

## **Toxic Release Inventory Program**

(R.C. 3751.01, 3751.02, 3751.03, 3751.04, 3751.05, 3751.10, 3751.11; Section 737.10)

The bill allows owners and operators of specified facilities to fulfill state toxic release inventory reporting requirements under the Toxic Release Inventory Program by complying with federal reporting requirements established by the U.S. Environmental Protection Agency. Under current state and federal law, owners and operators of specified industrial facilities must submit toxic release inventory reports to both OEPA and U.S. EPA. The bill specifically states that the electronic submission of a report to U.S. EPA constitutes the simultaneous submission of the report to OEPA as required by federal law. According to OEPA, U.S. EPA shares the federally submitted reports with OEPA. Thus, according to OEPA, the elimination of the requirement to submit the report directly to OEPA removes the redundancy in federal and state reporting requirements.

The bill retains the authority of OEPA to undertake investigations and enforcement actions regarding violations of the Toxic Release Inventory Program and to impose civil and criminal penalties for such violations. OEPA's investigatory authority includes the power to enter upon property to conduct investigations. Violations of the Program include the failure to submit a toxic release inventory report to U.S. EPA.

The bill eliminates fees required to be paid for filing a toxic release inventory report with OEPA, including late fees. The bill further provides that any money collected by OEPA before or after the bill's effective date from fees must remain in the Toxic Chemical Release Reporting Fund to be used exclusively for implementing, administering, and enforcing the laws governing the Toxic Release Inventory Program.

## **Total maximum daily load (TMDL)**

(R.C. 6111.03 and 6111.561; Section 761.10)

### **Introduction**

According to the U.S. EPA, a total maximum daily load (TMDL) is a planning tool and potential starting point for restoration or protection activities for bodies of water under the federal Water Pollution Control Act. A TMDL establishes a target for the total load of a pollutant that a water body can assimilate and allocates the load to sources of the pollutant. The TMDL can impact the parameters under which a water pollution discharge permit is issued.

The bill authorizes the Director of OEPA to establish a TMDL for each impaired body of water in Ohio and to submit the TMDL to the U.S. EPA. Under current law, the



Director is already authorized to undertake this task. However, the bill outlines the scope of this authority in order to supersede case law regarding TMDLs. In *County Board of Commissioners v. Nally*, 143 Ohio St.3d 93 (2015), the Ohio Supreme Court held that a TMDL prescribed a legal standard that did not previously exist, and therefore had to be formally promulgated as a rule pursuant to the Administrative Procedure Act before it could be enforced against the general public. The bill alters the Court's ruling by establishing specific procedures and standards under which a TMDL may be issued. The bill does so by declaring that the establishment, amendment, or modification of a TMDL after March 24, 2015, is not subject to the Administrative Procedure Act and additional laws governing the adoption of administrative rules.

### **Rules**

Under the bill, the Director must adopt new rules governing TMDLs no later than December 31, 2018 that do all of the following:

- (1) Allocate pollutant load between and among nonpoint sources and point sources in a TMDL report;
- (2) Establish procedures and requirements for developing and issuing a new TMDL;
- (3) Establish procedures and requirements for revising and updating a TMDL; and
- (4) Establish procedures and requirements for validation of existing TMDLs following implementation and additional assessment.

### **Establishing a TMDL**

The Director must establish a TMDL for pollutants for each impaired body of water or segment thereof that is identified and listed under the federal Water Pollution Control Act. The Director must establish each TMDL as follows:

- (1) Pursuant to a priority ranking established by the Director;
- (2) Only for pollutants that the Administrator of the U.S. EPA has identified under the federal Water Pollution Control Act as suitable; and
- (3) At a level necessary to implement applicable water quality standards that accounts for seasonal variations, a margin of safety, and lack of knowledge concerning the relationship between effluent limitations and water quality.



The bill establishes new administrative procedures that apply to the development of TMDLs. For example, it requires the Director to provide opportunities for interested parties to provide input during the development of a TMDL. The opportunities to provide input may include comment on and meeting with interested parties on any of the following aspects of the TMDL process:

(1) The project assessment plan development process, including the process for determining the cause and source of water quality impairments or threats;

(2) The technical support document that identifies and analyzes water quality data and habitat assessments that will assist in determining TMDL target conditions;

(3) The preliminary draft TMDL, which must include development of modeling, management choices, restoration targets, load allocations, waste load allocations, and associated TMDL-derived permit limits necessary to establish and select a TMDL restoration scenario; and

(4) The proposed TMDL implementation plan, under which specific actions, schedules, and monitoring necessary to implement a TMDL are established.

The proposed TMDL implementation plan also may include considerations of the cost and cost effectiveness of pollutant controls supplied by interested parties, sources of funding necessary to address pollutant load reductions, and the environmental benefit of incremental reductions in pollutant levels.

#### **Draft TMDL**

Before establishing a final TMDL for an impaired body of water, the bill requires the Director to prepare an official draft TMDL. The official draft TMDL must include:

(1) An estimate of the total amount of each pollutant that causes the water quality impairment from all sources;

(2) An estimate of the total amount of pollutants that may be added to the impaired body of water or segment thereof while still achieving and maintaining applicable water quality standards; and

(3) Draft allocations among point and nonpoint sources contributing to the impairment sufficient to meet water quality standards.

The official draft TMDL implementation plan also may include interim water quality target values and principles of adaptive management necessary to achieve water quality standards, as the Director determines appropriate.



### **Notice and comment**

The bill requires the Director to provide all of the following:

- (1) Public notice of the official draft TMDL;
- (2) An opportunity for comment on the official draft TMDL; and
- (3) An opportunity for a public hearing regarding the official draft TMDL, if there is significant public interest, as determined by the Director.

Regarding the public notice, the bill requires the Director to specify in the notice the body of water or segment thereof to which the official draft TMDL relates and the time, date, and place of the hearing. The Director must send the public notice to all interested parties that participated in the public input process on the official draft TMDL. Further, the Director must prepare and make available a written responsiveness summary of the comments after the public comment period expires.

### **Final TMDL**

After the public comment process is completed and the Director has completed and made available the written responsiveness summary, the Director may establish the final TMDL. The bill specifies that the final TMDL is appealable to the Environmental Review Appeals Commission (ERAC), however, the submission of that TMDL by the Director to the U.S. EPA is not appealable. The bill states that the Director may revise an established TMDL to accommodate new information.

### **Intent of the bill's TMDL provisions and existing TMDLs**

The bill includes an intent statement, clarifying that it is the intent of the General Assembly to supersede the effect of the holding in *County Board of Commissioners v. Nally*, to exclude the TMDL process from rule-making procedures, and to make the establishment of a final TMDL appealable to ERAC.

The bill states that a TMDL submitted to and approved by the U.S. EPA prior to March 24, 2015 (the date of the decision in *County Board of Commissioners v. Nally*) is valid and remains in full force and effect as approved, but may be revised by the Director. The holder of an NPDES permit that contains water quality based effluent limitations based on a TMDL established prior to March 24, 2015 may appeal the lawfulness and reasonableness of those limitations by:

- (1) Filing an appeal with ERAC no later than 30 days after the first eligible NPDES permit renewal date after the bill's effective date; or



(2) Seeking a modification of the water quality based effluent limitations contained in the NPDES permit from the Director. If the Director denies the request for modification, the permit holder can appeal that denial to ERAC no later than 30 days after the denial.

### **Industrial water pollution control certificate**

(R.C. 6111.03, 6111.04, and 6111.30)

The bill eliminates obsolete authority of the Director to issue, deny, revoke, or modify industrial water pollution control certificates. Water pollution control certificates are issued for tax exemption purposes. The authority to issue the certificates was transferred from OEPA to the Department of Taxation in 2003.<sup>42</sup>

### **Construction Grant Fund and program**

(Repealed R.C. 6111.033 and 6111.40)

The bill eliminates the Construction Grant Fund, which is required to consist of money arising from grants to the state from the U.S. EPA under the Federal Water Pollution Control Act. The Fund is currently empty, because U.S. EPA has ceased making such grants. In accordance with this change, the bill eliminates the construction grant program, under which a municipal corporation, board of county commissioners, conservancy district, sanitary district, or regional water and sewer district can apply for money for the design, acquisition, construction, alteration, and improvement of sewage and waste treatment works.

### **Water Pollution Control Loan Administrative Fund**

(R.C. 6111.036)

The bill authorizes OEPA to use money in the Water Pollution Control Loan Administrative Fund for water quality related programs administered by OEPA. The bill retains current law that authorizes OEPA to also use money in the Fund to defray administrative costs associated with the Water Pollution Control Loan Program. Under current law, the Fund consists of fees collected through the administration of loans under that Program.

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<sup>42</sup> See R.C. 5709.20 through 5709.27, not in the bill.