

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 304**

**Senators Brown, Yuko**

**Cosponsors: Senators Williams, O'Brien, Schiavoni, Tavares**

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**A BILL**

To amend sections 905.326 and 939.08 and to enact 1  
section 939.99 of the Revised Code to generally 2  
require the application of fertilizer in the 3  
western Lake Erie basin to be applied onto an 4  
actively farmed field at the agronomic rate, and 5  
to require the application of manure in the 6  
western Lake Erie basin to be applied onto an 7  
actively farmed field at either the agronomic 8  
rate or while utilizing specified best available 9  
technologies. 10

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 905.326 and 939.08 be amended and 11  
section 939.99 of the Revised Code be enacted to read as 12  
follows: 13

**Sec. 905.326.** (A) (1) ~~Except as provided in division (B) of~~ 14  
~~this section, no~~ No person in the western basin shall recklessly 15  
surface apply fertilizer under ~~either~~ any of the following 16  
circumstances: 17

(a) On snow-covered or frozen soil; 18

(b) When the top two inches of soil are saturated from precipitation;  
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(c) For agricultural purposes unless the person applies the fertilizer onto an actively farmed field at the agronomic rate.  
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~~(2) Except as provided in division (B) of this section, no~~  
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No person in the western basin shall recklessly surface apply  
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fertilizer for agricultural purposes in a granular form when the  
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local weather forecast for the application area contains greater  
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than a fifty per cent chance of precipitation exceeding one inch  
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in a twelve-hour-the twenty-four-hour period following the  
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planned application.  
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~~(B) Division (A) of this section does not apply if a person in the western basin applies fertilizer under any of the following circumstances:-~~  
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~~(1) The fertilizer is injected into the ground.~~  
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~~(2) The fertilizer is incorporated within twenty four hours of surface application.~~  
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~~(3) The fertilizer is applied onto a growing crop.~~  
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~~(C)~~(1) Upon receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director of agriculture or the director's designee may investigate or make inquiries into any alleged failure to comply with this section.  
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(2) After receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director or the director's designee may enter at reasonable times on any private or public property to inspect  
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and investigate conditions relating to any such alleged failure 47  
to comply with this section. 48

(3) If an individual denies access to the director or the 49  
director's designee, the director may apply to a court of 50  
competent jurisdiction in the county in which the premises is 51  
located for a search warrant authorizing access to the premises 52  
for the purposes of this section. 53

(4) The court shall issue the search warrant for the 54  
purposes requested if there is probable cause to believe that 55  
the person is not in compliance with this section. The finding 56  
of probable cause may be based on hearsay, provided that there 57  
is a reasonable basis for believing that the source of the 58  
hearsay is credible. 59

~~(D) This section does not affect any restrictions 60  
established in Chapter 903. of the Revised Code or otherwise 61  
apply to those entities or facilities that are permitted as 62  
concentrated animal feeding facilities under that chapter. 63~~

~~(E) (C) As used in this section, "western": 64~~

(1) "Western basin" means land in the state that is 65  
located in the following watersheds identified by the specified 66  
United States geological survey hydrologic unit code: 67

~~(1) (a) St. Marys watershed, hydrologic unit code 68  
04100004; 69~~

~~(2) (b) Auglaize watershed, hydrologic unit code 04100007; 70~~

~~(3) (c) Blanchard watershed, hydrologic unit code 71  
04100008; 72~~

~~(4) (d) Sandusky watershed, hydrologic unit code 04100011; 73~~

<del>(5)</del> <u>(e)</u> Cedar-Portage watershed, hydrologic unit code	74
04100010;	75
<del>(6)</del> <u>(f)</u> Lower Maumee watershed, hydrologic unit code	76
04100009;	77
<del>(7)</del> <u>(g)</u> Upper Maumee watershed, hydrologic unit code	78
04100005;	79
<del>(8)</del> <u>(h)</u> Tiffin watershed, hydrologic unit code 04100006;	80
<del>(9)</del> <u>(i)</u> St. Joseph watershed, hydrologic unit code	81
04100003;	82
<del>(10)</del> <u>(j)</u> Ottawa watershed, hydrologic unit code 04100001;	83
<del>(11)</del> <u>(k)</u> River Raisin watershed, hydrologic unit code	84
04100002.	85
<u>(2) "Agronomic rate" means the rate at which fertilizer</u>	86
<u>can be added to soil for optimum crop growth while minimizing</u>	87
<u>the potential for nutrient runoff based on all of the following:</u>	88
<u>(a) Nutrient content of the fertilizer to be applied;</u>	89
<u>(b) Nutrient needs of the current crops or the crops</u>	90
<u>planned to be planted immediately following the current crops;</u>	91
<u>(c) Nutrient content of the soil prior to the application</u>	92
<u>of the fertilizer as determined by a soil test taken within the</u>	93
<u>previous twelve months;</u>	94
<u>(d) The application rate at which the fertilizer will be</u>	95
<u>applied as determined by an accurate application device</u>	96
<u>calibration.</u>	97
<del>(F)</del> <u>(D)</u> Notwithstanding section 905.31 of the Revised	98
Code, as used in this section, "fertilizer" means nitrogen or	99
phosphorous.	100

**Sec. 939.08.** (A) Except as provided in division (B) of 101  
this section, no person in the western basin shall surface apply 102  
manure under any of the following circumstances: 103

(1) On snow-covered or frozen soil; 104

(2) When the top two inches of soil are saturated from 105  
precipitation; 106

(3) When the local weather forecast for the application 107  
area contains greater than a fifty per cent chance of 108  
precipitation ~~exceeding one half inch in a twenty four hour~~ the 109  
forty-eight-hour period following the planned application; 110

(4) Onto an actively farmed field for agricultural 111  
purposes unless either of the following apply: 112

(a) The person applies the manure at the agronomic rate. 113

(b) The person maintains and uses an operational system 114  
utilizing a best available technology for the treatment, 115  
stabilization, separation, or nutrient removal of the person's 116  
whole herd manure output. Such technologies include any of the 117  
following: 118

(i) Composting in accordance with section 3734.028 of the 119  
Revised Code and rules adopted under that section; 120

(ii) Anaerobic digestion; 121

(iii) Mechanical solid-liquid separation; 122

(iv) Hydrothermal carbonization; 123

(v) Wet chemical treatment; 124

(vi) Thermochemical stabilization and conversion; 125

(vii) Any other technology approved by the environmental 126

<u>protection agency.</u>	127
<u>(B) (1) Beginning on the effective date of this amendment</u>	128
<u>until two years after that date, no person in the western basin</u>	129
<u>that operates an agricultural facility in existence on the</u>	130
<u>effective date of this amendment shall surface apply manure</u>	131
<u>under any of the following circumstances:</u>	132
<u>(a) On snow-covered or frozen soil;</u>	133
<u>(b) When the top two inches of soil are saturated from</u>	134
<u>precipitation;</u>	135
<u>(c) When the local weather forecast for the application</u>	136
<u>area contains greater than a fifty per cent chance of</u>	137
<u>precipitation exceeding one-half inch in a twenty-four-hour</u>	138
<u>period.</u>	139
<u>(2) Beginning two years after the effective date of this</u>	140
<u>amendment, no person in the western basin that operates an</u>	141
<u>agricultural facility in existence on the effective date of this</u>	142
<u>amendment shall violate division (A) of this section.</u>	143
<del>(B) Division (A) of this section does not apply if a</del>	144
<del>person in the western basin applies manure under any of the</del>	145
<del>following circumstances:-</del>	146
<del>(1) The manure is injected into the ground.-</del>	147
<del>(2) The manure is incorporated within twenty-four hours of</del>	148
<del>surface application.-</del>	149
<del>(3) The manure is applied onto a growing crop.-</del>	150
<del>(4) In the event of an emergency, the director of</del>	151
<del>agriculture or the director's designee provides written consent</del>	152
<del>and the manure application is made in accordance with procedures</del>	153

~~established in the United States department of agriculture— 154  
natural resources conservation service practice standard code— 155  
590 prepared for this state.— 156~~

(C) (1) Upon receiving a complaint by any person or upon 157  
receiving information that would indicate a violation of this 158  
section, the director of agriculture or the director's designee 159  
may investigate or make inquiries into any alleged failure to 160  
comply with this section. 161

(2) After receiving a complaint by any person or upon 162  
receiving information that would indicate a violation of this 163  
section, the director or the director's designee may enter at 164  
reasonable times on any private or public property to inspect 165  
and investigate conditions relating to any such alleged failure 166  
to comply with this section. 167

(3) If an individual denies access to the individual's 168  
property, the director may apply to a court of competent 169  
jurisdiction in the county in which the premises is located for 170  
a search warrant authorizing access to the premises for the 171  
purposes of this section. 172

(4) The court shall issue the search warrant for the 173  
purposes requested if there is probable cause to believe that 174  
the person is not in compliance with this section. The finding 175  
of probable cause may be based on hearsay, provided that there 176  
is a reasonable basis for believing that the source of the 177  
hearsay is credible. 178

(D) ~~This section does not affect any restrictions— 179  
established in Chapter 903. of the Revised Code or otherwise— 180  
apply to those entities or facilities that are permitted as— 181  
concentrated animal feeding facilities under that chapter.— 182~~

<del>(E)</del> As used in this section, <del>"western"</del> :	183
(1) <u>"Western basin" has the same meaning as in section 905.326 of the Revised Code.</u>	184 185
(2) <u>"Agronomic rate" means the rate at which manure can be added to soil for optimum crop growth while minimizing the potential for nutrient runoff based on all of the following:</u>	186 187 188
(a) <u>Nutrient content of the manure to be applied;</u>	189
(b) <u>Nutrient needs of the current crops or the crops planned to be planted immediately following the current crops;</u>	190 191
(c) <u>Nutrient content of the soil prior to the application of the manure as determined by a soil test taken within the previous twelve months;</u>	192 193 194
(d) <u>The application rate at which the manure will be applied as determined by an accurate application device calibration.</u>	195 196 197
<u>Sec. 939.99. Whoever recklessly violates division (A) or (B) of section 939.08 of the Revised Code is guilty of a misdemeanor of the third degree on a first offense, a misdemeanor of the second degree on a second offense, and a misdemeanor of the first degree on a third or subsequent offense.</u>	198 199 200 201 202 203
<b>Section 2.</b> That existing sections 905.326 and 939.08 of the Revised Code are hereby repealed.	204 205