

Coastal Management Program

§ 1506.01 Definitions.

Text of Statute

As used in this chapter:

(A) "Coastal area" means the waters of Lake Erie, the islands in the lake, and the lands under and adjacent to the lake, including transitional areas, wetlands, and beaches. The coastal area extends in Lake Erie to the international boundary line between the United States and Canada and landward only to the extent necessary to include shorelands, the uses of which have a direct and significant impact on coastal waters as determined by the director of natural resources.

(B) "Coastal management program" means the comprehensive action of the state and its political subdivisions cooperatively to preserve, protect, develop, restore, or enhance the resources of the coastal area and to ensure wise use of the land and water resources of the coastal area, giving attention to natural, cultural, historic, and aesthetic values; agricultural, recreational, energy, and economic needs; and the national interest. "Coastal management program" includes the establishment of objectives, policies, standards, and criteria concerning, without limitation, protection of air, water, wildlife, rare and endangered species, wetlands and natural areas, and other natural resources in the coastal area; management of coastal development and redevelopment; preservation and restoration of historic, cultural, and aesthetic coastal features; and public access to the coastal area for recreation purposes.

(C) "Coastal management program document" means a comprehensive statement consisting of, without limitation, text, maps, and illustrations that is adopted by the director in accordance with this chapter, describes the objectives, policies, standards, and criteria of the coastal management program for guiding public and private uses of lands and waters in the coastal area, lists the governmental agencies, including, without limitation, state agencies, involved in implementing the coastal management program, describes their applicable policies and programs, and cites the statutes and rules under which they may adopt and implement those policies and programs.

(D) "Person" means any agency of this state, any political subdivision of this state or of the United States, and any legal entity defined as a person under section 1.59 of the Revised Code.

(E) "Director" means the director of natural resources or the director's designee.

(F) "Permanent structure" means any residential, commercial, industrial, institutional, or agricultural building, any mobile home as defined in division (O) of

section 4501.01 of the Revised Code, any manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code, and any septic system that receives sewage from a single-family, two-family, or three-family dwelling, but does not include any recreational vehicle as defined in section 4501.01 of the Revised Code.

(G) "State agency" or "agency of the state" has the same meaning as "agency" as defined in section 111.15 of the Revised Code.

(H) "Coastal flood hazard area" means any territory within the coastal area that has been identified as a flood hazard area under the "Flood Disaster Protection Act of 1973," 87 Stat. 975, 42 U.S.C.A. 4002, as amended.

(I) "Coastal erosion area" means any territory included in Lake Erie coastal erosion areas identified by the director under section 1506.06 of the Revised Code.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 146 v H 119 (Eff 5-8-96); 147 v S 142. Eff 3-30-99.

§ 1506.02 Natural resources department designated lead agency for coastal management program; document; grants.

Text of Statute

(A) The department of natural resources is hereby designated the lead agency for the development and implementation of a coastal management program. The director of natural resources:

(1) Shall develop and adopt the coastal management program document. The director shall cooperate and coordinate with other agencies of the state and its political subdivisions in the development of the document. Before adopting the document, the director shall hold four public hearings on it in the coastal area, and may hold additional public meetings, to give the public the opportunity to make comments and recommendations concerning its terms. The director shall consider the public comments and recommendations before adopting the document. The director may amend the coastal management program document, provided that, prior to making changes in it, the director notifies by mail those persons who submitted comments and recommendations concerning the original document and appropriate agencies of the state and its political subdivisions. The director may hold at least one public hearing on the proposed changes.

(2) Shall administer the coastal management program in accordance with the coastal management program document, this chapter, and rules adopted under it;

(3) Shall adopt and may amend or rescind rules under Chapter 119. of the Revised Code for the implementation, administration, and enforcement of the coastal management program and the other provisions of this chapter. Before the adoption, amendment, or rescission of rules under division (A)(3) of this section, the director

shall do all of the following:

- (a) Maintain a list of interested public and private organizations and mail notice to those organizations of any proposed rule or amendment to or rescission of a rule at least thirty days before any public hearing on the proposal;
- (b) Mail a copy of each proposed rule, amendment, or rescission to any person who requests a copy within five days after receipt of the request;
- (c) Consult with appropriate statewide organizations and units of local government that would be affected by the proposed rule, amendment, or rescission.

Although the director is expected to discharge these duties diligently, failure to mail any notice or copy or to so consult with any person is not jurisdictional and shall not be construed to invalidate any proceeding or action of the director.

- (4) Shall provide for consultation and coordination between and among state agencies, political subdivisions of the state, and interstate, regional, areawide, and federal agencies in carrying out the purposes of the coastal management program and the other provisions of this chapter;
 - (5) Shall, to the extent practicable and consistent with the protection of coastal area resources, coordinate the rules and policies of the department of natural resources with the rules and policies of other state and federal agencies to simplify and consolidate the regulation of activities along the Lake Erie shoreline;
 - (6) May, to accomplish the purposes of the coastal management program and the other provisions of this chapter, contract with any person and may accept and expend gifts, bequests, and grants of money or property from any person.
- (B) Every agency of the state, upon request of the director, shall cooperate with the department of natural resources in the implementation of the coastal management program.
- (C) The director shall establish a coastal management assistance grant program. Grants may be awarded from federal funds received for that purpose and from such other funds as may be provided by law to any municipal corporation, county, township, park district created under section 511.18 or 1545.04 of the Revised Code, conservancy district established under Chapter 6101. of the Revised Code, port authority, other political subdivision, state agency, educational institution, or nonprofit corporation to help implement, administer, or enforce any aspect of the coastal management program. Grants may be used for any of the following purposes:
- (1) Feasibility studies and engineering reports for projects that are consistent with the policies in the coastal management program document;
 - (2) The protection and preservation of wetlands, beaches, fish and wildlife habitats, minerals, natural areas, prime agricultural land, endangered plant and animal species, or other significant natural coastal resources;

- (3) The management of shoreline development to prevent loss of life and property in coastal flood hazard areas and coastal erosion areas, to set priorities for water-dependent energy, commercial, industrial, agricultural, and recreational uses, or to identify environmentally acceptable sites for dredge spoil disposal;
- (4) Increasing public access to Lake Erie and other public places in the coastal area;
- (5) The protection and preservation of historical, cultural, or aesthetic coastal resources;
- (6) Improving the predictability and efficiency of governmental decision making related to coastal area management;
- (7) Adopting, administering, and enforcing zoning ordinances or resolutions relating to coastal flood hazard areas or coastal erosion areas;
- (8) The redevelopment of deteriorating and underutilized waterfronts and ports;
- (9) Other purposes approved by the director.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 145 v S 182 (Eff 10-20-94); 146 v H 119 (Eff 5-8-96); 147 v S 187. Eff 3-18-99.

[§ 1506.02.1] § 1506.021* Six year limit on rules.

Text of Statute

Any rule adopted under division (A)(3) of section 1506.02 of the Revised Code shall remain in effect for not more than six years after the effective date of the rule.

History

HISTORY: 146 v H 119, § 3. Eff 5-8-96.

*** This statute was originally section 3 of HB 119 (146 v --). The section number is the result of codification by the Legislative Service Commission.**

§ 1506.03 Director to determine consistency of project or activity with program.

Text of Statute

Except as otherwise provided in this section, no project or activity directly affecting the coastal area that is proposed by or subject to the approval of any agency of the state shall be implemented or approved until the director of natural resources has determined that it is consistent with the policies in the coastal management program document. Any agency of the state may develop and adopt a statement of coastal management policies, in which case a determination of consistency shall not be required under this section if the statement of coastal management policies has been approved by the director and the project or activity is in accordance with that statement.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 145 v S 182. Eff 10-20-94.

§ 1506.04 Duty of county or municipal corporation to comply with national flood insurance program or equivalent.

Text of Statute

(A) No later than six months after the effective date of this section, each county or municipal corporation within whose jurisdiction is a coastal flood hazard area shall either participate in and remain in compliance with the national flood insurance program established in the "Flood Disaster Protection Act of 1973," 87 Stat. 975, 42 U.S.C. 4002, as amended, or shall adopt resolutions or ordinances governing the coastal flood hazard area that meet or exceed the standards required for participation in the regular phase of the national flood insurance program.

(B) If the director of natural resources determines at any time that a county or municipal corporation that is participating in the national flood insurance program as described in division (A) of this section or has adopted resolutions or ordinances under that division is not in compliance with that program or those resolutions or ordinances, as applicable, he shall so notify the legislative authority of the county or municipal corporation and shall also notify the legislative authority that it may respond to his determination in accordance with the procedure for doing so established by rules adopted under section 1506.02 of the Revised Code. If after considering the legislative authority's response the director determines that the county or municipal corporation is still not in compliance with the national flood insurance program or resolutions or ordinances adopted under division (A) of this section, as applicable, he may request the attorney general in writing to, and the attorney general shall, bring an action for appropriate relief in a court of competent jurisdiction against the county or municipal corporation.

(C) The attorney general, upon the written request of the director, shall bring an action for appropriate relief in a court of competent jurisdiction against any development that meets both of the following criteria:

(1) Is located in a county or municipal corporation that is not in compliance with division (A) of this section;

(2) Is not in compliance with the standards of the national flood insurance program established in the "Flood Disaster Protection Act of 1973," 87 Stat. 975, 42 U.S.C. 4002, as amended.

As used in this division, "development" means any artificial change to improved or unimproved real estate, including, without limitation, the construction of buildings and other structures and mining, dredging, filling, grading, paving, excavation, and drilling operations.

(D) This section does not apply to any permits or approvals issued by any state

agency prior to the effective date of rules adopted under section 1506.02 of the Revised Code for the implementation of this section.

History

HISTORY: 142 v S 70. Eff 3-15-89.

§ 1506.05 Promotion of public access to Lake Erie.

Text of Statute

The director of natural resources shall prepare and maintain a current inventory of public access facilities and areas for the Ohio shoreline of Lake Erie, including, without limitation, shoreline parks, cultural resources, natural areas, wildlife refuges, harbors of refuge, boat launch ramps, shoreline fishing areas, and beaches. No later than December 31, 1994, the director shall evaluate public access to Lake Erie and may prepare and publish plans and policy recommendations as necessary for enhancing public access to Lake Erie. The director shall update any plans and policy recommendations at least once every five years. Every state agency and political subdivision, upon the director's request, shall cooperate with the director and furnish information for the public access inventory and any public access plans.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 145 v S 182. Eff 10-20-94.

§ 1506.06 Preliminary and final identification of coastal erosion areas; notice to grantee; prohibited governmental actions.

Text of Statute

(A) The director of natural resources, using the best available scientific records, data, and analyses of shoreline recession, shall make a preliminary identification of Lake Erie coastal erosion areas, which are the land areas anticipated to be lost by Lake Erie-related erosion within a thirty-year period if no additional approved erosion control measures are completed within that time. The preliminary identification shall state the bluff recession rates for the coastal erosion areas and shall take into account areas where substantial filling, protective measures, or naturally stable land has significantly reduced recession. Prior to making the preliminary identification, the director shall consult with the appropriate authority of each municipal corporation, county, and township having territory within an area that the director proposes to identify as a Lake Erie coastal erosion area. Upon making the preliminary identification, the director shall notify by certified mail the appropriate authority of each municipal corporation, county, and township having territory within a Lake Erie coastal erosion area of the preliminary identification. The notice shall delineate the portion of a Lake Erie coastal erosion area within the jurisdiction of, and shall be made available for public inspection by, the municipal

corporation, county, or township. The director also shall publish a notice in a newspaper of general circulation in each affected locality stating that the preliminary identification has been made and stating where information delineating the Lake Erie coastal erosion areas may be inspected by the public and shall notify each landowner of record in a coastal erosion area of the preliminary identification. The notification shall be sent by certified mail to the landowner at the address indicated in the most recent tax duplicate. Within sixty days after the notifications required by this division, the director shall hold public hearings in each of the shoreline counties on the preliminary identification of the Lake Erie coastal erosion areas. Any affected municipal corporation, county, township, or private landowner may file with the director a written objection to the preliminary identification at any of those hearings or at any other time within one hundred twenty days from the date indicated in the certified mail notice, which date shall be one week following the date of the notice. For any such objection, verifiable evidence or documentation shall be submitted indicating that some portion of a Lake Erie coastal erosion area should not have been included in the areas defined by the preliminary identification. A municipal corporation, county, or township may object only with respect to territory within its jurisdiction or other territory that it owns; a private landowner may object only with respect to the landowner's land.

(B) The director shall review all objections filed under division (A) of this section. The director may then modify the preliminary identification of Lake Erie coastal erosion areas. Within the next ninety days, the director shall notify each objecting person of the director's decision regarding the objection. The director also shall notify, within that ninety-day period, any other owner for whom the director's decision results in a modification on that other owner's property.

(C) Whenever the preliminary identification of a Lake Erie coastal erosion area is modified as a result of an objection, the director shall so notify the affected municipal corporation, county, or township and shall publish a notice of the modification in a newspaper of general circulation in the affected locality. Objections to modifications may be filed within sixty days of the newspaper notification required by this division or within sixty days of the date of the property owner's notification required by division (B) of this section, whichever is later, and shall be filed in the same manner as objections to the original preliminary identification. The director shall rule on each objection to a modification within sixty days after receiving it.

(D) After the director has ruled on each objection filed under division (B) or (C) of this section, the director shall make a final identification of the Lake Erie coastal erosion areas and shall notify by certified mail the appropriate authority of each affected municipal corporation, county, and township of the final identification. The

final identification may be appealed under section 1506.08 of the Revised Code.

(E) At least once every ten years, the director shall review and may revise the identification of Lake Erie coastal erosion areas, taking into account any recent natural or artificially induced changes affecting anticipated recession. The review and revision shall be done in the same manner as that provided for original preliminary and final identification in this section.

(F) Any person who has received written notice under this section or section 5302.30 of the Revised Code that a parcel or any portion of a parcel of real property that the person owns has been included in a Lake Erie coastal erosion area identified under this section shall not sell or transfer any interest in that real property unless the person first provides written notice to the purchaser or grantee that the real property is included in a Lake Erie coastal erosion area. The written notice shall be provided in accordance with section 5302.30 of the Revised Code.

(G) No state agency, county, township, or municipal corporation, or any other political subdivision or special district in this state established by law shall use the fact that property has been identified as a Lake Erie coastal erosion area as a basis for any of the following:

(1) Failing to enter into or renew a lease or to issue or renew a permit under section 1506.11 of the Revised Code;

(2) Failing to issue or renew a permit required by law, other than a permit issued under section 1506.07 of the Revised Code;

(3) Taking private property for public use in the exercise of the power of eminent domain;

(4) Determining what constitutes just compensation for a taking of the property in the exercise of the power of eminent domain.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 145 v S 182 (Eff 10-20-94); 146 v H 119. Eff 5-8-96.

§ 1506.07 Rules for permanent structures in erosion area; permit; county or municipal regulation.

Text of Statute

(A) No later than December 31, 1994, the director of natural resources shall adopt, and may subsequently amend or rescind, rules in accordance with Chapter 119. of the Revised Code governing the erection, construction, and redevelopment of permanent structures in Lake Erie coastal erosion areas identified under section 1506.06 of the Revised Code and such other rules as are necessary to implement this section. The rules shall include, without limitation, a requirement that any person who intends to erect, construct, or redevelop any permanent structure in a

Lake Erie coastal erosion area obtain a permit to do so from the director and requirements and procedures for the issuance of such permits, including, without limitation, a requirement that no later than thirty days after receiving a complete permit application, the director either shall notify the applicant that the application is approved or denied and, if denied, the reason for denial or shall notify the applicant of any modification necessary to qualify the application for approval and a requirement that each permit contain a reference to the volume and page of the deed record by which the current owner of the property to be improved obtained title to it.

The rules adopted under this division do not apply to the erection, construction, or redevelopment of a permanent structure for which a permit was issued or plan was approved by any state agency, political subdivision of this state, or federal agency prior to any of the following:

- (1) The effective date of those rules;
- (2) The date the director notifies each municipal corporation, county, and township of the final identification of the coastal erosion areas pursuant to section 1506.06 of the Revised Code;
- (3) The date the director adopts the coastal management program document pursuant to section 1506.02 of the Revised Code.

(B) No person shall erect, construct, or redevelop a permanent structure on land within a Lake Erie coastal erosion area without a permit issued in accordance with rules adopted under division (A) of this section. The director shall grant a permit under those rules if the proposed site is protected by an effective erosion control measure approved by the director that will protect the permanent structure or if both of the following criteria are met:

- (1) The structure will be movable or will be situated as far landward as applicable zoning resolutions or ordinances permit;
- (2) The person seeking the authorization will suffer exceptional hardship if the authorization is not given.

The approval of an effective erosion control measure by the director for the purposes of this division does not create liability on the part of the director, the department of natural resources, or the state, municipal corporation, county, or township regarding the future protection of the site for which the measure was approved.

The director shall not require a permit for the erection, construction, or redevelopment of a permanent structure on any parcel of property within a Lake Erie coastal erosion area if that property is not adjacent to Lake Erie.

(C) The director or his authorized representative may issue a stop work order whenever the director finds, after inspection, that any erection, construction, or

redevelopment is being conducted within a Lake Erie coastal erosion area in violation of division (B) of this section.

(D) A permit granted by the director under division (B) of this section is not required within the territory of any county or municipal corporation that has adopted and is enforcing a Lake Erie coastal erosion area resolution or ordinance within its zoning or building regulations if the resolution or ordinance has been reviewed by the director under this division and meets or exceeds the standards established under division (B) of this section.

No later than thirty days after adopting, amending, or rescinding a Lake Erie coastal erosion area resolution or ordinance under this division, the legislative authority of the county or municipal corporation shall submit it to the director for review and comment. No later than thirty days after receiving the resolution or ordinance, the director shall notify the legislative authority that the resolution or ordinance does or does not meet or exceed the standards established under division (B) of this section. If it does, the director's notice also shall indicate that a permit granted by the director under division (B) of this section is not required within the territory of that county or municipal corporation. If the resolution or ordinance does not meet those standards, the legislative authority may submit a revised resolution or ordinance under this division until the director notifies the legislative authority that the resolution or ordinance meets those standards.

Beginning on the thirty-first day of January following the director's notice that the resolution or ordinance meets or exceeds the standards established under division (B) of this section, and every two years thereafter, the legislative authority shall submit to the director, on a form created by the department, a report of the county's or municipal corporation's relevant administrative and enforcement activities during the previous two calendar years.

If the director determines at any time that a Lake Erie coastal erosion area resolution or ordinance that the director has determined under this division meets or exceeds the standards established under division (B) of this section is being inadequately enforced, the director shall so notify the legislative authority that adopted it and also shall notify the legislative authority that it may respond to the director's determination in accordance with the procedure for doing so established by rules adopted under this section. If after considering the legislative authority's response the director determines that the resolution or ordinance still is being inadequately enforced, the director shall reinstate the permit requirement of division (B) of this section within the territory of the affected county or municipal corporation.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 145 v S 182 (Eff 10-20-94); 146 v H 119.

Eff 5-8-96.

§ 1506.08 Appeals.

Text of Statute

Any person who is adversely affected by the final identification of a Lake Erie coastal erosion area under division (D) of section 1506.06 of the Revised Code or any other final administrative act of the director of natural resources under this chapter or who receives denial of a permit application under rules adopted under division (A) of section 1506.07 of the Revised Code, within thirty days after the identification, act, or denial, may appeal it in accordance with Chapter 119. of the Revised Code.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 146 v H 119. Eff 5-8-96.

§ 1506.09 Violations; injunction; civil penalty.

Text of Statute

(A)(1) No person shall violate or fail to comply with any provision of this chapter, any rule or order adopted or issued under it, or any condition of a permit issued in accordance with rules, resolutions, or ordinances adopted under it.

(2) The attorney general, upon written request of the director of natural resources, shall bring an action for an injunction against any person who has violated, is violating, or is threatening to violate division (A)(1) of this section.

(3) Any person who violates any provision of this chapter, any rule or order adopted or issued under it, or any condition of a permit issued in accordance with rules adopted under division (A) of section 1506.07 of the Revised Code shall, in addition to any fine that may be assessed under section 1506.99 of the Revised Code, be assessed a civil penalty of not more than five thousand dollars for each offense to be paid into the state treasury to the credit of the general revenue fund. Upon written request of the director, the attorney general shall commence an action against any such violator. Any action under this division is a civil action, governed by the rules of civil procedure and other rules of practice and procedure applicable to civil actions.

(B) The prosecuting attorney of a county or the city director of law of a municipal corporation that has adopted a resolution or ordinance in accordance with division (D) of section 1506.07 of the Revised Code may, on behalf of that county or municipal corporation, respectively, bring a civil action against any person who violates that resolution or ordinance within the territory of that county or municipal corporation in the court of common pleas in the county in which the violation occurred. Any such violator may, in addition to any fine that may be assessed under

section 1506.99 of the Revised Code, be assessed a civil penalty of not more than five thousand dollars for each offense together with court costs. Any moneys recovered under this division shall be paid into the treasury of the appropriate county or municipal corporation. Any action under this division shall be governed by the rules of civil procedure and other rules of practice and procedure applicable to civil actions.

History

HISTORY: 142 v S 70. Eff 3-15-89.

§ 1506.10 State's rights to waters of Lake Erie.

Text of Statute

It is hereby declared that the waters of Lake Erie consisting of the territory within the boundaries of the state, extending from the southerly shore of Lake Erie to the international boundary line between the United States and Canada, together with the soil beneath and their contents, do now belong and have always, since the organization of the state of Ohio, belonged to the state as proprietor in trust for the people of the state, for the public uses to which they may be adapted, subject to the powers of the United States government, to the public rights of navigation, water commerce, and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing past their lands.

Any artificial encroachments by public or private littoral owners, which interfere with the free flow of commerce in navigable channels, whether in the form of wharves, piers, fills, or otherwise, beyond the natural shoreline of those waters, not expressly authorized by the general assembly, acting within its powers, or pursuant to section 1506.11 of the Revised Code, shall not be considered as having prejudiced the rights of the public in such domain. This section does not limit the right of the state to control, improve, or place aids to navigation in the other navigable waters of the state or the territory formerly covered thereby.

The department of natural resources is hereby designated as the state agency in all matters pertaining to the care, protection, and enforcement of the state's rights designated in this section.

Any order of the director of Natural Resources in any matter pertaining to the care, protection, and enforcement of the state's rights in that territory is a rule or adjudication within the meaning of sections 119.01 to 119.13 of the Revised Code.

History

HISTORY: GC § 3699a; 107 v 587; 121 v 84; Bureau of Code Revision, RC § 123.03, 10-1-53; 126 v 137 (Eff 10-13-55); 135 v S 174 (Eff 12-4-73); RC § 1506.10, 142 v S 70. Eff 3-15-89.

§ 1506.11 Leasing of lakefront land for private improvement.

Text of Statute

(A) "Territory," as used in this section, means the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada.

(B) Whenever the state, acting through the director of natural resources, upon application of any person who wants to develop or improve part of the territory, and after notice that the director, at the director's discretion, may give as provided in this section, determines that any part of the territory can be developed and improved or the waters thereof used as specified in the application without impairment of the public right of navigation, water commerce, and fishery, a lease of all or any part of the state's interest therein may be entered into with the applicant, or a permit may be issued for that purpose, subject to the powers of the United States government and in accordance with rules adopted by the director in accordance with Chapter 119. of the Revised Code, and without prejudice to the littoral rights of any owner of land fronting on Lake Erie, provided that the legislative authority of the municipal corporation within which any such part of the territory is located, if the municipal corporation is not within the jurisdiction of a port authority, or the county commissioners of the county within which such part of the territory is located, excluding any territory within a municipal corporation or under the jurisdiction of a port authority, or the board of directors of a port authority with respect to such part of the territory included in the jurisdiction of the port authority, has enacted an ordinance or resolution finding and determining that such part of the territory, described by metes and bounds or by an alternate description referenced to the applicant's upland property description that is considered adequate by the director, is not necessary or required for the construction, maintenance, or operation by the municipal corporation, county, or port authority of breakwaters, piers, docks, wharves, bulkheads, connecting ways, water terminal facilities, and improvements and marginal highways in aid of navigation and water commerce and that the land uses specified in the application comply with regulation of permissible land use under a waterfront plan of the local authority.

(C) Upon the filing of the application with the director, the director may hold a public hearing thereon and may cause written notice of the filing to be given to any municipal corporation, county, or port authority, as the case may be, in which such part of the territory is located and also shall cause public notice of the filing to be given by advertisement in a newspaper of general circulation within the locality where such part of the territory is located. If a hearing is to be held, public notice of the filing may be combined with public notice of the hearing and shall be given

once a week for four consecutive weeks prior to the date of the initial hearing. All hearings shall be before the director and shall be open to the public, and a record shall be made of the proceeding. Parties thereto are entitled to be heard and to be represented by counsel. The findings and order of the director shall be in writing. All costs of the hearings, including publication costs, shall be paid by the applicant. The director also may hold public meetings on the filing of an application. If the director finds that a lease may properly be entered into with the applicant or a permit may properly be issued to the applicant, the director shall determine the consideration to be paid by the applicant, which consideration shall exclude the value of the littoral rights of the owner of land fronting on Lake Erie and improvements made or paid for by the owner of land fronting on Lake Erie or that owner's predecessors in title. The lease or permit may be for such periods of time as the director determines. The rentals received under the terms of such a lease or permit shall be paid into the state treasury to the credit of the Lake Erie submerged lands fund, which is hereby created, and shall be distributed from that fund as follows:

(1) Fifty per cent of each rental shall be paid to the department of natural resources for the administration of this section and section 1506.10 of the Revised Code and for the coastal management assistance grant program required to be established under division (C) of section 1506.02 of the Revised Code;

(2) Fifty per cent of each rental shall be paid to the municipal corporation, county, or port authority making the finding provided for in this section.

All leases and permits shall be executed in the manner provided by section 5501.01 of the Revised Code and shall contain, in addition to the provisions required in this section, a reservation to the state of all mineral rights and a provision that the removal of any minerals shall be conducted in such manner as not to damage any improvements placed by the littoral owner, lessee, or permit holder on the lands. No lease or permit of the lands defined in this section shall express or imply any control of fisheries or aquatic wildlife now vested in the division of wildlife of the department.

(D) Upland owners who, prior to October 13, 1955, have erected, developed, or maintained structures, facilities, buildings, or improvements or made use of waters in the part of the territory in front of those uplands shall be granted a lease or permit by the state upon the presentation of a certification by the chief executive of a municipal corporation, resolution of the board of county commissioners, or resolution of the board of directors of the port authority establishing that the structures, facilities, buildings, improvements, or uses do not constitute an unlawful encroachment on navigation and water commerce. The lease or permit shall specifically enumerate the structures, facilities, buildings, improvements, or uses so

included.

(E) Persons having secured a lease or permit under this section are entitled to just compensation for the taking, whether for navigation, water commerce, or otherwise, by any governmental authority having the power of eminent domain, of structures, facilities, buildings, improvements, or uses erected or placed upon the territory pursuant to the lease or permit or the littoral rights of the person and for the taking of the leasehold and the littoral rights of the person pursuant to the procedure provided in Chapter 163. of the Revised Code. The compensation shall not include any compensation for the site in the territory except to the extent of any interest in the site theretofore acquired by the person under this section or by prior acts of the general assembly or grants from the United States government. The failure of any person to apply for or obtain a lease or permit under this section does not prejudice any right the person may have to compensation for a taking of littoral rights or of improvements made in accordance with a lease, a permit, or littoral rights.

(F) If any taxes or assessments are levied or assessed upon property that is the subject of a lease or permit under this section, the taxes or assessments are the obligation of the lessee or permit holder.

(G) If a lease or permit secured under this section requires the lessee or permit holder to obtain the approval of the department or any of its divisions for any changes in structures, facilities, or buildings, for any improvements, or for any changes or expansion in uses, no lessee or permit holder shall change any structures, facilities, or buildings, make any improvements, or expand or change any uses unless the director first determines that the proposed action will not adversely affect any current or prospective exercise of the public right of recreation in the territory and in the state's reversionary interest in any territory leased or permitted under this section.

Proposed changes or improvements shall be deemed to "adversely affect" the public right of recreation if the changes or improvements cause or will cause any significant demonstrable negative impact upon any present or prospective recreational use of the territory by the public during the term of the lease or permit or any renewals and of any public recreational use of the leased or permitted premises in which the state has a reversionary interest.

History

HISTORY: RC § 123.03.1, 126 v 137 (Eff 10-13-55); 129 v 582 (593) (Eff 1-10-61); 131 v 49 (Eff 11-1-65); 135 v S 174 (Eff 12-4-73); 140 v S 6 (Eff 3-14-85); 141 v H 201 (Eff 7-1-85); RC § 1506.11, 142 v S 70 (Eff 3-15-89); 145 v S 182 (Eff 10-20-94); 146 v H 60 (Eff 3-4-98); 147 v S 187. Eff 3-18-99.

§ 1506.12 Coastal resources advisory council.

Text of Statute

There is hereby created the coastal resources advisory council, which shall consist of nineteen members, appointed by the director of natural resources, who represent a broad range of interests, experience, and knowledge relating to the management, use, conservation, protection, and development of coastal area resources. The director shall solicit names of qualified persons to serve on the council from the legislative authorities of counties, townships, municipal corporations, and other political subdivisions and from interest groups located in the coastal area. The director shall appoint to the council at least one member from each shoreline county, which members shall be selected from the names submitted to the director as described above and at least one of which shall be a public official of such a county; at least three individuals who own private shoreline property in a shoreline county; at least one public official of a municipal corporation that is located in a shoreline county; at least two individuals who are members of the Ohio association of realtors and whose places of business as specified in section 4735.16 of the Revised Code are located in the shoreline area; and at least two individuals with experience in residential and commercial land development in the shoreline area. No more than ten members of the council shall be from the same political party. The director may participate in the deliberations of the council, but shall not vote. The members of the council first appointed by the director shall serve terms commencing no later than one hundred eighty days after March 15, 1989, and expiring on February 1, 1990. On February 2, 1990, the director shall appoint six members to serve for a term of one year and seven members to serve for a term of two years. The members first appointed by the director after the effective date of this amendment shall serve terms commencing no later than one hundred eighty days after that date. Three of those members shall serve terms expiring on February 1, 1997, and three of those members shall serve terms expiring on February 1, 1998. On February 2, 1997, the director shall appoint nine members to serve for a term of three years to replace all members whose terms of office expired on February 1, 1997. On February 2, 1998, the director shall appoint ten members to serve for a term of four years to replace all members whose terms of office expired on February 1, 1998. Thereafter, terms of office for all members shall be for four years commencing on the second day of February and ending on the first day of February. Members may be reappointed to the council.

The director may remove any member at any time for inefficiency, neglect of duty, or malfeasance in office. In the event of the death, removal, resignation, or incapacity of any member, the director shall appoint a successor to hold office for the remainder of the term for which the member's predecessor was appointed. Any member shall continue in office subsequent to the expiration date of the member's

term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

Membership on the council does not constitute holding a public office or position of employment under state law and is not grounds for removal of public officers or employees from their offices or positions of employment.

The council annually shall select from its members a chairperson and a vice-chairperson. The council shall hold at least one meeting every three months and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairperson and shall be called upon the written request of two or more members. A majority of the members constitutes a quorum. The department of natural resources shall furnish clerical, technical, legal, and other services required by the council in the performance of its duties.

Members shall receive no compensation, but shall be reimbursed from appropriations to the department for the actual and necessary expenses incurred by them in the performance of their official duties.

The council shall do all of the following:

- (A) Advise the director on carrying out the director's duties under this chapter, including, without limitation, implementation of the coastal management program;
- (B) Recommend to the director such policies and legislation as are necessary to preserve, protect, develop, and restore or enhance the coastal resources of the state;
- (C) Review and make recommendations to the director on the development of policies, plans, and programs for long-term, comprehensive coastal resource management, including, without limitation, the coastal management program document adopted under division (A)(1) of section 1506.02 of the Revised Code;
- (D) Recommend to the director ways to enhance cooperation among governmental agencies, including, without limitation, state agencies, having an interest in coastal management and to encourage wise use and protection of the state's coastal resources. The council may request information and other assistance from those governmental agencies for this purpose.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 146 v H 119. Eff 5-8-96.

See provisions, § 27 of HB 670 (146 v --), concerning the date of expiration for certain state agencies, following RC § 1501.04.

§ 1506.20 Repealed.

Repealed, 144 v H 298, § 2 [143 v H 550; 143 v H 804]. Eff 7-26-91.

This section created the Lake Erie office.

§ 1506.21 Lake Erie commission created.

Text of Statute

(A) There is hereby created the Ohio Lake Erie commission, consisting of the directors of environmental protection, natural resources, health, agriculture, and transportation, or their designees. The members of the commission annually shall designate a chairperson, who shall preside at the meetings of the commission, and a secretary.

The commission shall hold at least one meeting every three months. The secretary of the commission shall keep a record of its proceedings. Special meetings shall be held at the call of the chairperson or upon the request of four members of the commission. All meetings and records of the commission shall be open to the public. Three members of the commission constitute a quorum. The agencies represented on the commission shall furnish clerical, technical, and other services required by the commission in the performance of its duties.

(B) The commission shall do all of the following:

- (1) Ensure the coordination of state and local policies and programs pertaining to Lake Erie water quality, toxic pollution control, and resource protection;
- (2) Review, and make recommendations concerning, the development and implementation of policies, programs, and issues for long-term, comprehensive protection of Lake Erie water resources and water quality that are consistent with the great lakes water quality agreement and the great lakes toxic substances control agreement;
- (3) Recommend policies and programs to modify the coastal management program of this state;
- (4) At each regular meeting, consider matters relating to the implementation of sections 1506.22 and 1506.23 of the Revised Code;
- (5) Publish and submit the Lake Erie protection agenda in accordance with division (C) of section 1506.23 of the Revised Code;
- (6) Ensure the implementation of a basinwide approach to Lake Erie issues;
- (7) Increase representation of the interests of this state in state, regional, national, and international forums pertaining to the resources and water quality of Lake Erie and the Lake Erie basin;
- (8) Promote education concerning the wise management of the resources of Lake Erie;
- (9) Establish public advisory councils as considered necessary to assist in programs established under this section and sections 1506.22 and 1506.23 of the Revised Code. Members of the public advisory councils shall represent a broad cross section of interests, shall have experience or expertise in the subject for which the advisory council was established, and shall serve without compensation.

(10) Prepare and submit the report required under division (D) of section 1506.23 of the Revised Code.

(C) Each state agency, upon the request of the commission, shall cooperate in the implementation of this section and sections 1506.22 and 1506.23 of the Revised Code.

History

HISTORY: 143 v H 804 (Eff 10-1-90); 144 v H 298 (Eff 7-26-91); 144 v S 331 (Eff 11-13-92); 145 v S 182 (Eff 10-20-94); 147 v H 215. Eff 6-30-97.

See provisions, § 27 of HB 670 (146 v --), concerning the date of expiration for certain state agencies, following RC § 1501.04.

§ 1506.22 Great Lakes protection fund.

Text of Statute

(A) Except as provided in division (B) of this section, the state agency whose director has been designated to administer the Lake Erie protection fund under section 1506.23 of the Revised Code is hereby designated the lead agency for the implementation in this state of the purposes of the great lakes protection fund, a regional trust fund established by the great lakes states to advance the principles, goals, and objectives of the great lakes toxic substances control agreement and the great lakes water quality agreement, as they may be revised and amended.

(B) The governor shall appoint two members from this state to the board of directors of the great lakes protection fund as provided in the bylaws and articles of incorporation of the fund. Of the initial appointments made to the board, one shall serve for a term of one year and one shall serve for a term of two years; thereafter, the members of the board of directors from this state shall serve for terms of two years. The governor may remove any member at any time as provided in the bylaws and articles of incorporation of the fund. In the event of a vacancy, the governor shall appoint a successor to hold office for the remainder of the term for which the member's predecessor was appointed. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

Membership on the board does not constitute holding a public office or position of employment under the laws of this state and is not grounds for removal of public officers or employees from their offices or positions of employment.

Members of the board from this state shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

History

HISTORY: 143 v H 804 (Eff 10-1-90); 144 v H 298 (Eff 7-26-91); 147 v H 215.

Eff 6-30-97.

§ 1506.23 Lake Erie protection fund; agenda; annual report of commission.

Text of Statute

(A) There is hereby created in the state treasury the Lake Erie protection fund, which shall consist of moneys deposited into the fund from the issuance of Lake Erie license plates under section 4503.52 of the Revised Code and donations, gifts, bequests, and other moneys received for the purposes of this section. Not later than the first day of June each year, the Ohio Lake Erie commission created in section 1506.21 of the Revised Code shall designate one of its members to administer the fund and, with the approval of the commission, to expend moneys from the fund for any of the following purposes:

- (1) Accelerating the pace of research into the economic, environmental, and human health effects of contamination of Lake Erie and its tributaries;
- (2) Funding cooperative research and data collection regarding Lake Erie water quality and toxic contamination;
- (3) Developing improved methods of measuring water quality and establishing a firm scientific base for implementing a basinwide system of water quality management for Lake Erie and its tributaries;
- (4) Supporting research to improve the scientific knowledge on which protection policies are based and devising new and innovative clean-up techniques for toxic contaminants;
- (5) Supplementing, in a stable and predictable manner, state commitments to policies and programs pertaining to Lake Erie water quality and resource protection;
- (6) Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, institutions of higher education, environmental organizations, and conservation groups within the Lake Erie basin;
- (7) Awarding of grants to any agency of the United States, any state agency, as "agency" is defined in division (A)(2) of section 111.15 of the Revised Code, any political subdivision, any educational institution, or any nonprofit organization for the development and implementation of projects and programs that are designed to protect Lake Erie by reducing toxic contamination of or improving water quality in Lake Erie;
- (8) Expenses authorized by the Ohio Lake Erie commission necessary to implement this chapter.

(B) Moneys in the Lake Erie protection fund are not intended to replace other moneys expended by any agency of the United States, any state agency, as "agency"

is so defined, any political subdivision, any educational institution, or any nonprofit organization for projects and programs that are designed to protect Lake Erie by reducing toxic contamination of or improving water quality in Lake Erie.

(C) Each March, the Ohio Lake Erie commission shall publish a Lake Erie protection agenda that describes proposed uses of the Lake Erie protection fund for the following state fiscal year. The agenda shall be the subject of at least one public meeting of the commission held in the Lake Erie basin. The commission shall submit the agenda to the governor, the president of the senate, and the speaker of the house of representatives.

(D) Not later than September 1, 1991, and annually thereafter, the Lake Erie commission shall prepare a report of the activities that were undertaken by the commission under this section during the immediately preceding fiscal year, including, without limitation, revenues and expenses for the preceding fiscal year. The commission shall submit the report to the governor, the president of the senate, and the speaker of the house of representatives.

History

HISTORY: 143 v H 804 (Eff 10-1-90); 144 v H 298 (Eff 7-26-91); 144 v S 359 (Eff 12-22-92); 147 v H 215. Eff 6-30-97.

§ 1506.24 Lake Erie resources fund; annual protection agenda.

Text of Statute

(A) There is hereby created in the state treasury the Lake Erie resources fund, which shall consist of moneys awarded to the state from the great lakes protection fund and donations, gifts, bequests, and other moneys received for the purposes of this section. Not later than the first day of June each year, the Ohio Lake Erie commission created in section 1506.21 of the Revised Code shall designate one of its members to administer the fund and, with the approval of the commission, to expend moneys from the fund for any of the following purposes:

- (1) Accelerating the pace of research into the economic, environmental, and human health effects of contamination of Lake Erie and its tributaries;
- (2) Funding cooperative research and data collection regarding Lake Erie water quality and toxic contamination;
- (3) Developing improved methods of measuring water quality and establishing a firm scientific base for implementing a basinwide system of water quality management for Lake Erie and its tributaries;
- (4) Supporting research to improve the scientific knowledge on which protection policies are based and devising new and innovative clean-up techniques for toxic contaminants;
- (5) Supplementing, in a stable and predictable manner, state commitments to

policies and programs pertaining to Lake Erie water quality and resource protection;

(6) Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, institutions of higher education, environmental organizations, and conservation groups within the Lake Erie basin;

(7) Awarding of grants to any agency of the United States, any state agency, as "agency" is defined in division (A)(2) of section 111.15 of the Revised Code, any political subdivision, any educational institution, or any nonprofit organization for the development and implementation of projects and programs that are designed to protect Lake Erie by reducing toxic contamination of or improving water quality in Lake Erie;

(8) Expenses authorized by the Ohio Lake Erie commission necessary to implement this chapter.

(B) Moneys in the Lake Erie resources fund are not intended to replace other moneys expended by any agency of the United States, any state agency, as "agency" is so defined, any political subdivision, any educational institution, or any nonprofit organization for projects and programs that are designed to protect Lake Erie by reducing toxic contamination of or improving water quality in Lake Erie.

(C) Each March, the Ohio Lake Erie commission shall publish a Lake Erie protection agenda that describes proposed uses of the Lake Erie resources fund for the following state fiscal year. The agenda shall be the subject of at least one public meeting of the commission held in the Lake Erie basin. The commission shall submit the agenda to the governor, the president of the senate, and the speaker of the house of representatives.

(D) Annually the Lake Erie commission shall prepare a report of the activities that were undertaken by the commission under this section during the immediately preceding fiscal year, including, without limitation, revenues and expenses for the preceding fiscal year. The commission shall submit the report to the governor, the president of the senate, and the speaker of the house of representatives.

History

HISTORY: 147 v H 215. Eff 6-30-97.

§ 1506.30 Definitions.

Text of Statute

As used in sections 1506.30 to 1506.37 of the Revised Code:

(A) "Abandoned property" means a submerged aircraft; a submerged watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of a submerged aircraft or watercraft; the personal

property of the officers, crew, and passengers of a submerged aircraft or watercraft; the cargo of a submerged aircraft or watercraft that has been deserted, relinquished, cast away, or left behind and for which attempts at reclamation have been abandoned by the owners and insurers; and submerged materials resulting from activities of prehistoric and historic native Americans.

(B) "Lake Erie" means that portion of the waters and lands of Lake Erie belonging to the state as provided in section 1506.10 of the Revised Code.

(C) "Historical value" means the quality of significance exemplified by an object, structure, site, or district that is included in or eligible for inclusion in the state registry of archaeological landmarks authorized under section 149.51 of the Revised Code, the state registry of historic landmarks authorized under section 149.55 of the Revised Code, or the national register of historic places.

(D) "Marine surveyor" means a person engaged in the business of mapping or surveying submerged lands and abandoned property.

(E) "Mechanical or other assistance" means all manmade devices used to raise or remove artifacts from abandoned property, including pry bars, wrenches and other hand or power tools, cutting torches, explosives, winches, flotation bags, lines to surface, extra divers buoyancy devices, and other buoyancy devices.

(F) "Recreational value" means value relating to an activity in which the public engages or may engage for recreation or sport, including scuba diving and fishing, as determined by the director of natural resources.

History

HISTORY: 144 v H 264. Eff 3-2-92.

§ 1506.31 Rules establishing Lake Erie submerged lands preserves; access.

Text of Statute

(A) In order to provide special protection for abandoned property and features and formations in Lake Erie having historical, archaeological, recreational, ecological, geological, environmental, educational, scenic, or scientific value, the director of natural resources, with the approval of the director of the Ohio historical society, may adopt rules in accordance with Chapter 119. of the Revised Code establishing Lake Erie submerged lands preserves. A preserve may be established for any area of submerged lands that contains a single watercraft or aircraft of historical value, two or more watercraft or aircraft constituting abandoned property, or other features of archaeological, historical, recreational, ecological, environmental, educational, scenic, scientific, or geological value other than sand, gravel, stone, and other minerals and substances authorized to be taken and removed in accordance with section 1505.07 of the Revised Code.

Any rule adopted under this division shall describe the area included in the preserve

so designated and the abandoned property or features of archaeological, historical, recreational, ecological, geological, environmental, educational, scenic, or scientific value found in the preserve. Each preserve shall encompass the designated area and within that area shall extend upward to and include the surface of the water. Any number of preserves may be designated; however, an individual preserve shall not exceed three hundred square miles in area and the total area of all submerged lands designated as preserves shall not exceed ten per cent of the total submerged lands of Lake Erie.

(B) When establishing a preserve under division (A) of this section, the directors of natural resources and the Ohio historical society shall consider all of the following factors:

- (1) Whether creating the preserve is necessary to protect either abandoned property or significant underwater features possessing historical, archaeological, recreational, geological, ecological, environmental, educational, scenic, or scientific value;
- (2) The extent of local public and private support for creation of the preserve;
- (3) If the purpose of the preserve is to be recreational, the extent to which preserve support facilities such as roads, marinas, charter services, hotels, medical hyperbaric facilities, and rescue agencies have been developed in or are planned for the coastal area that is nearest the proposed preserve;
- (4) Whether creating the preserve will conflict with existing or potential removals of sand, gravel, stone, or other minerals or substances authorized to be taken and removed in accordance with section 1505.07 of the Revised Code.

(C) The director of natural resources, with the approval of the director of the Ohio historical society, may establish policies and may adopt rules in accordance with Chapter 119. of the Revised Code governing access to and the use of any preserve established under division (A) of this section. The director of natural resources shall limit or prohibit access to abandoned property in a preserve only if one of the following conditions is met:

- (1) The site of the abandoned property is biologically or ecologically sensitive or is hazardous to human safety.
- (2) Any abandoned property of significant historical value in the preserve is extremely fragile and in danger of collapsing.
- (3) Any abandoned property of historical value in the preserve is suffering extensive deterioration or attrition due to prior unregulated access.
- (4) The director of natural resources has agreed to limit access during the term of a permit issued under section 1506.32 of the Revised Code at the request of the holder of the permit who is recovering, altering, salvaging, or destroying abandoned property in the preserve in accordance with the permit.

History

HISTORY: 144 v H 264. Eff 3-2-92.

§ 1506.32 Permit to recover, alter, salvage or destroy abandoned property associated with submerged watercraft or aircraft.

Text of Statute

(A) Except as otherwise provided in division (B) of this section, any person who wishes to recover, alter, salvage, or destroy any abandoned property that is located on, in, or in the immediate vicinity of and associated with a submerged watercraft or aircraft in Lake Erie shall obtain a permit to do so from the director of natural resources that also has been approved by the director of the Ohio historical society. A permit shall authorize the operation on, in, or in the immediate vicinity of and associated with only the submerged watercraft or aircraft named in the permit and shall expire one year after its date of issuance. To apply for a permit, a person shall file an application on a form prescribed by the director of natural resources that contains all of the following information:

- (1) The name and address of the applicant;
- (2) The name, if known, of the watercraft or aircraft on, in, or around which the operation is proposed and a current photograph or drawing of the watercraft or aircraft, if available;
- (3) The location of the abandoned property to be recovered, altered, salvaged, or destroyed and the depth of water in which it may be found;
- (4) A description of each item to be recovered, altered, salvaged, or destroyed;
- (5) The method to be used in the operation;
- (6) The proposed disposition of any abandoned property recovered, including the location at which it will be available for inspection by the director of the Ohio historical society for the purposes of division (C) of section 1506.33 of the Revised Code;
- (7) Any other information that the director of natural resources or the director of the Ohio historical society considers necessary.

(B) A person may recover, alter, salvage, or destroy abandoned property from Lake Erie that is located outside a Lake Erie submerged lands preserve established under rules adopted under section 1506.31 of the Revised Code without obtaining a permit under this section if the abandoned property is not attached to or located on, in, or in the immediate vicinity of and associated with a submerged watercraft or aircraft and if the abandoned property is recoverable by hand without mechanical or other assistance.

(C) Immediately after receiving a permit application, the director of natural resources shall send a copy of it to the director of the Ohio historical society who

shall review it for approval pursuant to division (D) of this section. If the director of natural resources determines that an application submitted under division (A) of this section is incomplete, he shall so notify the applicant in writing and shall specify the additional information that is needed. If the director of the Ohio historical society needs further information, he shall notify the director of natural resources, who shall notify the applicant in accordance with this division. The applicant may resubmit the application following receipt of the notice.

(D) The director of the Ohio historical society shall approve, conditionally approve, or disapprove an application. If he determines that the abandoned property to be recovered, altered, salvaged, or destroyed has historical value in itself or in conjunction with other abandoned property in its vicinity, he may conditionally approve or disapprove the application. If he conditionally approves an application, he may impose conditions on the permit in accordance with division (E) of this section. The director of the Ohio historical society shall notify the director of natural resources of his approval, conditional approval, or disapproval within fifty days after receiving the application. If the director of the Ohio historical society does not respond within fifty days as prescribed in this division, the application is deemed approved by him.

(E) The director of natural resources shall approve, conditionally approve, or disapprove an application. If he determines that the abandoned property to be recovered, altered, salvaged, or destroyed has substantial recreational, ecological, environmental, educational, scenic, or scientific value in itself or in conjunction with other abandoned property or resources in its vicinity or that the operation will not comply with any policies established or rules adopted under section 1506.31 of the Revised Code governing access to and use of the Lake Erie submerged lands preserve, if any, in which the operation is proposed, he may conditionally approve or disapprove the application.

(F) Not later than sixty days after a complete application is submitted under this section, the director of natural resources shall approve, conditionally approve, or disapprove the application. The director of natural resources shall not approve or conditionally approve an application until it has been approved or conditionally approved by the director of the Ohio historical society under division (D) of this section. If either director conditionally approves an application, he shall impose on the permit such conditions as he considers reasonable and necessary to protect the public trust and general interests, including conditions that provide any of the following:

- (1) Protection and preservation of the abandoned property to be recovered and of any recreational value of the area in which the operation is proposed;
- (2) Assurance of reasonable public access to the abandoned property after recovery;

(3) Conformity with any policies established or rules adopted under section 1506.31 of the Revised Code governing access to and use of the Lake Erie submerged lands preserve, if any, in which the operation is proposed;

(4) Prohibition of injury, harm, or damage to the applicable submerged lands or to abandoned property not authorized for recovery, alteration, salvage, or destruction during and after the proposed operation;

(5) Prohibition against the discharge of debris from the watercraft, aircraft, or salvage equipment or limitation of the amount of debris that may be so discharged;

(6) A requirement that the permit holder submit a specific plan for recovery, alteration, salvage, or destruction to the director of natural resources prior to commencing the operation. The plan may include a discussion of measures that will be taken to ensure the safety of individuals who will recover, alter, salvage, or destroy or assist in the recovery, alteration, salvage, or destruction of the abandoned property and to prevent, minimize, or mitigate potential adverse effects on any abandoned property that is to be recovered or salvaged, any abandoned property that is not to be recovered, altered, salvaged, or destroyed, and surrounding geographic features.

(G) A permit holder may renew the permit by making application to the director of natural resources at least sixty days before the expiration date of the permit. The director of natural resources shall not issue a permit to another person to recover, alter, salvage, or destroy abandoned property that is the subject of a permit for which a renewal is sought unless the director of natural resources or the director of the Ohio historical society disapproves the permit renewal. The director of natural resources or the director of the Ohio historical society may conditionally approve or disapprove a permit renewal application in accordance with division (D), (E), or (F) of this section or if the permit holder has not made reasonable progress in undertaking the operation authorized by the original permit.

(H) Any person may appeal to the director of natural resources a decision under this section approving, disapproving, or approving conditionally a permit application or renewal application in accordance with Chapter 119. of the Revised Code.

(I) The director of natural resources shall not issue and the director of the Ohio historical society shall not approve a permit under this section to recover, alter, salvage, or destroy abandoned property from Lake Erie that is located within a Lake Erie submerged lands preserve established under any rules adopted under section 1506.31 of the Revised Code unless the operation is for historical or scientific purposes or will not adversely affect the historical, cultural, recreational, or ecological integrity of the preserve as a whole.

(J) The director of natural resources may adopt rules in accordance with Chapter 119. of the Revised Code and establish and observe such policies regarding the

public availability and use of applications submitted and permits issued under this section as will meet the legitimate requirements of the person who submits an application or to whom a permit is issued. Unless the director of natural resources determines that revealing the location of abandoned property to which a permit or permit or renewal application applies is necessary to protect the abandoned property or the public health, safety, and welfare, the director of natural resources and the director of the Ohio historical society shall keep confidential and shall not release to any person the location of such abandoned property:

- (1) During the time the application or renewal application is being processed;
- (2) During the term of the permit or a permit renewal;
- (3) Except as provided in division (J)(4) of this section, for two years following the denial of a permit or renewal application;
- (4) During the appeal of any denial of a permit or renewal application and for two years following the entry of any final order or judgment in the most recent appeal of the denial.

At the request of a permit holder, the director of natural resources may limit access to the site of abandoned property for which the permit was issued during the term of the permit.

(K) Except as provided in division (B) of this section, no person shall recover, alter, salvage, or destroy abandoned property in Lake Erie having a fair market value of one hundred dollars or more unless the person has a permit issued for that purpose under this section.

History

HISTORY: 144 v H 264. Eff 3-2-92.

§ 1506.33 State owns all abandoned property submerged in Lake Erie; exceptions; report of recovery or salvage; disposition of property.

Text of Statute

(A) Except as otherwise provided in divisions (B) and (D) of this section, the ownership of and title to all abandoned property that is submerged in Lake Erie are in the state, which holds title in trust for the benefit of the people of the state.

(B) Any person who recovers or salvages abandoned property from Lake Erie without a permit as provided in division (B) of section 1506.32 of the Revised Code shall file a written report with the director of the Ohio historical society not later than thirty days after the recovery or salvage if both of the following apply:

- (1) The property is valued at more than ten dollars;
- (2) The property has been abandoned for more than thirty years. The report shall list all such abandoned property that was recovered or salvaged and shall describe its location at the time of recovery or salvage.

The person shall give the director or his authorized representative an opportunity to examine the property for ninety days after the report is filed. If the director determines that the abandoned property does not have historical value, he shall release it to the person who recovered or salvaged it.

(C) Any person who recovers or salvages abandoned property from Lake Erie in accordance with a permit issued under section 1506.32 of the Revised Code shall file a written report with the director not later than ten days after the recovery or salvage. The report shall list the abandoned property that was recovered or salvaged and shall describe its location at the time of recovery or salvage.

The person shall give the director or his authorized representative an opportunity to examine the property for ninety days after the report is filed. The property shall not be removed from this state during that period without written approval from the director. If the property is removed from the state without the director's written approval, the attorney general, upon the request of the director, shall bring an action for its recovery.

(D)(1) If the director determines that any abandoned property listed in a report filed under division (C) of this section has historical value, he shall not release it to the permit holder.

(2) If the director determines that any abandoned property so listed does not have historical value and if the abandoned property does not consist of coins, currency, or both that were intended for distribution as payroll, the director shall release the abandoned property to the permit holder. The permit holder shall remit to the treasurer of state an amount equal to ten per cent of the value of the abandoned property. The treasurer shall credit fifty per cent of the moneys so received to the fund provided for in section 149.56 of the Revised Code and fifty per cent to the Lake Erie submerged lands preserves fund created in section 1506.35 of the Revised Code.

(3) If the director determines that any abandoned property so listed does not have historical value and if the abandoned property consists of coins, currency, or both that were intended for distribution as payroll, he shall release at least sixty per cent, but not more than eighty per cent, of the abandoned property to the permit holder. The director may sell or otherwise transfer ownership of and title to any abandoned property retained by him under division (D)(3) of this section. Proceeds from any such sale shall be credited to the fund provided for in section 149.56 of the Revised Code.

History

HISTORY: 144 v H 264. Eff 3-2-92.

§ 1506.34 Policies and rules for administration; public information programs;

contracts with marine experts.

Text of Statute

(A) The director of natural resources, with the approval of the director of the Ohio historical society, shall establish policies and may adopt rules necessary to implement and administer sections 1506.30 to 1506.37 of the Revised Code. Not less than forty-five days prior to adopting a rule under this section or section 1506.31 of the Revised Code, the director of natural resources shall send a copy of the proposed rule to the director of the Ohio historical society, who shall promptly review it. Not more than thirty days after receiving the proposed rule, the director of the Ohio historical society shall return the rule to the director of natural resources together with his written approval or disapproval of the proposed rule. If he disapproves the rule, he shall explain the reasons for his disapproval and any amendments to the rule he considers necessary to obtain his approval. The director of natural resources shall not adopt a rule under those sections that has not been approved by the director of the Ohio historical society. If the director of the Ohio historical society does not respond within thirty days as prescribed in this section, the rule is deemed approved by him.

(B) The director of natural resources shall inform the public of the requirements of sections 1506.30 to 1506.37 of the Revised Code and any policies established and rules adopted under them. In complying with this section, the director may establish or conduct educational programs or seminars, print and distribute informational pamphlets, and provide detailed information to organizations that conduct scuba diving training programs.

(C) The director of natural resources may hire or contract with a marine archaeologist, a marine historian, a marine surveyor, or any combination thereof for the purposes of implementing and administering sections 1506.30 to 1506.37 of the Revised Code and any rules adopted under them.

History

HISTORY: 144 v H 264. Eff 3-2-92.

§ 1506.35 Suspension or revocation of permit; forfeiture proceedings; submerged lands preserves fund; enforcement of provisions.

Text of Statute

(A) The director of natural resources may suspend or revoke, in accordance with Chapter 119. of the Revised Code, a permit issued under section 1506.32 of the Revised Code if the permit holder has done either of the following:

- (1) Failed to comply with sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, or any provision or condition of his permit;
- (2) Damaged abandoned property other than in accordance with the provisions or

conditions of the permit.

(B) Any motor vehicle, as defined in section 4501.01 of the Revised Code, watercraft, as defined in section 1547.01 of the Revised Code, mechanical or other assistance, scuba gear, sonar equipment, or other equipment used by any person in the course of committing a third or subsequent violation of division (K) of section 1506.32 of the Revised Code shall be considered contraband for the purposes of sections 2933.42 and 2933.43 of the Revised Code, except that proceeds from the sale of such contraband shall be disposed of in the following order:

(1) To the payment of the costs incurred in the forfeiture proceedings under section 2933.43 of the Revised Code;

(2) To the payment of the balance due on any security interest preserved under division (C) of section 2933.43 of the Revised Code;

(3) To the payment of any costs incurred by the seizing agency under section 2933.43 of the Revised Code in connection with the storage, maintenance, security, and forfeiture of the contraband;

(4) Fifty per cent of the remaining money to the credit of the Lake Erie submerged lands preserves fund created in division (C) of this section and fifty per cent of the remaining money to the Ohio historical society for deposit into the fund created pursuant to division (C) of section 149.56 of the Revised Code.

(C) There is hereby created in the state treasury the Lake Erie submerged lands preserves fund. The fund shall be composed of moneys credited to it under division (B)(4) of this section and division (D)(2) of section 1506.33 of the Revised Code, all appropriations, contributions, and gifts made to it, and any federal grants received by the department of natural resources for the purposes of sections 1506.30 to 1506.37 of the Revised Code. The director shall use the moneys in the Lake Erie submerged lands preserves fund solely to implement and administer sections 1506.30 to 1506.37 of the Revised Code.

(D) The director may request the attorney general to, and the attorney general shall, bring a civil action in any court of competent jurisdiction for any of the following purposes:

(1) To enforce compliance with or restrain violation of sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, or any permit issued under section 1506.32 of the Revised Code;

(2) To enjoin the further removal of abandoned property or archaeological material from Lake Erie;

(3) To order the restoration of an area affected by a violation of sections 1506.30 to 1506.37 of the Revised Code or of a permit issued under section 1506.32 of the Revised Code to its prior condition.

Any action under this division is a civil action, governed by the Rules of Civil

Procedure.

(E) A peace officer of a county, township, or municipal corporation, and a preserve officer, wildlife officer, park officer, or watercraft officer designated under section 1517.10, 1531.13, 1541.10, or 1547.521 [1547.52.1] of the Revised Code, as applicable, may enforce compliance with sections 1506.30 to 1506.37 of the Revised Code, any rules adopted under those sections, and any permit issued under section 1506.32 of the Revised Code and may make arrests for violation of those laws, rules, and permits.

History

HISTORY: 144 v H 264 (Eff 3-2-92); 145 v S 182. Eff 10-20-94.

§ 1506.36 Certain activities not limited by provisions.

Text of Statute

Sections 1506.30 to 1506.35 of the Revised Code do not limit the right of:

- (A) Any person to engage in recreational diving in Lake Erie, except at a site of abandoned property to which the director of natural resources has limited access during the term of a permit pursuant to division (J) of section 1506.32 of the Revised Code;
- (B) Any person to own any abandoned property submerged in Lake Erie that was recovered before the effective date of this section or released to the person under division (B) or (D) of section 1506.33 of the Revised Code;
- (C) The department of natural resources or the Ohio historical society to recover or contract for the recovery of abandoned property in Lake Erie;
- (D) Any person to take and remove sand, gravel, stone, or other minerals or substances from and under the bed of Lake Erie in accordance with section 1505.07 of the Revised Code.

History

HISTORY: 144 v H 264. Eff 3-2-92.

§ 1506.37 Submerged lands advisory council.

Text of Statute

There is hereby created the submerged lands advisory council, which shall consist of nine members as follows: the director of natural resources or the director's designee; the director of the Ohio historical society or the director's designee; and seven members appointed by the governor who have an interest in or are knowledgeable about the preservation of submerged resources, at least two of whom shall be experienced in scuba diving and at least one of whom shall be a professional salvor or marine surveyor. Other appointments may include, without limitation, maritime historians, underwater archaeologists, and charter boat

operators. Initial appointments shall be made within ninety days after March 2, 1992. Of the initial appointments made by the governor, two shall be for terms ending March 2, 1993, two shall be for terms ending March 2, 1994, and three shall be for terms ending March 2, 1995. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until a successor takes office or until a period of sixty days has elapsed, whichever occurs first. The council shall elect a chairperson annually from among its members.

The council may make recommendations to the coastal resources advisory council created in section 1506.12 of the Revised Code, the department of natural resources, the Ohio historical society, and the members of the general assembly regarding all of the following:

- (A) The creation and boundaries of Lake Erie submerged lands preserves under rules adopted under section 1506.31 of the Revised Code;
- (B) The issuance of permits under section 1506.32 of the Revised Code;
- (C) Policies and rules needed for the implementation and administration of sections 1506.30 to 1506.37 of the Revised Code;
- (D) Appropriate legislation for the management and preservation of submerged resources.

History

HISTORY: 144 v H 264 (Eff 3-2-92); 146 v H 670. Eff 12-2-96.

See provisions, § 27 of HB 670 (146 v --), concerning the date of expiration for certain state agencies, following RC § 1501.04. The agency was changed from Committee to Council in H 670 (146 v --), eff 12-2-96.

§ 1506.99 Penalties.

Text of Statute

- (A) Whoever violates division (A) of section 1506.09 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars for each offense.
- (B) Whoever violates division (K) of section 1506.32 of the Revised Code is guilty of a misdemeanor of the third degree.

History

HISTORY: 142 v S 70 (Eff 3-15-89); 144 v H 264 (Eff 3-2-92); 146 v S 2. Eff 7-

1-96.

The effective date is set by section 6 of SB 2.

**CHAPTER 1507
Shore Erosion****Section**

- 1507.01 Division created; duties of chief engineer; employees.
1507.02 Amended and renumbered.
1507.03 Amended and renumbered.
1507.04 Amended and renumbered.
1507.05 Amended and renumbered.
[1507.05.1, 1507.05.2] 1507.051, 1507.052 Amended and renumbered.
1507.06 Amended and renumbered.
[1507.06.1, 1507.06.2] 1507.061, 1507.062 Repealed.
[1507.06.3, 1507.06.4] 1507.063, 1507.064 Repealed.
1507.07 Amended and renumbered.
[1507.07.1] 1507.071 Amended and renumbered.
1507.08 Amended and renumbered.
1507.09 Amended and renumbered.
1507.10 Amended and renumbered.
1507.11 Amended and renumbered.
1507.12 Burr Oak water system fund.
1507.13 Entry on land for surveys and inspections.
1507.99 Repealed.

§ 1507.01 Division created; duties of chief engineer; employees.**Text of Statute**

There is hereby created in the department of natural resources the division of engineering to be administered by the chief engineer of the department, who shall be a professional engineer registered under Chapter 4733. of the Revised Code. The chief engineer shall do all of the following:

- (A) Administer this chapter;
- (B) Provide engineering, architectural, land surveying, and related administrative and maintenance support services to the other divisions in the department;
- (C) Upon request of the director of natural resources, implement the department's capital improvement program and facility maintenance projects, including all associated engineering, architectural, design, contracting, surveying, inspection, and management responsibilities and requirements;
- (D) With the approval of the director, act as contracting officer in departmental engineering, architectural, surveying, and construction matters regarding capital improvements except for those matters otherwise specifically provided for in law;
- (E) As long as the state retains ownership of the Burr Oak water system, administer, operate, and maintain the Burr Oak water system and, with the approval of the director, act as contracting agent in matters concerning that system;
- (F) Provide engineering support for the coastal management program established under Chapter 1506. of the Revised Code;

(G) Coordinate the department's roadway maintenance program with the department of transportation pursuant to section 5511.05 of the Revised Code and maintain the roadway inventory of the department of natural resources;
(H) Coordinate the department's emergency response activities with the emergency management agency created in section 5502.22 of the Revised Code;
(I) Coordinate the department's projects, programs, policies, procedures, and activities with the United States army corps of engineers;
(J) Subject to the approval of the director, employ professional and technical assistants and such other employees as are necessary for the performance of the activities required or authorized under this chapter, other work of the division, and any other work agreed to under working agreements or contractual arrangements; prescribe their duties; and fix their compensation in accordance with such schedules as are provided by law for the compensation of state employees.

History

HISTORY: 145 v S 182 (Eff 10-20-94); 148 v H 283. Eff 9-29-99.

Not analogous to former RC § 1507.01, amended and renumbered RC § 1507.02 in 145 v S 182, eff 10-20-94.

The effective date is set by section 162 of HB 283.

§ 1507.02 Amended and renumbered.

Amended and renumbered RC § 1521.20 in 148 v H 601. Eff 6-14-2000.

§ 1507.03 Amended and renumbered.

Amended and renumbered RC § 1521.21 in 148 v H 601, eff 6-14-2000.

§ 1507.04 Amended and renumbered.

Amended and renumbered RC § 1521.22 in 148 v H 601, eff 6-14-2000.

§ 1507.05 Amended and renumbered.

Amended and renumbered RC § 1521.23 in 148 v H 601, eff 6-14-2000.

[§§ 1507.05.1, 1507.05.2] §§ 1507.051, 1507.052 Amended and renumbered.

Amended and renumbered RC §§ 1507.07, 1507.08 in 145 v S 182. Eff 10-20-94.

§ 1507.06 Amended and renumbered.

Amended and renumbered RC § 1521.24 in 148 v H 601, eff 6-14-2000.

[§§ 1507.06.1, 1507.06.2] §§ 1507.061, 1507.062 Repealed.

Repealed, 129 v 1350(1361), § 2 [126 v 569(572)]. Eff 11-2-61.

These sections created the waterways safety commission.

[§§ 1507.06.3, 1507.06.4] §§ 1507.063, 1507.064 Repealed.

Repealed, 129 v 1350(1361), § 2 [126 v 569(572)]; 128 v H 928]. Eff 11-2-61.

These sections created the waterways safety commission.

§ 1507.07 Amended and renumbered.

Amended and renumbered RC § 1521.25 in 148 v H 601, eff 6-14-2000.

[§ 1507.07.1] § 1507.071 Amended and renumbered.

Amended and renumbered RC § [1521.26](#) in 148 v H 601, eff 6-14-2000.

§ 1507.08 Amended and renumbered.

Amended and renumbered RC § [1521.27](#) in 148 v H 601, eff 6-14-2000.

§ 1507.09 Amended and renumbered.

Amended and renumbered RC § [1521.28](#) in 148 v H 601, eff 6-14-2000.

§ 1507.10 Amended and renumbered.

Amended and renumbered RC § [1521.29](#) in 148 v H 601, eff 6-14-2000.

§ 1507.11 Amended and renumbered.

Amended and renumbered RC § [1521.30](#) in 148 v H 601, eff 6-14-2000.

§ 1507.12 Burr Oak water system fund.

Text of Statute

The chief engineer of the department of natural resources shall adopt, and may amend and rescind, rules in accordance with Chapter [119](#). of the Revised Code specifying requirements and procedures for the provision of water service to water users and establishing a rate schedule, including related water service fees and late payment penalties, for the sale of water from the Burr Oak water system sufficient to meet the capital improvement and operating expenses of the system. The revenue derived from the sale of the water shall be deposited into the Burr Oak water system fund, which is hereby created in the state treasury. All investment earnings of the fund shall be credited to the fund. Money in the fund shall be used to pay the capital improvement and operating expenses of the Burr Oak water system. The chief engineer may enter into contracts with the Ohio Water Development authority, pursuant to Chapter [6121](#). of the Revised Code, to meet the capital improvement expenses of the Burr Oak water system.

The provisions of this section apply only as long as the state retains ownership of the Burr Oak water system and cease to apply if ownership of the Burr Oak water system is transferred from the state.

For the purposes of this chapter, "Burr Oak water system" means the Burr Oak water treatment plant and its transmission lines, storage tanks, and other appurtenances.

History

HISTORY: RC § [1503.36](#), 144 v H 298 (Eff 7-26-91); RC § [1541.23](#), 144 v S 180 (Eff 3-24-93); RC § [1507.12](#), 145 v S 182 (Eff 10-20-94); 146 v S 310 (Eff 6-20-96); 148 v H 283. Eff 9-29-99.

Not analogous to former RC § [1507.12](#), amended and renumbered RC § [1507.10](#) in 145 v S 182, eff 10-20-94.

The effective date is set by section 162 of HB 283.

§ 1507.13 Entry on land for surveys and inspections.

Text of Statute

The chief engineer of the department of natural resources or any employee in the service of the division of engineering may enter upon lands to make surveys and inspections in accordance with this chapter when necessary in the discharge of the

duties specified in this chapter. Notice of such a proposed entry shall be given to the owner of the land to be surveyed or inspected or to the person in possession of it by such means as are reasonably available, not less than forty-eight hours nor more than thirty days prior to the date of the entry. Such an entry does not constitute a trespass.

History

HISTORY: 145 v S 182. Eff 10-20-94.

Not analogous to former RC § 1507.13, amended and renumbered RC § 1507.11 in 145 v S 182, eff 10-20-94.

§ 1507.99 Repealed.

Repealed, 148 v H 601, § 2 [Bureau of Code Revision, 10-1-53; 145 v S 182]. Eff 6-14-2000.

This section set the penalty for violations of RC § 1507.04, renumbered to RC § 1521.22 in HB 601 (148 v --), effective 6-14-2000.

CH 1521

CONSERVATION OF NATURAL RESOURCES CHAPTER 1521 Division of Water

Section

- 1521.01 Definitions.
- 1521.02 Division of water.
- 1521.03 Powers and duties.
- [§ 1521.03.1] 1521.031 Water advisory council.
- 1521.04 Aid for water management improvements; authority to make improvements; charges.
- [1521.04.1] 1521.041 Repealed.
- 1521.05 Well construction logs; sealing reports.
- 1521.06 Construction permits for dams, dikes, or levees.
- [§ 1521.06.1] 1521.061 Surety bond conditioned on satisfactory completion of project.
- [§ 1521.06.2] 1521.062 Periodic inspection; chief may remove or correct unsafe structures.
- [§ 1521.06.3] 1521.063 Annual inspection fee.
- [§ 1521.06.4] 1521.064 Rules for exemption from inspections.
- 1521.07 Right of entry.
- 1521.08 Two grand divisions.
- 1521.09 Reservoirs; reduction of assessed valuation.
- 1521.10 Landowner to submit plans.
- 1521.11 Certification.
- 1521.12 Approval of plans.
- 1521.13 Floodplain management; flood damage reduction standards.
- 1521.14 Floodplain management duties of state agencies and political subdivisions; marking of flood heights; conditions for funding developments.
- 1521.15 Water resources inventory and long-term plan.
- 1521.16 Registration of facilities capable of withdrawing more than 100,000 gallons a day; ground water stress areas.
- 1521.17 Determination of reasonableness of use of water.
- 1521.18 Compliance of municipal ordinances and county resolutions with flood insurance act standard.
- 1521.20 Erosion agent for purposes of cooperation with federal authorities.
- 1521.21 Assistance by engineers and employees of other state departments or educational institutions.
- 1521.22 Shore structure permits.
- 1521.23 Permit and lease fund.
- 1521.24 Agreements with subdivisions or state agencies for erosion projects.
- 1521.25 Contracts with subdivisions for erosion projects.
- 1521.26 Coastal erosion loan program.
- 1521.27 Acquisition of lands.
- 1521.28 Action not in conflict.
- 1521.29 Plan for management of erosion; technical assistance to subdivisions and landowners.
- 1521.30 Reappraisal of real property damaged or destroyed by shore erosion.
- §§ 1521.41, 1521.42 Repealed.
- 1521.99 Penalties.

§ 1521.01 Definitions.

Text of Statute

As used in sections [1521.01](#) to [1521.05](#), [1521.13](#) to [1521.18](#), and [1521.20](#) to [1521.30](#) of the Revised Code:

(A) "Consumptive use," "diversion," "Lake Erie drainage basin," "other great lakes states and provinces," "water resources," and "waters of the state" have the same meanings as in section [1501.30](#) of the Revised Code.

(B) "Well" means any excavation, regardless of design or method of construction, created for any of the following purposes:

(1) Removing ground water from or recharging water into an aquifer, excluding subsurface drainage systems installed to enhance agricultural crop production or urban or suburban landscape management or to control seepage in dams, dikes, and levees;

(2) Determining the quantity, quality, level, or movement of ground water in or the stratigraphy of an aquifer, excluding borings for instrumentation in dams, dikes, levees, or highway embankments;

(3) Removing or exchanging heat from ground water, excluding horizontal trenches that are installed for water source heat pump systems.

(C) "Aquifer" means a consolidated or unconsolidated geologic formation or series of formations that are hydraulically interconnected and that have the ability to receive, store, or transmit water.

(D) "Ground water" means all water occurring in an aquifer.

(E) "Ground water stress area" means a definable geographic area in which ground water quantity is being affected by human activity or natural forces to the extent that continuous availability of supply is jeopardized by withdrawals.

(F) "Person" has the same meaning as in section [1.59](#) of the Revised Code and also includes the United States, the state, any political subdivision of the state, and any department, division, board, commission, agency, or instrumentality of the United States, the state, or a political subdivision of the state.

(G) "State agency" or "agency of the state" has the same meaning as "agency" in section [111.15](#) of the Revised Code.

(H) "Development" means any artificial change to improved or unimproved real estate, including the construction of buildings and other structures, any substantial improvement of a structure, and mining, dredging, filling, grading, paving, excavating, and drilling operations.

(I) "Floodplain" means the area adjoining any river, stream, watercourse, or lake that has been or may be covered by flood water.

(J) "Floodplain management" means the implementation of an overall program of corrective and preventive measures for reducing flood damage, including the collection and dissemination of flood information, construction of flood control works, nonstructural flood damage reduction techniques, and adoption of rules, ordinances, or resolutions governing development in floodplains.

(K) "One-hundred-year flood" means a flood having a one per cent chance of being equaled or exceeded in any given year.

(L) "One-hundred-year floodplain" means that portion of a floodplain inundated by a one-hundred-year flood.

(M) "Structure" means a walled and roofed building, including, without limitation, gas or liquid storage tanks, mobile homes, and manufactured homes.

(N) "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty per cent of the market value of the structure before the start of construction of the improvement. "Substantial improvement" includes repairs to structures that have incurred substantial damage regardless of the actual repair work performed. "Substantial improvement" does not include either of the following:

(1) Any project for the improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the state or local code enforcement official having jurisdiction and that are the minimum necessary to ensure safe living conditions;

(2) Any alteration of an historic structure designated or listed pursuant to federal or state law, provided that the alteration will not preclude the structure's continued listing or designation as an historic structure.

(O) "Shore structure" includes, but is not limited to: beaches; groins; revetments; bulkheads; seawalls; breakwaters; certain dikes designated by the chief of the division of water; piers; docks; jetties; wharves; marinas; boat ramps; any associated fill or debris used as part of the construction of shore structures that may affect shore erosion, wave action, or inundation; and fill or debris placed along or near the shore, including bluffs, banks, or beach ridges, for the purpose of stabilizing slopes.

(P) "Conservancy district" means a conservancy district established under Chapter [6101](#). of the Revised Code.

(Q) "Park board" means the board of park commissioners of a park district created under Chapter [1545](#). of the Revised Code.

(R) "Erosion control structure" means anything that is designed primarily to reduce or control erosion of the shore along or near lake erie,* including, but not limited to, revetments, seawalls, bulkheads, certain breakwaters designated by the chief, and similar structures. "Erosion control structure" does not include wharves, piers, docks, marinas, boat ramps, and other similar structures.

History

HISTORY: GC § 408; 121 v 305; 123 v 84, § 2; Bureau of Code Revision, 10-1-53; 142 v H 662 (Eff 6-29-88); 143 v H 476 (Eff 7-18-90); 143 v S 396 (Eff 4-11-91); 147 v S 142 (Eff 3-30-99); 148 v H 601. Eff 6-14-2000.

* Division (R). Lake Erie does not appear with initial capital letters in the new wording by HB 601 (148 v --).

§ 1521.02 Division of water.

Text of Statute

There is hereby created within the department of natural resources a division of water consisting of a chief of the division of water, and such positions as are necessary for the performance of the functions of the division.

History

HISTORY: GC § 408-2; 121 v 305; 123 v 84, § 2; 123 v 862 (907), § 3; Bureau of Code Revision, 10-1-53; 128 v 298. Eff 11-2-59.

§ 1521.03 Powers and duties.

Text of Statute

The chief of the division of water shall do all of the following:

(A) Assist in an advisory capacity any properly constituted watershed district, conservancy district, or soil and water conservation district or any county, municipal corporation, or other government agency of the state in the planning of works for ground water recharge, flood mitigation, floodplain management, flood control, flow capacity and stability of streams, rivers, and watercourses, or the establishment of water conservation practices, within the limits of the appropriations for those purposes;

(B) Have authority to conduct basic inventories of the water and related natural resources in each drainage basin in the state; to develop a plan on a watershed basis that will recognize the variety of uses to which water may be put and the need for its management for those uses; with the approval of the director of natural resources and the controlling board, to transfer appropriated or other funds, authorized for those inventories and plan, to any division of the department of natural resources or other state agencies for the purpose of developing pertinent data relating to the plan of water management; and to accept and expend moneys contributed by any person for implementing the development of the plan;

(C) Have authority to make detailed investigations of all factors relating to floods, floodplain management, and flood control in the state with particular attention to those factors bearing upon the hydraulic and hydrologic characteristics of rivers, streams, and watercourses, recognizing the variety of uses to which water and watercourses may be put;

(D) Cooperate with the United States or any agency thereof and with any political subdivision of the state in planning and constructing flood control works;

(E) Hold meetings or public hearings, whichever is considered appropriate by the chief, to assist in the resolution of conflicts between ground water users. Such meetings or hearings shall be called upon written request from boards of health of city or general health districts created by or under the authority of Chapter [3709](#) of the Revised Code or authorities having the duties of a board of health as authorized by section [3709.05](#) of the Revised Code, boards of county commissioners, boards of township trustees, legislative authorities of municipal corporations, or boards of directors of conservancy districts and may be called by the chief upon the request of any other person or at the chief's discretion. The chief shall collect and present at such meetings or hearings the available technical information relevant to the conflicts and to the ground water resource. The chief shall prepare a report, and may make recommendations, based upon the available technical data and the record of the meetings or hearings, about the use of the ground water resource. In making the report and any recommendations, the chief also may consider the factors listed in division (B) of section [1521.17](#) of the Revised Code. The technical information presented, the report prepared, and any recommendations made under this division shall be presumed to be prima-facie authentic and admissible as evidence in any court pursuant to Evidence Rule 902.

(F) Perform stream or ground water gauging and may contract with the United States government or any other agency for the gauging of any streams or ground water within the state;

(G) Primarily with regard to water quantity, have authority to collect, study, map, and interpret all available information, statistics, and data pertaining to the availability, supply, use, conservation, and replenishment of the ground and surface waters in the state in coordination with other agencies of this state;

(H) Primarily with regard to water quantity and availability, be authorized to cooperate with and negotiate for the state with any agency of the United States government, of this state, or of any other state pertaining to the water resources of the state;

(I) Provide engineering support for the coastal management program established under Chapter [1506](#) of the Revised Code.

History

HISTORY: 134 v S 397 (Eff 10-23-72); 137 v H 522 (Eff 11-1-77); 143 v H 476 (Eff 7-18-90); 143 v S 396 (Eff 4-11-91); 147 v S 187 (Eff 3-18-99); 148 v H 601. Eff 6-14-2000.

Not analogous to former RC § [1521.03](#) (GC § 408-2; 121 v 305; 123 v 84; 123 v 862 (907); Bureau of Code Revision, 10-1-53), repealed 128 v 298, eff 11-2-59.

[§ 1521.03.1] § 1521.031 Water advisory council.

Text of Statute

There is hereby created in the department of natural resources the Ohio water advisory council. The council shall consist of seven members appointed by the governor with the advice and consent of the senate. No more than four of the members shall be of the same political party. Members shall be persons who have a demonstrated interest in water management and whose expertise reflects the various responsibilities of the division of water, including, but not limited to, dam safety, surface water, groundwater, and flood plain management. The chief of the division of water may participate in the deliberations of the council, but shall not vote.

Terms of office of members shall be for two years commencing on the second day of February and ending on the first day of February. Each member shall hold office from the date of appointment until the end of the term for which he was appointed. The governor may remove any member at any time for inefficiency, neglect of duty, or malfeasance in office. In the event of the death, removal, resignation, or incapacity of any member, the governor, with the advice and consent of the senate, shall appoint a successor to hold office for the remainder of the term for which his predecessor was appointed. Any member shall continue in office following the expiration date of his term until his successor takes office or until sixty days have elapsed, whichever occurs first. Membership on the council does not constitute holding a public office or position of employment under the Revised Code and is not grounds for removal of public officers or employees from their offices or positions of employment.

The council annually shall select from its members a chairman and a vice-chairman. The council shall hold at least one meeting each calendar quarter and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairman and shall be called upon the written request of two or more members. A majority of the members constitutes a quorum. The division shall furnish clerical, technical, legal, and other services required by the council in the performance of its duties.

Members shall receive no compensation, but shall be reimbursed from the appropriations for the division for the actual and necessary expenses incurred by them in the performance of their official duties.

The council shall:

(A) advise the chief of the division of water in carrying out the duties of the division under this chapter and Chapter [1523](#). of the Revised Code;
(B) recommend such policy and legislation with respect to water management and conservation as will promote the economic, industrial, and social development of the state while minimizing threats to the state's natural environment;
(C) review and make recommendations on the development of plans and programs for long-term, comprehensive water management throughout the state; and
(D) recommend ways to enhance cooperation among governmental agencies having an interest in water to encourage wise use and protection of the state's ground and surface waters. To this end, the council shall request nonvoting representation from appropriate governmental agencies.

History

HISTORY: 140 v S 360. Eff 10-15-84.

See provisions, § 27 of HB 670 (146 v --), concerning the date of expiration for certain state agencies, following RC § [1501.04](#).

§ 1521.04 Aid for water management improvements; authority to make improvements; charges.

Text of Statute

The chief of the division of water, with the approval of the director of natural resources, may make loans and grants from the water management fund created in section [1501.32](#) of the Revised Code to governmental agencies for water management, water supply improvements, and planning and may administer grants from the federal government and from other public or private sources for carrying out those functions and for the performance of any acts that may be required by the United States or by any agency or department thereof as a condition for the participation by any governmental agency in any federal financial or technical assistance program. Direct and indirect costs of administration may be paid from the water management fund.

The chief may use the water management fund to acquire, construct, reconstruct, improve, equip, maintain, operate, and dispose of water management improvements. The chief may fix, alter, charge, and collect rates, fees, rentals, and other charges to be paid into the water management fund by governmental agencies and persons who are supplied with water by facilities constructed or operated by the department of natural resources in order to amortize and defray the cost of the construction, maintenance, and operation of those facilities. This section does not apply to the Burr Oak water system administered by the chief engineer of the department of natural resources under sections [1507.01](#) and [1507.12](#) of the Revised Code.

History

HISTORY: RC § [1501.21](#), 134 v S 397 (Eff 10-23-72); RC § [1521.04](#), 137 v H 522 (Eff 11-1-77); 143 v H 550 (Eff 5-3-90); 145 v S 182 (Eff 10-20-94); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

Former RC § [1521.04](#) renumbered RC § [6111.42](#) in 134 v S 397, eff 10-23-72.

[§ 1521.04.1] § 1521.041 Repealed.

Repealed, 129 v 1418, § 2 [128 v 918]. Eff 7-1-63.

This section concerned sale of publications.

§ 1521.05 Well construction logs; sealing reports.

Text of Statute

(A) As used in this section:

(1) "Construct" or "construction" includes drilling, boring, digging, deepening, altering, and logging.

(2) "Altering" means changing the configuration of a well, including, without limitation, deepening a well, extending or replacing any portion of the inside or outside casing or wall of a well that extends below ground level, plugging a portion of a well back to a certain depth, and reaming out a well to enlarge its original diameter.

(3) "Logging" means describing the lithology, grain size, color, and texture of the formations encountered during the drilling, boring, digging, deepening, or altering of a well.

(4) "Grouting" means neat cement; bentonite products in slurry, granular, or pelletized form, excluding drilling mud or fluids; or any combination of neat cement and bentonite products that is placed within a well to seal the annular space or to seal an abandoned well and that is impervious to and capable of preventing the movement of water.

(5) "Abandoned well" means a well whose use has been permanently discontinued and that poses potential health and safety hazards or that has the potential to transmit surface contaminants into the aquifer in which the well has been constructed.

(6) "Sealing" means the complete filling of an abandoned well with grouting or other approved materials in order to permanently prevent the vertical movement of water in the well and thus prevent the contamination of ground water or the intermixing of water between aquifers.

(B) Any person that constructs a well shall keep a careful and accurate log of the construction of the well. The log shall show all of the following:

(1) The character, including, without limitation, the lithology, color, texture, and grain size, the name, if known, and the depth of all formations passed through or encountered;

(2) The depths at which water is encountered;

(3) The static water level of the completed well;

(4) A copy of the record of all pumping tests and analyses related to those tests, if any;

(5) Construction details, including lengths, diameters, and thicknesses of casing and screening and the volume, type of material, and method of introducing gravel packing and grouting into the well;

(6) The type of pumping equipment installed, if any;

(7) The name of the owner of the well, the address of the location where the well was constructed, and a description of the location of the property where the well was constructed;

(8) The signature of the individual who constructed the well and filed the well log;

(9) Any other information required by the chief of the division of water.

The log shall be furnished to the division within thirty days after the completion of construction of the well on forms prescribed and prepared by the division. The log shall be kept on file by the division.

In accordance with Chapter [119](#). of the Revised Code, the chief may adopt, amend, and rescind rules requiring other persons that are involved in the construction or subsequent development of a well to submit well logs under this division containing any or all of the information specified in divisions (B)(1) to (9) of this section and requiring any person that seals an abandoned well to submit a well sealing report under this division containing any or all of the information specified in those divisions and any additional information specified in the rules.

(C)(1) No person shall fail to keep and submit a well log as required by this section.

(2) No person shall make a false statement in any well log required to be kept and submitted under this section. Violation of division (C)(2) of this section is falsification under section [2921.13](#) of the Revised Code.

(D) For the purposes of prosecution of a violation of division (C)(1) of this section, a prima-facie case is established when the division obtains either of the following:

(1) A certified copy of a permit for a private water system issued in accordance with rules adopted under section [3701.344](#) [3701.34.4] of the Revised Code, or a certified copy of the invoice or a canceled check from the owner of a well indicating the construction services performed;

(2) A certified copy of any permit issued under Chapter [3734](#). or 6111. of the Revised Code or plan approval granted under Chapter [6109](#). of the Revised Code for any activity that includes the construction of a well.

History

HISTORY: GC § 408-10; 121 v 305; 122 v 651; 123 v 84; Bureau of Code Revision, RC § [1521.05](#), 10-1-53; RC § [6111.43](#), 134 v S 397 (Eff 10-23-72); RC § [1521.05](#), 137 v H 522 (Eff 11-1-77); 143 v H 476 (Eff 7-18-90); 145 v S 182 (Eff 10-20-94); 147 v S 187. Eff 3-18-99.

§ 1521.06 Construction permits for dams, dikes, or levees.

Text of Statute

(A) No dam may be constructed for the purpose of storing, conserving, or retarding water, or for any other purpose, nor shall any dike or levee be constructed for the purpose of diverting or retaining flood water, unless the person or governmental agency desiring the construction has a construction permit for the dam, dike, or levee issued by the chief of the division of water.

A construction permit is not required under this section for:

(1) A dam which is or will be less than ten feet in height and which has or will have a storage capacity of not more than fifty acre-feet at the elevation of the top of the dam, as determined by the chief. For the purposes of this section, the height of a dam shall be measured from the natural stream bed or lowest ground elevation at the downstream or outside limit of the dam to the elevation of the top of the dam.

(2) A dam, regardless of height, which has or will have a storage capacity of not more than fifteen acre-feet at the elevation of the top of the dam, as determined by the chief;

(3) A dam, regardless of storage capacity, which is or will be six feet or less in height, as determined by the chief;

(4) A dam, dike, or levee which belongs to a class exempted by the chief;

(5) The repair, maintenance, improvement, alteration, or removal of a dam, dike, or levee which is subject to section [1521.062](#) [1521.06.2] of the Revised Code, unless the construction constitutes an enlargement of the structure as determined by the chief;

(6) A dam or impoundment constructed under Chapter [1513](#). of the Revised Code.

(B) Before a construction permit may be issued, three copies of the plans and specifications, including a detailed cost estimate, for the proposed construction, prepared by a registered professional engineer, together with the filing fee specified by this section and the bond or other security required by section [1521.061](#) [1521.06.1] of the Revised Code, shall be filed with the chief. The detailed estimate of the cost shall include all costs associated with the construction of the dam, dike, or levee, including supervision and inspection of the construction by a registered professional engineer. Except for a political subdivision, the filing fee shall be based on the detailed cost estimate for the proposed construction as filed with and approved by the chief, and shall be determined by the following schedule:

- (1) For the first one hundred thousand dollars of estimated cost, a fee of two per cent;
- (2) For the next four hundred thousand dollars of estimated cost, a fee of one and one-half per cent;
- (3) For the next five hundred thousand dollars of estimated cost, a fee of one per cent;
- (4) For all costs in excess of one million dollars, a fee of one-quarter of one per cent.

In no case shall the filing fee be less than two hundred dollars or more than fifty thousand dollars. If the actual cost exceeds the estimated cost by more than fifteen per cent, an additional filing fee shall be required equal to the fee determined by the preceding schedule less the original filing fee. The filing fee for a political subdivision shall be two hundred dollars. All fees collected pursuant to this section, and all fines collected pursuant to section [1521.99](#) of the Revised Code, shall be deposited in the state treasury to the credit of the dam safety fund, which is hereby created. Expenditures from the fund shall be made by the chief for the purpose of administering this section and sections [1521.061](#) [1521.06.1] and [1521.062](#) [1521.06.2] of the Revised Code.

(C) The chief shall, within thirty days from the date of the receipt of the application, fee, and bond or other security, issue or deny a construction permit for the construction or may issue a construction permit conditioned upon the making of such changes in the plans and specifications for the construction as he considers advisable if he determines that the construction of the proposed dam, dike, or levee, in accordance with the plans and specifications filed, would endanger life, health, or property.

(D) The chief may deny a construction permit if he finds that a dam, dike, or levee built in accordance with the plans and specifications would endanger life, health, or property, because of improper or inadequate design, or for such other reasons as the chief may determine.

In the event the chief denies a permit for the construction of the dam, dike, or levee, or issues a permit conditioned upon a making of changes in the plans or specifications for the construction, he shall state his reasons therefor and so notify, in writing, the person or governmental agency making the application for a permit. If the permit is denied, the chief shall return the bond or other security to the person or governmental agency making application for the permit.

The decision of the chief conditioning or denying a construction permit is subject to appeal as provided in Chapter [119](#). of the Revised Code. A dam, dike, or levee built substantially at variance from the plans and specifications upon which a

construction permit was issued is in violation of this section. The chief may at any time inspect any dam, dike, or levee, or site upon which any dam, dike, or levee is to be constructed, in order to determine whether it complies with this section.

(E) A registered professional engineer shall inspect the construction for which the permit was issued during all phases of construction and shall furnish to the chief such regular reports of his inspections as the chief may require. When the chief finds that construction has been fully completed in accordance with the terms of the permit and the plans and specifications approved by him, he shall approve the construction. When one year has elapsed after approval of the completed construction, and the chief finds that within this period no fact has become apparent to indicate that the construction was not performed in accordance with the terms of the permit and the plans and specifications approved by the chief, or that the construction as performed would endanger life, health, or property, he shall release the bond or other security. No bond or other security shall be released until one year after final approval by the chief, unless the dam, dike, or levee has been modified so that it will not retain water and has been approved as nonhazardous after determination by the chief that the dam, dike, or levee as modified will not endanger life, health, or property.

(F) When inspections required by this section are not being performed, the chief shall notify the person or governmental agency to which the permit has been issued that inspections are not being performed by the registered professional engineer and that the chief will inspect the remainder of the construction. Thereafter, the chief shall inspect the construction and the cost of inspection shall be charged against the owner. Failure of the registered professional engineer to submit required inspection reports shall be deemed notice that his inspections are not being performed.

(G) The chief may order construction to cease on any dam, dike, or levee which is being built in violation of the provisions of this section, and may prohibit the retention of water behind any dam, dike, or levee which has been built in violation of the provisions of this section. The attorney general, upon written request of the chief, may bring an action for an injunction against any person who violates this section or to enforce an order or prohibition of the chief made pursuant to this section.

(H) The chief may adopt rules in accordance with Chapter [119](#) of the Revised Code, for the design and construction of dams, dikes, and levees for which a construction permit is required by this section or for which periodic inspection is required by section [1521.062](#) [1521.06.2] of the Revised Code, for deposit and forfeiture of bonds and other securities required by section [1521.061](#) [1521.06.1] of the Revised Code, for the periodic inspection, operation, repair, improvement, alteration, or removal of all dams, dikes, and levees, as specified in section [1521.062](#) [1521.06.2] of the Revised Code, and for establishing classes of dams, dikes, or levees which are exempt from the requirements of sections [1521.06](#) and [1521.062](#) [1521.06.2] of the Revised Code as being of a size, purpose, or situation which does not present a substantial hazard to life, health, or property. The chief may, by rule, limit the period during which a construction permit issued under this section is valid. If a construction permit expires before construction is completed, the person or agency shall apply for a new permit, and shall not continue construction until the new permit is issued.

(I) As used in this section and section [1521.063](#) [1521.06.3] of the Revised Code, "political subdivision" includes townships, municipal corporations, counties, school districts, municipal universities, park districts, sanitary districts, and conservancy districts and subdivisions thereof.

History

HISTORY: GC § 408-11; 121 v 305 (311); 123 v 84 (95), § 2; Bureau of Code Revision, 10-1-53; 130 v S 330 (Eff 10-10-63); 132 v H 589 (Eff 12-14-67); 133 v S 224 (Eff 12-18-69); 142 v H 171 (Eff 7-1-87); 142 v H 708. Eff 4-19-88.

[§ 1521.06.1] § 1521.061 Surety bond conditioned on satisfactory completion of project.

Text of Statute

Except as otherwise provided in this section, a construction permit shall not be issued under section [1521.06](#) of the Revised Code unless the person or governmental agency applying for the permit executes and files a surety bond conditioned on completion of the dam, dike, or levee in accordance with the terms of the permit and the plans and specifications approved by the chief of the division of water, in an amount equal to fifty per cent of the estimated cost of the project. The chief shall not approve any bond until it is personally signed and acknowledged by both principal and surety, or as to either by his attorney in fact, with a certified copy of the power of attorney attached. The chief shall not approve the bond unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact a fidelity and surety business in this state.

All bonds shall be given in a form prescribed by the chief and shall run to the state as obligee.

The applicant may deposit, in lieu of a bond, cash in an amount equal to the amount of the bond or United States government securities or negotiable certificates of deposit issued by any bank organized or transacting business in this state having a par value equal to or greater than the amount of the bond. Such cash or securities shall be deposited upon the same terms as bonds. If one or more certificates of deposit are deposited in lieu of a bond, the chief shall require the bank which issued any the certificate to pledge securities of the aggregate market value equal to the amount of the certificate which is in excess of the amount insured by the federal deposit insurance corporation. The securities to be pledged shall be those designated as eligible under section [135.18](#) of the Revised Code. The securities shall be security for the repayment of the certificate of deposit.

Immediately upon a deposit of cash, securities, or certificates of deposit, the chief shall deliver them to the treasurer of state, who shall hold them in trust for the purposes for which they have been deposited. The treasurer of state is responsible for the safekeeping of such deposits. An applicant making a deposit of cash, securities, or certificates of deposit may withdraw and receive from the treasurer of state, on the written order of the chief, all or any portion of the cash, securities, or certificates of deposit, upon depositing with the treasurer of state cash, other United States government securities, or negotiable certificates of deposit issued by any bank organized or transacting business in this state equal in par value to the par value of the cash, securities, or certificates of deposit withdrawn. An applicant may demand and receive from the treasurer of state all interest or other income from any such securities or certificates as it becomes due. If securities so deposited

with and in the possession of the treasurer of state mature or are called for payment by the issuer thereof, the treasurer of state, at the request of the applicant who deposited them, shall convert the proceeds of the redemption or payment of the securities into such other United States government securities, negotiable certificates of deposit issued by any bank organized or transacting business in this state, or cash as the applicant designates.

When the chief finds that a person or governmental agency has failed to comply with the conditions of his bond, he shall make a finding of that fact and declare the bond, cash, securities, or certificates of deposit forfeited in the amount set by rule of the chief. The chief shall thereupon certify the total forfeiture to the attorney general, who shall proceed to collect that amount.

In lieu of total forfeiture, the surety, at its option, may cause the dam, dike, or levee to be completed as required by section [1521.06](#) of the Revised Code and rules of the chief, or otherwise rendered nonhazardous, or pay to the treasurer of state the cost thereof.

All moneys collected on account of forfeitures of bonds, cash, securities, and certificates of deposit under this section shall be credited to the dam safety fund created in section [1521.06](#) of the Revised Code. The chief shall make expenditures from the fund to complete dams, dikes, and levees for which bonds have been forfeited or to otherwise render them nonhazardous.

Expenditures from the fund for those purposes shall be made pursuant to contracts entered into by the chief with persons who agree to furnish all of the materials, equipment, work, and labor as specified and provided in the contract.

A surety bond shall not be required for a permit for a dam, dike, or levee that is to be designed and constructed by an agency of the United States government, if the agency files with the chief written assurance of the agency's financial responsibility for the structure during the one-year period following the chief's approval of the completed construction provided for under division (E) of section [1521.06](#) of the Revised Code.

History

HISTORY: 133 v S 224 (Eff 12-18-69); 141 v H 201 (Eff 7-1-85); 142 v H 171 (Eff 7-1-87); 143 v H 602. Eff 9-28-90.

Not analogous to former RC § [1521.06.1](#) (130 v S 330), repealed 133 v S 224, § 2, eff 10-10-63.

[§ 1521.06.2] § 1521.062 Periodic inspection; chief may remove or correct unsafe structures.

Text of Statute

(A) All dams, dikes, and levees constructed in this state and not exempted by this section or by the chief of the division of water under section [1521.06](#) of the Revised Code, shall be inspected periodically by the chief to ensure that continued operation and use of the dam, dike, or levee does not constitute a hazard to life, health, or property. Periodic inspections shall not be required of the following structures:

(1) A dam that is less than ten feet in height and has a storage capacity of not more than fifty acre-feet at the elevation of the top of the dam, as determined by the chief. For the purposes of this section, the height of a dam shall be measured from the natural stream bed or lowest ground elevation at the downstream or outside limit of the dam to the elevation of the top of the dam.

(2) A dam, regardless of height, that has a storage capacity of not more than fifteen acre-feet at the elevation of the top of the dam, as determined by the chief;

(3) A dam, regardless of storage capacity, that is six feet or less in height, as determined by the chief;

(4) A dam, dike, or levee belonging to a class exempted by the chief;

(5) A dam, dike, or levee that has been exempted in accordance with rules adopted under section [1521.064](#) [1521.06.4] of the Revised Code.

(B) Intervals between periodic inspections shall be determined by the chief, but shall not exceed five years. The chief may use inspection reports prepared for the owner of the dam, dike, or levee by a registered professional engineer.

(C) The owner shall be furnished a report of each inspection and shall be informed of required repairs, maintenance, investigations, and other remedial and operational measures by the chief. The chief shall order the owner to perform such repairs, maintenance, investigations, or other remedial or operational measures as he considers necessary to safeguard life, health, or property. The order shall permit the owner a reasonable time in which to perform the needed repairs, maintenance, investigations, or other remedial measures, and the cost thereof shall be borne by the owner. All orders of the chief are subject to appeal as provided in Chapter [119](#) of the Revised Code. The attorney general, upon written request of the chief, may bring an action for an injunction against any person who violates this section or to enforce an order of the chief made pursuant to this section.

(D) The owner of a dam, dike, or levee shall monitor, maintain, and operate the structure and its appurtenances safely in accordance with state rules, terms and conditions of permits, orders, and other requirements issued pursuant to this section or section [1521.06](#) of the Revised Code. The owner shall fully and promptly notify the division of water and other responsible authorities of any condition which threatens the safety of the structure, and shall take all necessary actions to safeguard life, health, and property.

(E) Before commencing the repair, improvement, alteration, or removal of a dam, dike, or levee, the owner shall file an application including plans, specifications, and other required information with the division, and shall secure written approval of the application by the chief. Emergency actions by the owner required to safeguard life, health, or property are exempt from this requirement. The chief may, by rule, define maintenance, repairs, or other remedial measures of a routine nature which are exempt from this requirement.

(F) The chief may remove or correct, at the expense of the owner, any unsafe structures found to be constructed or maintained in violation of this section or section [1521.06](#) of the Revised Code. In the case of an owner other than a governmental agency, the cost of removal or correction of any unsafe structure, together with a description of the property on which the unsafe structure is located, shall be certified by the chief to the county auditor and placed by the county auditor upon the tax duplicate. This cost is a lien upon the lands from the date of entry and shall be collected as other taxes and returned to the division. In the case of an owner that is a governmental agency, the cost of removal or correction of any unsafe structure shall be recoverable from the owner by appropriate action in a court of competent jurisdiction.

(G) If the condition of any dam, dike, or levee is found, in the judgment of the chief, to be so dangerous to the safety of life, health, or property as not to permit time for the issuance and enforcement of an order relative to repair, maintenance,

or operation, the chief shall employ any of the following remedial means necessary to protect life, health, and property:

- (1) Lower the water level of the lake or reservoir by releasing water;
- (2) Completely drain the lake or reservoir;
- (3) Take such other measures or actions as he considers necessary to safeguard life, health, and property. The chief shall continue in full charge and control of the dam, dike, or levee until the structure is rendered safe. The cost of the remedy shall be recoverable from the owner of the structure by appropriate action in a court of competent jurisdiction.

(H) The chief may accept and expend gifts, bequests, and grants from the United States government or from any other public or private source, and may contract with the United States government or any other agency or entity for the purpose of carrying out the dam safety functions set forth in this section and section [1521.06](#) of the Revised Code.

History

HISTORY: 133 v S 224 (Eff 12-18-69); 142 v H 171 (Eff 7-1-87); 143 v H 602. Eff 9-28-90.

[§ 1521.06.3] § 1521.063 Annual inspection fee.

Text of Statute

(A) Except for a political subdivision, the owner of any dam subject to section [1521.062](#) [1521.06.2] of the Revised Code shall pay an annual fee, based upon the height of the dam, to the division of water on or before June 30, 1988, and on or before the thirtieth day of June of each succeeding year. The annual fee shall be as follows:

(1) For any dam classified as a class I dam under rules adopted by the chief of the division of water under section [1521.06](#) of the Revised Code, thirty dollars plus three dollars per foot of height of dam;

(2) For any dam classified as a class II dam under those rules, thirty dollars plus one dollar per foot of height of dam;

(3) For any dam classified as a class III dam under those rules, thirty dollars.

For purposes of this section, the height of a dam is the vertical height, to the nearest foot, as determined by the division under section [1521.062](#) [1521.06.2] of the Revised Code. All fees collected under this section shall be deposited in the dam safety fund created in section [1521.06](#) of the Revised Code. Any owner who fails to pay any annual fee required by this section within sixty days after the due date shall be assessed a penalty of ten per cent of the annual fee plus interest at the rate of one-half per cent per month from the due date until the date of payment.

(B) The chief shall, in accordance with Chapter [119](#) of the Revised Code, adopt, and may amend or rescind, rules for the collection of fees and the administration, implementation, and enforcement of this section.

(C)(1) No person or governmental agency shall violate or fail to comply with this section or any rule or order adopted or issued under it.

(2) The attorney general, upon written request of the chief, may commence an action against any such violator. Any action under division (C)(2) of this section is a civil action.

History

HISTORY: 142 v H 171 (Eff 7-1-87); 143 v H 602. Eff 9-28-90.

[§ 1521.06.4] § 1521.064 Rules for exemption from inspections.

Text of Statute

The chief of the division of water, in accordance with Chapter [119](#). of the Revised Code, shall adopt, and may amend and rescind, rules establishing a program under which dams, dikes, and levees may be exempted from inspections under section [1521.062](#) [1521.06.2] of the Revised Code if the continued operation and use of, and any rupturing of or other structural damage to, the dams, dikes, and levees will not constitute a hazard to life, health, or property. The rules shall establish, without limitation, all of the following:

- (A) A procedure by which the owner of such a dam, dike, or levee may apply for an exemption under this section;
- (B) The standards that a dam, dike, or levee shall meet in order to be exempted under this section;
- (C) A procedure by which the chief shall periodically review the status of a dam, dike, or levee that has been exempted under this section to determine if the exemption should be rescinded;
- (D) A requirement that the owner of any dam, dike, or levee exempted under this section shall agree, in writing, to accept liability for any injury, death, or loss to persons or property caused by the rupturing of or other structural damage to the dam, dike, or levee.

History

HISTORY: 143 v H 602. Eff 9-28-90.

§ 1521.07 Right of entry.

Text of Statute

The chief of the division of water or any employee in the service of the division may enter upon lands to make surveys and inspections in accordance with this chapter, when necessary in the discharge of the duties enumerated in this chapter.

History

HISTORY: GC § 408-12; 121 v 305 (311); 123 v 84 (96), § 2; Bureau of Code Revision, 10-1-53; 132 v H 589 (Eff 12-14-67); 143 v S 396. Eff 4-11-91.

§ 1521.08 Two grand divisions.

Text of Statute

The public works of this state shall be divided into two grand divisions as follow:

- (A) The Miami and Erie canal, together with Lake St. Mary's reservoir, Indian Lake reservoir, and the Loramie reservoir, with all of their feeders and parts, and the various state channel dams which impound water for the purpose of supplying water for the Miami and Erie canal shall be styled "division one."
- (B) The Ohio and Erie canal, together with the Portage lakes and Buckeye lake, with all of their feeders and parts, and the various state dams in the state channels which impound waters for the purpose of supplying the Ohio and Erie canal shall be styled "division two."

The division of water shall have the care and control of the public works as defined in this section on behalf of the director of natural resources pursuant to section [1520.03](#) of the Revised Code and shall protect, operate, maintain, and keep them in repair. The chief of the division of water may remove obstructions and shall make such alterations or changes on those works and construct such feeders,

dikes, reservoirs, dams, locks, or other works, devices, or improvements as are proper in the discharge of his duties. The chief may adopt, amend, and rescind rules for the administration of this section.

History

HISTORY: RS § 218-1; 95 v 392; 86 v 385; 75 v 584; GC § 411; 103 v 119; Bureau of Code Revision, 10-1-53; 143 v H 111. Eff 7-1-89.

§ 1521.09 Reservoirs; reduction of assessed valuation.

Text of Statute

Any landowner, or groups of landowners or lessors, in this state not within the corporate limits of any municipal corporation in this state, who shall by the construction of a dam across any watercourse form upon his own land one or more reservoirs for the collection and storage of surface water, and who maintains such reservoirs in such condition as to collect and store such water, or who donates to the state or any of its agencies a tract of land on which the state or any of its agencies may erect and maintain a reservoir for the storage of water, is entitled to a reduction of the assessed valuation of the tract of land upon which such reservoir is located of forty dollars for each acre-foot of storage capacity afforded by such dam. The total amount of such reduction shall not exceed forty per cent of the assessed valuation of the entire contiguous acreage owned by the landowner and upon which such reservoirs are located.

History

HISTORY: GC § 474-1; 117 v 696; Bureau of Code Revision. Eff 10-1-53.

§ 1521.10 Landowner to submit plans.

Text of Statute

In order to be entitled to the compensation provided for in section [1521.09](#) of the Revised Code, the landowner must have prepared and submit to the division of water complete plans for the dam provided for in such section. The plans shall have the approval of the chief of the division of water and the dam shall be constructed in accordance with such plans before compensation can be claimed.

History

HISTORY: GC § 474-2; 117 v 696, § 2; 123 v 84; 124 v 264 (272), § 3; Bureau of Code Revision. Eff 10-1-53.

§ 1521.11 Certification.

Text of Statute

Upon the completion of the dam referred to in section [1521.09](#) of the Revised Code to the satisfaction of the division of water, it shall certify the completion and the capacity thereof to the county auditor who shall thereupon make such reduction in the assessed valuation of the contiguous landowner as he is entitled to receive under sections [1521.09](#) to [1521.12](#), inclusive, of the Revised Code.

History

HISTORY: GC § 474-3; 117 v 696, § 3; 123 v 84; 124 v 264; Bureau of Code Revision. Eff 10-1-53.

§ 1521.12 Approval of plans.

Text of Statute

In the event that any dam is constructed before plans are submitted to and approved by the division of water as required by section [1521.10](#) of the Revised Code, the landowner may submit plans of the dam he has built, showing the area of the drainage basin above the dam, a cross section of the dam site, a cross section, plan, and elevation of the dam, a map of the spillway, a topographic map of the reservoir basin, and such other data and information as the division requires. If the plans receive the approval of the division, and upon examination the dam is found to be satisfactorily completed in accordance with such plans, said division shall certify the completion and capacity thereof to the county auditor. If the plans fail to meet the requirements of the division, the owner may submit revised plans, and when such revised plans have been approved and the dam rebuilt to conform to such plans, the completion of the dam and its capacity shall then be certified to the auditor who shall thereupon make such reduction in the assessed valuation of the contiguous land as such owner is entitled to receive under sections [1521.09](#) to [1521.12](#), inclusive, of the Revised Code.

History

HISTORY: GC § 474-4; 117 v 696, § 4; 123 v 84; 124 v 264, § 3; Bureau of Code Revision. Eff 10-1-53.

§ 1521.13 Floodplain management; flood damage reduction standards.

Text of Statute

(A) The chief of the division of water shall do all of the following:

- (1) Coordinate the floodplain management activities of state agencies and political subdivisions with the floodplain management activities of the United States, including the national flood insurance program established in the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, and regulations adopted under that act;
- (2) Collect, prepare, and maintain technical data and information on floods and floodplain management and make the data and information available to the public, state agencies, political subdivisions, and agencies of the United States;
- (3) Cooperate and enter into agreements with persons for the preparation of studies and reports on floods and floodplain management;
- (4) Assist any county, municipal corporation, or state agency in developing comprehensive floodplain management programs;
- (5) Provide technical assistance to any county, municipal corporation, or state agency through engineering assistance, data collection, preparation of model laws, training, and other activities relating to floodplain management;
- (6) For the purpose of reducing damages and the threat to life, health, and property in the event of a flood, cooperate with state agencies, political subdivisions, and the United States in the development of flood warning systems, evacuation plans, and flood emergency preparedness plans;
- (7) Upon request, assist the emergency management agency established by section [5502.22](#) of the Revised Code in the preparation of flood hazard mitigation reports required as a condition for receiving federal disaster aid under the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C.A. 5121, as amended, "The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1994," Pub.L.No. 93-288, as amended, and regulations adopted under those acts;

(8) Adopt, and may amend or rescind, rules in accordance with Chapter [119](#) of the Revised Code for the administration, implementation, and enforcement of this section and sections [1521.14](#) and [1521.18](#) of the Revised Code;

(9) Establish, by rule, technical standards for the delineation and mapping of floodplains and for the conduct of engineering studies to determine the vertical and horizontal limits of floodplains. The standards adopted under this division shall be consistent with and no more stringent than the analogous standards established under the national flood insurance program adopted pursuant to the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended.

(10) Establish, by rule, flood damage reduction standards governing development within one hundred year floodplains other than development subject to the rules adopted under division (A)(11) of this section. The standards shall include provisions to ensure that structures are protected at least to the one hundred year flood level and that any increase in the one hundred year flood level will not exceed one foot as determined by engineering studies conducted in accordance with the technical standards established in rules adopted under division (A)(9) of this section. The standards adopted under this division shall be no more stringent than the minimum floodplain management criteria of the national flood insurance program adopted under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended.

(11) Establish, by rule, minimum flood damage reduction standards governing development undertaken by state agencies within one hundred year floodplains. The standards shall include provisions to ensure that structures are protected at least to the one hundred year flood level and that any increase in the one hundred year flood level will not exceed one foot as determined by engineering studies conducted in accordance with the technical standards established in rules adopted under division (A)(9) of this section. The standards adopted under this division shall be consistent with and no less stringent than the minimum floodplain management criteria of the national flood insurance program adopted under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended.

(12) On behalf of the director of natural resources, administer section [1506.04](#) of the Revised Code.

(B) Rules adopted under division (A)(10) of this section and standards established under those rules apply only to developments for which a demonstration of compliance is required under division (C)(1) of section [1521.14](#) of the Revised Code.

History

HISTORY: 143 v S 396 (Eff 4-11-91); 144 v H 264 (Eff 3-2-92); 145 v S 182 (Eff 10-20-94); 146 v S 162. Eff 10-29-95.

Not analogous to former RC § [1521.13](#) (GC § 408-15; 122 v 651; Bureau of Code Revision, 10-1-53), repealed 134 v S 397, § 2, eff 10-23-72.

§ 1521.14 Floodplain management duties of state agencies and political subdivisions; marking of flood heights; conditions for funding developments.

Text of Statute

(A) All state agencies and political subdivisions, prior to the expenditure of funds for or the construction of buildings, structures, roads, bridges, or other facilities in locations that may be subject to flooding or flood damage, shall notify and consult

with the division of water and shall furnish such information as the division may reasonably require in order to avoid the uneconomic, hazardous, or unnecessary use of floodplains in connection with such facilities.

(B) With respect to existing publicly owned facilities that have suffered flood damage or that may be subject to flood damage, the chief of the division of water may conspicuously mark past and probable flood heights so as to assist in creating public awareness of and knowledge about flood hazards. Wherever economically feasible, state agencies and political subdivisions responsible for existing publicly owned facilities shall apply floodproofing measures in order to reduce potential flood damage.

(C)(1) Any state agency that funds or finances developments or that has regulatory jurisdiction that preempts the authority of political subdivisions to regulate development as necessary to establish participation in the national flood insurance program under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, before awarding funding or financing or granting a license, permit, or other authorization for a development that is or is to be located within a one hundred year floodplain, shall require the applicant therefor to demonstrate to the satisfaction of the agency that the development will comply with the flood damage reduction standards established in rules adopted under division (A)(10) of section [1521.13](#) of the Revised Code.

(2) Any state agency that undertakes any development that is or is to be located within a one hundred year floodplain shall ensure that the development complies with the minimum flood damage reduction standards established in rules adopted under division (A)(11) of section [1521.13](#) of the Revised Code.

(3) Prior to the disbursement of any state disaster assistance funds in connection with any incident of flooding to or within a municipal corporation or county that is not listed by the chief as being in compliance under division (D)(1) of section [1521.18](#) of the Revised Code, each state agency having the authority to disburse such funds shall require the municipal corporation or county to establish or reestablish compliance as provided in that division.

(D) All state agencies shall comply with this section, rules adopted under section [1521.13](#) of the Revised Code, and any applicable local floodplain management ordinance or resolution. Upon the written request of the director of natural resources, the attorney general may bring a civil action for injunctive relief, in the court of common pleas of Franklin county, against any state agency that violates this section, rules adopted under section [1521.13](#) of the Revised Code, or any applicable local floodplain management ordinance or resolution. In the action, the court may enter an order that restrains, prevents, or abates any conduct, or abates any development undertaken by a state agency, in violation of this section, rules adopted under section [1521.13](#) of the Revised Code, or any applicable local floodplain management ordinance or resolution.

History

HISTORY: 132 v H 314 (Eff 12-14-67); 143 v S 396 (Eff 4-11-91); 144 v H 264 (Eff 3-2-92); 145 v S 182. Eff 10-20-94.

§ 1521.15 Water resources inventory and long-term plan.

Text of Statute

(A) The chief of the division of water shall develop and maintain, in cooperation with local, state, federal, and private agencies and entities, a water resources

inventory for the collection, interpretation, storage, retrieval, exchange, and dissemination of information concerning the water resources of this state, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of consumptive use and diversion of the water resources. The water resources inventory also shall include, without limitation, information to assist in determining the reasonableness of water use and sharing under common law, promoting reasonable use and development of water resources, and resolving water use conflicts.

All agencies of the state shall cooperate with the chief in the development and maintenance of the inventory.

(B) The chief shall cooperate with the other great lakes states and provinces to develop a common base of data regarding the management of the water resources of the Lake Erie drainage basin and to establish systematic arrangements for the exchange of those data.

(C) The chief shall prepare and present to the governor no later than September 1, 1998, a long-term water resources plan for the protection, conservation, and management of the water resources of the Lake Erie drainage basin. The plan shall include, without limitation, all of the following:

(1) An inventory of surface and ground water resources;

(2) Identification and assessment of existing uses and future demand for all of the following:

(a) Withdrawal of water resources for domestic, agricultural, manufacturing, mining, navigation, power production, recreation, fish and wildlife, and other uses;

(b) Diversion;

(c) Consumptive use.

(3) Guidelines to minimize consumptive use;

(4) Guidelines and procedures to coordinate, conserve, develop, protect, use, and manage the water resources of the Lake Erie drainage basin.

History

HISTORY: 142 v H 662 (Eff 6-29-88); 143 v H 476 (Eff 7-18-90); 145 v S 182. Eff 10-20-94.

§ 1521.16 Registration of facilities capable of withdrawing more than 100,000 gallons a day; ground water stress areas.

Text of Statute

(A) Any person who owns a facility that has the capacity to withdraw waters of the state in an amount greater than one hundred thousand gallons per day from all sources and whose construction is completed before January 1, 1990, shall register the facility by January 1, 1991, with the chief of the division of water, and any person who owns a facility that has the capacity to withdraw waters of the state in such an amount and whose construction is completed on or after January 1, 1990, shall register the facility with the chief within three months after the facility is completed. The person shall register the facility using a form prescribed by the chief that shall include, without limitation, the name and address of the registrant and date of registration; the locations and sources of the facility's water supply; the facility's withdrawal capacity per day and the amount withdrawn from each source; the uses made of the water, places of use, and places of discharge; and such other information as the chief may require by rule.

The registration date of any facility whose construction was completed prior to January 1, 1990, and that is registered under this division prior to January 1, 1991, shall be January 1, 1990. The registration date of any facility whose construction was completed prior to January 1, 1990, and that is required to register under this division prior to January 1, 1991, but that is not registered prior to that date, and the registration date of any facility whose construction was completed after January 1, 1990, and that is required to register under this division shall be the date on which the registration is received by the chief.

(B) In accordance with division (D) of this section, the chief shall adopt rules establishing standards and criteria for determining when an area of ground water is a ground water stress area, the geographic limits of such an area, and a threshold withdrawal capacity for the area below which registration under this division shall not be required. At any time following the adoption of those rules, the chief may by order designate an area of ground water as a ground water stress area and shall establish in any such order a threshold withdrawal capacity for the area below which registration under this division shall not be required.

Following the designation of a ground water stress area, the chief immediately shall give notice by publication in a newspaper of general circulation in the designated area that shall include a map delineating the designated ground water stress area and a statement of the threshold withdrawal capacity established for the area below which registration under this division shall not be required. The notice shall not appear in the legal notices section of the newspaper. Any person who owns a facility in the designated ground water stress area that is not registered under division (A) of this section and that has the capacity to withdraw waters of the state in an amount greater than the threshold withdrawal capacity for the area from all sources shall register his facility with the chief not later than thirty days after publication of the notice. A person registering a facility under this division shall do so using a form prescribed by the chief. The form shall include the information specified in division (A) of this section.

(C) Any person who owns a facility registered under division (A) or (B) of this section shall file a report annually with the chief listing the amount of water withdrawn per day by the facility, the return flow per day, and any other information the chief may require by rule. Any person who, under Chapter [6109](#). of the Revised Code, provides such information to the Ohio environmental protection agency is exempt from reporting under this division. The director of environmental protection shall provide the chief any such reported information upon his request.

(D) The chief shall adopt, and may amend or rescind, rules in accordance with Chapter [119](#). of the Revised Code to carry out this section.

(E)(1) No person knowingly shall fail to register a facility or file a report as required under this section.

(2) No person shall file a false report under this section. Violation of division (E)(2) of this section is falsification under section [2921.13](#) of the Revised Code.

(F) At the request of the director of natural resources, the attorney general may commence a civil action to compel compliance with this section, in a court of common pleas, against any person who has violated or is violating division (E)(1) of this section. The court of common pleas in which a civil action is commenced under this division has jurisdiction to and shall compel compliance with this section upon a showing that the person against whom the action is brought has violated or is violating that division.

Any action under this division is a civil action, governed by the rules of civil procedure and other rules of practice and procedure applicable to civil actions.

History

HISTORY: 142 v H 662 (Eff 6-29-88); 143 v H 476 (Eff 7-18-90); 145 v S 182. Eff 10-20-94.

§ 1521.17 Determination of reasonableness of use of water.

Text of Statute

(A) The general assembly hereby finds and declares that the determination of the reasonableness of a use of water depends upon a consideration of the interests of the person making the use, of any person harmed by the use, and of society as a whole.

(B) In accordance with section 858 of the Restatement (Second) of Torts of the American law institute, all of the following factors shall be considered, without limitation, in determining whether a particular use of water is reasonable:

- (1) The purpose of the use;
- (2) The suitability of the use to the watercourse, lake, or aquifer;
- (3) The economic value of the use;
- (4) The social value of the use;
- (5) The extent and amount of the harm it causes;
- (6) The practicality of avoiding the harm by adjusting the use or method of use of one person or the other;
- (7) The practicality of adjusting the quantity of water used by each person;
- (8) The protection of existing values of water uses, land, investments, and enterprises;
- (9) The justice of requiring the user causing harm to bear the loss.

(C) In any determination of reasonable use of water under common law in which prior use is a factor, it shall be conclusive that one use is prior to another in the quantity claimed if the date of registration of one facility providing such use under section [1521.16](#) of the Revised Code is prior to that of another facility. If a use of water in which prior use is a factor is by means of a facility having the capacity to withdraw one hundred thousand gallons or less of water per day and the facility is not registered under division (B) of that section, prior use shall be based on historic information and documentation provided by any person.

History

HISTORY: 142 v H 662 (Eff 6-29-88); 143 v H 476. Eff 7-18-90.

§ 1521.18 Compliance of municipal ordinances and county resolutions with flood insurance act standard.

Text of Statute

(A) For the purposes of this section, a one hundred year floodplain is limited to an area identified as a one hundred year floodplain in accordance with the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended.

(B) Each municipal corporation or county that has within its boundaries a one hundred year floodplain and that adopts a floodplain management ordinance or resolution or any amendments to such an ordinance or resolution on or after April 11, 1991, after adopting the ordinance, resolution, or amendments and before submitting the ordinance, resolution, or amendments to the federal emergency management agency for final approval for compliance with applicable standards

adopted under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, shall submit the ordinance, resolution, or amendments to the chief of the division of water for his review for compliance with those standards. Within forty-five days after receiving any such ordinance, resolution, or amendments, the chief shall complete his review and notify the municipal corporation or county as to whether the ordinance, resolution, or amendments comply with those standards. If the chief finds that the ordinance, resolution, or amendments comply with those standards, he shall forward it or them to the federal emergency management agency for final approval.

(C)(1) If the chief determines that a county or municipal corporation that has adopted a floodplain management resolution or ordinance fails to administer or enforce the resolution or ordinance, the chief shall send a written notice by certified mail to the board of county commissioners of the county or the chief executive officer of the municipal corporation stating the nature of the noncompliance.

(2) In order to maintain its compliance status in accordance with division (D) of this section, a county or municipal corporation that has received a notice of noncompliance under division (C)(1) of this section may submit information to the chief not later than thirty days after receiving the notice that demonstrates compliance or indicates the actions that the county or municipal corporation is taking to administer or enforce the resolution or ordinance. The chief shall review the information and shall issue a final determination by certified mail to the county or municipal corporation of the compliance or noncompliance status of the county or municipal corporation. If the chief issues a final determination of noncompliance, he shall send a copy of that determination to the federal emergency management agency concurrently with mailing the notice to the municipal corporation or county.

(D)(1) A county or municipal corporation is considered to be in compliance for the purposes of this section if either of the following applies:

(a) The county or municipal corporation has adopted a floodplain management resolution or ordinance that the chief has determined complies with applicable standards adopted under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, and is adequately administering and enforcing it as determined under division (C) of this section.

(b) The county or municipal corporation is participating in the national flood insurance program under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, and has not received a notice of noncompliance under division (B) or (C) of this section.

(2) The chief shall maintain a list of all counties and municipal corporations that have one hundred year floodplains within their boundaries. The list shall indicate whether each such county or municipal corporation is in compliance or noncompliance as provided in division (D)(1) of this section and whether each such county or municipal corporation is participating in the national flood insurance program. The chief shall provide a copy of the list to the general assembly and all state agencies annually and shall notify the general assembly and the agencies of any changes at least quarterly.

(E) Any county or municipal corporation that is adversely affected by any determination of the chief under this section may appeal it in accordance with Chapter [119](#) of the Revised Code not later than thirty days after the final determination.

History

HISTORY: 143 v S 396 (Eff 4-11-91); 145 v S 182. Eff 10-20-94.

§ 1521.20 Erosion agent for purposes of cooperation with federal authorities.

Text of Statute

The chief of the division of water shall act as the erosion agent of the state for the purpose of cooperating with the secretary of the army, acting through the chief of engineers of the United States army corps of engineers in the department of defense. The chief shall cooperate with the secretary in carrying out, and may conduct, investigations and studies of conditions along the shorelines of Lake Erie and of the bays and projections therefrom, and of the islands therein, within the territorial waters of the state, with a view to devising and perfecting economical and effective methods and works for preventing, correcting, and controlling shore erosion and damage therefrom and controlling the inundation of improved property by the waters of Lake Erie, its bays, and associated inlets.

History

HISTORY: GC § 412-24; 116 v 244; 123 v 84(110), § 2; 124 v 264; Bureau of Code Revision, RC § [1507.01](#), 10-1-53; 126 v 569 (Eff 9-30-55); 129 v 1350 (Eff 11-2-61); 130 v H 1 (Eff 1-23-63); RC § [1507.02](#), 145 v S 182 (Eff 10-20-94); RC § [1521.20](#), 148 v H 601. Eff 6-14-2000.

The provisions of § 6 of HB 601 (148 v --) read as follows:

SECTION 6. On the effective date of this section, all of the staff, records, files, and effects of the Division of Engineering in the Department of Natural Resources pertaining to the functions, powers, duties, and obligations of that Division under former sections 1507.02, 1507.03, 1507.04, 1507.05, 1507.06, 1507.07, 1507.071, 1507.08, 1507.09, 1507.10, 1507.11, and 1507.99 of the Revised Code shall be transferred and assigned to the Division of Water in the Department of Natural Resources for the purposes of sections [1521.20](#) to [1521.30](#) and [1521.99](#) of the Revised Code, as amended by this act. The Division of Water also shall assume custody and control of funds and other assets in the possession of the Division of Engineering that are appropriate and necessary to carry out the transferred functions, powers, duties, and obligations.

Any business or other matter undertaken or commenced by the Division of Engineering pertaining to or connected with the functions, powers, duties, and obligations hereby transferred or assigned and pending on the effective date of this act shall be conducted and completed by the Division of Water in the same manner and under the same terms and conditions and with the same effect as if conducted by the Division of Engineering.

All powers of the Chief Engineer of the Division of Engineering transferred by this act shall be performed by the Chief of the Division of Water.

All criteria, acts, determinations, certifications, and decisions of the Division of Engineering pertaining to the functions transferred and assigned to the Division of Water at the time of the transfer and assignment shall continue in force as criteria, acts, determinations, certifications, and decisions of the Division of Water until duly modified or terminated by that Division.

Wherever the functions, powers, duties, and obligations of the Division of Engineering that are transferred and assigned by this act to the Division of Water are referred to or designated in any law, contract, or other document pertaining to

those functions, powers, duties, and obligations, the reference or designation shall be deemed to refer to the Division of Water.

No existing right or remedy of any person shall be lost, impaired, or affected by reason of this act, except insofar as the rights and remedies shall be administered by the Division of Water instead of the Division of Engineering.

No action or proceeding pending on the effective date of this act brought by the Division of Engineering pertaining to the functions, powers, duties, and obligations that are transferred by this act shall be affected by any provision of this act, but may be prosecuted or defended in the name of the Division of Water. In all such actions and proceedings, the Division of Water, upon application to the court, shall be substituted as a party.

§ 1521.21 Assistance by engineers and employees of other state departments or educational institutions.

Text of Statute

The chief of the division of water, in the discharge of the chief's duties under sections 1507.20 to 1507.30 of the Revised Code, may call to the chief's assistance, temporarily, any engineers or other employees in any state department, or in the Ohio state university or other educational institutions financed wholly or in part by the state, for the purpose of devising the most effective and economical methods of controlling shore erosion and damage from it and controlling the inundation of improved property by the waters of Lake Erie and its bays and associated inlets. Such engineers and employees shall not receive any additional compensation over that which they receive from the departments or institutions by which they are employed, but they shall be reimbursed for their actual necessary expenses incurred while working under the direction of the chief on erosion and inundation projects.

History

HISTORY: GC §§ 412-25, 412-26; 116 v 244, §§ 2, 3; 123 v 84(111), § 2; 124 v 264; Bureau of Code Revision, RC § [1507.02](#), 10-1-53; 129 v 1350 (Eff 11-2-61); RC § [1507.03](#), 145 v S 182 (Eff 10-20-94); RC § [1521.21](#), 148 v H 601. Eff 6-14-2000.

§ 1521.22 Shore structure permits.

Text of Statute

No person shall construct a beach, groin, or other structure to control erosion, wave action, or inundation along or near the Ohio shoreline of Lake Erie, including related islands, bays, and inlets, without first obtaining a shore structure permit from the chief of the division of water. The application for a shore structure permit shall include detailed plans and specifications prepared by a professional engineer registered under Chapter 4733. of the Revised Code. An applicant shall provide appropriate evidence of compliance with any applicable provisions of this chapter and Chapters 1505. and 1506. of the Revised Code, as determined by the chief. A temporary shore structure permit may be issued by the chief or an authorized representative of the chief if it is determined necessary to safeguard life, health, or property.

Each application or reapplication for a permit under this section shall be accompanied by a non-refundable fee as the chief shall prescribe by rule.

If the application is approved, the chief shall issue a permit to the applicant authorizing construction of the project. If requested in writing by the applicant within thirty days of issuance of a notice of disapproval of the application, the chief shall conduct an adjudication hearing under Chapter [119](#) of the Revised Code, except sections [119.12](#) and [119.121](#) [119.12.1] of the Revised Code. After reviewing the record of the hearing, the chief shall issue a final order approving the application, disapproving it, or approving it conditioned on the making of specified revisions in the plans and specifications.

The chief, by rule, shall limit the period during which a construction permit issued under this section is valid and shall establish reapplication requirements governing a construction permit that expires before construction is completed.

In accordance with Chapter [119](#) of the Revised Code, the chief shall adopt, and may amend or rescind, such rules as are necessary for the administration, implementation, and enforcement of this section.

History

HISTORY: GC § 412-28; 116 v 244, § 5; 121 v 575; 123 v 84(111), § 2; 124 v 264; Bureau of Code Revision, RC § [1507.03](#), 10-1-53; 125 v 802 (Eff 10-30-53); 126 v 769 (Eff 10-5-55); 129 v 1350 (Eff 11-2-60); 142 v S 70 (Eff 3-15-89); RC § [1507.04](#), 145 v S 182 (Eff 10-20-94); RC § [1521.22](#), 148 v H 601. Eff 6-14-2000.

§ 1521.23 Permit and lease fund.

Text of Statute

All moneys derived from the granting of permits and leases under section [1505.07](#) of the Revised Code for the removal of sand, gravel, stone, gas, oil, and other minerals and substances from and under the bed of Lake Erie and from applications for shore structure permits submitted under section [1521.22](#) of the Revised Code shall be paid into the state treasury to the credit of the permit and lease fund, which is hereby created. Notwithstanding any section of the Revised Code relating to the distribution or crediting of fines for violations of the Revised Code, all fines imposed under division (A) of section [1505.99](#) and division (C) of section [1521.99](#) of the Revised Code shall be paid into that fund. The fund shall be administered by the department of natural resources for the protection of Lake Erie shores and waters; investigation and control of erosion; the planning, development, and construction of facilities for recreational use of Lake Erie; implementation of section [1521.22](#) of the Revised Code; preparation of the state shore erosion plan under section [1521.29](#) of the Revised Code; and state administration of Lake Erie coastal erosion areas under sections [1506.06](#) and [1506.07](#) of the Revised Code.

History

HISTORY: GC § 412-28; 116 v 244, § 5; 121 v 575; 123 v 84(111), § 2; 124 v 264; Bureau of Code Revision, RC § [1507.04](#), 10-1-53; 126 v 569 (Eff 9-30-55); 129 v 582(684) (Eff 1-10-61); 129 v 1350 (Eff 11-2-61); 131 v 458 (Eff 11-5-65); 134 v H 94 (Eff 10-16-72); 134 v S 397 (Eff 10-23-72); 137 v S 221 (Eff 11-23-77); 141 v H 201 (Eff 7-1-85); 142 v S 70 (Eff 3-15-89); RC § [1507.05](#), 145 v S 182 (Eff 10-20-94); 146 v H 119 (Eff 5-8-96); 147 v S 187 (Eff 3-18-99); RC § [1521.23](#), 148 v H 601. Eff 6-14-2000.

§ 1521.24 Agreements with subdivisions or state agencies for erosion projects.

Text of Statute

The state, acting through the chief of the division of water, subject to section [1521.28](#) of the Revised Code, may enter into agreements with counties, townships, municipal corporations, park boards, and conservancy districts, other political subdivisions, or any state departments or divisions for the purpose of constructing and maintaining projects to control erosion along the Ohio shoreline of Lake Erie and in any rivers and bays that are connected with Lake Erie and any other watercourses that flow into Lake Erie. Such projects also may be constructed on any Lake Erie island that is situated within the boundaries of the state.

The cost of such shore erosion projects that are for the benefit of public littoral property shall be prorated on the basis of two-thirds of the total cost to the state through appropriations made to the division of water and one-third of the cost to the counties, townships, municipal corporations, park boards, conservancy districts, or other political subdivisions.

If a shore erosion emergency is declared by the governor, the state, acting through the chief, may spend whatever state funds are available to alleviate shore erosion, without participation by any political subdivision, regardless of whether the project will benefit public or private littoral property.

A board of county commissioners, acting for the county over which it has jurisdiction, may enter into and carry out agreements with the chief for the construction and maintenance of projects to control shore erosion. In providing the funds for the county's proportionate share of the cost of constructing and maintaining the projects referred to in this section, the board shall be governed by and may issue and refund bonds in accordance with Chapter [133](#). of the Revised Code.

A municipal corporation or a township, acting through the legislative authority or the board of township trustees, may enter into and carry out agreements with the chief for the purpose of constructing and maintaining projects to control shore erosion. In providing the funds for the municipal corporation's or township's proportionate share of the cost of constructing and maintaining the projects referred to in this section, a municipal corporation or township may issue and refund bonds in accordance with Chapter [133](#). of the Revised Code. The contract shall be executed on behalf of the municipal corporation or township by the mayor, city manager, or other chief executive officer who has the authority to act for the municipal corporation or township.

Conservancy districts may enter into and carry out agreements with the chief, in accordance with the intent of this section, under the powers conferred upon conservancy districts under Chapter [6101](#). of the Revised Code.

Park boards may enter into and carry out agreements with the chief, in accordance with the intent of this section, and issue bonds for that purpose under the powers conferred upon park districts under Chapter [1545](#). of the Revised Code.

The chief shall approve and supervise all projects that are to be constructed in accordance with this section. The chief shall not proceed with the construction of any project until all funds that are to be paid by the county, township, municipal corporation, park board, or conservancy district, in accordance with the terms of the agreement entered into between the chief and the county, township, municipal corporation, park board, or conservancy district, are in the chief's possession and deposited in the shore erosion fund, which is hereby created in the state treasury. If the chief finds it to be in the best interests of the state to construct projects as

set forth in this section by the state itself, without the financial contribution of counties, townships, municipal corporations, park boards, or conservancy districts, the chief may construct the projects.

In deciding whether to assist a county or municipal corporation in constructing and maintaining a project under this section, the state, acting through the chief, shall consider, among other factors, whether the county or municipal corporation has adopted or is in the process of adopting a Lake Erie coastal erosion area resolution or ordinance under division (D) of section [1506.07](#) of the Revised Code.

All projects constructed by the state in conformity with sections [1521.20](#) to [1521.28](#) of the Revised Code shall be constructed subject to sections [153.01](#) to [153.20](#) of the Revised Code, except that the state architect and engineer is not required to prepare the plans and specifications for those projects.

History

HISTORY: GC § 412-28; 116 v 244, § 5; 121 v 575; 123 v 84(111), § 2; 124 v 264; Bureau of Code Revision, RC § [1507.05](#), 10-1-53; 125 v 802 (Eff 10-30-53); 129 v 1350 (Eff 11-2-61); 130 v H 573 (Eff 9-30-63); 137 v S 221 (Eff 11-23-77); 141 v H 201 (Eff 7-1-85); 142 v S 70 (Eff 3-15-89); 143 v H 230 (Eff 10-30-89); RC § [1507.06](#), 145 v S 182 (Eff 10-20-94); 146 v H 119 (Eff 5-8-96); RC § [1521.24](#), 148 v H 601. Eff 6-14-2000.

§ 1521.25 Contracts with subdivisions for erosion projects.

Text of Statute

The chief of the division of water may enter into a contract with any county, township, municipal corporation, conservancy district, or park board that has an agreement with the state in accordance with section [1521.24](#) of the Revised Code for the construction of a shore erosion project. No contract shall be let until all money that is to be paid by the political subdivision entering into the agreement has been deposited in the shore erosion fund created in section [1521.24](#) of the Revised Code, and no contract shall be valid until approved by the director of natural resources.

History

HISTORY: RC § [1507.05.1](#), 125 v 802 (Eff 10-30-53); 129 v 1350 (Eff 11-2-61); 137 v S 221 (Eff 11-23-77); 141 v H 201 (Eff 7-1-85); RC § [1507.07](#), 145 v S 182 (Eff 10-20-94); RC § [1521.25](#), 148 v H 601. Eff 6-14-2000.

§ 1521.26 Coastal erosion loan program.

Text of Statute

(A) A board of county commissioners may use a loan obtained under division (C) of this section to provide financial assistance to any person who owns real property in a coastal erosion area, as defined in section [1506.01](#) of the Revised Code, and who has received a permit under section [1521.22](#) of the Revised Code to construct an erosion control structure in that coastal erosion area. The board shall enter into an agreement with the person that complies with all of the following requirements:

(1) The agreement shall identify the person's real property for which the erosion control structure is being constructed and shall include a legal description of that property and a reference to the volume and page of the deed record in which the title of that person to that property is recorded.

(2) In accordance with rules adopted by the Ohio water development authority under division (V) of section [6121.04](#) of the Revised Code for the purposes of

division (C) of this section and pursuant to an agreement between the board and the authority under that division, the board shall agree to cause payments to be made by the authority to the contractor hired by the person to construct an erosion control structure in amounts not to exceed the total amount specified in the agreement between the board and the person.

(3) The person shall agree to pay to the board, or to the authority as the assignee pursuant to division (C) of this section, the total amount of the payments plus administrative or other costs of the board or the authority at times, in installments, and bearing interest as specified in the agreement.

The agreement may contain additional provisions that the board determines necessary to safeguard the interests of the county or to comply with an agreement entered into under division (C) of this section.

(B) Upon entering into an agreement under division (A) of this section, the board shall do all of the following:

(1) Cause the agreement to be recorded in the county deed records in the office of the county recorder of the county in which the real property is situated. Failure to record the agreement does not affect the validity of the agreement or the collection of any amounts due under the agreement.

(2) Establish by resolution an erosion control repayment fund into which shall be deposited all amounts collected under division (B)(3) of this section. Moneys in that fund shall be used by the board for the repayment of the loan and for administrative or other costs of the board or the authority as specified in an agreement entered into under division (C) of this section. If the amount of money in the fund is inadequate to repay the loan when due, the board of county commissioners, by resolution, may advance money from any other fund in order to repay the loan if that use of the money from the other fund is not in conflict with law. If the board so advances money in order to repay the loan, the board subsequently shall reimburse each fund from which the board advances money with moneys from the erosion control repayment fund.

(3) Bill and collect all amounts when due under the agreement entered into under division (A) of this section. The board shall certify amounts not paid when due to the county auditor, who shall enter the amounts on the real property tax list and duplicate against the property identified under division (A)(1) of this section. The amounts not paid when due shall be a lien on that property from the date on which the amounts are placed on the tax list and duplicate and shall be collected in the same manner as other taxes.

(C) A board may apply to the authority for a loan for the purpose of entering into agreements under division (A) of this section. The loan shall be for an amount and on the terms established in an agreement between the board and the authority. The board may assign any agreements entered into under division (A) of this section to the authority in order to provide for the repayment of the loan and may pledge any lawfully available revenues to the repayment of the loan, provided that no moneys raised by taxation shall be obligated or pledged by the board for the repayment of the loan. Any agreement with the authority pursuant to this division is not subject to Chapter [133](#). of the Revised Code or any requirements or limitations established in that chapter.

(D) The authority, as assignee of any agreement pursuant to division (C) of this section, may enforce and compel the board and the county auditor by mandamus

pursuant to Chapter [2731](#). of the Revised Code to comply with division (B) of this section in a timely manner.

(E) The construction of an erosion control structure by a contractor hired by an individual homeowner, group of individual homeowners, or homeowners association that enters into an agreement with a board under division (A) of this section is not a public improvement, as defined in section [4115.03](#) of the Revised Code, and is not subject to competitive bidding or public bond laws.

History

HISTORY: RC § [1507.07.1](#), 148 v S 43 (Eff 10-20-99); RC § [1521.26](#), 148 v H 601. Eff 6-14-2000.

§ 1521.27 Acquisition of lands.

Text of Statute

The state, or any county, township, municipal corporation, conservancy district, or park board that has entered into a contract under section [1521.25](#) of the Revised Code, may acquire lands by gift or devise, purchase, or appropriation. In case of appropriation, the proceedings shall be instituted in the name of the state or the political subdivision and shall be conducted in the manner provided for the appropriation of private property by the state or the political subdivision insofar as those proceedings are applicable. Either the fee or any lesser interest may be acquired as the state or the political subdivision considers advisable.

History

HISTORY: RC § [1507.05.2](#), 125 v 802 (Eff 10-30-53); RC § [1507.08](#), 145 v S 182 (Eff 10-20-94); RC § [1521.27](#), 148 v H 601. Eff 6-14-2000.

§ 1521.28 Action not in conflict.

Text of Statute

Any action taken by the chief of the division of water under sections [1521.20](#) to [1521.30](#) of the Revised Code shall not be deemed in conflict with certain powers and duties conferred upon and delegated to federal agencies and to municipal corporations under Section 7 of Article XVIII, Ohio Constitution, or as provided by sections [721.04](#) to [721.11](#) of the Revised Code.

History

HISTORY: GC § 412-29; 115 v 244, § 6; 123 v 84(114), § 2; 124 v 264; Bureau of Code Revision, RC § [1507.11](#), 10-1-53; 129 v 1350 (Eff 11-2-61); 142 v S 70 (Eff 3-15-89); RC § [1507.09](#), 145 v S 182 (Eff 10-20-94); RC § [1521.28](#), 148 v H 601. Eff 6-14-2000.

§ 1521.29 Plan for management of erosion; technical assistance to subdivisions and landowners.

Text of Statute

The chief of the division of water, in cooperation with the division of geological survey, may prepare a plan for the management of shore erosion in the state along Lake Erie, its bays, and associated inlets, revise the plan whenever it can be made more effective, and make the plan available for public inspection. In the preparation of the plan, the chief may employ such existing plans as are available.

The chief also may establish a program to provide technical assistance on shore erosion control measures to municipal corporations, counties, townships, conservancy districts, park boards, and shoreline property owners.

History

HISTORY: RC § [1507.12](#), 125 v 802 (Eff 10-30-53); 129 v 1350 (Eff 11-2-61); 142 v S 70 (Eff 3-15-89); RC § [1507.10](#), 145 v S 182 (Eff 10-20-94); RC § [1521.29](#), 148 v H 601. Eff 6-14-2000.

§ 1521.30 Reappraisal of real property damaged or destroyed by shore erosion.

Text of Statute

Upon application of any owner of real property damaged or destroyed by shore erosion, the county auditor of the county in which the real property is situated shall cause a reappraisal to be made and shall place the property on the tax list at its true value in money.

Whenever the county auditor finds that ninety per cent or more of the area of any littoral parcel of land appearing upon the tax duplicate has been eroded and lies within the natural boundaries of Lake Erie and that the remainder of the parcel, if any, has no taxable value, the auditor may certify that finding to the county board of revision. Upon consideration thereof, the board may authorize removal of the parcel from the tax duplicate and cancellation of all current and delinquent taxes, assessments, interest, and penalties charged against the parcel.

History

HISTORY: RC § [1507.13](#), 125 v 802 (Eff 10-30-53); 136 v H 920 (Eff 10-11-76); 140 v H 260 (Eff 9-27-83); RC § [1507.11](#), 145 v S 182 (Eff 10-20-94); RC § [1521.30](#), 148 v H 601. Eff 6-14-2000.

§§ 1521.41, 1521.42 Repealed.

Repealed, 132 v H 192, § 1 [127 v 88; 131 v 506]. Eff 8-24-67.

These sections were about the construction, control and management of Salt Fork Lake.

§ 1521.99 Penalties.

Text of Statute

(A) Whoever violates division (C)(1) of section [1521.05](#) or division (E)(1) of section [1521.16](#) of the Revised Code is guilty of a misdemeanor of the fourth degree.

(B) Whoever violates section [1521.06](#) or [1521.062](#) [1521.06.2] of the Revised Code shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. Each day of violation constitutes a separate offense.

(C) Whoever violates sections [1521.20](#) to [1521.30](#) of the Revised Code shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. Each day of violation constitutes a separate offense.

History

HISTORY: 137 v H 522 (Eff 11-1-77); 142 v H 171 (Eff 7-1-87); 142 v H 662 (Eff 6-29-88); 143 v H 476 (Eff 7-18-90); 145 v S 182 (Eff 10-20-94); 148 v H 601. Eff 6-14-2000.

Not analogous to former RC § [1521.99](#) (Bureau of Code Revision, 10-1-53), repealed 134 v S 397, eff 10-23-72.



Ohio Department of Natural Resources

BOB TAFT, GOVERNOR

SAMUEL W. SPECK, DIRECTOR

Office of the Director

1930 Belcher Drive – Bldg. D-3
Columbus, OH 43224-1387

Phone: (614) 265-6879 Fax: (614) 261-9601

August 24, 2004

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049, 122 South Front Street
Columbus, Ohio 43216-1049

RE: Approval of the Statement of Coastal Management Policies
Developed and Adopted by the Ohio Environmental Protection Agency

Dear Director Jones:

I am in receipt of your letter dated November 24, 2003, requesting that I approve the Statement of Coastal Management Policies developed by the Ohio Environmental Protection Agency ("Ohio EPA"), a copy of which is attached as Exhibit "A" hereto and made a part hereof ("the Statement"), which was adopted by the Director of Ohio EPA on November 24, 2003 in the Director's Final Findings and Orders filed *In the Matter of: The Adoption of a Statement of Coastal Management Policies under Section 1506.03 of the Revised Code*, a copy of which is attached as Exhibit "B" hereto and made a part hereof ("the Adoption").

Pursuant to Ohio Revised Code Section ("O.R.C.") 1506.02(A)(2), the Director of ODNR is required to administer the Ohio Coastal Management Program ("OCMP") in accordance with the OCMP Document (described in R.C. 1506.01(C)), O.R.C. Chapter 1506, and the rules adopted there under. O.R.C. 1506.03 provides that no project or activity directly affecting the coastal area that is proposed by or subject to the approval of any agency of the state shall be implemented or approved until the Director of ODNR has determined that it is consistent with the policies in the OCMP Document.

O.R.C. 1506.03 and the OCMP Document also provide mechanisms, which can be utilized by state agencies to assure consistency, while exempting certain projects or activities from a case-by-case review by the Director of ODNR under O.R.C. 1506.03. The OCMP Document provides that one of these mechanisms is the development and execution of a Memorandum of Understanding. The Directors of ODNR and Ohio EPA executed a Memorandum of Understanding between ODNR and Ohio EPA in accordance with the OCMP Document on March 7, 1997 ("the MOU"). The MOU is currently found in the OCMP Document at Appendix E-1 – E-5.

In addition, pursuant to O.R.C. 1506.03, any agency of the state may develop and adopt a statement of coastal management policies, in which case a determination of consistency shall not be required from the Director of ODNR under that section if the statement of coastal management policies has been approved by the Director of ODNR and the project or activity is in accordance with that statement. The OCMP Document and the MOU also provide for this discretionary development of a statement of coastal management policies.

The OCMP Document requires that a state agency's statement of coastal management policies must, at a minimum, be as stringent as the corresponding OCMP policy provisions and must include:

1. A list of the agency's projects or activities that, if implemented or approved, would directly affect the coastal area and that are determined by agreement between ODNR and the agency to be consistent with the policies of the OCMP;
2. A provision that incorporates the approved statement into the agency's administrative policies and decision-making processes; and
3. A provision for the annual review of consistency performance by ODNR, with revocation of approval if consistency performance is determined to be unsatisfactory.

The MOU provides that if ODNR and Ohio EPA agree to a statement of coastal management policies, it shall be signed by each director and made a part of the MOU. Thereafter, no reviews specified in Sections A through D of the MOU would be required as long as the actions specified in the Statement remain consistent. However, if ODNR believes that any action undertaken by Ohio EPA under the Statement is inconsistent, ODNR shall notify Ohio EPA, and if the issue cannot be resolved, the mediation process outlined in Section F of the MOU will be initiated.

In applying these requirements, I hereby find that the Statement, as adopted by the Director of Ohio EPA in the Adoption:

- A. Is as stringent as the corresponding OCMP policy provisions;
- B. Provides a list of the agency's projects or activities that, if implemented or approved, would directly affect the coastal area and that are hereby determined by agreement between ODNR and Ohio EPA to be consistent with the policies of the OCMP;
- C. Contains a provision that incorporates the approved statement into the agency's administrative policies and decision-making processes;
- D. Is hereby subject to the following provision for the annual review of consistency performance by ODNR, with revocation of approval if consistency performance is determined to be unsatisfactory:
 1. ODNR will consult at least annually with Ohio EPA and request information on the number and location of projects implemented under the Statement; and
 2. ODNR will notify and provide written justification to Ohio EPA if this Approval is to be revoked. The revocation shall be effective 30 days after the date of notification. Thereafter, Ohio EPA may submit for ODNR approval of a new statement no earlier than six months after the revocation date.
- E. Was signed by the Director of Ohio EPA in the Adoption and is hereby signed by the Director of ODNR in this Approval.
- F. Is hereby made a part of the MOU. Hereafter, no reviews specified in Sections A through D of the MOU would be required as long as the actions specified in the Statement remain consistent. If ODNR believes that any action undertaken by Ohio EPA under the Statement is inconsistent, ODNR shall notify Ohio EPA, and

if the issue cannot be resolved, the mediation process outlined in Section F of the MOU will be initiated.

Accordingly, the Statement, as adopted by the Director of Ohio EPA in the Adoption, is found to comply with the requirements of O.R.C. 1506, the OCMP Document and the MOU as described above and is hereby approved pursuant to O.R.C. 1506.03. Hereafter, Ohio EPA will use the Statement, as adopted by the Director of Ohio EPA in the Adoption, and as approved in this Approval, to assure consistency for activities requiring state authorization when following the procedure provided in the OCMP Document, Part II, Chapter 4, Pages 28 – 29.

Sincerely,


Samuel W. Speck
Director

cc: James Carnes, Deputy Director, ODNR
David Mackey, Chief, Office of Coastal Management, ODNR ✓



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

November 24, 2003

Samuel W. Speck, Director
Ohio Department of Natural Resources
1930 Belcher Drive
Fountain Square, Building D-3
Columbus, OH 43224-1387

Re: Ohio EPA Statement of Coastal Management Policies

Dear ^{Sam} Director Speck:

I am pleased to submit to you Ohio EPA's Statement of Coastal Management Policies(Statement) along with my order adopting the Statement. I am submitting this package to you for your approval pursuant to R.C. § 1506.03.

In developing the Statement my staff worked with your staff, particularly your chief counsel, Joan Weiser, and with Cynthia Frazzini, Assistant Attorney General. They were very helpful in guiding us through the process. We have followed closely the form and substance of the polices applicable to us in the Ohio Coastal Management Program document, updating and revising information to reflect our current authority and programs.

If you need any additional information prior to making a decision to approve, please contact me. Otherwise I look forward to receiving notification of your formal approval of the Statement.

Sincerely,

Christopher Jones
Director

cc: Ed Kitchen, Director's Office
Jeanne Mallett, Legal
Dave Mackey, ODNR
Joan Weiser, ODNR
Cynthia Frazzini, AAG-ODNR

Bob Taft, Governor
Jennette Bradley, Lieutenant Governor
Christopher Jones, Director

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

RECEIVED BY THE JOURNAL

In the Matter of	:	Director's Final Findings
The Adoption of a Statement	:	and Orders
of Coastal Management Policies	:	
Under Section 1506.03 of the	:	
Revised Code	:	

FINDINGS AND ORDERS

The Director of Environmental Protection, having given due consideration to the following, finds:

1. The Ohio Coastal Management Program (OCMP), for which the Ohio Department of Natural Resources (ODNR) is the lead agency, is a long-range, prospective and progressive program for protection and management of the state's coastal resources. Full implementation of the OCMP began with the adoption of the program document and evolved through state and local implementation of its enforceable policies and other management measures. The OCMP relies on action and oversight by local jurisdictions and state agencies for ensuring consistency with coastal management policies.
2. Coastal management policies promote the wise management of those land and water uses having direct and significant impacts upon the Lake Erie coastal area. Certain policies focus upon the protection of significant natural areas, such as wetlands, that embody the unique values of the Ohio coast. Other policies have been established in an effort to simplify governmental procedures and foster inter-agency cooperation regarding coastal activities. These management policies are sufficiently specific, comprehensive and enforceable to enable the state to implement a program of rational development and resource protection for the Lake Erie coastal area. The coastal management policies are essential to provide the specific guidance needed by the state and its local jurisdictions to undertake the OCMP cooperatively.
3. The OCMP does not affect all activities and projects in the coastal area, but rather only those activities considered to have a direct and significant impact on the coastal lands, waters, and resources. "Direct and significant impact" is defined as the result of any action causing or likely to cause (1) changes in the manner in which land, water or other coastal resources are used; (2) changes in the environmental quality of coastal resources; or (3) limitations on the range of uses of coastal resources. Potential individual and cumulative impacts of such uses on coastal waters are to be considered.

Adoption of a Statement of Coastal
Management Policies Under ORC § 1506.03

4. The management approach of the OCMP addresses the potential impacts of coastal activities on coastal resources rather than the general land uses, such as agriculture, water-dependent commercial development and port operation, with which certain coastal activities are associated.
5. Ohio EPA's participation in the OCMP is limited to those areas of the program that are within Ohio EPA's statutory authority.
6. Of the priority coastal management issues identified in the OCMP, that Ohio EPA has authority to manage, in whole or in part, are:
 - a. Water resources and watersheds,
 - b. Coastal land use and development, and
 - c. Coastal habitat and wetlands.
7. ORC § 1506.03 provides that, except as otherwise provided in that section, no project or activity directly affecting the coastal area that is proposed by or subject to the approval of any agency of the state shall be implemented or approved until the director of natural resources has determined that it is consistent with the policies in the OCMP.
8. The procedures applied by Ohio EPA in granting approval of projects or activities directly affecting the coastal area ensure compliance with the applicable coastal management policies that are within the authority of Ohio EPA to enforce.
9. The Ohio EPA licenses, permits and approvals that are subject to state coastal management consistency requirements are: permits to install for air sources, Section 401 water quality certificates, National Pollutant Discharge Elimination System (NPDES) permits, injection well drilling permits, solid waste disposal plant and site permits, permits for the installation or modification of disposal systems or any part thereof, permits to install for solid waste facilities, installation and operation permits for new hazardous waste facilities and renewals and modifications of those permits, and plan approvals for public water systems.
10. ORC § 1506.03 further provides that any agency of the state may develop and adopt a statement of coastal management policies. In which case a determination of consistency shall not be required under that section if the statement of coastal management policies has been approved by the director of natural resources and the project or activity is in accordance with that statement.
11. ORC § 3745.01 provides that Ohio EPA, under the supervision of the director, shall administer the laws pertaining to chemical emergency planning, community right-to-know, and toxic chemical release reporting; the cessation of chemical handling operations; the prevention, control, and abatement of air and water pollution; public

Adoption of a Statement of Coastal
Management Policies Under ORC § 1506.03

water supply; comprehensive water resource management planning; and the disposal and treatment of solid wastes, infectious wastes, construction and demolition debris, hazardous waste, sewage, industrial waste, and other wastes.

12. ORC § 3745.01(C) provides that Ohio EPA may advise, consult, cooperate, and enter into contracts or agreements with any other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter and ORC Chapters 3704., 3714., 3734., 3751., 3752., 6109., and 6111.
13. Ohio EPA has developed the following coastal management policies, identified by number and title:

Number	Title
1	Water Quality
2	Environmental Contaminants: Prevention and Emergency Response
3	NonPoint Source Pollution
4	Potable Water Supply
5	Area of Concern Remedial Action Plans
6	Ground Water
7	Wetlands
8	Rare and Endangered Species
9	Dredging and Dredged Material Disposal
10	Fisheries Management
11	Air Quality
12	Hazardous, Solid and Infectious Waste Management
13	Visual and Aesthetic Quality

It is therefore

ORDERED that the above identified coastal management policies, which are attached hereto, are hereby incorporated herein by reference as if fully rewritten.

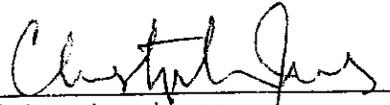
It is further

ORDERED that the above coastal management policies are hereby adopted as policies of the Ohio EPA.

Adoption of a Statement of Coastal
Management Policies Under ORC § 1506.03

It is further

ORDERED that a copy of these Final Findings and Orders shall be transmitted to the Director of ODNR.



Christopher Jones
Director

Issued at Columbus, Ohio this 24TH day of November, 2003.

OHIO EPA COASTAL MANAGEMENT POLICIES

INTRODUCTION

Attached are Ohio EPA's coastal management policies. The framework for implementation and the authorities responsible for implementation of the Ohio Coastal Management Program(OCMP) are outlined in the text that follows each list of policies under the heading: Authorities and Administration. All policies document existing statutory authority, current governmental programs or established state policy.

To be consistent with the OCMP issued by Ohio Department of Natural Resources, the policies have been classified as either an enforceable policy or an enhancement policy.

1. An enforceable policy is regulatory and legally binding. It mandates that certain requirements be satisfied prior to the initiation of a specific activity in the coastal region. Such a policy has statutory authority based upon provisions of the Ohio Revised Code(ORC). Enforceable policies are binding for federal consistency purposes pursuant to Section 307 of the federal Coastal Zone Management Act. Enforceable policies are underlined in the text of this section and are followed by appropriate ORC citation in parentheses. Enforceable policies in this context are mere descriptive citations to the authority granted by the statute or rule cited. There is no intent to make any independent statement of policy as described in ORC§ 3745.30 despite the nomenclature.

2. An enhancement policy provides guidance or preferences regarding certain activities, but is not legally binding. It may be a formal state policy or recommendation, or statute with discretionary authority.

Taken together, these two types of policies offer a clear view of the content of Ohio EPA's coastal management policies. They specifically set out who will be affected by the OCMP, in what fashion and when. The policies provide a clear sense of direction and predictability for decision makers who must address coastal issues in their daily work.

POLICY 1 - WATER QUALITY

IT IS THE POLICY OF THE STATE OF OHIO TO MAINTAIN AND IMPROVE THE QUALITY OF THE STATE'S COASTAL WATERS FOR THE PURPOSE OF PROTECTING THE PUBLIC HEALTH AND WELFARE AND TO ENABLE THE USE OF SUCH WATERS FOR PUBLIC WATER SUPPLY, INDUSTRIAL AND AGRICULTURAL NEEDS, AND PROPAGATION OF FISH, AQUATIC LIFE AND WILDLIFE BY:

- I. ASSURING ATTAINMENT OF STATE WATER QUALITY STANDARDS AND OTHER WATER QUALITY RELATED REQUIREMENTS (O.A.C. CHAPTER 3745-1) THROUGH:
 - A. CONTROLLING DISCHARGES INTO WATERS OF THE STATE BY REQUIRING PERMITS TO CONSTRUCT FACILITIES AND BY ESTABLISHING AND ENFORCING EFFLUENT LIMITATIONS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES, SECTION 402 CWA, O.R.C. Chapter 6111.);
 - B. ADMINISTERING A PERMIT SYSTEM TO CONTROL INJECTION WELL DRILLING (Classes 1, 4 and 5) IN COMPLIANCE WITH THE "SAFE DRINKING WATER ACT" AND THE CWA (O.R.C. Chapter 6111.);
 - C. REGULATING DISCHARGE OF DREDGE OR FILL MATERIAL INTO SURFACE WATERS INCLUDING WETLANDS IN ACCORDANCE WITH SECTION 401 OF THE CLEAN WATER ACT (O.R.C. Chapter 6111.);
 - D. ESTABLISHING UNIFORM REGULATIONS REGARDING SOLID WASTE DISPOSAL SITES AND FACILITIES (O.R.C. §§3734.02 AND 3734.05);
 - E. PROHIBITING THE SALE OR DISTRIBUTION FOR SALE OF PHOSPHOROUS-CONTAINING HOUSEHOLD LAUNDRY DETERGENTS IN THE LAKE ERIE BASIN (O.R.C. §6111.10);
 - F. PREPARING A STATE WATER QUALITY MANAGEMENT PLAN (O.R.C. Chapter 6111.); AND
 - G. ADMINISTERING A STATE REVOLVING LOAN FUND PROGRAM TO PROVIDE FINANCIAL ASSISTANCE FOR PUBLICLY OWNED WASTEWATER TREATMENT FACILITIES AND THE IMPLEMENTATION OF NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAMS (O.R.C. Chapter 6111.)

Authorities and Administration

I. State Water Quality Standards

The State of Ohio is committed to maintaining and improving the quality of its coastal waters. Ohio EPA is the agency responsible for ensuring that state water quality standards are met. USEPA reviews and approves all water quality standards for Ohio. This review is to ensure consistency with federal water quality goals established by the Clean Water Act. The most recent major rule changes for water quality standards included the Great Lakes Initiative (GLI). The GLI rules have been promulgated by the state and approved by USEPA.

Water quality standards set forth in O.A.C. Chapter 3745-1 establish minimum requirements for all surface waters of the state. Water quality standards consist of two parts: designated uses and numerical or narrative criteria designed to protect the uses. The water quality use designations are assigned to protect reproducing populations of fish, plants and associated vertebrate and invertebrate organisms. Lake Erie itself is designated as Exceptional Warmwater Habitat, Superior High Quality Water, Public Water Supply, Agricultural and Industrial Water Supply and Bathing Waters (O.A.C. rule 3745-1-31). Tributaries within the coastal area are designated for various uses as indicated in Table 2.

O.A.C. rule 3745-1-05 outlines the state's antidegradation policy. Existing water uses in Lake Erie and its tributaries shall be maintained and protected, and degradation that would interfere with such uses is prohibited. Antidegradation is applied when dischargers are meeting federal technology requirements and the level of pollutants in the surface water is lower, i.e., the quality of water is better, than what is needed to meet water quality based requirements. In these instances, federal law allows states to permit increased discharges of pollutants up to the safe environmental levels, i.e., up to the water quality based requirements, provided that : 1) federal technology requirements are still met; 2) there is public involvement in the decision-making process; and 3) the increased discharge is needed to accommodate important social or economic development.

[SEE ATTACHED TABLE]

A. Permits to Install and NPDES Enforcement

1. The Ohio EPA is authorized by O.R.C .§6111.03 to issue permits for the discharge of conventional pollutants, toxic pollutants and nutrients to waters of the state pursuant to the National Pollutant Discharge Elimination System (NPDES, Section 402, CWA) consistent with the State Water Quality Management Plan (Section 208, CWA). Limits set for permit issuance are based on Technical Support Documents (TSDs) that compile all background material for the planning regions and Water Quality Based Effluent Limit (WQBEL) reports that use the TSDs, toxicity test results and Wasteload Allocations (WLAs).

2. The Ohio EPA monitors, through monthly operating reports submitted by permitted dischargers, the quality of effluent discharged, tracks compliance with NPDES permits and takes enforcement action against entities when necessary (O.R.C. §6111.03).
3. “Permits to install” (PTIs) are issued for construction of new or expanded wastewater treatment facilities, sewers and for disposal of sludge from wastewater treatment facilities. (O.A.C. rule 3745-42-02).
4. Ohio EPA administers and enforces the publicly owned treatment works pretreatment program in accordance with the CWA pursuant to O.R.C. §6111.03. This allows the agency to apply and enforce pretreatment standards contained in O.A.C. Chapter 3745-3; approve or deny requests for publicly-owned pretreatment programs and oversee or implement such programs; and set the terms and conditions of permits as necessary to achieve compliance with O.R.C. Chapter 6111.
5. Ohio EPA regulates the discharge of toxics into publicly owned treatment works or waters of the state through NPDES permits. It may take enforcement action when necessary and enforces National Municipal Policy to ensure compliance by permittees with water quality standards as mandated by the 1981 amendments to the CWA (O.R.C. Chapter 6111). Ohio EPA recommends, identifies and assesses the impact of controls for the discharge of toxic materials to protect the public health and the environment from effects due to toxic chemical exposures via surface waters of the state.
6. The director may “issue, modify, or revoke orders to prevent, control, or abate water pollution” by requiring the construction of new disposal systems or modifying existing ones pursuant to O.R.C. §6111.03(H)(2). This section refers to all sewage system and waste treatment works including all pipes, conduits, etc., used to conduct or collect a waterborne sewage or other waste to a point of disposal or treatment. Further, the director may modify terms or conditions of a permit consistent with the CWA to require the maximum use of technology furthering the elimination of wastes into waters of the state (O.R.C. §6111.031).

B. Injection Well Drilling Regulation

Ohio EPA administers a program established under O.R.C. §6111.043 and 6111.044 to regulate the injection of wastes into waters of the state. Class 1, 4 and 5 injection wells are regulated by Ohio EPA. When the director reviews permits under the program, the director must find, before issuing a permit, that the activity will comply with the CWA, the “Safe Drinking Water Act” and the State Clean Water Act (O.R.C. Chapter 6111). Unless otherwise authorized by the director, “no person shall drill a well or convert an existing well for the purpose of injecting sewage, industrial wastes, or other wastes,

without having obtained an injection well drilling permit issued by the director of environmental protection” (O.R.C.§6111.043 and O.A.C. Chapter 3745-34).

C. Section 401 Water Quality Certification

Any activity that requires a federal permit pursuant to Section 404 of the CWA or Section 10 of the Rivers and Harbors Act of 1899, or any other federal permit or license for an activity that may result in any discharge into navigable waters, must be consistent with the state’s water quality standards (O.R.C.§6111.03). Rules that, in part, set forth criteria for Section 401 Water Quality Certification are contained in O.A.C. Chapter 3745-32 (See Appendix for the entire text.) Policy 7 further describes Ohio EPA’s policy on regulation of activities affecting wetlands through the 401 process.

D. Regulation of Solid Waste Disposal Facilities

Ohio EPA has established uniform regulations throughout the state governing solid waste disposal sites and facilities and requires issuance of licenses from local boards of health for disposal sites (O.R.C.§§3734.02 and 3734.05). Detailed plans for such sites, facilities and methods of operation must be approved by the Director of Ohio EPA prior to issuance of any permit (O.R.C.§3734.02). See Policy 12 for further details.

E. Regulation of Phosphorous-containing Detergent

Within the State Water Quality Management Plan, Ohio EPA has developed the Ohio Phosphorous Reduction Strategy for Lake Erie to quantify phosphorous loadings into Lake Erie from Ohio, and to identify those mechanisms that, if properly implemented, would reduce such loadings. Pursuant to the strategy, Ohio prohibits the sale and distribution for sale of household laundry detergents containing more than 0.5 percent by weight of phosphorous in all Ohio counties in the Lake Erie watershed (O.R.C.§6111.10).

F. State Water Quality Management Planning

Ohio EPA prepares a State Water Quality Management Plan under provisions of the CWA, Sections 205(j), 208, 303 and 604(b). The plan is used to assess technical needs for pollution control and to identify institutional mechanisms necessary to enforce controls. It is a compilation of various reports addressing a number of issues related to protecting and improving Ohio’s water quality. The plan incorporates reports that are prepared by Areawide Planning Agencies established under Section 208 and that address water quality management needs in their areas. It also includes the Phosphorous Reduction Strategy, 305(b) Water Quality Inventory, the Nonpoint Source Assessment and Nonpoint Source Management Plan and Remedial Action Plans (RAPs) and others.

G. Funding Publicly Owned Wastewater Treatment Systems and Nonpoint Source Pollution Controls (O.R.C.§6111.037).

As the designated lead agency, Ohio EPA is authorized to administer the Water Pollution Control Loan Fund (O.R.C. §§6111.036 and 6111.037), in conjunction with the Ohio Water Development Authority (OWDA). This fund was established pursuant to the CWA of 1987 to provide financial assistance for publicly owned wastewater treatment systems and nonpoint source pollution controls. Provisions require the state to match every five federal dollars with one dollar from its own funds. The Water Pollution Control Loan Fund statute authorizes state funding of the program (O.R.C. §6111.036). Financial assistance from the fund is limited to projects appearing on a priority list that is prepared by the Director of Ohio EPA and that ranks projects principally on the basis of relative water quality and public health benefits and financial need of the applicant.

OWDA is responsible for certain financial matters pertaining to the State Revolving Loan Fund Program. These duties include distributing funds to contractors and receiving loan payments from communities, issuing revenue bonds, and offering financial advice. The loan payback period may not exceed 20 years, and interest rates are set by Ohio EPA through a public participation process. The revolving fund may use bonds issued upon the incoming interest payments of the initial loans to provide additional funding for future wastewater treatment projects. OWDA is also authorized to make loans and issue bonds unrelated to the State Revolving Loan Fund Program to raise the necessary local share of financing for these projects (O.R.C. §§6121.03 and 6121.04).

TABLE - TRIBUTARY DESIGNATIONS

Stream Segment (in coastal area)	Use Designations														
	Aquatic Life Habitat						Water Supply			Recreation					
	S	R	W	E	M	S	C	L	P	A	I	B	P	C	R
Maumee River - I-75 to confluence with Maumee Bay - Perrysburg Bridge to I-75 - remaining segment within coastal area	*		0							*	*	*	*	*	*
Pontage River										*					*
Toussaint River															
Sandusky River - Fremont Sewage Treatment Plant to confluence with Muskegonge Creek - remaining segment within coastal area			0							*	*			*	*
Huron River - East Branch/West Branch confluence to Lake Erie - bordering Dupont Marsh			1												
Old Woman Creek - Estuary - within boundaries of Old Woman Creek NERR - remaining segment within coastal area			0							*	*	*	*	*	*
Vermilion River															
Black River															
Rocky River															

1 = based on results of biological field assessment performed by Ohio EPA; * = based on 1978 Water Quality Standards;
 0 = based on justification other than the results of a biological field assessment performed by Ohio EPA;

SRW = State Resource Water; WWH = Warmwater Habitat; EWH = Exceptional Warmwater Habitat; MWH = Modified Warmwater Habitat;
 SSI = Seasonal Salmonid Habitat; CWI = Coldwater Habitat; LRW = Limited Resource Water; PWS = Public Water Supply; AWS = Agricultural Water Supply;

Stream Segment (in coastal area)	Use Designations																	
	Aquatic Life Habitat						Water Supply			Recreation								
	S	R	W	W	W	W	E	M	S	C	L	P	A	I	B	P	S	
Cuyahoga River - Entirety of ship channel (Newburgh and South Shore (H&SS) RR bridge (RM 5.6) to mouth, including the old river channel)* - remaining segment within coastal area			+											+				
Chagrin River	+																	
Grand River																		
Ashtabula River																		
Conneaut Creek																		

*June-Jan -- Limited Resource Water; Feb-May -- Fish Passage

POLICY 2 - ENVIRONMENTAL CONTAMINANTS: PREVENTION
AND EMERGENCY RESPONSE

IT IS THE POLICY OF THE STATE OF OHIO TO PREVENT AND/OR MINIMIZE TO THE GREATEST EXTENT POSSIBLE, DAMAGES TO THE PUBLIC HEALTH, SAFETY AND WELFARE, AND TO THE ENVIRONMENT FROM CONTAMINANTS BY:

- A. REQUIRING OWNERS OF FACILITIES SUBJECT TO O.R.C. CHAPTER 3750, EMERGENCY PLANNING, TO COMPLY WITH THE STATE'S RIGHT TO KNOW AND SPILL/RELEASE REPORTING LAWS; AND
- B. PROVIDING FOR EMERGENCY RESPONSE TO ALL SPILLS WITH A COORDINATED AND PLANNED EFFORT MAXIMIZING RESOURCES AND MINIMIZING ENVIRONMENTAL DAMAGE (O.R.C. CHAPTERS 6111 AND 3750).

Authorities and Administration

Ohio's State Emergency Response Commission (SERC) is authorized to coordinate emergency planning efforts (O.R.C. Chapter 3750). SERC accomplishes this through administration by Ohio EPA's Division of Air Pollution Control (DAPC). Pursuant to O.R.C. §3745.01 Ohio EPA administers "the laws pertaining to chemical emergency planning, community right-to-know, and toxic chemical release reporting." The director "shall adopt rules in accordance with" O.R.C. Chapter 119 that are consistent with and equivalent in scope, content and coverage to, and no more stringent than the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 (O.R.C. §3750.02) and 42 U.S.C. 11023 (O.R.C. §3751.02).

- A. The State of Ohio strives to prevent accidental release of environmental contaminants and to minimize their effects when they do occur by enforcing O.R.C. Chapter 3750 Emergency Planning. The specific requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (also known as SARA Title III) and the corresponding Ohio Revised Code provisions include four basic reporting requirements, as follows:
 - 1. Owners of facilities with extremely hazardous substance(s) (360 chemicals listed by USEPA) must identify themselves and participate in emergency planning (O.R.C. §3750.05).
 - 2. Owners of facilities identified must report all spills or releases of substances covered by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or by SARA (O.R.C. §3750.06).

3. Owners of identified facilities must provide to Ohio EPA (1) Material Safety Data Sheet(s) and (2) a list of chemicals stored and their human health and/or physical hazard (O.R.C. §3750.07).
4. Owners must complete a Facility Identification form, Chemical Inventory form and Facility map (O.R.C. §3750.08).

As provided in O.A.C. Chapters 3750-20, 3750-25 and 3750-30, a facility must comply with O.R.C. Chapter 3750 when all of the following conditions are met:

1. The facility is subject to the OSHA Hazard Communication Standard;
2. The facility stores a "Hazardous Chemical" and/or an "Extremely Hazardous Substance"(EHS); and
3. A quantity in storage of one of these Hazardous Chemicals or Extremely Hazardous Substances is in excess of the "Threshold Quantity"(TQ).

Oil releases are addressed under O.R.C. §3750.06 and the CWA, as amended, 33 U.S.C. 1251 et seq. The federal Spill Prevention Control and Counter-measure program and related regulations for oil storage facilities (40 CFR 112). Preventive engineering, such as containment dikes, were also called for to prevent spills from reaching waterways.

- B. SARA Title III directs communities and industries to work together in developing response plans and procedures for hazardous material related spills. Local emergency planning committees (LEPCs) of each emergency planning district are required to "prepare and submit...a chemical emergency response and preparedness plan for the district" to SERC (O.R.C. §3750.04). (Within the coastal area, each of the nine counties is a separate emergency planning district.) These local "Hazardous Materials Emergency Response and Management Plans" include, but are not limited to, an identification of local hazardous reporting facilities, routes used to transport hazardous materials, emergency response procedures, evacuation plans and a list of response personnel and equipment.

The Ohio Emergency Management Agency (Ohio EMA) coordinates state and local level plan development and makes recommendations to SERC, which is responsible for final approval or disapproval (O.R.C. §3750.02). Local plans have been prepared for all nine coastal counties. Annually plans for Ashtabula, Lake, Cuyahoga, Lorain, Wood, Ottawa, Erie, Lucas and Sandusky counties have been reviewed, and the SERC has concurred with them.

Ohio EPA's Division of Emergency and Remedial Response (DERR) follows the National Contingency Plan (NCP) guidance for spill response and cleanup. To facilitate spill reporting, Ohio EPA operates a toll-free 24-hour telephone number (1-800-282-9378). DERR investigates reported releases and provides fire departments and local

governments with either telephone or on-site assistance in evaluating incidents and in directing the company's cleanup efforts. DERR also coordinates efforts to assure compliance with cleanup levels and disposal methods.

POLICY 3 - NONPOINT SOURCE POLLUTION

IT IS THE POLICY OF THE STATE OF OHIO TO CONTROL NONPOINT SOURCE WATER POLLUTION IN ORDER TO REDUCE SEDIMENT, NUTRIENTS AND OTHER POLLUTANTS AND OTHERWISE IMPROVE, PROTECT OR RESTORE THE WATER QUALITY OF LAKE ERIE AND ITS TRIBUTARIES, THUS REDUCING DAMAGE TO AQUATIC HABITATS AND LOWERING COSTS OF WATER TREATMENT AND CHANNEL DREDGING, BY USING A BROAD ARRAY OF STATE AND LOCAL AUTHORITIES TO REGULATE AND MANAGE THE CONTRIBUTING SOURCES AND ACTIVITIES.

Authorities and Administration

The State of Ohio manages and regulates activities that contribute to nonpoint source pollution through a complex but coordinated array of institutional mechanisms and authorities. A complete analysis of these mechanisms and authorities and how they operate to achieve stated goals and comply with federal and state standards and regulations is contained in the Ohio Nonpoint Source Management Plan. Eight major sources of nonpoint source contaminants are addressed by this program, and the roles and responsibilities of all agencies and organizations involved with implementation are described therein.

The State of Ohio developed the Nonpoint Source Management Plan pursuant to Section 319 of the CWA. The program was developed in 1988 and updated in 1992 and 1999 by ODNR under an agreement with Ohio EPA and relies on TMDLs and comprehensive plans for implementation. The program specifies Best Management Practices for the eight major sources of nonpoint pollutants: agriculture, hydromodification/habitat modification, land disposal, mining, oil field wastes, silviculture, urban runoff and construction site erosion and a section addressing specific ground water issues. Section 319 funds are allocated based on the program's recommendations and policies. The Plan is to be updated again by July, 2004. Funds have been used to initiate local watershed treatment and aquatic restoration and protection projects. Promoting public awareness about nonpoint pollution issues has been identified as critical to the future success of pollution control projects and programs and is therefore a major program goal. State funds have been appropriated to ODNR and OSUE to help implement local nonpoint projects.

Section 6217 of Coastal Zone Area Reauthorization Act (CZARA) directs states to develop Coastal Nonpoint Pollution Control Programs to be implemented through changes to the state coastal management plan and the state nonpoint source management plan. Ohio Department of Natural Resources' Division of Real Estate and Land Management (REALM) held several initial meetings in 1993 to begin coordinating program development and implementation through cooperation with a Division of Surface Water(Ohio EPA)-Division of Soil and Water Conservation(ODNR) team. However the OCMP and thus Ohio EPA's Coastal Management Program has decided to focus its primary efforts on core program development. Pending changes in CZARA and consequent changes in the OCMP, Ohio EPA intends to follow the federally approved core program stated in the current OCMP. Key aspects of the program are the development of additional enforceable authorities, where needed, and provision for public involvement and education in all phases of the program.

POLICY 4 - POTABLE WATER SUPPLY

IT IS THE POLICY OF THE STATE OF OHIO TO ENSURE THAT A SAFE SUPPLY OF WATER IS AVAILABLE FOR PRIVATE, COMMUNITY, INDUSTRIAL, AGRICULTURAL AND COMMERCIAL USES ALONG LAKE ERIE BY:

- A. ADMINISTERING THE STATE SAFE DRINKING WATER ACT (O.R.C. CHAPTER 6109); AND
- B. SUPERVISING THE DESIGN, CONSTRUCTION AND OPERATION OF PUBLIC WATER SUPPLY TREATMENT AND DISTRIBUTION SYSTEMS (O.R.C. §6109.07);

Authorities and Administration

A. The Ohio EPA is the principal water quality regulatory agency over public water systems in Ohio and is the state administrator of P.L. 93-523, the Safe Drinking Water Act and its amendments, 42 U.S.C. 300(f) et seq. Ohio EPA's Division of Drinking and Ground Waters (DDAGW) derives its authority from the State Safe Drinking Water Act, O.R.C. Chapter 6109. The statute does not apply to public water systems that meet all of the following criteria:

1. Consist only of distribution and storage facilities and do not have any collection and treatment facilities;
2. Obtain all of their water from, but are not owned or operated by, a public water system;
3. Do not sell water to any person; and
4. Are not carriers that convey passengers in interstate commerce.

DDAGW oversees compliance with and monitoring of primary drinking water standards, including maximum contaminant levels (MCLs), and treatment techniques for public drinking water. Primary standards have been established for contaminants, including toxic chemicals, that have been shown to directly affect the health of consumers (O.A.C. Chapter 3745-82). Additional treatment is required if any contaminant exceeds a primary standard. All new public water systems, and existing systems making changes in their source of water, must provide treatment to meet the secondary standards for iron and manganese if they would otherwise exceed the secondary standards. Public water systems are encouraged to meet the other secondary standards. Appropriate enforcement actions are taken for failure to meet requirements of the Safe Drinking Water Act.

B. DDAGW reviews plans and issues plan approval for construction or substantial improvement of public water systems. Installation of or substantial changes to a water system requires the approval of Ohio EPA based on requirements of the State Safe Drinking Water Act and the rules adopted thereunder. DDAGW also has primary responsibility for on-site survey

inspections of public water systems and maintains a laboratory certification program for commercial, private, state and industrial facilities conducting biological and/or chemical analysis on potable water.

POLICY 5 - AREA OF CONCERN REMEDIAL ACTION PLANS

IT IS THE POLICY OF THE STATE OF OHIO TO COORDINATE THE DEVELOPMENT AND IMPLEMENTATION OF REMEDIAL ACTION PLANS FOR OHIO'S FOUR LAKE ERIE BASIN AREAS OF CONCERN AS IDENTIFIED IN THE INTERNATIONAL JOINT COMMISSION'S (IJC) REPORTS ON GREAT LAKES WATER QUALITY.

Authorities and Administration

In 1974 the Water Quality Board of the International Joint Commission (IJC) began identifying problem areas along with the Great Lakes in its reports on Great Lakes water quality. By 1981 many of the problems caused by conventional pollutants had been alleviated by improvements in effluent treatment by both municipal and industrial dischargers. However persistent environmental quality problems remained in many areas. In 1985, to address the problems at these locations, the IJC requested that the jurisdictions (states and provinces) prepare Remedial Action Plans (RAPs) for each of their Areas of Concern (AOCs). This request became a requirement of the Great Lakes Water Quality Agreement in 1987 and a statutory requirement under the Great Lakes Critical Programs Act amendment, 33 U.S.C. 1268, to the 1990 CWA.

The Ohio EPA is responsible for the preparation of RAPs for four AOCs identified as highly polluted sites along the Lake Erie shoreline. These areas are the lower Maumee, Black, Cuyahoga and Ashtabula Rivers and harbors. RAPs are the framework to provide a systemic and comprehensive ecosystem approach to restore these areas to beneficial use and to track the effectiveness of remedial activities as they are implemented.

RAPs are to be developed with significant local community involvement. Development/implementation teams include representatives from local, state and federal government agencies, elected officials, industry and business, special interest groups, academia and the general public. Ohio's four RAPs have established active community RAP teams. Stage 1 RAP reports, identifying the impaired uses and sources of pollution, have been completed for all for AOCs.

All of the RAP groups are beginning to develop Stage 2 RAP reports that will recommend remedial actions, identify responsible parties and search for sources for funding. The major task of the Stage 2 process is to accomplish implementation of the identified remedial actions. Where possible, identified remedial actions are already being implemented.

POLICY 6 - GROUND WATER

IT IS THE POLICY OF THE STATE OF OHIO TO PROMOTE THE PROTECTION AND MANAGEMENT OF OHIO'S GROUND WATER RESOURCES BY:

- A. REGULATING ACTIVITIES AND ENFORCING RULES REGARDING THE CONSTRUCTION AND OPERATION OF WATER SUPPLY AND WASTE-WATER DISPOSAL SYSTEMS (O.R.C. §§6111.03, 6109.07 AND O.A.C. CHAPTER 3745-9);
- B. REGULATING ABOVE-GROUND HAZARDOUS WASTE STORAGE (O.R.C. CHAPTER 3737 AND O.A.C. CHAPTER 3745-54); AND
- C. COORDINATING STATE ACTIVITIES REGARDING GROUND WATER ISSUES.

Authorities and Administration

A. & B.

Ohio EPA has general supervisory power over public water supplies pursuant to O.R.C. §6111.03 and O.A.C. Chapters 3745-81 through 3745-99. Construction or installation plans for a public water system must be approved by Ohio EPA in compliance with requirements of the Safe Drinking Water Act (O.R.C. §6109.07 and O.A.C. Chapter 3745-91). State standards for the location, construction, operation and modification of wells are set forth in O.A.C. Chapter 3745-9. Ohio EPA also administers wastewater disposal programs and regulates hazardous and nonhazardous materials management and disposal. Ohio EPA's Division of Drinking and Ground Waters (DDAGW) implements the ground water protection requirements of the CWA (O.R.C. §6111.03); manages the state's Underground Injection Control program for class 1, 4 and 5 wells, which regulates the types and amounts of waste that can be injected into underground geologic formations (O.A.C. Chapter 3745-34); monitors ground water quality and manages and works to achieve voluntary participation in Ohio's Wellhead Protection Program (O.A.C. Chapter 3745-91).

Ohio EPA enforces the state's ground water protection standard, O.A.C. rule 3745-54-92, which provides that the owners and operators of facilities that treat, store or dispose of hazardous waste must comply with conditions that are designed to ensure that hazardous constituents under O.A.C. rule 3745-54-93 detected in the ground water from a regulated unit do not exceed the concentration limits under O.A.C. rule 3745-54-94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under O.A.C. rule 3745-54-95 during the compliance period under O.A.C. rule 3745-54-06.

- C. The Ohio EPA DDAGW is responsible for administering the State Coordinating Committee on Ground Water (SCCGW). State agencies with regulatory and programmatic jurisdiction over ground water, i.e., Ohio EPA, Department of Natural Resources, Department of Health, Department of Agriculture, Department of Transportation, Department of Development, Department of Commerce Bureau of Underground Storage Tanks and the Public Utilities Commission are members of the Committee and meet on a regular basis to promote the exchange of information and coordination of programs and activities. The SCCGW works in cooperation with the Ohio Resources Council, which was established under O.R.C. 1521.19, to develop and implement a comprehensive approach to ground water protection in Ohio.

ECOLOGICALLY SENSITIVE RESOURCES

Uses Subject to Management

- Activities involving the filling, dredging or alteration of wetlands and special aquatic sites.
- Activities affecting natural areas, nature preserves, wildlife habitat areas and areas of exceptional ecological significance.
- Activities threatening rare and endangered plant and animal species.

Wetlands

Wetlands are considered a critical natural resource in Ohio because they serve many beneficial natural functions and are greatly diminished throughout the state relative to the original extent of wetlands in Ohio. The U.S. Fish and Wildlife Service's *Report to Congress, Wetlands Losses in the United States - 1780's to 1980's* (Dahl, T.E., 1990), estimated Ohio's loss at 90 percent of an original 5 million acres. In pre-settlement times, nearly 300,000 acres of marshes spread from the Great Black Swamp of northwest Ohio eastward along Lake Erie. Conversion of Lake Erie marshes and coastal wetlands to other uses has continued. A Division of Wildlife (DOW) inventory showed a 45 percent decline in acreage from 1954 to the mid-1970s. Since that time, however, losses have been partially offset as a result of increased state and federal regulatory authority (Sections 401 and 404, CWA) and more aggressive acquisition and restoration efforts of recent years. Today, an estimated 33,000 acres of wetlands remain within the coastal management area.

The Ohio Wetlands Priority Conservation Plan published by the Ohio Department of Natural Resources (ODNR) in 1988 identified the following threats to remaining wetlands:

Agricultural drainage - Losses attributable to drainage improvement projects involve both direct conversion and incidental results of stream and drainage system modification. Thousands

of acres of low-lying coastal marshes have been diked and drained for farming, although some are flooded in fall for waterfowl. Such areas are not irreversibly converted to nonwetland uses. In fact, some of these areas have reverted to marsh by landowner design or by the encroachment of higher lake levels.

Development - Ohio's lacustrine and adjacent palustrine wetlands are threatened by the construction of marinas and waterfront developments such as condominiums and resort communities. This is particularly critical in the Lake Erie region, where unprecedented development and economic growth is occurring because of the area's attractiveness for outdoor recreation and tourism and its quality of life amenities. It is extremely difficult to quantify such losses because many are piecemeal losses, partial habitat alterations and secondary and cumulative effects upon wetlands.

Mounting pressure exists to convert diked (and sometimes pumped) wetlands in crop land use to nonagricultural and nonwater dependent uses such as residential, recreational and resort development. This can represent an even greater threat to wetlands than agricultural use because such development is irreversible and is often adjacent, or in close proximity, to other marshland. Secondary and cumulative impacts of such development are serious concerns.

Nonpoint Source Pollution - The degradation of wetlands through nonpoint source pollution is more difficult to assess and manage. Ohio EPA and ODNR have developed the state's Nonpoint Source Assessment and Management Plan, which in 1988 identified hydrological/habitat modification activities as the principal nonpoint source threat to wetlands in Ohio. Ohio's 1993 Statewide Comprehensive Outdoor Recreation Plan (SCORP) reaffirmed this.

Secondary impacts on off-site or "downstream" wetlands is a serious concern with respect to many large-scale earth disturbing developments and activities. Inadequate erosion control and stormwater runoff control measures can result in the downstream siltation of aquatic habitats including wetlands.

No comprehensive study has been conducted since 1989. But there is no concrete evidence to suggest that dramatic changes have occurred in either the nature or extent of these threats. One possible exception is that marina development has declined significantly since the late 1980s. However, as stated earlier, losses are being slowed by regulatory and other protective efforts, and a decline in the rate of loss is occurring. As of 1997 it is difficult to quantitatively assess this change in loss rate, but it is important to do so.

The outlook for coastal wetlands reflects positive trends to statewide wetlands conservation. The Ohio EPA protects wetlands by including the term "wetlands" in the Ohio Water Quality Standards and Section 401 Regulations and Permit Procedures.

POLICY 7 - WETLANDS

IT IS THE POLICY OF THE STATE OF OHIO TO PROTECT, PRESERVE AND MANAGE WETLANDS WITH THE OVERALL GOAL TO RETAIN THE STATE'S REMAINING WETLANDS, AND, WHERE FEASIBLE, RESTORE AND CREATE WETLANDS TO INCREASE THE STATE'S WETLANDS RESOURCE BASE BY:

- A. REGULATING ACTIVITIES IN WETLANDS THROUGH THE ENFORCEMENT OF OHIO WATER QUALITY STANDARDS FOR ANY ACTIVITY THAT MAY RESULT IN ANY DISCHARGE INTO WETLANDS AND OTHER WATERS OF THE STATE (O.R.C. §§6111.03(O) AND 6111.03(P) AND O.A.C. RULES 3745-1-05, 3745-1-50 TO -54 AND O.A.C. CHAPTER 3745-32);
- B. PROVIDING INFORMATION ON WETLAND RESOURCES AND TECHNICAL ASSISTANCE TO ORGANIZATIONS AND INDIVIDUALS REQUESTING HELP IN WETLANDS CONSERVATION PROJECTS; AND

Authorities and Administration

- A. All coastal area wetlands fall within the jurisdiction of the U.S. Army Corps of Engineers (COE) in regulating activities under the Rivers and Harbors Act of 1899 (Section 10) and/or the CWA (Section 404). The scope of the state's authority under Section 401 of the CWA and Ohio water pollution control laws is coterminous with that of the COE and covers all surface waters within the coastal area, including wetlands. However state water pollution control law extends the state's authority to require a state water quality certification for all applicants for any federal license or permit to conduct any activity that may result in any discharge into the waters of the state (O.R.C. §6111.03(P)). "Waters of the state" include wetlands (O.A.C. rule 3745-32-01 (N)). "Wetlands" are defined in state regulations as "areas where the water table is at, near, or above the land surface long enough each year to support the growth of water dependent vegetation and to result in the formation of characteristic wet soil types. These include marshes, swamps, bog and similar areas" (O.A.C. rule 3645-32-01 (O)).

Ohio has developed wetland water quality standards via rulemaking. This rule-making was a joint effort of Ohio EPA and ODNR. The basic structure of the wetland standards is to assign one designated use to all jurisdictional wetlands. Under O.A.C. rule 3745-1-53, all of these surface water bodies receive the "wetland" use designation. The O.A.C. rule 3745-2-51 also contains narrative criteria, composed of goal statements that support the wetland use designation. Numeric chemical criteria for the wetland use, in O.A.C. rule 3745-1-52, apply to point source discharges. Those discharges are held to the warmwater habitat aquatic life use chemical criteria. For wetland discharges this criteria needs to be met at the "end of pipe".

The wetland antidegradation provisions found in O.A.C. rule 3745-1-54 have a tiered system of protection. A wetland under review is placed into one of three antidegradation categories. These categories are based on a wetland's relative functions and values, sensitivity to disturbance, rarity and the ability to adequately mitigate for its loss through wetland restoration or creation.

Category 1 wetlands are those that support minimal wetland functions. Wetlands assigned to Category 1 do not provide critical habitat for threatened or endangered species or contain rare, threatened or endangered species. Category 1 wetlands are likely to be hydrologically isolated, have low species diversity, be dominated by non-native species in the plant community and have no significant wildlife habitat or use. Category 1 wetlands would have limited potential for reestablishment of lost wetland functions. Typical Category 1 wetlands would include wetlands that are acidic ponds created on mined lands, those wetlands that have little or no plants and wetlands that are hydrologically isolated and comprised primarily of invasive, opportunistic plant species such as purple loosestrife (*Lythrum salicaria*), reed canary grass (*Phalaris arundinacea*) and giant reed (*Phragmites australis*).

Category 2 wetlands are those that support moderate hydrological, habitat, recreational and other wetland functions. Wetlands assigned to Category 2 are likely to be dominated by native species but generally would not have habitat for rare, threatened or endangered species. Category 2 wetlands could be wetlands that are degraded but still have a reasonable potential for reestablishing lost wetland functions.

Category 3 wetlands are those that support superior wetland functions. Wetlands assigned to Category 3 would typically have high levels of biodiversity, a high proportion of native species or other high functional values. Category 3 wetlands might include wetlands that contain or provide habitat for threatened or endangered species, high quality forested wetlands, including old growth forested wetlands, mature forested riparian wetlands, vernal pools and wetlands that are scarce regionally or statewide, including bogs and fens.

O.A.C. rules 3745-1-03 and 3745-1-54 establish criteria for determining when the Director of Ohio EPA can allow a lowering of water quality in wetlands and what is appropriate mitigation for those impacts. O.A.C. rule 3745-1-05 identifies Category 1 wetlands as Limited Resource Waters and Category 2 and Category 3 wetlands as General High Quality Waters.

In order for an applicant to impact a Category 1 wetland the applicant must show that alternatives to impacting the wetland have been considered. Unavoidable wetland impacts must be minimized by replacing the storm water and some water quality functions on-site. The impacted Category 1 wetlands must then be mitigated for at a ratio of one and a half acres of wetland mitigation for every acre of wetlands destroyed (1.5:1). This mitigation can occur anywhere within the same U.S. Army Corps of Engineers District. Ohio is divided into four of these districts, which are based on drainage areas.

Category 2 wetlands require that the applicant has considered all alternatives to their destruction. For unavoidable impacts the applicant must demonstrate that the acreage of wetland impacts has been minimized. The applicant must then demonstrate that the proposed lowering of water quality is necessary for important social and economic development. Applicants must demonstrate that they can successfully mitigate for their projects by restoring or creating wetlands of equal or higher quality than those being impacted. Approved wetland impacts must be mitigated on-site (within a one mile radius) if there exists a high likelihood of success for such an endeavor. If the applicant can demonstrate that on-site mitigation is not practicable then mitigation can occur anywhere within the same watershed, or a grouping of thirty-seven watersheds comprising Ohio. Mitigation ratios for Category 2 wetland impacts range from 1.5:1 to 2.5:1, with higher ratios required for off-site mitigation and for replacement of forested wetlands.

Approved impacts to Category 3 wetlands must meet all of the demonstrations required for impacts to Category 2 wetlands. Additionally, for Category 3 wetland impacts to be approved, the applicant must show that there is a public need for the project. Again, approved impacts must be mitigated for by restoration or creation of wetlands of equal or higher quality than those being impacted. Mitigation ratios for Category 3 wetlands range from 2:1 to 3:1, with higher ratios for off-site mitigation and for impacts to forested systems.

O.A.C. rule 3745-1-54 also singles out a subset of Category 3 wetlands, i.e. those that are scarce either regionally or statewide, where only temporary disturbances of water quality can be authorized. This subset includes such wetland ecosystems as bogs, fens and other wetland systems that are high quality and rare.

O.A.C. rule 3745-1-05 allows the Director to designate surface waters with outstanding ecological or recreational values as Outstanding National Resource Waters. Amendments to O.A.C. rule 3745-1-05 address review requirements for some wetlands designated Outstanding National Resource Waters. Disturbances to the water quality of wetlands and other surface waters designated as Outstanding National Resource Waters can only be authorized if they are short-term.

As well as providing mitigation for impacted Category 2 and Category 3 wetlands, the applicant must always replace the storm water and some water quality functions on-site. Peak post-development rates of surface runoff cannot exceed peak pre-development surface runoff rates on the project site. Retention or detention structures built on-site to accommodate this requirement must also incorporate chemical water quality improvement measures to the maximum extent practicable.

All approved wetland mitigation projects must be protected in perpetuity and are subject to a five year monitoring program under O.A.C. rule 3745-1-54. The monitoring includes information on hydrology, plants, soils and chemical water quality. The monitoring includes submittal of an annual report by the applicant and a third year site visit by Ohio EPA staff. The applicant is responsible to undertake any recommendations made by Ohio

EPA to improve the mitigation wetlands. At the end of the five year monitoring period, if they can show that the mitigation is successful, the applicant is released from any further monitoring requirements.

The discharge of dredged or fill material or the creation of any obstruction or alternation is prohibited in wetlands unless the Director of Ohio EPA determines that the activity will (1) not interfere with the attainment or maintenance of water quality standards, and (2) not result in a violation of any applicable provision of the CWA, including: (a) effluent limitations described in Section 301; (b) water quality related effluent limitations as described in Section 302; (c) water quality standards and implementation plans as described in Section 303; (d) national standards of performance as described in Section 306; or (e) toxic and pretreatment effluent standards as described in Section 306. Notwithstanding an applicant's demonstration that these criteria are met, the director may deny an application for a Section 401 certification if the director finds that the discharge or obstructions or alterations will result in adverse long- or short-term impact on water quality (O.A.C. rule 3745-32-05).

There are water quality certification exemptions. No Section 401 water quality certification need be obtained if the discharge of dredged or fill material is part of the construction of a federal project specifically authorized by Congress, provided the effects of such discharge are included in an environmental impact statement submitted to Congress prior to the actual discharge (O.A.C. rule 3745-32-03).

The director may impose terms and conditions as a part of the Section 401 water quality certification that are necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality (O.A.C. rule 3745-32-05 (C)). Also, prior to the issuance of a water quality certification or prior to, during or after the discharge of dredged or fill material, to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests (O.A.C. rule 3745-32-05 (D)). The director may revoke a Section 401 water quality certification if the director concludes at any time that any applicable laws or regulations have been or are likely to be violated (O.A.C. rule 3745-32-06). Section 401 certifications are issued, modified, revoked or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA as stated in O.A.C. Chapter 3745-47 (O.A.C. rule 3745-32-07). Procedural rules require public notice regarding such Ohio EPA actions. Public notice is given when the agency begins consideration of issuance of Section 401 certification.

In reviewing applications for water quality certification, Ohio EPA staff solicit input from ODNR and the U.S. Fish and Wildlife Service. ODNR may provide comments or data regarding fish and wildlife impacts, biological and other natural resources, and potential effects upon resources or uses of concern to ODNR. Ohio EPA receives and incorporates in its administrative record comments and recommendations submitted by ODNR and the Fish and Wildlife Service to the Corps of Engineers (COE). Comments by ODNR are submitted in part to express the views of the state regarding the conservation of fish and

wildlife resources in accordance with the Fish and Wildlife Coordination Act and other applicable laws and regulations.

State authority provides increased protection of wetlands beyond controls over activities under the COE's Section 10/404 permit authority. State law provides that the Director of Ohio EPA may certify or deny certification to any applicant for a federal license or permit to conduct any activity that may result in a discharge into the waters of the state (O.R.C. §6111.03(P)). Further, O.A.C. rule 3745-32-02 sets forth the specific requirements that a Section 401 water quality certification is required to obtain the following: (1) a permit from the COE pursuant to Section 10 of the Rivers and Harbors Act; (2) a permit from the COE under both Section 10 and Section 404 of the Clean Water Act; and (4) any other federal permit or license that may result in any discharge to waters of the state.

In addition, increased protection of wetlands beyond the scope of the COE's authority is realized through the state's water pollution law and regulations. As an illustration, in December 1996, the COE published the final rule for the administration of its nationwide permit program regulations. The Corps' permits are not valid until the state certifies that the discharge does not violate the state's water quality standards. Ohio EPA denied water quality certification for nationwide permits 17 - discharges associated with hydropower projects and 21 - surface coal mining activities.

Also, state water quality certification has imposed general and specific conditions on many nationwide general permits.

The Environmental Review Appeals Commission (ERAC), an appellate review board, separate and distinct from the Ohio EPA, has ruled that the director's action of issuing water quality certification to an applicant with the condition that a portion of a wetland not be filled is reasonable and lawful because wetlands are waters of "exceptional ecological significance" within the meaning of O.A.C. rule 3745-1-05 and are therefore subject to the antidegradation policy of Ohio's water quality standards (ER 79-42, 8/30/79). This decision construing Ohio EPA regulations has been sustained by the Ohio Supreme Court.

- B. A broad network of individuals and institutions provide information and technical assistance on wetland issues ranging from acquisition-protection projects and strategies to mitigation options, research, education, inventorying, and wetland restoration and development. The OCMP endeavors to maintain effective linkages and networks to maximize the resources that may be devoted for coastal wetland conservation purposes. Information on wetlands protection through state and federal regulatory authority is readily available from the Ohio EPA, Division of Surface Water.

POLICY 8 - RARE AND ENDANGERED SPECIES

IT IS THE POLICY OF THE STATE OF OHIO TO PRESERVE AND PROTECT RARE, THREATENED AND ENDANGERED PLANT AND ANIMAL SPECIES TO PREVENT THEIR POSSIBLE EXTINCTION BY PROTECTING THE WATERS THAT PROVIDE A HABITAT FOR RARE AND ENDANGERED SPECIES (O.R.C. §6111.03 (R) AND O.A.C. RULE 3745-1-05 (C).

Ohio EPA, through the state water quality standard (O.A.C. Chapter 3745-1), provides additional protection to aquatic species identified as threatened or endangered. The Antidegradation Policy (O.A.C. rule 3745-1-05 (C)) protects waters of exceptional ecological significance, e.g., waters that provide a habitat for state and federally identified threatened or endangered species. Present ambient water quality in such waters will not be degraded for all substances determined to be toxic or to interfere with any designated use as determined by the Director of Ohio EPA. This authority is used through various permitting actions such as National Pollutant Discharge Elimination System (NPDES) permits and Section 401 water quality certifications.

POLICY 9 - DREDGING AND DREDGED MATERIAL DISPOSAL

IT IS THE POLICY OF THE STATE OF OHIO TO PROVIDE FOR THE DREDGING OF HARBORS, RIVER CHANNELS AND OTHER WATERWAYS AND TO PROTECT THE WATER QUALITY, PUBLIC RIGHT TO NAVIGATION, RECREATION AND NATURAL RESOURCES ASSOCIATED WITH THESE WATERS IN THE DISPOSAL OF THE DREDGED MATERIAL BY REGULATING WATER QUALITY CERTIFICATION, THE DISCHARGE OR DISPOSAL OF DREDGED MATERIAL (O.R.C. §6111.03(P) AND O.A.C. CHAPTER 3745-1.

Authorities and Administration

The Ohio EPA regulates discharges of dredged materials into Ohio waters through the authority of the Director to certify or deny certification to an applicant for a federal license or permit that the discharge will comply with the CWA (O.R.C. §6111.03(P)). Before any agency or individual disposes of dredged material into Ohio waters, a state water quality certification must be obtained. Water quality certifications are issued, denied or conditioned pursuant to Ohio EPA's review of a COE Section 10/404 permit application or application made directly to Ohio EPA (See Policy 7 for a more complete description of the 401 water quality certification authority).

POLICY 10 - FISHERIES MANAGEMENT

IT IS THE POLICY OF THE STATE OF OHIO TO ASSURE THE CONTINUAL ENJOYMENT OF THE BENEFITS RECEIVED FROM THE FISHERIES OF LAKE ERIE AND TO MAINTAIN AND IMPROVE THESE FISHERIES BY PROTECTING FISH HABITAT THROUGH OHIO EPA'S SECTION 401 WATER QUALITY CERTIFICATION AUTHORITY (O.R.C. §§6111.03(O) AND 6111.03(P) AND O.A.C. CHAPTERS 3745-1 AND 3745-32.

Authorities and Administration

The State of Ohio helps protect habitat for fish and aquatic life through Ohio EPA's authority to issue or deny Section 401 water quality certifications for activities that discharge dredged or fill material to waters of the state or create any obstructions or attraction in waters of the state. (See Policy 7 for details on this authority.) Biological criteria are considered in water quality standards, and the antidegradation policy is used to protect state resource waters from degradation. Therefore a Section 401 certification may be denied for sufficient grounds to protect important aquatic life uses of Lake Erie and coastal area waters. Special conditions for Section 401 certifications may be imposed on activities (O.A.C. rule 3745-32-05 (C)). Such terms and conditions may affect the design of a project to protect or enhance fish habitat; may provide for increased water circulation or other factors important to maintaining quality habitat; may provide for increased water circulation or other factors important to maintaining quality habitat; or may restrict when dredging might occur in order to avoid adverse impacts to spawning areas.

POLICY 11- AIR QUALITY

IT IS THE POLICY OF THE STATE OF OHIO TO ATTAIN AND MAINTAIN AIR QUALITY LEVELS THAT PROTECT PUBLIC HEALTH AND PREVENT INJURY TO PLANT AND ANIMAL LIFE AND PROPERTY BY SURVEYING AND MONITORING AIR QUALITY; ENFORCING NATIONAL AMBIENT AIR QUALITY STANDARDS THROUGH PERMITS AND VARIANCES; AND RESTRICTING OPEN BURNING. (O.R.C. CHAPTER 3704).

Authorities and Administration

The Ohio EPA, Division of Air Pollution Control, operates several programs that have far-reaching effects on the air quality of the State and Lake Erie. Such programs range from those developed and implemented since the inception of the Ohio EPA to new initiatives that limit the exposure of the population to air toxics.

Ohio's State Implementation Plan (SIP), approved by U.S. EPA, is developed, revised, implemented, and enforced by the Ohio EPA, local air pollution control agencies, and areawide planning agencies designated by the Governor. The principal provisions of the SIP are state emission limitations designed to meet federal primary and secondary ambient air quality standards (O.A.C. Chapters 3745-17, 3745-18, 3745-21, 3745-23 and 3745-71). Implementation and enforcement of these regulations are achieved through the issuance of air permits by the Director of Ohio EPA (O.A.C. Chapters 3745-31, 3745-35 and 3745-77).

SIPs are in effect statewide, with specific provisions for sources in nonattainment areas. Pursuant to the 1990 Clean Air Act (CAA) amendments, Cuyahoga, Lake and Lorain counties underwent major SIP revisions to reduce point and mobile source pollution that contributed to the ozone and PM10 nonattainment. These revisions included the implementation of automobile inspection and maintenance programs in the Cleveland metropolitan area. In addition, major SIP revisions were made to reduce point source pollution for ozone and PM10 in Lucas and Wood counties

Ohio's SIP also incorporates the following:

1. emergency episode plans requiring the reduction of air contaminants during air pollution alerts, air pollution warnings and air pollution emergencies (O.A.C. Chapter 3745-25);
2. restrictions on certain types of open burning within the boundaries of municipal corporations and buffer areas, and total prohibition of open burning of garbage (O.A.C. Chapter 3745-19);
3. transportation control plans prepared by NOACA and TMACOG in the coastal area

and geared toward encouraging and providing facilities alternative means of transportation such as buses, rapid transit, bicycling and car pooling, as mandated by Section 174 of the CAA and enforced by Ohio EPA pursuant to its directive to adopt and maintain a program for the prevention, control and abatement of air pollution that is consistent with the federal CAA (O.R.C. § 3704.02 (2); O.A.C. Chapter 3745-101);

4. extensive procedural means for citizen and industry involvement in Agency actions; and

5. provisions for daily Pollutant Standards Index readings in each major metropolitan area.

Operators of new sources of air contaminants must obtain a Permit to Install (O.A.C. Chapter 3745-31) and must meet criteria for the Prevention of Significant Deterioration (PSD) or emission offset regulations in nonattainment areas if the air emission exceed trigger limits. New Source Performance Standards (NSPS), National Emission Standards for Hazardous Pollutants (NESHAPS), Best Available Technology (BAT) criteria, and source impact determinations must all be met before issuance of a Permit to Install. Risk assessment modeling may be conducted. Additionally, permits to operate are issued for pollution sources that are in full compliance with regulations and those that have an approved schedule of compliance included in the permit.

Ohio EPA conducts field surveillance and source inspection to ensure that sources remain in compliance and that noncompliant sources make timely progress toward compliance. The Director of Ohio EPA may revoke or suspend any permit to operate upon finding that any conditions, standards or regulations have been or will be violated.

The Division of Air Pollution Control conducts an enforcement program. Compliance is monitored in the field. Noncomplying sources are referred to the Central Office, where enforcement cases are developed. Industry may be issued administrative findings and orders to comply, or the case may be referred to the Ohio Attorney General for prosecution.

The Division of Air Pollution Control assists with the development of procedures for risk assessment, management and communication and will participate in cooperative efforts with other Ohio EPA divisions and Great Lakes states concerning multiple pathway pollution sources. These pathways of contamination to the Great Lakes should be monitored and controlled.

The air permit to install program (O.A.C. Chapter 3745-31) provides a means to control emissions of criteria pollutants such as sulfur dioxide, oxides of nitrogen, organic compounds, carbon monoxide and particulate matter from stationary sources through the application of best available technology for new sources. Mobile sources of pollution are being addressed in major urban areas such as Cleveland, where an automobile inspection and maintenance program is being implemented to control ozone precursors.

POLICY 12 - HAZARDOUS, SOLID AND INFECTIOUS WASTE MANAGEMENT

IT IS THE POLICY OF THE STATE OF OHIO TO ENSURE THAT THE GENERATION OF SOLID, INFECTIOUS AND HAZARDOUS WASTES IS REDUCED AS MUCH AS POSSIBLE BY:

A. ADMINISTERING A PERMIT PROGRAM FOR THE SITING OF NEW FACILITIES AND THE MODIFICATION, REVISION AND OPERATION OF EXISTING FACILITIES (O.R.C. CHAPTER 3734);

B. COMPLIANCE MONITORING AND ENFORCEMENT OF REQUIREMENTS OF O.R.C. CHAPTER 3734, DEVELOPED PURSUANT TO AND IN ACCORDANCE WITH PROVISIONS OF THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)(O.A.C. CHAPTERS 3745-50 THROUGH -58; 3745-65 THROUGH -69; 3745-218; 3745-248; 3745-270; 3745-273 AND 3745-279) AND THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA);

C. ESTABLISHING LONG-RANGE SOLID AND HAZARDOUS WASTE MANAGEMENT PLANS (O.R.C. CHAPTER 3734); AND

D. ENCOURAGING THE ADOPTION OF POLLUTION PREVENTION PRACTICES THAT EMPHASIZE A PREFERENCE FOR SOURCE REDUCTION AND ENVIRONMENTALLY SOUND RECYCLING OVER TREATMENT AND DISPOSAL.

Authorities and Administration

A. through C.

Hazardous Waste Management

"Hazardous waste" means any waste or combination of wastes in solid, liquid, semisolid or contained gaseous form that, in the determination of the Director of Ohio EPA, because of its quantity, concentration or physical or chemical characteristics, may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health or safety or to the environment when improperly stored, treated, transported, disposed of or otherwise managed.

"Hazardous waste" includes any substance identified by regulation as hazardous waste under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 as

amended, and does not include any substance that is subject to the Atomic Energy Action of 1954, 42 U.S.C. 2011 (O.R.C. § 3734.01(J)).

Ohio EPA regulates the management, transportation, treatment, storage and disposal of hazardous waste under authority of O.R.C. Chapter 3734, in part as a means of enforcing RCRA. Specific criteria for management of hazardous waste are stated in O.A.C. Chapters 3745-50 through -58, 3745-65 through -69, 3745-218, 3745-248, 3745-270, 3745-273 and 3745-279. These rules are implemented and enforced by Ohio EPA's Division of Hazardous Waste Management with headquarters' personnel in Columbus and field staff located in five district offices.

Generators of hazardous waste must provide for the proper management, transportation, storage, treatment and disposal of the wastes. "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in O.A.C. Chapter 3745-51 or whose act first causes a hazardous waste to become subject to the hazardous waste rules (O.A.C. 3745-50-10). The "cradle-to-grave" tracking of the movement and disposition of hazardous wastes is documented by a paperwork system that requires a manifest to accompany each waste load leaving a generator facility and requires entries at each point in the process leading up to final disposal of the waste. Generators are required to maintain these manifests, and the regulatory agencies can cross-reference manifest records to verify proper handling of the wastes (O.R.C. §3734.12 et seq.). Generator standards for the management of hazardous wastes are contained in O.A.C. Chapter 3745.52.

Each hazardous waste storage, treatment and disposal facility must operate in conformance with regulations that include specifications for day-to-day operations, financial responsibility, and the eventual closure of the facility and post-closure care. Storage, treatment or disposal of hazardous waste at nonpermitted facilities is prohibited. Final siting decisions for new hazardous waste treatment, storage and disposal facilities are made by the Director of Ohio EPA, who issues installation and operation permits to these facilities. The Director of Ohio EPA also issues modification and renewal permits, in accordance with O.R.C. §3734.05. The terms "storage," "treatment," "disposal" and "facility" are defined in O.R.C. §3734.01 and O.A.C. rule 3745-50-10. Rules governing the operations of permitted hazardous waste facilities are specified in O.A.C. Chapters 3745-54 and -55.

Remedial Response to Previously Disposed Hazardous Wastes

Ohio EPA has completed preliminary assessments at each abandoned hazardous waste site and is in the process of establishing priorities for corrective action. Corrective action at these sites involves a thorough study to characterize the nature of the problem and to evaluate alternatives for remedial action. After a remedial action plan is selected, Ohio EPA works with responsible parties to ensure that a proper cleanup is completed and that continuing environmental monitoring and maintenance of the site is secure. Requirements governing the investigation, cleanup and acquisition of abandoned hazardous waste sites are specified in O.R.C. §3734.19 through 3734.24; funding mechanisms are provided by O.R.C. §3734.25 through 3734.28. These provisions are implemented by Ohio's Division of Emergency and Remedial

Response (DERR).

Solid and Infectious Waste Management

“Solid wastes” means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural and community operations, excluding earth or material from construction, mining or demolition operations, or other waste materials of the type that would normally be included in demolition debris, nontoxic fly ash, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, tires, combustible and noncombustible material, street dirt, and debris. “Solid wastes” does not include any material that is an infectious waste or a hazardous waste (O.R.C. § 3734.01 (E)). (Construction and demolition wastes are defined and regulated separately under O.R.C. Chapter 3714.)

“Infectious wastes” includes cultures and stocks of infectious agents and associated biologicals; laboratory wastes that have or may have been in contact with such agents; pathological wastes; waste materials from rooms of humans or enclosures of animals that have been isolated due to communicable disease; blood specimens and products; contaminated carcasses, body parts and bedding of animals intentionally exposed to infectious agents; sharp wastes used in treatment, diagnosis or inoculation of humans or animals exposed to infectious agents (O.R.C. § 3734.01 (R)).

Existing solid waste landfills must operate in accordance with established rules that include requirements for daily cover of materials, minimization or nuisance conditions and other requirements to ensure that the facility does not cause an environmental problem (O.A.C. Chapter 3745-27). In addition, residual solid waste landfills must operate in accordance with O.A.C. Chapter 3745-30.

Ohio EPA's Division of Solid and Infectious Waste Management (DSIWM) regulates the disposal of solid waste and transport and treatment of infectious waste through permitting, registrations, licensing, monitoring, oversight of construction operations and closure and post-closure care pursuant to regulations specified in O.A.C. Chapters 3745-27, -31 and -37. Licensing systems for solid and infectious waste disposal facilities may be administered by the Board of Health of the health district in which the facility is located if Ohio EPA has determined that the board substantially complies with O.R.C. Chapter 3734. Decisions regarding siting of new solid and infectious waste facilities are the responsibility of Ohio EPA's Division of Solid and Infectious Waste Management with support from the Division of Drinking and Ground Waters.

Long-Range and Pollution Prevention Planning

Ohio EPA has adopted a State Solid Waste Management Plan in conjunction with the Solid Waste Advisory Council (O.R.C. § 3734.50). The primary goals of this plan, completed in 1989, are to reduce the state's reliance upon landfills and to establish objectives for solid waste reuse, reduction, recycling and minimization. Boards of County Commissioners must establish single

or joint county solid waste management districts (O.R.C. §3734.52). District committees must prepare, adopt and submit a solid waste management plan to Ohio EPA in compliance with agency standards (O.R.C. §§3734.54 and 3734.55).

Hazardous waste generators and permitted facilities are required to certify that waste minimization programs and reports are in process (O.A.C. rules 3745-52-41, 3745-54-73 and 3745-54-75). Underground injection facilities' owners and operators are required to prepare waste minimization plans for industrial wastes disposed at their facilities. Each owner or operator of a class I injection well facility, as defined in O.A.C. rule 3745-34-04, must prepare and adopt a waste minimization and treatment plan to identify specific technically and economically feasible measures that will be taken to prevent or reduce releases into the environment of the industrial waste and other wastes generated at the facility. For an injection well facility located on the premises of the industrial facility generating the wastes disposed of at the injection facility, the plan must also address the industrial waste and other wastes generated at that industrial facility. The plan must cover a three-year planning period (O.R.C. Chapter 6111.045).

D. Ohio EPA incorporates pollution prevention requirements into enforcement cases to achieve environmental improvements rather than solely imposing penalties. Settlement offers may include reduced monetary penalties in exchange for development of waste minimization or pollution prevention plans or the installation of source redemption processes.

Ohio EPA has received federal funding to develop projects to identify pollution prevention opportunities for Ohio businesses in the Lake Erie Basin. Projects include Hazardous Waste Generation and Management; Hazardous Waste Minimization and Pollution Prevention; and Pollution Prevention Case Study Development.

POLICY 13 - VISUAL AND AESTHETIC QUALITY

IT IS THE POLICY OF THE STATE OF OHIO TO PROTECT THE VISUAL AND AESTHETIC AMENITIES OF LAKE ERIE AND ITS SHORELINE TO ENHANCE THE RECREATIONAL, ECONOMIC, CULTURAL AND ENVIRONMENTAL VALUES INHERENTLY ASSOCIATED WITH THE COASTAL AREA BY ENFORCING STATE WATER QUALITY STANDARDS (O.R.C. CHAPTER 6111 AND O.A.C. RULE 3745-1-04).

Authorities and Administration

Visual and aesthetic qualities of the state's waters are further protected under the state's Water Quality Standards (O.A.C. rule 3745-1-04). These narrative standards, commonly called the "five free froms," provide the Director of Ohio EPA with authority to regulate pollution sources that create floating debris, oil, scum, color, odor or other annoyances. Violation of these standards are subject to criminal and civil penalties (O.R.C. § 6111.07).

ODOT AGREEMENT NO. 13225

Memorandum of Understanding
Between
the Ohio Department of Natural Resources
and
Ohio Department of Transportation

This Memorandum of Understanding (MOU) was made and entered into on May 9, 2005, by and between the Ohio Department of Natural Resources (ODNR) and the Ohio Department of Transportation (ODOT).

The purpose of this MOU is to establish the responsibilities of ODNR and ODOT in coordinating intrastate review of consistency determinations, consistency certifications, and federal assistance proposals required by the Coastal Zone Management Act (CZMA), 16 USC 1456, et seq., and implementing federal regulations, 30 C.F.R. 930, et seq. This MOU will also establish the responsibilities of ODNR and ODOT in implementing the State of Ohio Coastal Management Program (OCMP) and ensuring consistency of projects and activities subject to the approval of the State of Ohio as required in Section 1506.03 of the Ohio Revised Code and further defined in the Ohio Coastal Management Program Document. The procedures outlined below are intended to minimize duplication and delays while making certain that the objectives of the Ohio Coastal Management Program are attained.

Activities of ODOT that are subject to the provisions of this MOU include all construction, maintenance and operations activities; however, the activities described in Attachment "A" are hereby determined to be consistent with the OCMP, based on their routine nature and relatively minor potential to impact the coastal zone as described in the OCMP. For other projects and activities not specifically exempted above, the following coordination procedures will be implemented.

1. **Planning Stage**

- 1.1 To avoid major policy-based objections to activities undertaken by ODOT that may have a direct impact on the coastal area, as defined in the Ohio Coastal Management Program document, ODOT shall submit to ODNR, Consistency Coordinator, Office of Coastal Management, a description of the proposed project or activity, and an assessment that the project or activity is consistent with the policies of the coastal management program as early as possible in the planning phase.
- 1.2 The consistency assessment should document that ODOT has coordinated with other agencies participating in the activity or exercising authority in the coastal area. The description of the proposed project shall be in sufficient detail and scope to allow for an adequate review by ODNR.
- 1.3 A staff contact within ODOT and participating agencies shall be designated to address any need for follow-up questions, further information, or mediation.

1.4 ODNR shall consult with other agencies and organizations as necessary to determine if the action or activity should be undertaken by the state based upon the rules, regulations, and policies embodied in the Ohio Coastal Management Program document.

2. **Planning Stage Review Process**

2.1 ODOT shall submit the project description with supporting documentation and consistency certification to ODNR as soon as practicable in the planning process but prior to a final decision to proceed with the action or activity.

2.2 ODNR shall promptly review the submitted material and request additional information or clarification as needed. Within 30 days of receipt of all information, ODNR shall review the project or activity, incorporating reviews of other agencies and organizations, necessary to make a determination. Any extension of the review period will be mutually agreed to by ODNR and ODOT.

2.3 Upon completion of its review, ODNR will notify ODOT that the proposed project or activity is either consistent or inconsistent with policies of the Ohio Coastal Management Program. If found consistent, no further consistency reviews will be necessary if the action does not substantially change in scope. If found inconsistent, ODNR will clearly identify the rule, regulation, or policy that the action does not meet and may request additional information or recommend ways that the action may be modified to ensure consistency with applicable policies.

2.4 If ODOT agrees to modify the proposal in accordance with ODNR recommendations, the revised proposal will be resubmitted to ODNR for a consistency determination if requested by ODNR. ODNR will notify ODOT of its determination within 30 days of receipt of the revised proposal. If ODOT disagrees with the determination by ODNR, it agrees to engage in the mediation process outlined in Section 5 of this MOU

2.5 If no response, request for additional information, or request for an extension from ODNR is received by ODOT within 30 days of the receipt of the submission by ODNR, the project or activity shall be presumed to be consistent with the OCMP and approved by ODNR. ODOT may then proceed as proposed.

2.6 ODNR's point of contact is the Consistency Coordinator, Office of Coastal Management and ODOT's point of contact is the Administrator, Office of Environmental Services.

2.7 ODOT's submission for the planning stage shall consist of the supplemental project information sheet and exhibits.

3. Complex Project or Activity Review Process

- 3.1 For larger, more complex projects or activities, consistency determinations may be deferred pending ODNR's review of the environmental documentation, e.g., see factor summary (O.R.C. § 5521.011), Categorical Exclusion (23 C.F.R. 771), Environmental Assessment (23 C.F.R. 771) or Environmental Impact Statement (23 C.F.R. 771), prepared for ODOT projects.
- 3.2 If no response, request for additional information, or request for an extension from ODNR is received by ODOT within 30 days of the receipt of the submission by ODNR, the project or activity shall be presumed to be consistent with the OCMP and may proceed as proposed by ODOT.

4. Determination of Consistency

- 4.1 ODNR's consistency determination will be based upon information available at the applicable review stage. Subsequent documents will address and attempt to resolve all concerns expressed during review of previous documents. As appropriate, the procedures set forth in 15 C.F.R., Subpart F, will apply.
- 4.2 If the Director, ODNR, has determined that a project or activity is consistent with coastal management policies, ODNR does not need to send any further statements of concurrence. An action once found to be consistent will be presumed to remain consistent unless a letter of objection is transmitted from ODNR to ODOT as a result of a determination that activities would violate applicable rules, regulations or policies of the OCMP.
- 4.3 If the project is found to be inconsistent, ODNR will clearly identify the rule, regulation or policy the action does not meet and may recommend a way that the action may be modified to ensure consistency. If ODOT disagrees with the determination of inconsistency, this determination may be appealed under the mediation process outlined in Section 5 of this MOU.

5. Mediation of Determinations of Inconsistency

- 5.1 When a letter of inconsistency has been received by ODOT from ODNR, ODOT will not proceed with the action until a decision has been reached that allows the objection to be lifted. The mediation will be a tiered process using the following steps:
 - 5.1.1 A meeting of staff members from each agency will be convened within 30 days of receipt of letter of inconsistency. Arrangements will be made through the Consistency Coordinator, Office of Coastal Management.
 - 5.1.2 A meeting of department directors will be convened within 30 days of the meeting of staff members, if necessary.
 - 5.1.3 A meeting involving an appropriate representative of the Office of the Governor will be convened within 30 days of the meeting of the directors, if necessary.

5.1.4 A decision reached at any of these levels will be binding on both parties, and the issue may not be brought forward at further stages of the action.

6. Statements of Coastal Management Policies

6.1 ODOT may request that ODNR approve a Statement of Coastal Management Policies for certain actions in addition to those listed in Attachment "A." The statement shall be as stringent as the corresponding portions of the OCMP. The statement shall not be approved unless it includes:

6.1.1 A list of the agency's projects or activities that, if implemented or approved, would affect the coastal area (as defined and described in the Ohio Coastal Management Program document pursuant to the CZMA and O.R.C. § 1506.01(A)) and that are determined to be consistent with the policies of the OCMP; and

6.1.2 A provision for the annual review of consistency performance by ODNR, with revocation of approval if consistency performance is determined to be unsatisfactory.

6.2 If the statement is approved by the Director, ODNR, it shall be signed by each director and made a part of this MOU as Attachment B. When a statement has been signed, no further reviews of subject projects and activities as specified in Sections 1-4 will be required as long as actions specified in the statement remain consistent.

6.3 If ODNR believes that any action undertaken by ODOT under the statement is inconsistent, ODNR will notify ODOT of such concern in writing and outline the reason for the inconsistency determination. ODOT will have 30 days to correct the problem and provide in writing to ODNR what steps it has taken to make the action consistent or explain why the original action is consistent with policies of the OCMP.

6.4 ODNR will then notify ODOT either that it will lift its determination of inconsistency or revoke approval of the statement. If the Director, ODNR revokes its approval of the statement, ODOT may appeal the decision under the mediation process outlined in Section 5 of this MOU.

7. Review

7.1 Five years after execution of this MOU, the process outlined herein will be reviewed by the parties to the MOU for substance, timeliness, responsiveness and impact on agency workload. The MOU shall remain in effect until such time as either agency deems it necessary to make revisions.

7.2 This MOU shall remain in effect from the date of the last signature hereto, or until modified or terminated by mutual consent, or unilaterally with ninety (90) days advance written notice by either party.

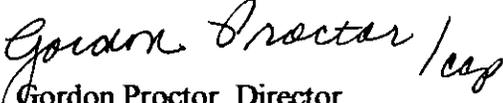
7.3 Obligations of each state agency are subject to O.R.C. § 126.07.

8. **Designation of Liaisons**

- 8.1 The Consistency Coordinator, Office of Coastal Management, is designated to serve as ODNR's liaison for matters involving the Ohio Coastal Management Program and this MOU. The Administrator, Office of Environmental Services, shall serve as ODOT's liaison for these purposes.
- 8.2 Any person executing this MOU in a representative capacity hereby warrants that he/she has been duly authorized by his/her Director to execute this MOU on such Director's behalf.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the dates shown below.


Samuel W. Speck, Director
Ohio Department of Natural Resources


Gordon Proctor, Director
Ohio Department of Transportation

Attachment A to MOU between ODNR and ODOT

Routine ODOT Projects Considered Consistent with the OCMP

Activities described in this attachment are deemed to be consistent with the Ohio Coastal Management Program as follows:

1. **NATIONWIDE PERMITS** - Projects authorized under the US Army Corps of Engineers Nationwide Permit Program except Nationwide Permit 17, 27 and 44, regardless of their location within Ohio's designated coastal area.
2. **CATEGORICAL EXCLUSIONS (CE 1, CE 2 and CE 3)** - Projects processed by ODOT, under agreement with FHWA, as Categorical Exclusion Level 1, Categorical Exclusion Level 2, and Categorical Exclusion Level 3 regardless of their location within Ohio's designated coastal area.

EXEMPTIONS

EXEMPTION FOR EA's, EIS's and LEVEL 4 CE's – Projects processed by ODOT as Environmental Assessments, Environmental Impact Statements or Level 4 CE's are exempt and will require coordination with ODNR in accordance with Items A-F of this Memorandum of Understanding.

EXEMPTION FOR PROJECTS INVOLVING 401/404 PERMITS - All projects involving both an Ohio EPA 401 Water Quality Certification and an Individual Army Corps of Engineers 404 Permit are exempt and will require coordination with ODNR in accordance with Items A-F of this Memorandum of Understanding. (Projects which can be authorized under 404 Nationwide Permit but require a 401 Water Quality Certification are considered consistent.)

EXEMPTION FOR PORT ASSISTANCE PROJECTS - All projects funded by the Ohio Port Assistance Program are sponsored by a port authority, city or county government. Since these entities are initiating and providing partial funding for Port Assistance projects, they will be instructed by ODOT to consult with ODNR.

1501:1-35-01 Notice of public meetings (sunshine rule).

Notice of all public meetings of the Ohio coastal resources advisory council shall be given in accordance with the following procedure:

(A) Any person may determine (be informed of) the time and place of regularly scheduled meetings or the time, place and purpose of any special meeting by calling on the telephone the office of real estate and land management.

(B) Any person may obtain advance notice of all meetings at which any specific type of public business is to be discussed by identifying the type of public business for which he desires to be notified and by supplying the office of real estate and land management with stamped self-addressed envelopes. The chief will mail to such person a notice of the time, place, and type of business to be discussed at the meeting at least four calendar days before the meeting is scheduled unless the meeting is an emergency meeting.

(C) The office of real estate and land management will maintain a list of representatives of the news media who have requested in writing notice of special or emergency meetings. The chief shall mail such representatives notice at least four days before special meetings or shall telephone notice at least twenty-four hours before special meetings. In the event of an emergency meeting the representatives of the news media who have requested notification of emergency meetings shall be notified immediately of the time, place and purpose of the meeting. News media requesting notice pursuant to this paragraph shall supply the chief with the name, mailing address and telephone number of the representative to be contacted.

(D) The Ohio coastal resources advisory council shall provide the chief of the office of real estate and land management with the time, place, and purpose of meetings requiring public notice under the provision of this rule within sufficient time to enable the chief to comply with the provisions of this rule.

HISTORY: Eff 9-8-91

Rule promulgated under: RC Chapter <JL:JUMP,"119","1_PORC"119.

Rule authorized by: RC <JL:JUMP,"121.22","1_PORC"121.22

Rule amplifies: RC <JL:JUMP,"1506.12","1_PORC"1506.12

1501:1-35-02 Minutes.

Minutes of all meetings of the Ohio coastal resources advisory council will be promptly recorded and shall be open to public inspection during working hours at the office of the chief of the office of real estate and land management.

HISTORY: Eff 9-8-91

Rule promulgated under: RC Chapter <JL:JUMP,"119","1_PORC"119.

Rule authorized by: RC <JL:JUMP,"121.22","1_PORC"121.22

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(C) The office of real estate and land management will maintain a list of representatives of the news media who have requested in writing notice of special or emergency meetings. The chief shall mail such representatives notice at least four days before special meetings or shall telephone notice at least twenty-four hours before special meetings. In the event of an emergency meeting the representatives of the news media who have requested notification of emergency meetings shall be notified immediately of the time, place and purpose of the meeting. News media requesting notice pursuant to this paragraph shall supply the chief with the name, mailing address and telephone number of the representative to be contacted.

(D) The Ohio coastal resources advisory council shall provide the chief of the office of real estate and land management with the time, place, and purpose of meetings requiring public notice under the provision of this rule within sufficient time to enable the chief to comply with the provisions of this rule.

HISTORY: Eff 9-8-91

Rule promulgated under: RC Chapter <JL:JUMP,"119","1_PORC"119.

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OHIO DEPARTMENT OF NATURAL RESOURCES

1501-6-10 TO 1501-6-13

RULES FOR DESIGNATING LAKE ERIE
COASTAL EROSION AREAS

1501-6-10	DEFINITIONS
1501-6-11	DETERMINATION OF ANNUAL RECESSION RATES
1501-6-12	DETERMINATION OF ANTICIPATED RECESSION DISTANCES
1501-6-13	PREPARATION OF MAPS OF LAKE <u>E</u> RIE COASTAL EROSION AREAS

JUNE, 1996

1501-6-10 DEFINITIONS.

- (A) "ANNUAL RECESSION RATE" MEANS THE AVERAGE RATE, EXPRESSED IN FEET PER YEAR, AT WHICH THE RECESSION LINE MOVES LANDWARD. THE ANNUAL RECESSION RATE SHALL BE BASED ON A TIME PERIOD NOT LESS THAN TEN YEARS NOR GREATER THAN THIRTY YEARS PRIOR TO THE YEAR THAT THE BASE-MAP IMAGERY WAS ACQUIRED. IN NO CASE SHALL THE ANNUAL RECESSION RATE USED TO CALCULATE THE ANTICIPATED RECESSION DISTANCE BE LESS THAN ZERO.
- (B) "ANTICIPATED RECESSION DISTANCE" MEANS THE CENTER-WEIGHTED MOVING AVERAGE OF DISTANCES, EQUAL TO THIRTY TIMES THE ANNUAL RECESSION RATE, AS DETERMINED AT FIVE CONSECUTIVE TRANSECTS. ANTICIPATED RECESSION DISTANCES LESS THAN THIRTY TIMES THE "CALCULATED ACCURACY LIMIT" (REFER TO PARAGRAPH (H) OF THIS RULE) SHALL BE EQUAL TO ZERO.
- (C) "BARRIER BEACH" MEANS A NARROW, ELONGATE SAND RIDGE RISING ABOVE LAKE LEVEL AND EXTENDING GENERALLY PARALLEL WITH THE MAINLAND SHORE, BUT SEPARATED FROM IT BY A BODY OF WATER OR A WETLAND.
- (D) "BASE RECESSION LINE" MEANS THE RECESSION LINE MAPPED FROM SYNOPTIC AERIAL PHOTOGRAPHY, REMOTE SENSING IMAGERY, DIGITAL DATA, OR MAPS USED TO CREATE THE RECESSION-LINE BASE MAP UPON WHICH COASTAL EROSION AREAS ARE DESIGNATED. THE COASTAL EROSION AREA SHALL BE DESIGNATED BY MEASURING ANTICIPATED RECESSION DISTANCES FROM THE BASE RECESSION LINE.
- (E) "BEACH" MEANS A ZONE OF UNCONSOLIDATED MATERIAL THAT EXTENDS LANDWARD FROM THE SHORELINE TO THE TOE OF THE BLUFF OR DUNE. WHERE NO BLUFF OR DUNE EXISTS, THE LANDWARD LIMIT OF THE BEACH IS EITHER THE LINE OF PERMANENT VEGETATION OR THE PLACE WHERE THERE IS A MARKED CHANGE IN MATERIAL OR PHYSIOGRAPHIC FORM.
- (F) "BLUFF" MEANS A BANK OR CLIFF WITH A PRECIPITOUS, STEEPLY SLOPED FACE ADJOINING A BEACH OR A BODY OF WATER.
- (G) "BLUFF LINE" MEANS THE POINT OF INFLECTION WHERE THE SLOPE OF THE UPLAND SURFACE CHANGES TO BEGIN ITS DESCENT TO THE BEACH OR SHORELINE.

2. A provision for the annual review of consistency performance by ODNR, with revocation of approval if consistency performance is determined to be unsatisfactory.

If the statement is approved by the Director, ODNR, it shall be signed by each director and made a part of this MOU as Attachment B. When a statement has been signed, no further reviews of subject projects and activities as specified in Sections A-D will be required as long as actions specified in the statement remain consistent.

If ODNR believes that any action undertaken by ODOT under the statement is inconsistent, ODNR will notify ODOT of such concern in writing and outline the reason for the inconsistency determination. ODOT will have 30 days to correct the problem and provide in writing to ODNR what steps it has taken to make the action consistent or explain why the original action is consistent with policies of the OCMP.

ODNR will then notify ODOT either that it will lift its determination of inconsistency or revoke approval of the statement. If the Director, ODNR revokes approval of the statement, ODOT may appeal the decision under the mediation process outlined in Section E of this MOU.

G. Review

Two years after execution of this MOU, the process outlined herein will be reviewed by the parties to the MOU for substance, timeliness, responsiveness and impact on agency workload.

H. Designation of Liaisons

The Coastal Management Administrator is designated to serve as ODNR's liaison for matters involving the Ohio Coastal Management Program and this MOU. The Administrator, Office of Environmental Services, shall serve as ODOT's liaison for these purposes.

The above is mutually agreed between ODNR and ODOT from this date on, or until modified or discontinued by mutual consent, or discontinued unilaterally with a minimum of ninety (90) days advance notice by either party. Obligations of the State are subject to O.R.C. § 126.07.

Donald C. Anderson, Director
Ohio Department of Natural Resources

Jerry Wray, Director
Ohio Department of Transportation

- (H) "CALCULATED ACCURACY LIMIT" MEANS THE POTENTIAL ERROR IN RECESSION RATE RESULTING FROM THE LIMIT OF IMAGE RESOLUTION AND MEASUREMENT INACCURACIES AND SHALL BE CALCULATED BY DIVIDING A FIXED ERROR OF FIVE FEET BY THE TIME PERIOD IN YEARS OVER WHICH THE ANNUAL RECESSION RATE IS CALCULATED.
- (I) "COASTAL EROSION AREA" MEANS THOSE LAND AREAS ALONG LAKE ERIE ANTICIPATED TO BE LOST DUE TO LAKE ERIE-RELATED EROSION WITHIN A THIRTY-YEAR PERIOD IF NO ADDITIONAL APPROVED EROSION CONTROL MEASURES ARE COMPLETED WITHIN THAT TIME. THESE AREAS INCLUDE LAND LAKEWARD OF THE BASE RECESSION LINE WHERE ANTICIPATED RECESSION DISTANCES ARE GREATER THAN ZERO AND EXTEND LANDWARD FROM THE BASE RECESSION LINE FOR A DISTANCE EQUAL TO THE ANTICIPATED RECESSION DISTANCE. WHERE ANTICIPATED RECESSION DISTANCES ARE EQUAL TO ZERO, COASTAL EROSION AREAS SHALL NOT BE DESIGNATED EITHER LAKEWARD OR LANDWARD OF THE BASE RECESSION LINE.
- (J) "DIKE" MEANS ANY ARTIFICIAL BARRIER TOGETHER WITH APPURTENANT WORKS THAT SHALL BE USED EITHER TO:
- (1) DIVERT OR RESTRAIN THE FLOW OF A STREAM OR OTHER BODY OF WATER FOR THE PURPOSE OF PROTECTING AN AREA FROM INUNDATION BY FLOOD WATERS; OR
 - (2) MAINTAIN WATER LEVELS IN THE DIKED AREA FOR THE PURPOSES OF MANAGING A WETLAND.
- (K) "DUNE" MEANS A RIDGE OR HILL OF LOOSE, WINDBLOWN SAND, THE CREST OF WHICH TYPICALLY TRENDS PARALLEL TO THE SHORELINE.
- (L) "EROSION" MEANS THE LOSS OR DISPLACEMENT OF LAND ALONG THE LAKESHORE DUE TO WAVE ATTACK, ICE SCOUR, MASS WASTING, OR OTHER RELATED EROSION PROCESSES.
- (M) "EROSION CONTROL MEASURE" MEANS A STRUCTURE OR ACTIONS SPECIFICALLY DESIGNED TO REDUCE OR CONTROL LAKE ERIE-RELATED EROSION OF THE SHORE. EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, GROINS, JETTIES, DIKES, SEAWALLS, REVETMENTS, BULKHEADS, BREAKWATERS AND ARTIFICIALLY NOURISHED SAND AND/OR GRAVEL BEACHES.

- (N) "FILL LAND" MEANS ARTIFICIAL LAND MADE BY PLACING SUBSTANTIAL FILL AND ASSOCIATED EROSION CONTROL MEASURES IN LAKE ERIE.
- (O) "MASS WASTING" MEANS THE DOWNSLOPE MOVEMENT OF MATERIAL DUE TO GRAVITY. EXAMPLES OF MASS WASTING INCLUDE BUT ARE NOT LIMITED TO ROTATIONAL SLUMPS, DEBRIS FLOWS, BLOCK FALLS, AND ROCK FALLS.
- (P) "RECESSION" MEANS THE LANDWARD RETREAT OF THE SHORE DUE TO EROSION.
- (Q) "RECESSION DISTANCE" MEANS THE DISTANCE BETWEEN TWO RECESSION LINES. THE RECESSION DISTANCE SHOWS HOW FAR THE "RECESSION LINE" (REFER TO PARAGRAPH (R) OF THIS RULE) RECEDED DURING A GIVEN TIME PERIOD.
- (R) "RECESSION LINE" MEANS THE LANDFORM USED FOR MAPPING RECESSION OF THE SHORE, WHICH SHALL INCLUDE BUT IS NOT LIMITED TO:
- (1) WHERE THE SHORE IS A BLUFF, THE RECESSION LINE SHALL BE THE BLUFF LINE. EXAMPLES ARE SHOWN IN FIGURE 1 OF THIS RULE.
 - (2) WHERE THE SHORE IS A SAND SPIT WITH A DUNE OR A BARRIER BEACH WITH A DUNE, THE RECESSION LINE SHALL BE THE TOP OF THE WAVE-CUT FACE IN THE DUNE OR THE CREST OF THE DUNE.
 - (3) WHERE THE SHORE IS A LOW-LYING SAND SPIT LACKING A DUNE OR A BARRIER BEACH LACKING A DUNE, THE RECESSION LINE SHALL BE THE CREST OF THE SPIT OR BARRIER.
 - (4) WHERE THE SHORE IS A WETLAND, THE RECESSION LINE SHALL BE THE LAKEWARD LINE OF PERSISTENT EMERGENT VEGETATION.
 - (5) WHERE THE SHORE IS DIKED, THE RECESSION LINE SHALL BE THE TOP OF THE LAKEWARD-FACING SLOPE OF THE DIKE.
 - (6) WHERE LOW-LYING WATERFRONT AREAS ARE PROTECTED BY A SEAWALL, BULKHEAD, OR REVETMENT, THE RECESSION LINE SHALL BE THE TOP OF THE LAKEWARD-FACING SLOPE OF THE STRUCTURE.

- (S) "SAND SPIT" MEANS A NARROW EMBANKMENT OF LAND COMPOSED OF SAND AND GRAVEL DEPOSITED BY LITTORAL PROCESSES WHICH HAS ONE END ATTACHED TO THE SHORE AND THE OTHER TERMINATING IN OPEN WATER.
- (T) "SHORE" MEANS THE LAND BORDERING THE LAKE.
- (U) "SHORELINE" MEANS THE LINE OF INTERSECTION OF LAKE ERIE WITH THE BEACH OR SHORE.
- (V) "WETLAND" MEANS AN AREA THAT IS INUNDATED OR SATURATED BY SURFACE OR GROUNDWATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND THAT UNDER NORMAL CIRCUMSTANCES DOES SUPPORT, VEGETATION TYPICALLY ADAPTED FOR LIFE IN SATURATED SOIL CONDITIONS. WETLAND INCLUDES WITHOUT LIMITATION SWAMPS, MARSHES, BOGS, AND FENS.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.02
RULE AMPLIFIES R.C. 1506.02, R.C. 1506.06
PRIOR EFFECTIVE DATE 9/8/91

1501-6-11 DETERMINATION OF ANNUAL RECESSION RATES.

THE PROCESS OF DETERMINING ANNUAL RECESSION RATES SHALL INCLUDE PREPARATION OF RECESSION-LINE BASE MAPS, MEASUREMENT OF RECESSION DISTANCES ON THE RECESSION-LINE MAPS, AND CALCULATION OF ANNUAL RECESSION RATES.

(A) RECESSION-LINE MAPS SHALL BE PREPARED USING THE FOLLOWING PROCEDURE.

- (1) BASE MAPS SHALL BE CONSTRUCTED USING THE MOST CURRENTLY AVAILABLE IMAGERY. TYPES OF BASE-MAP IMAGERY MAY INCLUDE, BUT ARE NOT LIMITED TO, AERIAL PHOTOGRAPHS, REMOTE SENSING IMAGERY, DIGITAL DATA, OR SOME COMBINATION THEREOF. CRITERIA USED TO SELECT BASE-MAP IMAGERY SHALL INCLUDE, BUT ARE NOT LIMITED TO, COMPLETE SYNOPTIC COVERAGE OF THE OHIO SHORE WHERE THE SHORE IS CENTRALLY LOCATED ON THE IMAGES, ADEQUATE GEOGRAPHIC REFERENCE POINTS, AND RESOLUTION THAT IS ADEQUATE TO MAP A BASE RECESSION LINE AND IDENTIFY CULTURAL AND PHYSIOGRAPHIC FEATURES ON THE IMAGERY.
- (2) THE RESULTING BASE MAPS SHALL BE PRODUCED AT A NOMINAL SCALE OF ONE INCH EQUAL TO TWO HUNDRED FEET; THE SCALE OF THE BASE MAPS SHALL BE VERIFIED WITH FIELD MEASUREMENTS NOT LESS THAN FIVE HUNDRED FEET IN LENGTH, AND THE TRUE SCALE IN FEET SHALL BE NOTED ON EACH INDIVIDUAL BASE MAP.
- (3) A BASE RECESSION LINE SHALL BE MAPPED ON THE RECESSION-LINE BASE MAPS AS DESCRIBED IN PARAGRAPH (R) OF RULE 1501-6-10 OF THE ADMINISTRATIVE CODE.
- (4) HISTORICAL IMAGERY USED TO PREPARE RECESSION-LINE MAPS SHALL BE SELECTED FROM CHARTS, AERIAL PHOTOGRAPHS, OR OTHER IMAGERY OF THE SHORE WHICH ARE ON FILE AT THE DEPARTMENT OF NATURAL RESOURCES, DIVISION OF GEOLOGICAL SURVEY. CRITERIA USED TO SELECT THIS IMAGERY FOR RECESSION-LINE MAPPING SHALL INCLUDE BUT ARE NOT LIMITED TO THOSE CRITERIA LISTED IN PARAGRAPH (A)(1) OF THIS RULE. IMAGERY SHALL BE ACQUIRED WITHIN A TIME PERIOD OF NOT LESS THAN TEN YEARS NOR GREATER THAN THIRTY YEARS PRIOR TO THE YEAR THAT THE BASE-MAP IMAGERY WAS ACQUIRED.
- (5) RECESSION LINES FROM CHARTS, AERIAL PHOTOGRAPHS, OR

OTHER IMAGERY SHALL BE PROJECTED OR DIGITALLY TRANSFERRED ONTO THE BASE MAPS.

- (B) RECESSION DISTANCES SHALL BE MEASURED AT POINTS UNIFORMLY SPACED ALONG THE BASE RECESSION LINE. THE RECESSION DISTANCE AT EACH POINT SHALL BE MEASURED FROM THE BASE RECESSION LINE ALONG A TRANSECT ORIENTED AT A RIGHT ANGLE TO THE GENERAL TREND OF THE BASE RECESSION LINE (FIGURE 1). EACH TRANSECT SHALL BE UNIQUELY IDENTIFIED AND THE MEASURED RECESSION DISTANCE SHALL BE RECORDED AND USED TO CALCULATE THE ANNUAL RECESSION RATE.
- (C) FOR EACH TRANSECT, THE ANNUAL RECESSION RATE IN FEET PER YEAR SHALL BE CALCULATED BY DIVIDING THE MEASURED RECESSION DISTANCE BY THE TIME PERIOD IN YEARS BETWEEN THE RECESSION LINES. THE MINIMUM ANNUAL RECESSION RATE SHALL BE ZERO FEET PER YEAR.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.02
RULE AMPLIFIES R.C. 1506.02, R.C. 1506.06
PRIOR EFFECTIVE DATE 9/8/91

1501-6-12 DETERMINATION OF ANTICIPATED RECESSION DISTANCES.

THE ANTICIPATED RECESSION DISTANCE IN FEET FOR EACH TRANSECT SHALL BE THE CENTER-WEIGHTED MOVING AVERAGE OF DISTANCES EQUAL TO THIRTY TIMES THE ANNUAL RECESSION RATE IN FEET PER YEAR AS DETERMINED AT FIVE CONSECUTIVE TRANSECTS WHERE: (1) THE DISTANCES FOR THE TWO OUTER TRANSECTS SHALL BE WEIGHTED BY A FACTOR OF ONE; (2) THE DISTANCES FOR THE TWO INNER TRANSECTS SHALL BE WEIGHTED BY A FACTOR OF THREE; AND (3) THE DISTANCE FOR THE CENTER TRANSECT SHALL BE WEIGHTED BY A FACTOR OF FIVE (FIGURE 1). ANTICIPATED RECESSION DISTANCES LESS THAN THIRTY TIMES THE CALCULATED ACCURACY LIMIT SHALL BE EQUAL TO ZERO. IN NO CASE SHALL THE ANTICIPATED RECESSION DISTANCE BE LESS THAN ZERO.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

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1501-6-13 PREPARATION OF COASTAL EROSION AREA MAPS.

COASTAL EROSION AREAS SHALL BE DELINEATED ON COASTAL EROSION AREA MAPS.

- (A) WHERE COASTAL EROSION AREAS ARE IDENTIFIED, SUCH AREAS SHALL INCLUDE LAND LAKEWARD OF THE BASE RECESSION LINE AND ALL LAND THAT EXTENDS LANDWARD OF THE BASE RECESSION LINE FOR A DISTANCE EQUAL TO THE ANTICIPATED RECESSION DISTANCE. WHERE ANTICIPATED RECESSION DISTANCES ARE EQUAL TO ZERO, A COASTAL EROSION AREA SHALL NOT BE DESIGNATED, EITHER LAKEWARD OR LANDWARD OF THE BASE RECESSION LINE.
- (1) THE LANDWARD BOUNDARY OF A COASTAL EROSION AREA SHALL BE DELINEATED BY PLOTTING ON EACH TRANSECT A POINT LANDWARD FROM THE BASE RECESSION LINE EQUAL TO THE ANTICIPATED RECESSION DISTANCE AS DETERMINED IN RULE 1501-6-12 OF THE ADMINISTRATIVE CODE AND THEN DRAWING STRAIGHT LINES BETWEEN THESE POINTS (FIGURE 1).
- (2) WHERE ONE TRANSECT HAS A POSITIVE ANTICIPATED RECESSION DISTANCE AND AN ADJACENT TRANSECT HAS A ZERO ANTICIPATED RECESSION DISTANCE, THE COASTAL EROSION AREA BOUNDARY SHALL BE DELINEATED AS FOLLOWS. A BOUNDARY LINE SHALL BE DRAWN BETWEEN THE POSITIVE ANTICIPATED RECESSION DISTANCE ON THE ONE TRANSECT TO THE BASE RECESSION LINE POSITION ON THE ADJACENT TRANSECT (FIGURE 2). AT THE POINT WHERE THE DISTANCE BETWEEN THE BOUNDARY LINE AND THE BASE RECESSION LINE EQUALS THE CALCULATED ACCURACY LIMIT, THE BOUNDARY LINE SHALL TURN LAKEWARD. THE LAKEWARD EXTENSION OF THE BOUNDARY LINE SHALL EXTEND TO THE SHORELINE AND SHALL BE SPACED PROPORTIONATELY BETWEEN THE TRANSECTS (FIGURE 2).
- (B) THE PRELIMINARY IDENTIFICATION OF COASTAL EROSION AREAS SHALL BE SHOWN ON RECESSION-LINE BASE MAPS DESCRIBED IN PARAGRAPH (A) OF RULE 1501-6-11 OF THE ADMINISTRATIVE CODE AS AREAS BOUNDED ON THE LAKEWARD SIDE BY THE SHORELINE AND ON THE LANDWARD SIDE BY A LINE (COASTAL EROSION AREA LINE) DRAWN PURSUANT TO PARAGRAPHS (A)(1) AND (A)(2) OF THIS RULE. THE BASE RECESSION LINE AND THE RECESSION LINE USED TO DETERMINE ANNUAL RECESSION RATES AND ANTICIPATED RECESSION DISTANCES AS PRESCRIBED IN PARAGRAPH (A)(4) OF RULE 1501-6-11 SHALL ALSO BE SHOWN ON THE RECESSION-LINE BASE MAPS (FIGURE 3).

- (C) FINAL IDENTIFICATION OF COASTAL EROSION AREAS SHALL BE SHOWN ON THE RECESSION-LINE BASE MAPS DESCRIBED IN PARAGRAPH (A) OF RULE 1501-6-11 OF THE ADMINISTRATIVE CODE AS AREAS BOUNDED ON THE LAKEWARD SIDE BY THE SHORELINE AND ON THE LANDWARD SIDE BY A LINE DRAWN PURSUANT TO PARAGRAPHS (A)(1), (A)(2), AND (B) OF THIS RULE. THIS FINAL IDENTIFICATION SHALL SHOW THE BOUNDARIES OF COASTAL EROSION AREAS AS THEY EXISTED AT THE TIME THE BASE-MAP IMAGERY WAS ACQUIRED. SUBSEQUENT TO THE FINAL IDENTIFICATION, THE LANDWARD EXTENT OF A COASTAL EROSION AREA SHALL BE DETERMINED BY MEASURING THE ANTICIPATED RECESSION DISTANCE FROM THE CURRENT BASE RECESSION LINE DEFINED IN PARAGRAPH (R) OF RULE 1501-6-10. RECESSION RATES AND ANTICIPATED RECESSION DISTANCES SHALL BE PROVIDED BY THE DEPARTMENT OF NATURAL RESOURCES WITH COASTAL EROSION AREA MAPS.

REPLACES: PART OF 1501-6-14

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DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

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PRIOR EFFECTIVE DATES: 9/8/91

OHIO DEPARTMENT OF NATURAL RESOURCES

RULES FOR ENFORCING LAKE ERIE
COASTAL EROSION AREAS

1501-6-21 TO 1501-6-28

1501-6-21	Definitions
1501-6-22	Applicability of the permit requirements for construction of a permanent structure
1501-6-23	Permit application procedure
1501-6-24	Review of permit application
1501-6-25	The permit to erect, construct, or redevelop a permanent structure
1501-6-26	Inspection procedures
1501-6-27	Review of administrative and enforcement activities of counties or municipal corporations which have adopted Lake Erie coastal erosion area resolutions or ordinances
1501-6-28	Severability

January, 1996

THE FOLLOWING DEFINITIONS SHALL APPLY TO THE TERMS USED IN RULES 1501-6-21 TO 1501-6-28 OF THE ADMINISTRATIVE CODE.

- (A) "APPLICANT" MEANS THE OWNER OF THE PROPERTY TO BE IMPROVED OR AN AUTHORIZED AGENT FOR SAID PROPERTY OWNER.
- (B) "APPLICATION" MEANS THE SIGNED AND COMPLETED APPLICATION FORM AND ALL SUPPORTING INFORMATION REQUIRED TO BE SUBMITTED TO APPLY FOR A PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE IN A LAKE ERIE COASTAL EROSION AREA PURSUANT TO SECTION 1506.07 OF THE REVISED CODE.
- (C) "COASTAL EROSION AREA" MEANS THOSE LAND AREAS ALONG LAKE ERIE ANTICIPATED TO BE LOST DUE TO LAKE ERIE-RELATED EROSION WITHIN A THIRTY-YEAR PERIOD IF NO ADDITIONAL APPROVED EROSION CONTROL MEASURES ARE COMPLETED WITHIN THAT TIME, AS DEFINED IN RULE 1501-6-10 OF THE OHIO ADMINISTRATIVE CODE.
- (D) "CONSTRUCT" MEANS TO BUILD, FORM, OR ASSEMBLE A NEW PERMANENT STRUCTURE.
- (E) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES.
- (F) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES, OR THE DIRECTOR'S DESIGNEE.
- (G) "ERECT" MEANS CONSTRUCT.
- (H) "EROSION CONTROL MEASURE" MEANS A STRUCTURE OR ACTIONS SPECIFICALLY DESIGNED TO REDUCE OR CONTROL LAKE ERIE-RELATED EROSION OF THE SHORE. EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, GROINS, JETTIES, DIKES, SEAWALLS, REVETMENTS, BULKHEADS, BREAKWATERS AND ARTIFICIALLY NOURISHED SAND AND/OR GRAVEL BEACHES.
- (I) "EXISTING STRUCTURE" MEANS A PERMANENT STRUCTURE WHICH EXISTED OR UPON WHICH CONSTRUCTION HAD BEGUN PRIOR TO THE EFFECTIVE DATE OF ENFORCEMENT OF THESE RULES AS DESCRIBED IN PARAGRAPH (C) OF RULE 1501-6-22.
- (J) "MOVABLE STRUCTURE" MEANS A PERMANENT STRUCTURE DESIGNED, SITED, AND CONSTRUCTED TO BE READILY RELOCATED AT MINIMUM COST AND WITH MINIMUM DISRUPTION OF ITS INTENDED USE. ACCESS TO AND FROM THE SITE SHALL BE OF SUFFICIENT WIDTH AND ACCEPTABLE GRADE TO PERMIT THE STRUCTURE TO BE RELOCATED. MOBILE HOMES

AND STRUCTURES BUILT OF ABOVE-GROUND STUD WALL CONSTRUCTION ON SKIDS OR ON PILING, OR ON BASEMENT OR CRAWL SPACE FOUNDATIONS ARE EXAMPLES OF MOVABLE STRUCTURES. SEPTIC SYSTEMS AND STRUCTURES WITH ABOVE-GROUND WALLS OF MASONRY, CONCRETE, OR RELATED MATERIALS ARE NOT MOVABLE STRUCTURES.

- (K) "PERMANENT STRUCTURE" MEANS ANY RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR AGRICULTURAL BUILDING, ANY MANUFACTURED HOME AS DEFINED IN SECTION 4501.01 OF THE REVISED CODE, AND ANY SEPTIC SYSTEM THAT RECEIVES SEWAGE FROM A SINGLE-FAMILY, TWO-FAMILY, OR THREE-FAMILY DWELLING, BUT DOES NOT INCLUDE ANY RECREATIONAL VEHICLE AS DEFINED IN SECTION 4501.01 OF THE REVISED CODE. AN ADDITION TO ANY EXISTING RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR AGRICULTURAL BUILDING, OR ANY MANUFACTURED HOME, WILL BE CONSIDERED A PERMANENT STRUCTURE IF THE GROUND LEVEL AREA OF THE ADDITION IS GREATER THAN OR EQUAL TO 500 SQUARE FEET.

AN APPURTENANT STRUCTURE TO ANY RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, OR AGRICULTURAL BUILDING, OR ANY MANUFACTURED HOME, THAT IS NOT INTEGRAL TO THE BUILDING'S STRUCTURE, SUCH AS A PATIO OR DECK, WILL NOT BE CONSIDERED A PERMANENT STRUCTURE. STAND-ALONE, UNINHABITABLE, STRUCTURES SUCH AS GAZEBOS, PICNIC SHELTERS, GARAGES AND STORAGE OR TOOL SHEDS WILL NOT BE CONSIDERED PERMANENT STRUCTURES.

- (L) "PERMIT" MEANS A FORM SIGNED BY THE DIRECTOR AUTHORIZING A PERSON TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, ON LAND WITHIN A LAKE ERIE COASTAL EROSION AREA.
- (M) "PERSON" MEANS ANY AGENCY OF THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE OR OF THE UNITED STATES, AND ANY LEGAL ENTITY DEFINED AS A PERSON UNDER SECTION 1.59 OF THE REVISED CODE.
- (N) "REDEVELOP" MEANS TO REMOVE AND REPLACE AN ENTIRE EXISTING PERMANENT STRUCTURE, OR TO BUILD A NEW PERMANENT STRUCTURE ON AN EXISTING FOUNDATION.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-22 APPLICABILITY OF THE PERMIT REQUIREMENTS FOR
CONSTRUCTION OF A PERMANENT STRUCTURE.

- (A) IN ACCORDANCE WITH THE PROVISIONS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE AND THE ADMINISTRATIVE RULES ADOPTED PURSUANT TO DIVISION (A) OF SECTION 1506.07 OF THE REVISED CODE, A PERMIT SHALL BE REQUIRED FOR THE ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, ON ANY LAND WITHIN A LAKE ERIE COASTAL EROSION AREA AS DEFINED IN SECTION 1506.06 OF THE REVISED CODE AND RULES 1501-6-10 TO 1501-6-13 OF THE ADMINISTRATIVE CODE.
- (B) A PERMIT IS NOT REQUIRED UNDER DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE FOR ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE WHICH IS OR WILL BE LOCATED WITHIN ANY COUNTY OR MUNICIPAL CORPORATION THAT HAS ADOPTED AND IS ENFORCING A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE WITHIN ITS ZONING OR BUILDING REGULATIONS, PROVIDED THAT THE RESOLUTION OR ORDINANCE HAS BEEN DETERMINED TO BE ACCEPTABLE BY THE DIRECTOR UNDER DIVISION (D) OF SECTION 1506.07 OF THE REVISED CODE.
- (C) A PERMIT IS NOT REQUIRED UNDER DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE FOR ERECTION, CONSTRUCTION OR REDEVELOPMENT OF A PERMANENT STRUCTURE IF ANY OTHER REQUIRED PERMIT WAS ISSUED OR PLAN WAS APPROVED FOR THAT ERECTION, CONSTRUCTION OR REDEVELOPMENT BY ANY STATE AGENCY, POLITICAL SUBDIVISION OF THIS STATE, OR FEDERAL AGENCY PRIOR TO ANY OF THE FOLLOWING:
- (1) THE EFFECTIVE DATE OF THESE RULES;
 - (2) THE DATE THE DIRECTOR NOTIFIES EACH MUNICIPAL CORPORATION, COUNTY, AND TOWNSHIP OF THE FINAL IDENTIFICATION OF THE COASTAL EROSION AREAS PURSUANT TO SECTION 1506.06 OF THE REVISED CODE;
 - (3) THE DATE THE DIRECTOR ADOPTS THE COASTAL MANAGEMENT PROGRAM DOCUMENT PURSUANT TO SECTION 1506.02 OF THE REVISED CODE.
- (D) A PERMIT IS NOT REQUIRED UNDER DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE FOR ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE ON ANY PARCEL OF LAND

THAT IS NOT ADJACENT TO LAKE ERIE.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
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1501-6-23 PERMIT APPLICATION PROCEDURE.

- (A) A PERSON SEEKING TO OBTAIN A PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, ON ANY LAND WITHIN A LAKE ERIE COASTAL EROSION AREA IS REQUIRED TO FILE AN APPLICATION, ACCOMPANIED BY NECESSARY SUPPORTING INFORMATION, IN ACCORDANCE WITH RULES 1501-6-21 TO 1501-6-28 OF THE ADMINISTRATIVE CODE. THE APPLICATION SHALL BE ON A FORM AS SPECIFIED BY THE DIRECTOR, COPIES OF WHICH MAY BE OBTAINED FROM THE DEPARTMENT. IN ADDITION TO THE INFORMATION TO BE SUPPLIED ON THE APPLICATION FORM, THE APPLICANT SHALL ALSO SUBMIT THE SUPPORTING INFORMATION DESCRIBED IN PARAGRAPH (B) OR (C) OF THIS RULE.
- (B) FOR A PROPOSED PERMANENT STRUCTURE PROTECTED OR TO BE PROTECTED BY AN EROSION CONTROL MEASURE, THE APPLICATION SHALL INCLUDE THE FOLLOWING:
- (1) A GENERAL DESCRIPTION OF THE PROPOSED PERMANENT STRUCTURE IDENTIFYING ITS PURPOSE; AND
 - (2) A MAP OF THE PROJECT SITE THAT CLEARLY SHOWS THE LOCATION OF THE PROPOSED PERMANENT STRUCTURE WITH RESPECT TO THE LAKE ERIE SHORELINE; PROPERTY LINES; COUNTY, TOWNSHIP, AND MUNICIPAL CORPORATION BOUNDARY LINES; AND STATE, COUNTY AND LOCAL ROADS. A UNITED STATES GEOLOGICAL SURVEY (USGS) SEVEN AND ONE-HALF MINUTE TOPOGRAPHIC MAP OR PORTION THEREOF WILL GENERALLY MEET THIS REQUIREMENT; AND
 - (3) A PROPOSED SCHEDULE OF CONSTRUCTION. THE SCHEDULE SHALL DEMONSTRATE THAT THE EROSION CONTROL MEASURES WILL BE CONSTRUCTED PRIOR TO OR CONCURRENT WITH THE ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF THE PERMANENT STRUCTURE; AND
 - (4) OTHER PERTINENT INFORMATION AS MAY REASONABLY BE DETERMINED NECESSARY BY THE DEPARTMENT TO FULLY EVALUATE THE APPLICATION.
- (C) FOR A PROPOSED PERMANENT STRUCTURE WHEN THE APPLICANT REQUESTS A PERMIT DUE TO EXCEPTIONAL HARDSHIP AS DESCRIBED IN PARAGRAPH (C)(2) OF RULE 1501-6-24 OF THE ADMINISTRATIVE CODE, THE APPLICATION SHALL INCLUDE THE FOLLOWING SUPPORTING INFORMATION:
- (1) THE INFORMATION DESCRIBED IN PARAGRAPHS (B)(1) AND (B)(2)

OF THIS RULE; AND

- (2) DOCUMENTATION THAT THE PERMANENT STRUCTURE WILL BE MOVABLE OR WILL BE SITUATED AS FAR LANDWARD AS APPLICABLE ZONING RESOLUTIONS OR ORDINANCES PERMIT; AND
 - (3) EXPLANATION OF THE EXCEPTIONAL HARDSHIP THAT THE PERSON SEEKING THE AUTHORIZATION WILL SUFFER, IF THE AUTHORIZATION IS NOT GIVEN.
- (D) THE THIRTY-DAY REVIEW PERIOD SPECIFIED IN PARAGRAPH (B) OF RULE 1501-6-24 OF THE ADMINISTRATIVE CODE WILL BEGIN ON THE DATE THE DEPARTMENT RECEIVES A COMPLETED APPLICATION AND ALL REQUIRED SUPPORTING INFORMATION. WITHIN SEVEN WORKING DAYS OF RECEIPT OF THE APPLICATION, THE DEPARTMENT SHALL NOTIFY THE APPLICANT, IN WRITING, INDICATING THE STARTING DATE FOR THE THIRTY-DAY REVIEW PERIOD (WHICH DATE SHALL BE, AS STATED ABOVE, THE DATE OF RECEIPT OF THE APPLICATION) IF THE APPLICATION IS COMPLETE. IF THE APPLICATION IS INCOMPLETE, THE DEPARTMENT SHALL IDENTIFY DEFICIENCIES IN THE APPLICATION WHICH MUST BE CORRECTED BEFORE THE APPLICATION WILL BE CONSIDERED COMPLETE. IF ADDITIONAL INFORMATION IS REQUESTED, THE THIRTY-DAY REVIEW PERIOD WILL BEGIN ON THE DATE IT IS RECEIVED BY THE DEPARTMENT.
- (E) IF, DURING THE THIRTY-DAY REVIEW PERIOD SPECIFIED IN PARAGRAPH (B) RULE 1501-6-24 OF THE ADMINISTRATIVE CODE, THE APPLICATION IS FOUND TO BE INACCURATE OR ADDITIONAL INFORMATION FROM THE APPLICANT IS NECESSARY TO ADEQUATELY EVALUATE THE PROJECT, THE APPLICANT SHALL BE NOTIFIED, IN WRITING, OF THE INACCURACY OR ADDITIONAL INFORMATION REQUIRED. REVIEW OF THE APPLICATION WILL CEASE PENDING RECEIPT OF THE NECESSARY CHANGES OR ADDITIONAL INFORMATION FROM THE APPLICANT. UPON RECEIPT OF THE REQUESTED CHANGES OR ADDITIONAL INFORMATION FROM THE APPLICANT, A NEW THIRTY-DAY REVIEW PERIOD WILL COMMENCE. IF EITHER THE NECESSARY CHANGES OR ADDITIONAL INFORMATION IS NOT PROVIDED WITHIN SIXTY DAYS OF THE DATE THE DEPARTMENT REQUESTED IT, REVIEW OF THE APPLICATION WILL BE TERMINATED, THE DEPARTMENT SHALL RETURN THE APPLICATION, AND A NEW APPLICATION SHALL BE REQUIRED FOR RENEWED CONSIDERATION.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

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1501-6-24 REVIEW OF PERMIT APPLICATION.

- (A) PURSUANT TO THE REQUIREMENTS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE, THE DEPARTMENT SHALL REVIEW EACH APPLICATION FOR A PERMIT AS DESCRIBED IN PARAGRAPH (B) OF RULE 1506-6-23 OF THE ADMINISTRATIVE CODE TO EVALUATE THE EXISTING OR PROPOSED EROSION CONTROL MEASURES. FACTORS TO BE CONSIDERED IN THE EVALUATION OF AN EROSION CONTROL MEASURE SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:
- (1) THE POTENTIAL INDIVIDUAL OR CUMULATIVE IMPACT, INCLUDING ANY ADVERSE EFFECTS ON SAND RESOURCES AND COASTAL PROCESSES; AND
 - (2) THE POTENTIAL FOR ACCELERATING EROSION ALONG THE ADJACENT SHORELINE; AND
 - (3) THE STABILITY OF THE EXISTING OR PROPOSED SLOPE; AND
 - (4) THE EFFECTIVENESS OF EXISTING EROSION CONTROL MEASURES AT THE PROPOSED SITE AND ALONG THE ADJACENT SHORELINE; AND
 - (5) THE INTEGRITY OF THE EXISTING OR PROPOSED EROSION CONTROL MEASURE, ITS APPURTENANCES AND COMPONENT MATERIALS; AND
 - (6) THE EFFECTIVENESS OF PROPOSED STRUCTURAL AND/OR NONSTRUCTURAL MEASURES TO PROTECT THE PERMANENT STRUCTURE.
- (B) WITHIN THIRTY DAYS AFTER RECEIPT OF A COMPLETE APPLICATION, THE DIRECTOR SHALL NOTIFY THE APPLICANT THAT THE APPLICATION IS EITHER APPROVED OR DENIED. IF AN APPLICATION IS APPROVED, THE DIRECTOR SHALL ISSUE A PERMIT, AS SPECIFIED IN RULE 1501-6-25 OF THE ADMINISTRATIVE CODE, TO ERECT, CONSTRUCT, OR REDEVELOP THE PERMANENT STRUCTURE. IF AN APPLICATION IS DENIED, THE DIRECTOR SHALL NOTIFY THE APPLICANT OF THE REASON FOR DENIAL AND OF THE APPLICANT'S APPEAL RIGHTS UNDER SECTION 1506.08 OF THE REVISED CODE.
- (C) THE DIRECTOR SHALL ISSUE A PERMIT TO AN APPLICANT IF:
- (1) THE PROPOSED SITE IS OR WILL BE PROTECTED BY EFFECTIVE EROSION CONTROL MEASURES AS DETERMINED ACCORDING TO CRITERIA IN PARAGRAPHS (A)(1) THROUGH (A)(6) OF THIS RULE, OR

(2) BOTH OF THE FOLLOWING CRITERIA ARE MET:

- (a) THE PERMANENT STRUCTURE WILL BE A MOVABLE STRUCTURE OR WILL BE SITUATED AS FAR LANDWARD AS APPLICABLE ZONING RESOLUTIONS OR ORDINANCES PERMIT; AND
- (b) THE APPLICANT WILL SUFFER EXCEPTIONAL HARDSHIP IF THE PERMIT IS NOT GRANTED.

(D) ISSUANCE BY THE DIRECTOR OF A PERMIT TO ERECT, CONSTRUCT OR REDEVELOP A PERMANENT STRUCTURE PURSUANT TO DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE DOES NOT RELEASE THE APPLICANT FROM OBTAINING ANY AND ALL OTHER PERMITS, LEASES OR DOCUMENTS FROM ANY LOCAL, STATE OR FEDERAL AGENCY FOR THE PERMANENT STRUCTURE OR FOR THE EROSION CONTROL MEASURES.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

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1501-6-25 THE PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A
PERMANENT STRUCTURE.

- (A) A PERMIT TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, IN A LAKE ERIE COASTAL EROSION AREA SHALL BE ISSUED BY THE DIRECTOR AFTER APPROVAL OF THE APPLICATION REQUIRED BY RULE 1501-6-23 OF THE ADMINISTRATIVE CODE. THE PERMIT SHALL BE VALID FOR A PERIOD OF TWO YEARS FROM THE DATE OF ISSUE UNLESS SPECIFIED OTHERWISE PURSUANT TO PROVISIONS OF THIS RULE. NO CONSTRUCTION SHALL BE PERFORMED UNTIL THE PERMIT IS ISSUED BY THE DIRECTOR.
- (B) THE PERMIT SHALL INCLUDE CONDITIONS, AS NECESSARY, TO ASSURE THAT CONSTRUCTION OF THE PERMANENT STRUCTURE AND ANY EROSION CONTROL MEASURE IS IN COMPLIANCE WITH THE APPROVED APPLICATION.
- (C) IF THE PROPOSED CONSTRUCTION SCHEDULE REQUIRED BY RULE 1501-6-23 OF THE ADMINISTRATIVE CODE EXCEEDS A PERIOD OF TWO YEARS, THE DIRECTOR MAY ISSUE, ON WRITTEN REQUEST OF THE APPLICANT, A PERMIT WHICH IS VALID FOR A LONGER PERIOD.
- (D) IF THE PERMIT EXPIRES BEFORE CONSTRUCTION HAS BEGUN, NO CONSTRUCTION SHALL BE PERFORMED, AND A NEW APPLICATION WITH SUPPORTING INFORMATION, AS PRESCRIBED BY RULE 1501-6-23 OF THE ADMINISTRATIVE CODE, SHALL BE SUBMITTED FOR RENEWED CONSIDERATION.
- (E) IF, AFTER CONSTRUCTION HAS BEGUN, A REVISED CONSTRUCTION SCHEDULE SHOWS THAT THE PERMIT WILL EXPIRE BEFORE CONSTRUCTION IS COMPLETED, THE DIRECTOR, ON WRITTEN REQUEST OF THE APPLICANT, MAY EXTEND THE LIFE OF THE PERMIT. NO EXTENSION SHALL BE GRANTED UNLESS THE APPLICANT HAS DEMONSTRATED TO THE SATISFACTION OF THE DIRECTOR THAT SUBSTANTIAL EFFORT HAS BEEN MADE TO COMPLETE THE CONSTRUCTION.
- (F) A SINGLE PERMIT MAY BE ISSUED TO AN APPLICANT FOR THE PURPOSE OF AUTHORIZING THE ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF MORE THAN ONE PERMANENT STRUCTURE ON A SINGLE PARCEL OR ON CONTIGUOUS PARCELS OF PROPERTY OWNED BY THE APPLICANT.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

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1501-6-26 INSPECTION PROCEDURES.

- (A) THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY MAKE INSPECTIONS DURING CONSTRUCTION TO ENSURE THAT THE PERMANENT STRUCTURE AND ANY EROSION PROTECTION MEASURES ARE BEING BUILT OR UNDERTAKEN IN COMPLIANCE WITH THE PERMIT ISSUED PURSUANT TO DIVISION(B) OF SECTION 1506.07 OF THE REVISED CODE. THE APPLICANT SHALL BE GIVEN REASONABLE PRIOR NOTICE OF AN INSPECTION BY THE DEPARTMENT, AND ALL INSPECTIONS SHALL BE PERFORMED AT REASONABLE TIMES FOR CONDUCTING BUSINESS.

- (B) IF AN INSPECTION REVEALS THAT ANY ERECTION, CONSTRUCTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE IS BEING CONDUCTED WITHOUT A PERMIT OR IN VIOLATION OF THE PERMIT OR THAT A REQUIRED EROSION PROTECTION MEASURE IS NOT IN COMPLIANCE WITH THE PERMIT, THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY ORDER THAT ALL WORK SHALL CEASE UNTIL THE VIOLATION HAS BEEN CORRECTED TO THE SATISFACTION OF THE DIRECTOR. THE DIRECTOR'S ORDER SHALL BE IN WRITING AND SHALL INDICATE THE SPECIFIC NATURE OF THE VIOLATION. THE ORDER SHALL REMAIN IN EFFECT UNTIL THE VIOLATION HAS BEEN CORRECTED TO THE SATISFACTION OF THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE. THE PERSON TO WHOM AN ORDER IS ISSUED SHALL BE AFFORDED AN ADJUDICATION HEARING PURSUANT TO CHAPTER 119. OF THE REVISED CODE. THE DIRECTOR SHALL SUSTAIN THE ORDER IF DEEMED APPROPRIATE AFTER EACH PERSON ALLEGEDLY LIABLE HAS HAD A HEARING OR HAS WAIVED THE RIGHT TO A HEARING.

EFFECTIVE:

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DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

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1501-6-27 REVIEW OF ADMINISTRATIVE AND ENFORCEMENT ACTIVITIES
OF COUNTIES OR MUNICIPAL CORPORATIONS WHICH HAVE

ADOPTED LAKE ERIE COASTAL EROSION AREA RESOLUTIONS
OR ORDINANCES.

- (A) BEGINNING ON THE THIRTY-FIRST DAY OF JANUARY FOLLOWING THE DIRECTOR'S NOTICE THAT THE LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE OF A COUNTY OR MUNICIPAL CORPORATION MEETS OR EXCEEDS THE STANDARDS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE, AND EVERY TWO YEARS THEREAFTER, THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION SHALL SUBMIT TO THE DIRECTOR, ON A FORM PROVIDED BY THE DEPARTMENT, A REPORT OF THE COUNTY'S OR MUNICIPAL CORPORATION'S RELEVANT ADMINISTRATIVE AND ENFORCEMENT ACTIVITIES DURING THE PREVIOUS TWO YEARS.
- (B) THE DEPARTMENT SHALL REVIEW THE REPORTS TO ASSURE COMPLIANCE WITH SECTION 1506.07 OF THE REVISED CODE INCLUDING, BUT NOT LIMITED TO, VERIFICATION OF THE LOCATIONS OF PERMITTED PERMANENT STRUCTURES RELATIVE TO COASTAL EROSION AREAS.
- (C) IF, AT ANY TIME, THE DIRECTOR DETERMINES THAT A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE ADOPTED BY A COUNTY OR MUNICIPAL CORPORATION IS BEING INADEQUATELY ADMINISTERED OR ENFORCED, THE DIRECTOR SHALL SO NOTIFY THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION, IDENTIFYING THE SCOPE OF THE ADMINISTRATIVE OR ENFORCEMENT DEFICIENCIES AND THE PROCEDURE ESTABLISHED IN PARAGRAPH (D) OF THIS RULE FOR THE LEGISLATIVE AUTHORITY'S RESPONSE.
- (D) AFTER THE DIRECTOR NOTIFIES THE AFFECTED LEGISLATIVE AUTHORITY OF THE DEFICIENCY, THE FOLLOWING PROCEDURE SHALL APPLY:
 - (1) WITHIN THIRTY DAYS OF THE DATE OF MAILING OF THE DIRECTOR'S NOTICE THAT THE RESOLUTION OR ORDINANCE IS BEING INADEQUATELY ADMINISTERED OR ENFORCED, THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION SHALL RESPOND, IN WRITING, TO THE DIRECTOR, ADDRESSING THE IDENTIFIED DEFICIENCIES AND DESCRIBING WITH SPECIFICITY ANY PROPOSED REMEDIES THERETO.
 - (2) WITHIN THIRTY DAYS OF THE DATE OF MAILING OF THE WRITTEN RESPONSE FROM THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION, THE DIRECTOR SHALL MAKE A FINAL DETERMINATION AS TO WHETHER OR NOT THE LEGISLATIVE AUTHORITY'S RESPONSE ADEQUATELY ADDRESSES THE IDENTIFIED DEFICIENCIES AND PROVIDES FOR THEIR CORRECTION.

- (3) IF THE DIRECTOR MAKES A FINAL DETERMINATION THAT A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE IS BEING INADEQUATELY ADMINISTERED OR ENFORCED BY A COUNTY OR MUNICIPAL CORPORATION, THE PERMIT REQUIREMENTS OF DIVISION (B) OF SECTION 1506.07 OF THE REVISED CODE SHALL BE REINSTATED WITHIN THE TERRITORY OF THE AFFECTED COUNTY OR MUNICIPAL CORPORATION.

- (4) DURING ANY PERIOD IN WHICH THE DIRECTOR HAS DETERMINED THAT A LAKE ERIE COASTAL EROSION AREA RESOLUTION OR ORDINANCE ADOPTED BY A COUNTY OR MUNICIPAL CORPORATION IS BEING INADEQUATELY ADMINISTERED OR ENFORCED, ALL APPLICATIONS TO ERECT, CONSTRUCT, OR REDEVELOP A PERMANENT STRUCTURE IN A LAKE ERIE COASTAL EROSION AREA SHALL BE SUBJECT TO JOINT REVIEW BY THE DIRECTOR AND THE COUNTY OR MUNICIPAL CORPORATION. DURING THIS PERIOD, THE COUNTY OR MUNICIPAL CORPORATION SHALL NOT ISSUE ANY PERMIT FOR CONSTRUCTION, ERECTION, OR REDEVELOPMENT OF A PERMANENT STRUCTURE WHICH LIES OR WILL LIE, IN WHOLE OR IN PART, IN A LAKE ERIE COASTAL EROSION AREA WITHOUT THE SPECIFIC WRITTEN APPROVAL OF THE DIRECTOR. THE PERIOD OF JOINT REVIEW SHALL COMMENCE ON THE FIFTH DAY AFTER THE DATE OF MAILING OF THE DIRECTOR'S NOTICE OF DEFICIENCY AND SHALL BE EFFECTIVE UNTIL SUCH TIME AS THE DIRECTOR IS SATISFIED THAT ANY IDENTIFIED DEFICIENCIES HAVE BEEN ADEQUATELY ADDRESSED BY THE LEGISLATIVE AUTHORITY OF THE COUNTY OR MUNICIPAL CORPORATION.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501-6-28 SEVERABILITY.

THE INVALIDATION BY A COURT OF A RULE ADOPTED OR AMENDED PURSUANT TO SECTION 1506.07 OF THE REVISED CODE SHALL NOT AFFECT THE VALIDITY OF ANY OTHER RULE OR PORTION THEREOF ADOPTED OR AMENDED THEREUNDER BY THE DIRECTOR.

EFFECTIVE:

CERTIFICATION:

DONALD C. ANDERSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

DATE

PROMULGATED UNDER R.C. CH. 119
RULE AUTHORIZED BY R.C. 1506.07
RULE AMPLIFIES R.C. 1506.07

1501:22-1-01 Definitions.

For purposes of rules 1501:22-1-08"1501:22-1-08 of the Administrative Code:

(A) "Appurtenant structure" means a structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure.

(B) "Appeal" means a request for a review of the county or municipal corporation permit administrator's interpretation of any provision of the flood damage prevention regulations or a request for a variance.

(C) "Area of shallow flooding" means a designated AO, AH, or VO zone on a county's or municipal corporation's Flood Insurance Rate Map (FIRM) with a one per cent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(D) "Area of special flood hazard" is the land in the floodplain within a county or municipal corporation subject to a one per cent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, VO, V1-30, VE, or V.

(E) "Base flood" means the flood having a one per cent chance of being equalled or exceeded in any given year. The base flood is also referred to as the one-hundred year flood.

(F) "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

(G) "Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

(H) "Coastal area" means the waters of lake Erie, the islands in the lake, and the lands under and adjacent to the lake, including transitional areas, wetlands, and beaches. The coastal area extends in lake Erie to the international boundary line between the United States and Canada and

landward only to the extent necessary to include shore-lands, the uses of which have a direct and significant impact on coastal waters as determined by the director of natural resources.

(I) "Coastal flood hazard area" means any territory within the coastal area that has been identified as a special flood hazard area under the Flood Disaster Protection Act of 1973, 87 Stat. 975, 42 U.S.C.A. 4002, as amended, and is subject to lake Erie-related flooding.

(J) "Coastal high hazard area" means an area of special flood hazard, as identified by the federal emergency management agency, along the open coast at lake Erie and any other area subject to high velocity wave action from storms or seismic sources along lake Erie and its bays.

(K) "Development" means any artificial change to improved or unimproved real estate, including, without limitation, the construction of buildings and other structures and mining, dredging, filling, grading, paving, excavation and drilling operations.

(L) "Director" means the director of the department of natural resources, state of Ohio or his designee.

(M) "Elevated building" means a non-basement building (a) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (b) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of paragraph (D)(4) of rule <JL:JUMP,"1501:22-1-04"1501:22-1-04 of the Administrative Code.

(N) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing

the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a county or municipality.

(O) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

(P) "Federal Emergency Management Agency" (FEMA) means the federal agency with the overall responsibility for administering the national flood insurance program.

(Q) "Flood Hazard Boundary Map" (FHBM) means an official map of a county or municipal corporation, issued by the federal emergency management agency, where the boundaries of the flood areas having special hazards have been designated as Zone A.

(R) "Flood Insurance Rate Map" (FIRM) means an official map of a community, on which the federal emergency management agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

(S) "Flood insurance rate zones" means the various flood insurance risk premium zones identified on a county's or municipal corporation's FIRM or FHBM issued by the federal emergency management agency. The symbols used to designate these zones are as follows:

A Area of special flood hazard without base flood elevations determined.

A1-30, AE Area of special flood hazard with base flood elevations determined.

AO Area of special flood hazard having shallow water depths and/or unpredictable flow paths between one and three feet.

A99 Area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes.

AH Area of special flood hazard having shallow water depths and/or unpredictable flow paths between one and three feet, and with base flood elevations determined.

V Area of special flood hazard along coast with velocity hazard (coastal high hazard area); no base flood elevations determined.

V1-30, VE Area of special flood hazard along coast with velocity hazard (coastal high hazard area); base flood elevations determined.

VO Area of special flood hazard along coast with velocity hazard having shallow water depths and/or unpredictable flow paths between one and three feet.

B, X Area of moderate flood hazard.

C, X Area of minimal hazard.

D Area of undetermined but possible flood hazard.

(T) "Flood insurance study" means the official report in which the federal emergency management agency has made an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations and floodway boundaries.

(U) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(V) "Floodproofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

(W) "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

(X) "Historic structure" means any structure that is:

(1) Listed individually in the national register of historic places (a listing maintained by the United States department of the interior) or preliminarily determined by the secretary of the United States department of the interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the secretary of the United States department of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

(3) Individually listed on the state inventory of historic places; or

(4) Individually listed on a local inventory of historic places in counties or municipal corporations with historic preservation programs that have been certified by the Ohio historical society.

(Y) "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of rule 1501:22-1-04 of the Administrative Code.

(Z) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

(AA) "Manufactured home park or subdivision" means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale. This definition shall exclude any manufactured home park as defined in section <JL:JUMP,"3733.01","1_PORC"3733.01 of the Revised Code, over which the public health council has exclusive rule making power.

(BB) "National Flood Insurance Program" means a federal program established by Congress in 1968, that allows property owners to purchase federally backed flood insurance within communities that participate in this program. In return for this insurance protection, participating communities must regulate new development within special flood hazard areas identified and mapped by the federal emergency management agency.

(CC) "New construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a county or municipal corporation and includes any subsequent improvements to such structures.

(DD) "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a county or municipality.

(EE) "Noncompliance" means the failure of a structure or other development to be fully compliant with the standards of the national flood insurance program or those promulgated under rule 1501:22-1-04 of the Administrative Code concerning floodplain management criteria.

(FF) "Recreational vehicle" means a vehicle which is (1) built on a single chassis; (2) four hundred square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(GG) "Special flood hazard area" means the same as "area of special flood hazard."

(HH) "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days of the permit date. Start of construction means the first placement of permanent construction of a

structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(II) "Structure" means a walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

(JJ) "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty per cent of the market value of the structure before the damage occurred.

(KK) "Substantial improvement" means any rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty per cent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure."

(LL) "Variance" means a grant of relief by a county or municipal corporation from the terms of its floodplain management regulations.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.04

Rule amplifies: RC 1506.02

119.032 Review Date: 4-28-00; 4-28-05

1501:22-1-02 Severability.

The invalidation by a court of a rule adopted or amended pursuant to section 1506.04 of the Revised Code shall not affect the validity of any other rule or portion thereof adopted or amended thereunder by the director.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.04

Rule amplifies: RC 1506.02

119.032 Review Date: 4-28-00; 4-28-05

1501:22-1-03 Floodplain management requirements for counties and municipal corporations containing coastal flood hazard areas.

(A) The floodplain management criteria contained in rule 1501:22-1-04 of the Administrative Code shall apply to all counties and municipal corporations containing coastal flood hazard areas which are not participating in the national flood insurance program. Such communities shall adopt resolutions or ordinances governing development within the coastal flood hazard areas which meet or exceed the standards of rule 1501:22-1-04 of the Administrative Code. These regulations must be legally enforceable, applied uniformly throughout the county or municipal corporation to all privately and publicly owned land within the coastal flood hazard area, and must take precedence over any less restrictive or conflicting local laws, resolutions, ordinances, or codes. The criteria of rule 1501:22-1-04 of the Administrative Code are to be considered minimum standards, a county or municipal corporation may exceed these criteria by adopting more stringent floodplain management regulations.

(B) A county or municipal corporation that participates in the national flood insurance program shall comply with the floodplain management criteria set forth in the national flood insurance program regulations found in Part 60 of Title 44 of the Code of Federal Regulations.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.04

Rule amplifies: RC 1506.02

119.032 Review Date: 4-28-00; 4-28-05

1501:22-1-04 Floodplain management criteria.

(A) When a county or municipal corporation has been notified, pursuant to the requirements of the national flood insurance program, that it contains areas of special flood hazards (A zones) by the publication of a FHBM or FIRM, but where such maps neither identify a floodway or coastal high hazard area, nor contain water surface elevation data, the county or municipal corporation shall:

- (1) Require permits for all proposed construction and other developments including the placement of manufactured homes, within Zone A on the FHBM or FIRM;
- (2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- (3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in an area of special flood hazard, all new construction and substantial improvements shall (a) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (b) be constructed with materials resistant to flood damage, (c) be constructed by methods and practices that minimize flood damages, and (d) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (4) Review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in an area of special flood hazard, any such proposals shall be reviewed to assure that (a) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (c) adequate drainage is provided to reduce exposure to flood hazards;
- (5) Require within areas of special flood hazard new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and
- (6) Require within areas of special flood hazard (a) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (b) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.
- (7) Require that all new subdivision proposals and other proposed developments

(including proposals for manufactured home parks and subdivisions) greater than fifty lots or five acres, whichever is the lesser, include within such proposals base flood elevation data;

(8) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, including data developed pursuant to paragraph (A)(7) of this rule, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the FHBM or FIRM meet the standards in paragraphs (B)(2), (B)(3), (B)(5), (B)(6), (B)(12), (B)(14), (C)(2) and (C)(3) of this rule;

(9) Where base flood elevation data are utilized, within Zone A on the FHBM or FIRM:

(a) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(b) Obtain, if the structure has been floodproofed in accordance with paragraph (B)(3)(b) of this rule, the elevation in relation to mean sea level to which the structure was floodproofed, and

(c) Maintain a record of all such information with the official designated by the county or municipal corporation to administer the issuance of floodplain development permits.

(10) Notify, in riverine situations, adjacent counties and municipal corporations prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the chief of the division of water in the department of natural resources.

(11) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(12) Require that all manufactured homes to be placed within Zone A on the FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement.

Method of anchoring may include, but are not to be limited to, use of over-the-top frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(B) When, pursuant to the requirements of the national flood insurance program, a county or municipal corporation has been provided a notice of final flood elevations for one or more special flood hazard areas on the FIRM and, if appropriate, other special flood hazard areas have been designated without base flood elevations on the FIRM, but a regulatory floodway or coastal high hazard area has not been identified, the county or municipal corporation shall:

(1) Require the standards of paragraph (A) of this rule within all A1-30 zones, AE zones, A zones, AH zones, and AO zones, on the FIRM:

(2) Require that all new construction and substantial improvements of residential structures within Zones A1-30, AE and AH zones on the FIRM have the lowest floor, including basement, elevated to or above the base flood level.

(3) Require that all new construction and substantial improvements of non-residential structures within Zones A1-30, AE and AH zones on the FIRM (a) have the lowest floor, including basement, elevated to or above the base flood level or, (b) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(4) Provide that where a non-residential structure is intended to be made watertight below the base flood level, (a) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of paragraph (B)(3)(b) or (B)(8)(b) of this rule, and (b) a record of such certificates which includes the specific elevation, in relation to mean sea level, to which such structures are flood-proofed shall be maintained for public inspection with the official designated by the county or municipal corporation.

(5) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(6) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the FIRM on sites (a) outside of manufactured home park or subdivision (b) in a new manufactured home park or subdivision, (c) in an expansion to an existing manufactured home park or subdivision, or (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.

(7) Require within any AO zone on the FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number

is specified);

(8) Require within any AO zone on the FIRM that all new construction and substantial improvements of nonresidential structures (a) have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM--at least two feet if no depth number is specified, or (b) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in paragraph (B)(3)(b) of this rule;

(9) Require within any A99 zones on a FIRM the standards of paragraphs (A)(1) to (A)(4)(a) and (A)(9) to (A)(12) of this rule;

(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development, including fill, shall be permitted within Zones A1-30 and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the county or municipal corporation.

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(12) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivisions within zones A1-30 AH, and AE on the FIRM that are not subject to the provisions of paragraph (B)(6) of this rule be elevated so that either (a) the lowest floor of the manufactured home is at or above the base flood elevation, or (b) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(13) Notwithstanding any other provisions of this rule, a county or municipality may approve certain development in Zones A1-30, AE and AH, on the FIRM which increase the water surface elevation of the base flood by more than one foot, provided that the county or municipality first applies for approval from the chief of the division of water in the department of natural resources.

(14) Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the FIRM either (a) be on the site for fewer than one hundred eighty consecutive days, (b) be fully licensed and ready for highway use, or (c) meet the permit requirements of (A)(1) of this rule and the elevation and anchoring requirements for "manufactured homes" in paragraph (B)(6) of this rule. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(C) When, pursuant to the requirements of the National Flood Insurance

Program, a county or municipal corporation has been provided a notice of final base flood elevations within Zones A1-30 and/or AE on the FIRM and, if appropriate, AO zones, AH zones, A99 zones, and A zones have been designated on the firm, and has been provided data from which the county or municipal corporation shall designate its regulatory floodway, the county or municipal corporation shall:

- (1) Meet the requirements of paragraph (B)(1) to (B)(14) of this rule;
- (2) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one foot any point;
- (3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the county or municipal corporation during the occurrence of the base flood discharge;

(D) When, pursuant to the requirements of the national flood insurance program, a county or municipal corporation has been provided a notice of final base flood elevations within Zones A1-30 and/or AE on the FIRM and, if appropriate, AH zones, AO zones, A99 zones, and A zones have been designated on the FIRM, and where on the FIRM coastal high hazard areas have been designated as Zones V1-30, VE, and/or V, the county or municipal corporation shall:

- (1) Meet the requirements of paragraphs (B)(1) to (B)(14) of this rule;
- (2) Within Zones V1-30, VE, and V on a FIRM. (a) Obtain the elevation in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor, excluding pilings and columns, of all new and substantially improved structures, and whether or not such structures contain a basement, and (b) maintain a record of all such information with the official designated by the county or municipal corporation.
- (3) Provide that all new construction and substantial improvements in Zones V1-30 and VE, and also Zone V, if base flood elevation data are available, on the FIRM, are elevated on pilings and columns so that (a) the bottom of the lowest horizontal structural member of the lowest floor, excluding the pilings or columns, is elevated to or above the base flood level; and (b) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the

provisions of this paragraph.

(4) Provide that all new construction and substantial improvements within Zones V1-30, VE, and V on the FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this paragraph, a breakaway wall shall have a design safe loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty pounds per square foot, either by design or when so required by local or state codes, may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(a) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

(b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components-structural and non-structural. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards. Such enclosed space shall be useable solely for parking of vehicles, building access or storage.

(5) Prohibit the use of fill for structural support of buildings within Zones V1-30, VE, and V on the FIRM;

(6) Require that manufactured homes placed or substantially improved within Zones V1-30, V, and VE on the FIRM on sites (a) outside of a manufactured home park or subdivision, (b) in a new manufactured home park or subdivision, (c) in an expansion to an existing manufactured home park or subdivision, or (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, meet the standards of paragraphs (D)(2) to (D)(5) of this rule and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones V1-30, V, and VE on the FIRM meet the requirements of paragraph (B)(12) of this rule.

(7) Require that recreational vehicles placed on sites within Zones V1-30, V, and VE on the FIRM either (a) be on the site for fewer than one hundred eighty consecutive days, (b) be fully licensed and ready for highway use, or (c) meet the requirements in paragraphs (A)(1) and (D)(2) to (D)(5) of this rule. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.04
Rule amplifies: RC 1506.02

119.032 Review Date: 4-28-00; 4-28-05

1501:22-1-05 Criteria for variances.

Resolutions or ordinances adopted by counties or municipal corporations governing coastal flood hazard areas may include provisions for issuing variances from the floodplain management criteria of rule 1501:22-1-04 of the Administrative Code provided such variances are consistent with the following provisions:

(A) Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(B) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (C), (D), and (E) of this rule;

(C) Variances shall only be issued upon (1) a showing of good and sufficient cause, (2) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local resolutions or ordinances;

(D) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(E) A county or municipal corporation shall maintain a record of all variance actions, including justification for their issuance, and upon request, submit such information to the chief of the division of water in the department of natural resources.

(F) Variances may be issued by a county or municipal corporation for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (1) the criteria of paragraphs (A) to (D) of this rule are met, and (2) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(G) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation

will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.04

Rule amplifies: RC 1506.02

119.032 Review Date: 4-28-00; 4-28-05

1501:22-1-06 Reporting requirements.

(A) Upon the written request by the director or his designee, the county or municipal corporation shall within thirty days of the mailing of the request furnish certified copies of such adopted resolutions or ordinances to the chief of the division of water in the department of natural resources.

(B) A county or municipal corporation which makes any modifications or amendments to its adopted resolutions or ordinances governing coastal flood hazard areas shall within thirty days of adoption submit a certified copy of such modifications or amendments to the chief of the division of water in the department of natural resources.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.04

Rule amplifies: RC 1506.02

119.032 Review Date: 4-28-00; 4-28-05

1501:22-1-07 Noncompliance with regulations.

A county or municipal corporation containing coastal flood hazard areas that fails to adopt or enforce resolutions or ordinances which comply with the floodplain management criteria of the national flood insurance program or the criteria contained in rule 1501:22-1-04 of the Administrative Code shall be considered noncompliant. When the director or his designee determines that a county or municipal corporation is noncompliant, he shall send a written notice of noncompliance to the legislative authority of the county or municipality. Such notice shall list the specific deficiencies noted and provided a reasonable amount of time not to exceed one hundred eighty days by which the noncompliance shall be corrected.

The legislative authority of the county or municipality shall report to the director within thirty days of the mailing of the written notice on the action which it is taking or proposes to take to correct the noncompliance.

If the county's or municipality's legislative authority fails to report to the director within thirty days of the date of the mailing the notice of noncompliance on the action which it is taking or proposes to take to correct the noncompliance, or fails to correct the noncompliance within one hundred eighty days, the director may, in writing, request the attorney general to bring an action for appropriate relief in a court of competent jurisdiction against the community.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.04

Rule amplifies: RC 1506.02

119.032 Review Date: 4-28-00; 4-28-05

1501:22-1-08 Noncompliant development.

If any development occurs within the costal flood hazard area of a county or municipal corporation which the director determines meets both of the following criteria, the director may, in writing, request the attorney general bring an action for appropriate relief in a court of competent jurisdiction against the development.

(A) The development is located in a county or municipal corporation that is not participating in the national flood insurance program and has not adopted resolutions or ordinances which meet or exceed the floodplain management criteria of rule <JL:JUMP,"1501:22-1-04"1501:22-1-04 of the Administrative Code;

(B) The development is not in compliance with the standards of the national flood insurance program.

HISTORY: Eff 7-26-90

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1501.30

Rule amplifies: RC 1506.04

APPENDIX J

COASTAL NONPOINT POLLUTION CONTROL PROGRAM AND OHIO NONPOINT SOURCE MANAGEMENT PROGRAM

The Coastal Nonpoint Pollution Control Program

As a part of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Congress created a stand-alone provision, Section 6217 (not an amendment of the CZMA), which requires that states and territories with approved coastal management programs develop a Coastal Nonpoint Pollution Control Program. The program must be submitted to NOAA and U.S. EPA for approval, and be implemented through changes to both the state coastal management program and the nonpoint source management program (Section 319, federal Clean Water Act). The State of Ohio will submit its updated Nonpoint Source Management Program as the basis for an approvable Coastal Nonpoint Pollution Control Program to NOAA and U.S. EPA within 30 months of approval of the OCMP (see letter from ODNR to NOAA on this matter at the end of this appendix).

The central purpose of Section 6217 is to strengthen the links between federal and state coastal management and water quality programs to enhance state and local efforts to manage land-use activities that degrade coastal waters and coastal aquatic habitats. To accomplish this purpose, the statute seeks to improve the states' and local governments' capabilities to control activities that affect coastal waters through implementation of management measures. In conformity with U.S. EPA guidance published under Section 6217(g), states may need to develop additional management measures determined necessary to achieve and maintain water quality standards. For example, additional management measures may need to be developed by the State of Ohio to address localized problems resulting from particular activities or land uses, or to manage critical coastal areas adjacent to impaired or threatened coastal waters.

Management Measures Guidance

Section 6217(g) of the CZARA requires U.S. EPA to publish (and periodically revise) "guidance for specifying management measures for sources of nonpoint source pollution in coastal waters." Management measures are defined in Section 6217(g)(5) as:

economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

Guidance on such management measures has been published by the U.S. EPA in a document titled "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal

Waters" (Office of Water, 840 B-92-002. U.S. Environmental Protection Agency, Washington, D.C. 20460, January, 1993). The guidance focuses on five major categories of nonpoint sources that impair or threaten coastal waters nationally: agricultural runoff; urban runoff (including developing and developed areas); silvicultural (forestry) runoff; marinas and recreational boating; and hydrologic modifications, dams and levees, and shoreline erosion. U.S. EPA has also included management measures for wetlands, riparian areas, and filter strips that apply generally to various categories of nonpoint source pollution.

The Requirements of Section 6217

Each state program shall provide for the implementation of management measures in conformity with guidance published by the Administrator, U.S. EPA, and shall contain the following:

1. An identification of land uses that individually or cumulatively cause or contribute significantly to degradation of coastal waters.
2. An identification of critical coastal areas adjacent to coastal waters, within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those otherwise provided for in the program.
3. Management measures - implementation and continuing revision of additional management measures applicable to land uses and areas identified in 1 and 2 above.
4. Technical assistance - provision of technical assistance to local governments and the public for implementing measures referred to in 3 above (e.g., assistance in developing ordinances and regulations, training, demonstration projects, financial incentives).
5. Public participation - opportunities for participation in all aspects of the program.
6. Administrative coordination - establishment of mechanisms such as joint review, memoranda of agreement, or other mechanisms to improve coordination among state agencies and between state and local officials responsible for land-use programs and permitting, water quality permitting and enforcement, etc.
7. State coastal area boundary modification - a proposal to modify the boundaries of the state coastal area if the coastal management agency of the state determines it is necessary to implement recommendations that may be made by the Secretary of Commerce regarding the inland boundaries of the coastal area. The state may elect not to change the Coastal Management boundary if it can demonstrate that it has the necessary enforceable policies and mechanisms to ensure 6217 implementation by networking other state authorities.

Developing the Ohio Coastal Nonpoint Pollution Control Program

Ohio's coastal nonpoint pollution program will be accomplished through changes to the approved Ohio Nonpoint Source Management Program and to the OCMP. Within ODNR, the Coastal Management Section, REALM, will work with the Division of Soil and Water Conservation (DSWC), which was ODNR's lead entity coordinating the development of the Ohio Nonpoint Source Management Program, to develop coastal nonpoint source initiatives and program strategies. The National Estuarine Research Reserve Program in the Division of Natural Areas and Preserves will participate in the development and implementation of the coastal nonpoint program as part of ODNR's continuing effort to fully integrate the OWC-NERR into the OCMP's broad-based approach to managing Lake Erie's coastal resources.

The development of the coastal nonpoint pollution control program will update and expand the existing Ohio Nonpoint Source Management Program. Ohio's program has been an aggressive program, harnessing state, local, federal and private resources and initiatives. ODNR is confident that the coastal nonpoint program can be developed effectively within that framework.

A team comprised of Ohio EPA's Division of Surface Water (DSW) and ODNR's DSWC staff will lead the development and implementation of Ohio's coastal nonpoint pollution control program. The Coastal Management Program, REALM, will coordinate program development, seek funding assistance, and ensure the involvement of the OWC-NERR, the Lake Erie Office and other relevant state, local and federal agencies. Coordination mechanisms for the OCMP described in Chapter 4 and the cooperative agreement embodied in the Memorandum of Understanding between ODNR and Ohio EPA (Appendix E) will enable the state to develop and implement the necessary management measures for nonpoint source pollution to restore and protect Lake Erie coastal area waters.

Current Means to Address Coastal Nonpoint Pollution Control

The following is a description of the authorities and programs the State of Ohio currently uses to address the five major categories of nonpoint sources (and wetlands) that are identified in the U.S. EPA Guidance.

Urban Runoff

Urban storm water pollution is fast becoming the most serious type of water pollution affecting Ohio's streams and nearshore areas. Although other sources, such as agricultural runoff, are more widespread and contribute a larger total pollutant load, urban storm water pollution is increasing, and the programs associated with its control are still largely in their infancy.

Although several agencies have some regulatory control over urban storm water, Ohio EPA's is the most comprehensive. Any discharge of wastewater from a point source must be permitted under O.R.C. § 6111.04. Construction and industrial activities resulting in such discharges must obtain

either an individual or general NPDES permit. Dischargers must file a Notice of Intent (NOI), informing Ohio EPA of their desire to obtain or renew coverage under a general permit. Additional information is required for individual discharge permits. Ohio EPA's program is authorized under federal regulations (40 C.F.R. Part 122).

While the industrial portion of the storm water permit program is proceeding well, problems abound for the construction site permit program. Because of their transient and ubiquitous nature, it is difficult for Ohio EPA to keep abreast of the thousands of construction sites across the state. To help meet this need, ODNR's Division of Soil and Water Conservation (DSWC) provides approximately \$75,000 per year to county Soil and Water Conservation districts (SWCDs) to review building permit applications and compare them with NOIs in their jurisdictions. For sites without NOIs, the districts contact the site operators and inform them of their responsibilities and offer assistance in preparing a Storm Water Pollution Prevention Plan (SWPP). SWCDs provide follow-up visits in cooperation with Ohio EPA district staff.

It should be noted that several types of construction sites are exempt under the NPDES program, principally small sites under 5 acres. These sources of pollution are generally controlled by counties under O.R.C. § 307.79, or municipalities under Article XVIII, Section 3 of the Ohio Constitution.

Standards for construction site erosion control and pre- and post-storm water management from development sites are set by the DSWC under O.R.C. §1511.02. "Rainwater and Land Development" (1996) contains applicable best management practices. The division, with the help of the Natural Resources Conservation Service (NRCS), provides technical assistance and training to SWCDs and Ohio EPA field staff.

Other controls are available to reduce urban storm water pollution but are less often applied, e.g., Division of Wildlife authority under O.R.C. Chapter 1531 to prevent stream litter and/or other discharges that kill and/or endanger wild animals, including stream life.

Agricultural Runoff

Agricultural pollution in Ohio is covered by a multiplicity of laws, rules and regulations. Principal among these is the DSWC's authority to control erosion on agricultural and forest lands and animal wastes discharges. The division's authority is contained in O.R.C. § 1511.02, which authorizes the promulgation of rules for management practices and plans and their enforcement. The division is authorized to carry out the agricultural pollution abatement program through county SWCDs, which provide on-site technical assistance and investigation of pollution complaints. The division is authorized to provide cost-sharing to land owners for the installation of management practices and provide grants to SWCDs to help implement pollution abatement programs. In state fiscal year 1996, over \$1.0 million was provided for these purposes. Along with implementation program funding, the division also develops standards and provides training to SWCD staff and

agricultural producers. These functions are often shared with the NRCS and the Cooperative Extension Service.

Ohio has a very strong SWCD program, with 88 separate districts employing over 400 staff. This, coupled with nearly 270 NRCS staff, provides a solid foundation to carry out agricultural pollution control programs across the state. SWCDs are empowered to provide technical assistance to producers, prepare and approve farm conservation plans, and enter onto private property to make natural resources inventories and other purposes under O.R.C. § 1515.08. SWCDs may also enter into agreements with DSWC to implement agricultural pollution abatement rules. At this time, all districts in Ohio are cooperating with the division for agricultural sediment, silvicultural erosion and animal waste pollution abatement.

Agricultural pollution control also falls under the purview of Ohio EPA, which is responsible for enforcing state water quality standards and issuing NPDES permits to livestock operations exceeding 1000 animal units. Such permits are often reviewed by SWCDs and ODNR, who provide technical suggestions to Ohio EPA.

The ODNR (Division of Soil and Water Conservation), Ohio EPA, Cooperative Extension Service and NRCS combine to provide an extensive educational and technical assistance capability in Ohio. Such resources are instrumental in conducting dozens of watershed projects focusing on agricultural pollution control throughout Ohio. These resources and high level of cooperation were responsible for the state achieving large reductions in sediment and phosphorus transport to Lake Erie in support of the U.S.-Canada Water Quality Agreement.

Agricultural pesticide use and distribution is controlled by the Ohio Department of Agriculture (ODA) under O.R.C. § 921. ODA is also responsible for implementing provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in Ohio, including certification and training of pesticide applicators, registering sellers, testing products and enforcement. DSWC can establish standards for management practices affecting sediment-bound pesticide, but has not done so, relying instead on an array of agricultural management practices developed by the NRCS.

The Division of Wildlife within the ODNR often cites agricultural sources of pollution. Under O.R.C. Chapter 1531, the division has authority to issue citations for fish kills associated with any source; however, manure discharges routinely account for a large percentage of fish kill citations each year. The division also has broad authority to cite potential and actual cases of pollution under its stream litter laws. Wildlife's strong authority stems from its ownership of all wild animals including all stream life. The division also has peace-keeping powers similar to sheriffs and municipal police officers.

Silvicultural Runoff

In general, few water quality problems are associated with forestry operations within the coastal area, primarily because there is very little forest acreage within the Ohio portion of the Lake Erie Basin. However, erosion problems associated with forestry operations are controlled by the DSWC, working in concert with ODNR's Division of Forestry. DSWC's authority is contained within the same chapter as that for agricultural operations, 1511.02, of the Ohio Revised Code. Both divisions provide training to forest operations personnel in the proper use of best management practices. When pollution problems occur, they are reported to DSWC, which uses the SWCDs to investigate them and make recommendations, just as is done with agricultural pollution. The ODA controls the use of pesticides on forests, as it does with other commercial crops.

Hydrologic Modification

Nonpoint source impacts from hydromodification activities include short and long term water quality degradation, destruction of aquatic habitat and impairment of beneficial functions of Ohio's waters. Ohio uses the following programs and authorities to address these impacts.

Ohio EPA has denied or conditioned Section 401 Water Quality Certification for nationwide permits for hydropower projects, bank stabilization, headwaters and isolated waters, and boat ramps.

Since 1989, ODNR, through the Divisions of Natural Areas and Preserves (DNAP), SWC, Forestry, and Wildlife have been working together to promote and demonstrate biotechnical engineering solutions to restore stream banks and improve aquatic habitat. The Division of Forestry's Stewardship Incentive Program (SIP) provides financial assistance up to 75 percent for landowners to stabilize stream banks and riparian corridors with woody vegetation. ODNR is working with county engineers to demonstrate BMPs to improve habitat on local agricultural ditches. And, the Division of Wildlife in conjunction with its ownership of the state's fish and wildlife resources and its enforcement authorities over the illegal killing of fish or wildlife, provides technical information to help assure protection of these resources during and following hydromodification activities.

DSWC through its NatureWorks Program and state nonpoint source pollution control funding is emphasizing riparian area protection and restoration of stream habitat. More than \$500,000 in state funds have been devoted to this purpose in the coastal area over the past two years. In addition, several divisions are preparing educational fact sheets for landowners on stream restoration; practices described in the fact sheets have been published as part of the post-development BMPs for construction sites.

The state Scenic Rivers Program administered by DNAP discourages hydromodification projects that would affect the natural qualities for which a scenic river has been designated. O.R.C. §1517.16 prohibits channel modifications within any wild, scenic or recreational river without plan approval by the Director of ODNR.

ODNR and Ohio EPA are cooperating to develop stream management policies that emphasize preservation. The agencies are cooperating to produce a video demonstrating BMPs and a Stream Management Notebook that will update the 1986 Ohio Stream Management Guide. ODNR is cooperating with SWCDs to initiate and/or complete restoration and enhancement of riparian habitat along 1,000 miles of stream per year.

Submerged lands leasing rules (O.A.C. 1501-6-01 through 06) stipulate that ODNR's review of any proposed project that would occupy the waters of Lake Erie and underlying lands must use information and findings of the Ohio Nonpoint Source Management Program.

Marinas

Marinas represent the only source category identified in the 6217 Guidance that is not explicitly addressed by the Ohio Nonpoint Source Management Program. As a result, this source has not been a significant focus of nonpoint source pollution control efforts in the State of Ohio. However, several authorities and programs are used to control marina-associated pollution.

The Ohio Department of Health (ODH) regulates marina construction, operation and maintenance under O.R.C. § 3733.21 through 3733.30 and O.A.C. 3701-35 (see Chapter 5, Policy 32). The intent of the marina law and regulations is to ensure that Ohioans using recreational watercraft, as well as surrounding areas, will be protected from unsafe drink in water, pollution hazards from improperly disposed wastes, accident hazards, and other unsanitary conditions. Marinas that provide dockage for watercraft with installed sewage holding tanks must provide sewage pump-out facilities (O.R.C. 3701-35-05).

ODH also administers the Clean Vessel Act to financially assist marina facility owners in the construction, renovation, operation, and maintenance of pump-out and dump stations for recreational watercraft. Eligible activities also include those necessary for storage and transport to sewage treatment facilities as well as information and education programs targeted to recreational boaters.

Marina construction is subject to the Ohio EPA NPDES storm water permit requirement for any earth-disturbing activity of greater than 5 acres, as described above with respect to Urban Runoff. Certain activities associated with marina operations are covered by this requirement as well. Those portions of marina facilities that are considered transportation-related are regulated. This entails such activities as mechanical repairs, fueling, painting, lubrication and equipment cleaning operations.

Under the Ohio EPA's Section 401 Water Quality Certification authority, the state has limited nationwide permit #36 to disallow authorization for boat ramps where dredging is required to establish water depths necessary for boat launching. And Ohio EPA has conditioned nationwide permit #33 for temporary construction, access and dewatering to disallow construction, maintenance or modification of marina basins.

Wetlands

In addition to the urban, agricultural, marina, silvicultural and hydromodification authorities and programs that in part can be used to address nonpoint source pollution in wetlands, the State of Ohio relies upon a rigorously enforced Water Quality Certification (Section 401) program. The following is a general description of that program as it relates to wetlands water quality protection. For a more thorough discussion of Ohio's enforcement of this program, see Chapter 5, Policy 12, and Appendix K.

In Ohio, wetlands are designated "state resource waters" (O.A.C. 3745-1-05(C)). Present ambient water quality may not be degraded for all substances determined to be toxic or to interfere with any designated use as determined by the Director, Ohio EPA. Existing uses must be maintained and protected. No lowering of water quality is allowed at all in "state resource waters." The discharge of dredged or fill material is prohibited unless the director determines that the activity will not interfere with the attainment or maintenance of water quality standards and will not result in a violation of any applicable provision of the CWA. And the director still may deny any Section 401 Water Quality Certification application if adverse long- or short-term impacts on water quality will result.

The State of Ohio's authority over wetlands extends beyond the scope of the Corps' Section 10/404 permit requirements. State law provides that the Director, Ohio EPA, may certify or deny certification to any applicant for **any** federal license or permit to conduct an activity that may result in a discharge into state waters (O.R.C. 6111.03(P)).

For approved Section 401 Water Quality Certifications that entail wetland mitigation, annual water quality monitoring is often required. Generally, grab samples are to be obtained each May and analyzed for ammonia, nitrates, total nitrogen, total and ortho-phosphorus, total organic carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, metals and biochemical oxygen demand.

Ohio Water Quality Certification has been denied for the following nationwide permits: 16 - return water from upland confined disposal sites, 17 - discharges associated with hydropower projects, 21 - surface coal mining activities and 23 - approved categorical exclusions. In addition, State of Ohio general conditions apply to nationwide permit numbers 3 through 7, 12 through 15, 18, 20, 22, 26, 27, 32 through 34, 37, 38 and 40. General conditions include insurance of bank stability, immediate repair of equipment-related damages and care in avoidance of unnecessary turbidity throughout the duration of the project. Ohio EPA has imposed specific conditions with respect to wetlands on several nationwide permits, as follows:

12. Utility Line Backfill and Bedding - In wetlands, at least the top 6 inches of backfill over a utility line shall consist of the topsoil material removed from the trench. Utility line installations greater than 1,000 feet in length are not authorized in forested wetlands.

26. Headwaters and Isolated Waters Discharges - Discharges in isolated wetlands and wetlands adjacent to headwaters where more than 5 acres would be adversely affected are not authorized. The nationwide permit will not authorize discharge into bogs or fens.

29. Single-family Housing - Discharge into bogs; fens; wetlands adjacent to headwater lakes; state scenic rivers; designated Coldwater, Exceptional Warmwater or Seasonal Salmonid aquatic life habitat streams; or into Lake Erie or any wetlands adjacent to Lake Erie is not authorized.

With respect to wetlands restoration (Management Measure B), the State of Ohio is using numerous programs in an increasingly aggressive manner to protect and restore wetlands. These are discussed in greater detail in Chapter 5, Policy 12. They are ODNR's State Nature Preserve Program, which includes approximately 1,200 acres of coastal wetlands; ODNR's Division of Wildlife's acquisition and land management programs, which, with completion of several new projects, will include approximately 6,900 acres of wetlands; and ODNR's state park system which now includes approximately 1,400 acres of coastal wetlands.

In addition, the Lake Erie Marshes is a focus area of the NAWMP and, as such, is of the highest priority for restoration projects with private landowners. Through 1995, ODNR's Division of Wildlife has assisted in restoration of more than 650 acres of previously drained coastal wetlands. And the Division of Soil and Water Conservation has cooperated with the U.S. Natural Resources Conservation Service to protect 250 acres of wetlands in coastal counties by offering piggy-back funding for the Wetlands Reserve Program (WRP) targeted at riparian wetlands. More than 500 additional acres in riparian areas of the Maumee River watershed are expected to enhance water quality in the Lake Erie basin, using SWC's added incentives to the WRP. ODNR's Division of Natural Areas and Preserves, through its Scenic Rivers Program, cooperates with the Ohio EPA and ODNR's DSWC to encourage watershed protection on designated streams with the aim of applying proper storm water management techniques and nonpoint source pollution control. (Segments of five Lake Erie tributaries have been designated as state Scenic Rivers.)

The Lake Erie Commission, in its 1996-1998 Strategic Plan, has identified the need to address "Loss of Habitat" and "Nonpoint Source Pollution" as two of its highest priorities, in part recommending that these areas continue to be high priorities for Lake Erie Protection Fund funding. Grants now will be available for property acquisition and for plan development in implementing measures that protect coastal wetland habitat. Projects that promote implementation of new and innovative practices to reduce urban nonpoint pollution and to support watershed planning and management to reduce agricultural nonpoint source pollution are also encouraged.

A statewide wetlands inventory has been developed to assist wetlands regulation, monitoring and enforcement, acquisition and protection strategies, and planning and management efforts. ODNR's Division of Wildlife manages this remotely sensed satellite imagery inventory.

The use of engineered vegetated treatment systems (Management Measure C) for pollution control has been underway in Ohio for nearly a decade. ODNR began to experiment with this method of pollution control in the late 1980s on several streams affected by acid mine drainage. More recently, wetlands have been constructed to treat feedlot runoff and milk house waste discharges from livestock operations. Using state NatureWorks funds, wetlands treating home septic system effluent will be demonstrated in Clermont County this year. All of the systems installed to date have been successful; however, some maintenance problems, such as destruction of plants by muskrat and beaver, need to be overcome.

In the Maumee River basin, the Blue Creek wetlands restoration project was designed to study the effectiveness of wetlands in removing agricultural pollutants. A task force was formed in 1989, and a grant from the Ohio EPA and U.S. EPA was used to hire Dr. William Mitsch of The Ohio State University to conduct a preliminary feasibility study. (Dr. Mitsch is an internationally recognized wetlands expert and a pioneer in the development of engineered wetlands.) Representatives of eight public agencies (including Ohio EPA, ODNR and TMACOG) and universities form the task force. Continuing research on contaminant pathways and agricultural runoff is being conducted through the University of Toledo, Bowling Green State University and Heidelberg College.

Use of engineered systems is addressed in the short- and long-term strategies of the Ohio Wetlands Strategy. It is a recommended short-term goal to collaborate in pilot and full-scale studies on the use of created wetlands for treating domestic and industrial wastewater. The long-term recommended goal includes an interim goal of 50,000 acres of wetlands and riparian ecosystems restored or created by the year 2000 and an overall goal of 400,00 acres by the year 2010.

The Ohio Nonpoint Source Management Program

The State of Ohio has developed a statewide nonpoint source management program that consists of the Ohio Nonpoint Source Assessment (Assessment) and the Ohio Nonpoint Source Management Program (Management Program). The development of the Assessment was coordinated by the Ohio EPA (DSW) and was approved by the U.S. EPA in April, 1989. ODNR (DSWC) coordinated the development of the Management Program, which was approved by U.S. EPA in December, 1989. It is an aggressive program that demonstrates Ohio's strong and long-term commitment to reducing nonpoint source pollution entering the state waters. State and county agencies, federal agencies, universities, and nonprofit organizations initiated and continued the implementation of over 100 statewide, watershed, county and municipal nonpoint source projects with federal, state and local fund support since 1990. Many of these projects directly affect coastal waters or are in the Lake Erie watershed. A copy of the State of Ohio Section 319 Annual Report, may be obtained from Ohio

EPA, Nonpoint Source /Clean Lakes Unit, Division of Surface Water, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43216-1049.

The Ohio Nonpoint Source Assessment was updated in 1990 in part as a result of suggestions made in public comments on the 1988 Assessment to make it easier to use. The 1990 update reorganizes the Assessment into five regional volumes including Lake Erie West and Lake Erie East that comprise the Ohio watershed area of Lake Erie. The regional volumes are complete and provide an excellent reference to streams and lakes within specific drainage basins and to ground water contamination problems. The Assessment provides information on seven categories and 25 subcategories of sources of nonpoint source pollution as defined within programs administered by U.S. EPA.

The Ohio Nonpoint Source Management Program uses some authorities of state and local government. The program has a large number of activities that were initiated at all levels of government. These projects are managed and implemented through cooperative agreements between state agencies, state and federal agencies, state and local agencies, and public and independent agencies.

The Ohio Nonpoint Source Management Program has implemented many projects in the Lake Erie watershed and coastal waters. Examples include:

- Enhancing Phosphorus Reduction Efforts from Agriculture in the Maumee River Remedial Action Plan Area of Concern (Project Manager: ODNR; Federal Cost = \$198,986; Local and State Cost = \$100,000)
- Enhancing Phosphorus Reduction Efforts from Agriculture in the Central and Eastern Lake Erie Drainage Basin (Project Manager: ODNR; Federal Cost = \$198,986; Local and State Cost = \$100,000)
- Upper Tiffin Watershed Protection PL-566 (Responsible Agency: SCS; Project Manager: Ohio EPA; Federal Cost = \$60,000; Local and State Cost = \$0)
- Ottawa County Paired Watershed Study (Responsible Agency: Ottawa Soil and Water Conservation District; Project Manager: Ohio EPA; Federal Cost = \$50,000; Local and State Cost = \$33,333)
- Cuyahoga Remedial Action Plan Nonpoint Source Education Project (Responsible Agency: Cuyahoga River Community Planning Organization; Project Manager: Ohio EPA; Federal Cost = \$30,000; Local and State Cost = \$10,000)
- Ottawa River/Swan Creek Urban Runoff Control (Responsible Agency: Toledo Metropolitan Area Council of Governments; Project Manager: Ohio EPA; Federal Cost = \$63,000; Local and State Cost = \$63,000)

- East Branch Rocky River Urban Nonpoint Source Project (Responsible Agency: Cuyahoga Soil and Water Conservation District; Project Manager: Ohio EPA; Federal Cost = \$63,000; Local and State Cost = \$42,000)
- Non-Agricultural Phosphorous Reduction in Lake Erie (Project Manager: ODNR; Federal Cost = \$100,000; Local and State Cost = \$99,000)
- Old Woman Creek Nonpoint Source Project (Responsible Agencies: Erie County Soil and Water Conservation District, ODNR; Project Manager: ODNR; ASCS has awarded \$187,000 in special water quality funds to the watershed)
- Water Quality Impact of No-Till and Fall Plow Systems with High and Low Input (Responsible Agency: The Ohio State University - Ohio Cooperative Extension Service; Project Manager: Ohio EPA; Federal Cost = \$50,084; Local and State Cost = \$13,208)
- Accelerating Awareness and Use of Prescription Farming (Project Manager: ODNR; Federal Cost = \$21,000; Local and State Cost = \$14,000)
- Maumee River Remedial Action Plan (Project Manager: Ohio EPA; Federal Cost = \$641,000 awarded for land use management measures and technical assistance)
- Black River Remedial Action Plan (Project Manager: Ohio EPA; \$200,000 awarded for a conservation equipment buy-down program, and technical assistance to land users in applying for conservation practices)

The program also uses enforceable authorities to control certain activities that may cause nonpoint source pollution. Agricultural pollution abatement rules enacted by ODNR's DSWC (O.A.C. 1501:15-5-01 through 1501:15-5-16) provide enforcement authority to correct agricultural and silvicultural erosion and animal waste discharges. Ohio EPA, under O.A.C. 3745-33-02 can issue NPDES permits and PTIs to agricultural animal confinement facilities for more than 1,000 animal units that are not excluded by 40 C.F.R. § 124.11.

Ohio EPA administers NPDES stormwater discharge permits for medium sized cities (Toledo, in the coastal area) and for industries under authority of O.R.C. § 6111.03(J) and 6111.03(5), in accordance with O.A.C. 3745-33 and 3745-38. (Such permits also apply to large sized cities such as Cleveland, but Cleveland is not required to file for a permit because larger portions of the city are served by combined sewers.) The definition of "industry" covered by these regulations includes landfills, hazardous waste facilities, transportation facilities, steam electric generating facilities and construction activities disturbing more than 5 acres in addition to numerous standard industrial classification facilities. The Ohio Department of Agriculture enforces regulations concerning the use of pesticides, including sanitizers, germicides, insecticides, fungicides, rodenticides and herbicides

(O.R.C. § 921.0 to 921.28 and O.A.C. 901:5-11). Local health departments regulate on-site treatment systems for 1- 2-and 3-family dwellings and manage sanitary landfills. Minimum standards are established by O.R.C. § 3701.34.

ODNR's Division of Wildlife has authority to cite, arrest and/or fine for several types of nonpoint source pollution to protect the state's wildlife resources. DOW has prosecuted cases involving thermal waste, pesticide, fertilizer and other pollutants when fish and other wild animal kills have occurred.

APPENDIX K

WETLANDS AUTHORITIES

- X Ohio EPA Section 401 Certification Regulations and Review Guidelines
- X State of Ohio Environmental Protection Agency Exceptions to Section 404 Nationwide Permits
- X Ohio EPA Standard Wetland Mitigation Conditions
- X Ohio Department of Natural Resources Policy Statement on Wetlands
- X Ohio EPA Wetland Ohio Water Quality Standards

3745-32 SECTION 401 WATER QUALITY CERTIFICATIONS

3745-32-01 Definitions.

3745-32-02 Section 401 water quality certification required.

3745-32-03 Section 401 water quality certification exemptions.

3745-32-04 Section 401 water quality certification applications.

3745-32-05 Criteria for decision by director.

3745-32-06 Revocation of section 401 water quality certification.

3745-32-07 Procedure for decision by director.

3745-32-01 Definitions.

For the purposes of this chapter the following definitions shall apply:

(A) "Applicant" means any person required to obtain a section 401 water quality certification from the Ohio EPA.

(B) "Director" means the director of the Ohio EPA or his duly authorized representative.

(C) "Discharge of dredged material" means any addition of dredged material, in excess of one cubic yard when used in a single or incidental operation, into waters of the state. The term includes, without limitation, the addition of dredged material to a specified disposal site which is located in waters of the state, or the runoff or overflow of dredged material from a contained land or water disposal area which enters the waters of the state. Discharges of pollutants into waters of the state resulting from the subsequent onshore processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Federal Water Pollution Control Act, even though the extraction of such material may require a permit from the army corps of engineers under section 10 of the Rivers and Harbors Act.

(D) "Discharge of fill material" means the addition of fill material into waters of the state for the purpose of creating fastlands, elevations of land beneath waters of the state, or for impoundments of water. The term includes, but is not limited to, the placement of the following in waters of the state: fill that is necessary to the construction of any structure; structures or impoundments requiring rock, sand, dirt, or other pollutants for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands, property protection or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; or artificial reefs.

(E) "Dredged material" means material that is excavated or dredged from waters of the state. The term does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

(F) "Federal Water Pollution Control Act" means the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 886, 33 U.S.C. 1251, as amended.

(G) "Fill material" means any pollutant used to create fill to replace an aquatic area with dry land or to change the bottom elevation of a water body for any purpose. "Fill material" does not include the following:

(1) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products;

(2) Material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.

(H) "General permit" means a department of the army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cause only minimal individual and

cumulative adverse environmental impact.

(I) "Nationwide permit" means a department of the army authorization that has been issued for certain specified activities nationwide.

(J) "Ohio EPA" means the Ohio environmental protection agency or its director, as the context or other law or regulations may require.

(K) "Person" means the state, any municipal corporation, political subdivision of the state, person as defined in section 1.59, 1.59 of the Revised Code, interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof.

(L) "Section 401 water quality certification" means certification from Ohio EPA, pursuant to section 401 of the Federal Water Pollution Control Act, Chapter 6111, 6111. of the Revised Code and Chapter 3745-32 of the Administrative Code, that any discharge, as set forth in section 401, will comply with sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act.

(M) "The Rivers and Harbors Act" means the Rivers and Harbors Act of 1899, 30 Stat. 1151, 33 U.S.C. 401.

(N) "Waters of the state" means all streams, lakes, ponds, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters, including those waters that are presently used, have been used or are susceptible to use to transport interstate commerce up to the head of navigation.

(O) "Wetlands" are areas where the water table is at, near, or above the land surface long enough each year to support the growth of water dependent vegetation and to result in the formation of characteristic wet soil types. These include marshes, swamps, bogs and similar areas.

HISTORY: Eff 9-15-82

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 6111.

3745-32-02 Section 401 water quality certification required.

(A) A section 401 water quality certification is required to obtain the following:

(1) A permit from the army corps of engineers pursuant to section 10 of the Rivers and Harbors Act;

(2) A permit from the army corps of engineers pursuant to section 404 of the Federal Water Pollution Control Act;

(3) A permit from the army corps of engineers pursuant to both section 10 of the Rivers and Harbors Act and section 404 of the Federal Water Pollution Control Act; and

(4) Any other federal permit or license to conduct any activity which may result in any discharge to waters of the state.

(B) No certification issued pursuant to this chapter shall be effective until all applicable fees have been paid.

HISTORY: Eff 9-15-82

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 6111.

3745-32-03 Section 401 water quality certification exemptions.

No section 401 water quality certification need be obtained if:

- (A) The secretary of the army has issued a general permit pursuant to section 404(e) of the Federal Water Pollution Control Act; or
- (B) The discharge of dredged or fill material is part of the construction of a federal project specifically authorized by congress, provided the effects of such discharge are included in an environmental impact statement submitted to congress prior to the actual discharge.

HISTORY: Eff 9-15-82

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 6111.

3745-32-04 Section 401 water quality certification applications.

(A) Filing an application with the army corps of engineers for any permit set forth in paragraphs (A)(1) to (A)(3) of rule 3745-32-02 of the Administrative Code constitutes application for a section 401 water quality certification from the Ohio EPA. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director.

(B) Any person filing an application for any other federal permit or license to conduct an activity which may result in a discharge to waters of the state must submit an application to the director for a section 401 water quality certification. If an application, in the judgment of the director, lacks information necessary or desirable to determine whether the applicant has demonstrated the criteria set forth in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director shall inform the applicant in writing that review of the application will not proceed until the applicant has submitted additional information as described by the director. The director may waive the application requirement if, in the judgment of the director, the activity for which a federal permit or license is sought will not result in a discharge to the waters of the state.

HISTORY: Eff 9-15-82

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 6111.

3745-32-05 Criteria for decision by director.

(A) The director shall not issue a section 401 water quality certification unless he determines that the applicant has demonstrated that the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state will:

- (1) Not prevent or interfere with the attainment or maintenance of applicable water quality standards;
- (2) Not result in a violation of any applicable provision of the following sections of the Federal Water Pollution Control Act including:
 - (a) Effluent limitations as described in section 301;
 - (b) Water quality related effluent limitations as described in section 302;
 - (c) Water quality standards and implementation plans as described in section 303;
 - (d) National standards of performance as described in section 306; or
 - (e) Toxic and pretreatment effluent standards as described in section 307.

(B) Notwithstanding an applicant's demonstration of the criteria in paragraph (A) of rule 3745-32-05 of the Administrative Code, the director may deny an application for a section 401 water quality certification if the director concludes that the discharge of dredged or fill material or obstructions or alterations in waters of the state will result in adverse long or short term impact on water quality.

(C) The director may impose such terms and conditions as part of a section 401 water quality certification as are appropriate or necessary to ensure compliance with the applicable laws and to ensure adequate protection of water quality.

(D) Prior to the issuance of a section 401 water quality certification or prior to, during, or after the discharge of dredged or fill material to waters of the state or the creation of any obstruction or alteration in waters of the state to ensure adequate protection of water quality, the director may require that the applicant perform various environmental quality tests including, but not limited to, chemical analyses of water, sediment or fill material, and bioassays.

HISTORY: Eff 9-15-82

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 6111.

3745-32-06 Revocation of section 401 water quality certification.

The director may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated.

HISTORY: Eff 9-15-82

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 6111.

3745-32-07 Procedure for decision by director.

A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code.

HISTORY: Eff 9-15-82

Rule promulgated under: RC Chapter 119.

Rule amplifies: RC Chapter 6111.

**FROM THE WATER QUALITY STANDARDS
EPR REGULATIONS**

(KKK) "Water quality standards" means the rules set forth in Chapter 3745-1 of the Administrative Code establishing stream use designations and water quality criteria protective of such uses for the surface waters of the state.

(LLL) "Wetlands" mean areas of land where the water table is at, near or above the land surface long enough each year to result in the formation of characteristically wet (hydric) soil types, and support the growth of water-dependent (hydrophytic) vegetation. Wetlands include, but are not limited to, marshes, swamps, bogs, and other such low-lying areas.

3745-1-03 Analytical methods and availability of documents.

(A) Analytical methods.

(1) All methods of analysis used in applying any of the chemical-specific criteria in Chapter 3745-1 of the Administrative Code shall be in accord with those prescribed in 40 CFR part 136, as amended, "Test Procedures for the Analysis of Pollutants" and "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volumes I, II and III," as cited in paragraph (B) of this rule.

(2) All methods of sample collection and preservation used in applying any of the chemical-specific criteria in Chapter 3745-1 of the Administrative Code shall be in accord with "Ohio EPA Division of Environmental Services Field Practices: Sampling Analysis and Biomonitoring" as cited in paragraph (B) of this rule.

(3) Mixing zones for thermal discharges will be determined in accordance with "Guidelines for the Submittal of Demonstrations Pursuant to Sections 316(a) and 316(b) of the Clean Water Act and Chapter 3745-1 of the Administrative Code," as cited in paragraph (B) of this rule.

(4) Methods for conducting whole-effluent toxicity tests shall be in accordance with those prescribed in "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volume IV," as cited in paragraph (B) of this rule.

(5) Methods, data collection and data analysis requirements for applying the biological criteria in rule 3745-1-07 of the Administrative Code shall be in accordance with "Biological

Criteria for the Protection of Aquatic Life: Volume II, Users Manual for Biological Field Assessment of Ohio Surface Waters," and "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volumes I, II, III and IV," as cited in paragraph (B) of this rule.

(B) Availability of documents. The following documents, cited in Chapter 3745-1 of the Administrative Code, are available for viewing at the library of the "Ohio Environmental Protection Agency, 122 South Front street, Columbus, Ohio 43215."

(1) 40 CFR part 136, "Test Procedures for the Analysis of Pollutants."

(2) "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volumes I, II and III," 1995, or any subsequent revisions.

(3) "Manual of Ohio EPA Laboratory Standard Operating Procedures, Volume IV," 1995, or any subsequent revisions.

(4) "Guidelines for the Submittal of Demonstrations Pursuant to Sections 316(a) and 316(b) of the Clean Water Act and Chapter 3745-1 of the Administrative Code," Ohio environmental protection agency, division of industrial wastewater, September 30, 1978.

(5) "Standard Methods for the Examination of Water and Wastewater," sixteenth edition, "American Public Health Association," "American Water Works Association" and the "Water Pollution Control Federation," 1985, or any subsequent revisions.

(6) "Biological Criteria for the Protection of Aquatic Life: Volume II, Users Manual for Biological Field Assessment of Ohio Surface Waters," October 30, 1987, updated January 1, 1988, amended September 30, 1989.

(7) "Ohio EPA Division of Environmental Services Field Practices: Sampling Analysis and Biomonitoring" 1995, or any subsequent revisions.

HISTORY: Eff 2-14-78; 4-4-85; 5-1-90; 7-31-99

Rule promulgated under: RC

<JL:JUMP,"119.03", "1_PORC"119.03

Rule authorized by: RC

<JL:JUMP,"6111.041", "1_PORC"6111.041

Rule amplifies: RC

<JL:JUMP,"6111.041", "1_PORC"6111.041

R.C. Section

<JL: JUMP,"119.032","1_PORC"119.032 rule

review date: 3/1/02

**FROM THE WATER QUALITY STANDARDS
EPA REGULATIONS**

3745-1-04 Criteria applicable to all waters.

The following general water quality criteria shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be:

- (A) Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life;
- (B) Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation;
- (C) Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance;
- (D) Free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone;
- (E) Free from nutrients entering the waters as a result of human activity in concentrations that create nuisance growths of aquatic weeds and algae.

The Director of the Ohio EPA adopted a revised antidegradation policy (O.A.C. 3745-1-05), effective October 1, 1996. The rule includes extensive detail regarding National Pollutant Discharge Elimination System (NPDES) permits and Permits to Install (PTIs). To obtain a copy of the rule, contact the Ohio EPA, Division of Surface Water at (614) 644-2001.

Review guidelines have been established for three major categories of projects: full projects, dredging projects and bulk commodity facilities. For ease of use, the guidelines are presented in a flowchart format. Table 1 lists the categories, the figure number of the appropriate flowchart, types of projects within these categories, and general comments.

Developing specific guidelines for site-specific projects is very difficult considering the number of variables for any given site. The purpose of these guidelines is to provide basic criteria for decision-making and for maintaining consistency of review. Consequently, user discretion is advised as to the degree to which the guidelines are followed.

Table 2: Review Categories

Project Category	Figure W.	Comments
Fill Projects	1	
• Wetland Fills	1a	Diking or filling any wetland, as defined in Ohio Administrative Code (OAC) Section 3745-32
• Erosion Protection	1b	Riprap, bulkheads, groins, breakwaters
• Temporary Road Crossings, Cofferdams	1c	Haul road crossings, fills for pipeline placement, fills in connection with construction dewatering
• Oxbow Fills	1	Fills associated with channelization projects; others considered as fastland creation
• Fastland Creation	1	Any fill with the purpose of converting aquatic areas to upland
• Dredge Disposal Sites	1	In-water confined disposal areas
Dredging Projects	2	
• Wetland Projects	2a	
Bulk Commodity Facilities	3	Loading/unloading docks; Section 10 consideration only



Figure 1: Fill Projects

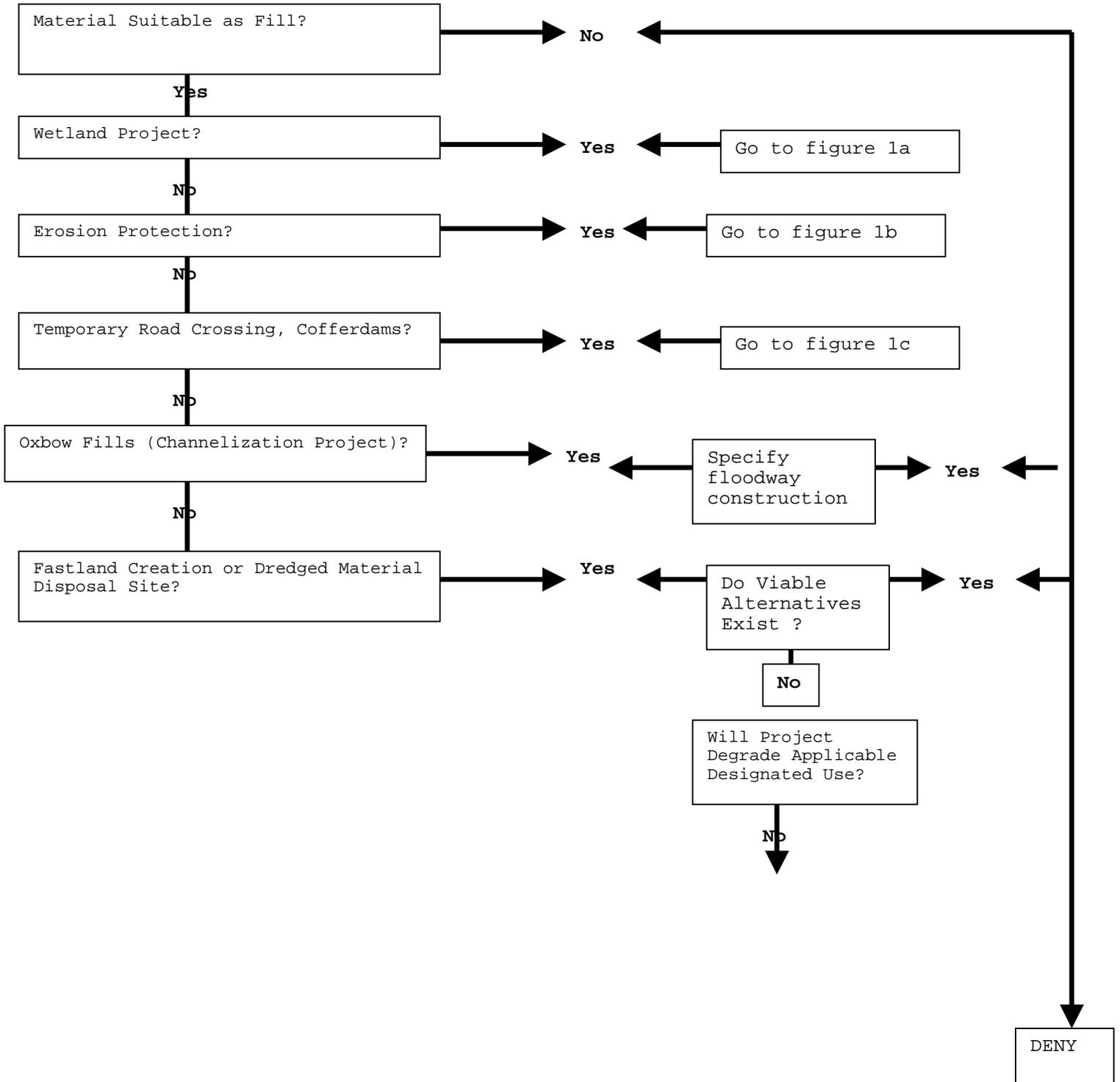
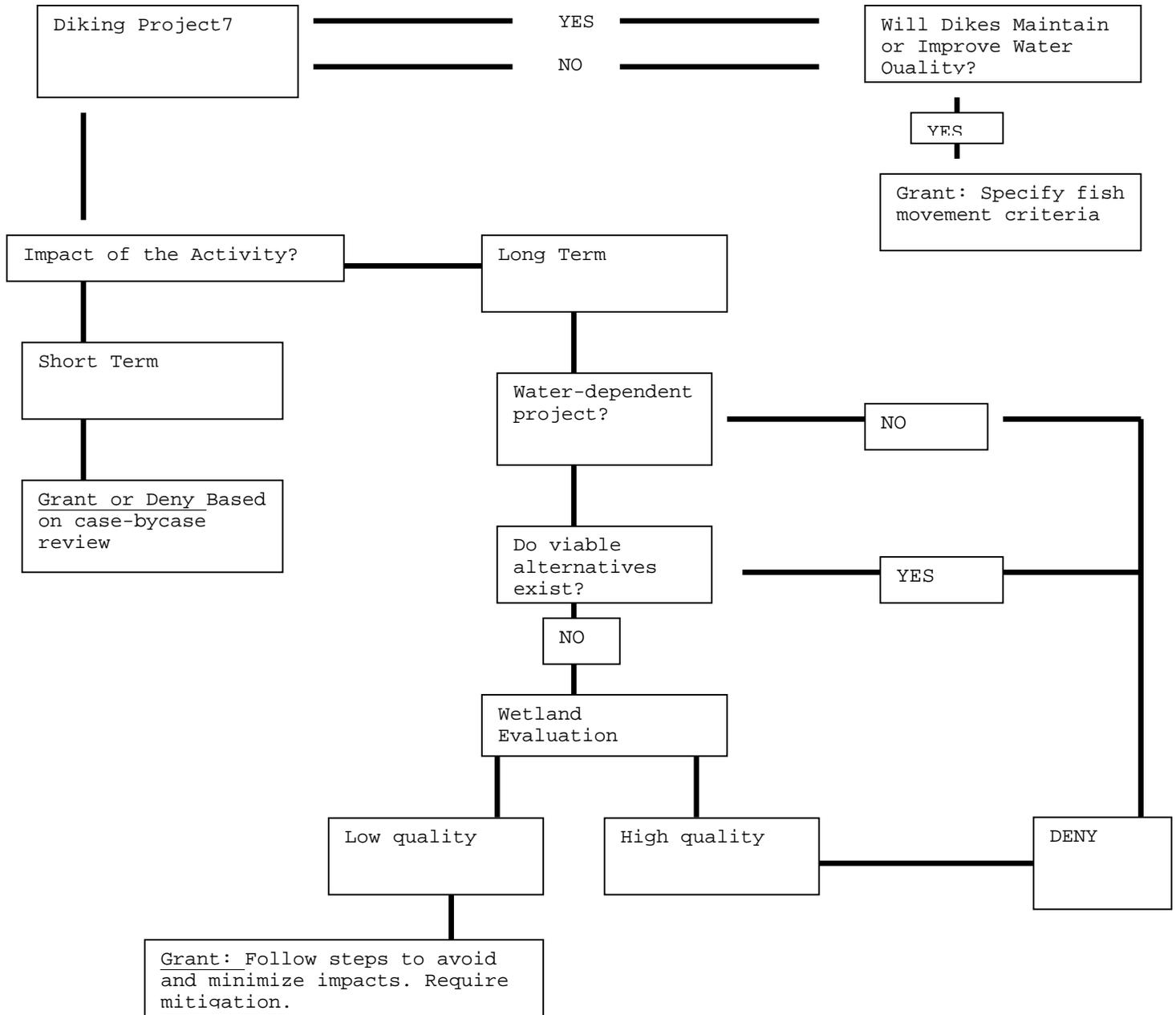


Figure 1a: Wetland Fills



Ficrure 1b: Files for Erosion Protection

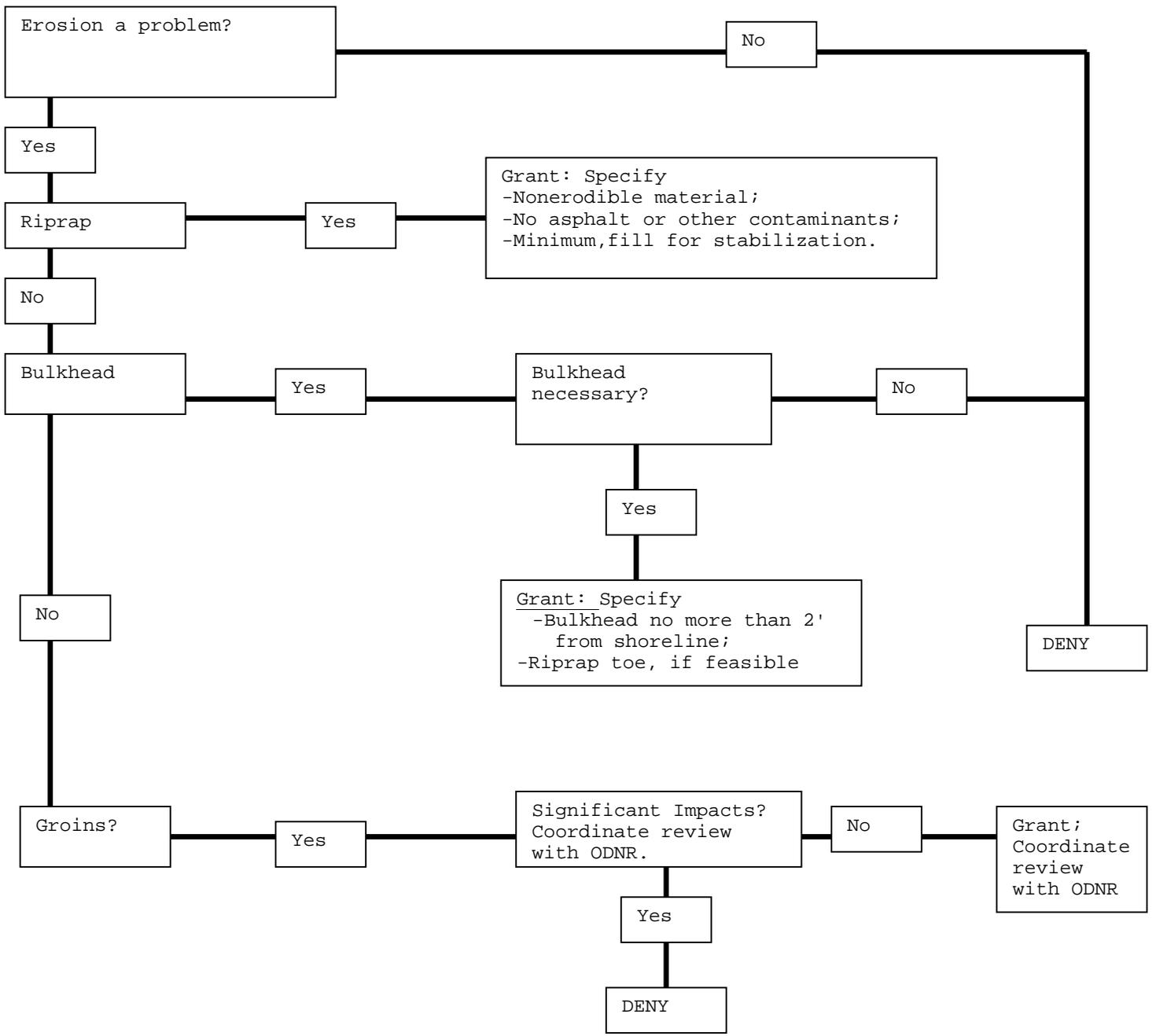
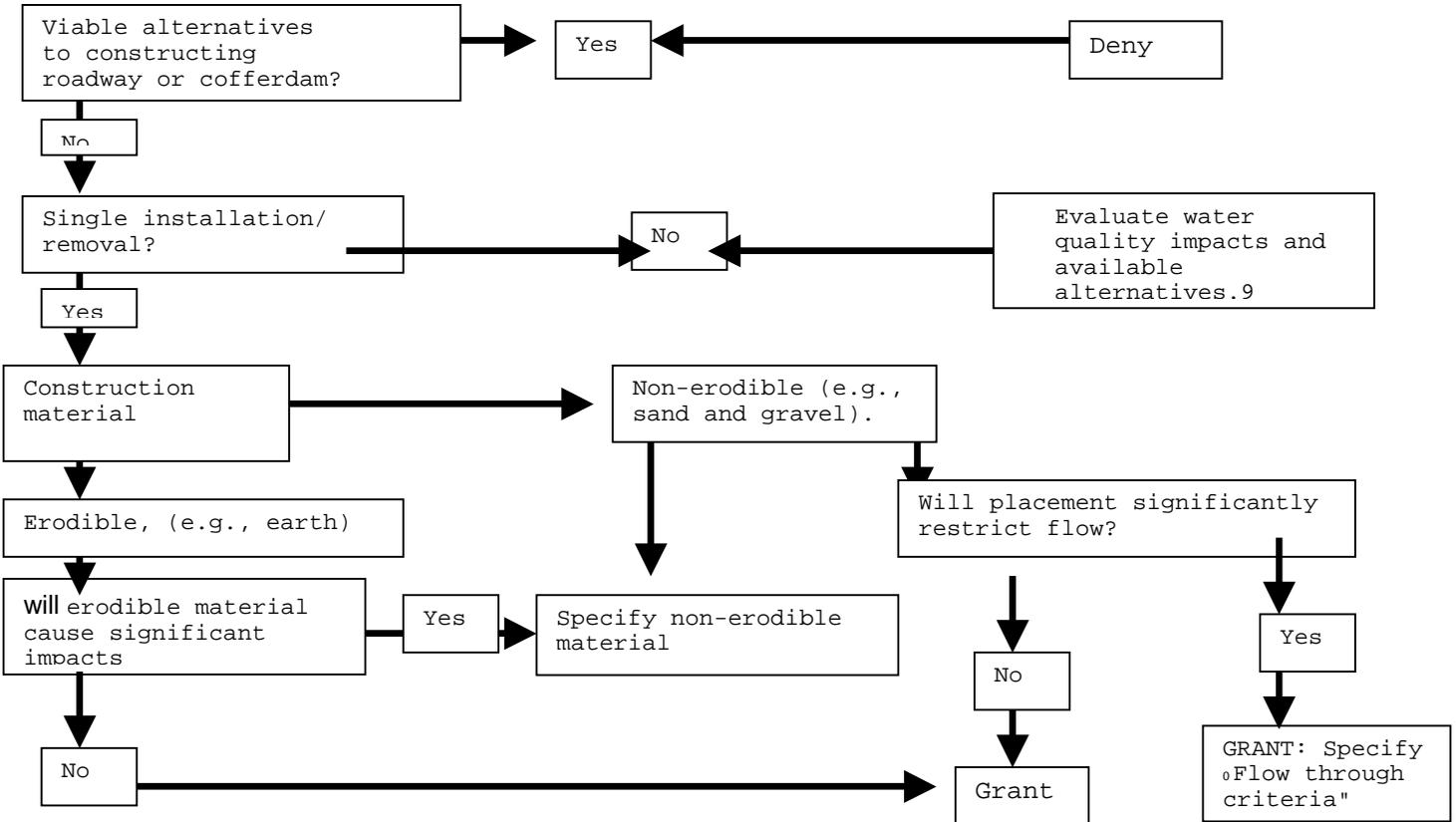


Figure 1c: Fills/Temporary Road Crossings, Cofferdams



The following correspond to the numbers appearing in the Fill Projects review flowcharts (Figures 1, 1a, 1b and 1c) : These paragraphs elaborate on the review guidelines for the activities identified.

1. **Creation of Floodways:** Channelization projects often needlessly remove oxbows from a stream as a means of improving drainage. Oxbows offer a diverse habitat for aquatic organisms that a new channel does not, and probably will not for many years. Whenever possible, it is recommended that a floodway be created to by-pass the oxbow and facilitate drainage during floods, leaving the oxbow in its normal state for channeling the flow during non-flood periods.
2. **Alternatives:** Consider practicable alternatives to aquatic fills. If an applicant requests permission to fill for marina parking, and an upland area is available nearby, then this alternative should be pursued. The loss of the aquatic habitat outweighs the inconvenience of a boater walking to his boat. Requiring the applicant to buy a piece of land away from the project site for this parking, however, does not represent a viable alternative.
3. **Diked Wetlands:** As a result of certain wildlife management practices, water quality in a wetland may be degraded by diking and other management techniques. Such degradation is a result of managing a wetland for specific types of wildlife. Generally, these activities are conducted by or coordinate with the Fish & Wildlife Resource Agencies. When reviewing certification applications for such projects, close coordination with the Fish & Wildlife Resource Agencies is essential.
4. **Fish Movement Criteria:** Diking of wetlands isolates these systems from the associated waterbody, resulting in losses including fish spawning and nursery areas. However, by not diking some wetlands, the habitat is degraded to a point that it is no longer desirable to many species. A compromise can be reached by allowing fish to access these areas during spawning periods. Any method to be used, as long as free movement between the waterbody and the wetland is maintained during these periods (e.g., floodgates, gated culverts or lift-board weirs) . in order to assure proper access and a workable time-table, it is recommended that this activity be coordinated with the Ohio Department of Natural Resources and the U.S. Fish & Wildlife Service.
5. **Water Dependency:** An assessment must be made to determine whether the fill needs to be located in an aquatic environment in order to fulfill its basic purpose. A fill to create a picnic area is not waterdependent since a picnic does not require water to function. Conversely, a fill coincidental to the construction of a marina would be water-dependent if it related directly to the function or maintenance of the marina, such as fills for finger docks or jetties. Nonwaterdependent fills may be allowable in specific instances where the fill is necessary to meet the overriding-public interest. Examples of such projects include construction of State highways. The applicant shall be required to avoid and minimize the amount of fill to be placed.
6. **Wetland Evaluation:** Wetland evaluation should include a plant and wildlife inventory and an evaluation of the wetland functions. High quality wetlands include, but are not limited to, those which provide habitat for threatened or endangered species and/or wetlands which are locally or regionally scarce or threatened.
7. **Mitigation:** All wetlands in Ohio are classified as State Resource Waters in Ohio's Antidegradation Policy (OAC Section 3745-1-05(C)) and are protected from degradation. However, in certain instances, limited degradation is permitted provided the applicant has worked to avoid impacts due to hydromodification (including reducing the scale of the proposed project) , minimize the impacts, and agreed to mitigate for the destruction of wetland habitat.

Acceptable mitigation includes *construction of* a wetland designed to replace the wetland *functions destroyed*, and restoration or enhancement of an existing degraded wetland. Protection of an existing functional wetland is not acceptable mitigation for destruction of a wetland; however, as part of a mitigation plan, certification conditions may require protection of on-site wetlands through establishment of deed restrictions or easements.

- a. Bulkhead Necessity: Look at various factors such as ice scour that would remove riprap, areas intensively bulkheaded, or any engineering constraints that necessitate the placement of a bulkhead. Vertical steel sheet-pile bulkheads provide minimal habitat for fish. If no alternatives exist, the placement of riprap at the bulkhead toe to mitigate the loss of the aquatic habitat will be required.
9. Cofferdam: Annual *installation and* removal of a cofferdam may cause long-term water quality degradation and impact the utilization of a waterbody by *spawning fish*. In many instances, less environmentally damaging alternatives to *annual cofferdam* installation are available and should be utilized.
10. Flow Through Criteria: If the placement of the fill will reduce the flow to a point potentially causing stagnation, thus rendering the water unfit for use or for receiving discharges, steps must be taken to allow an uninterrupted flow. This can be accomplished through the placement of weirs, culverts or other means.

Figure 2: Dredging Projects

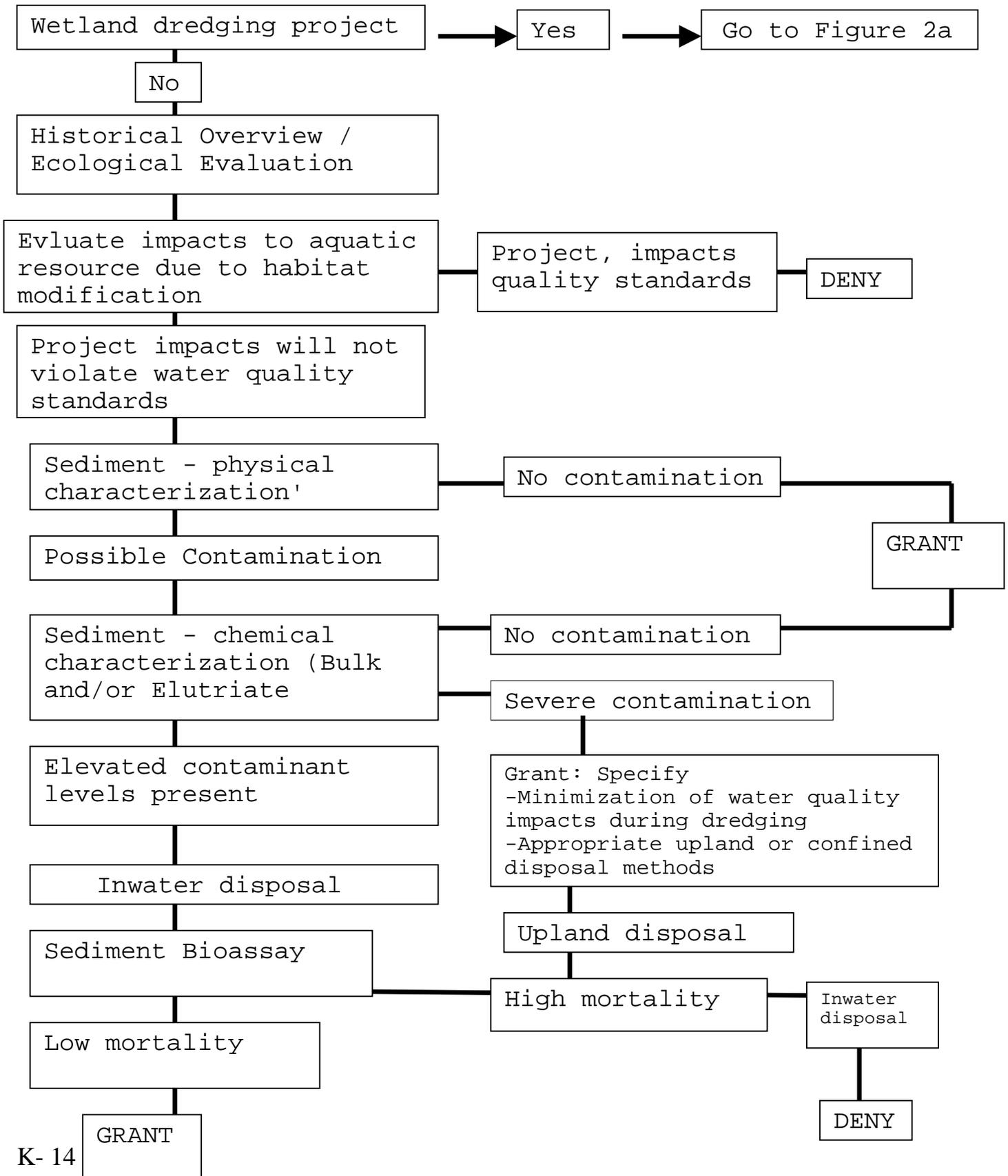
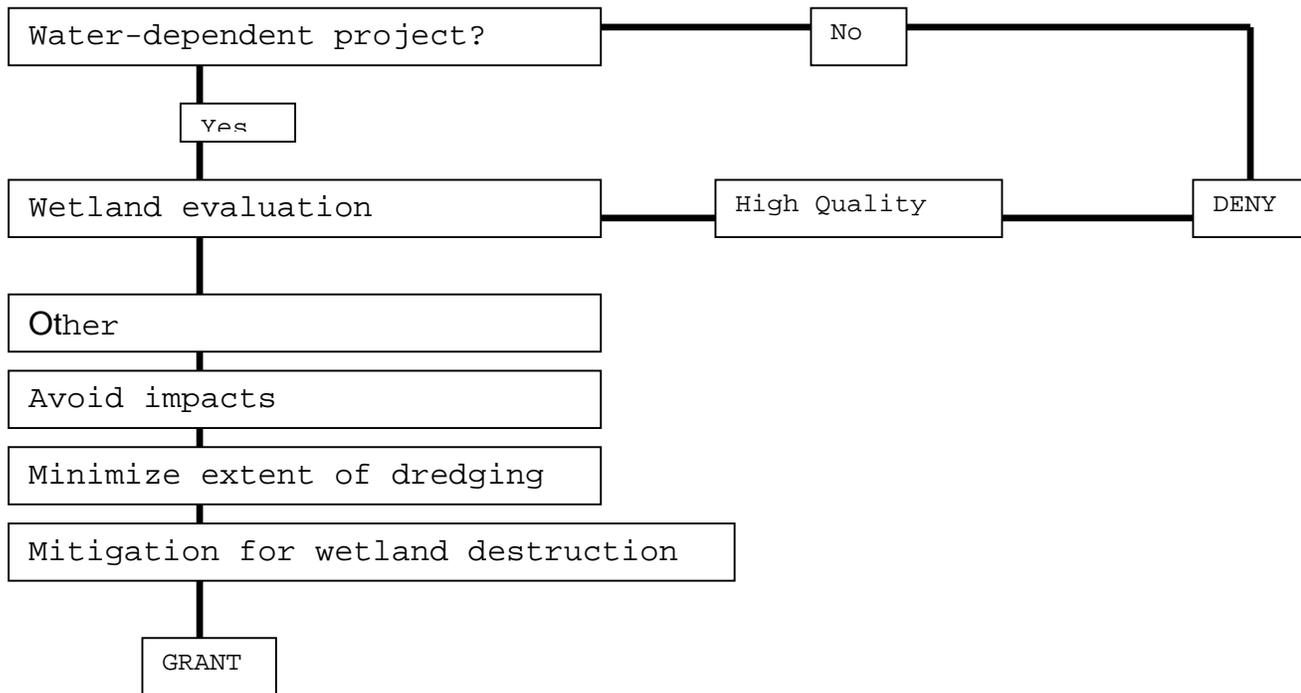


Figure 2a: Wetland Dredging Projects



The following correspond to the numbers appearing in the Dredging Projects review flowcharts (Figures 2 and 2a). These paragraphs elaborate on the review guidelines for the activities identified.

- a. **Historical Overview and Ecological Evaluation:** A brief review of historical data from the area is necessary to properly evaluate a project. This review should address the following: Known or suspected pollutant sources and types of potential sediment contaminants, previous dredging activities, previous disposal methods and locations, quantity and quality of these materials and any benefits or problems associated with these activities.

An ecological evaluation should include a review of existing inventories describing the area biota to determine local populations and if endangered species are present. Conditions that support their well-being should be noted. The applicable beneficial use designation should be determined from the State's Water Quality Standards. (Waterbodies which are State Resource Waters, Exceptional Warmwater Habitat, Coldwater Habitat or Seasonal Salmonid Habitat are considered High Quality.) Review existing bioaccumulation studies to determine if any problems exist with the uptake of heavy metals or organics.

- b. **Sediment Physical Characterization:** Characterization of the sediment particle size and composition is important in assessing potential contaminant levels. Sand and coarse-grained inorganic sediments (greater than 0.25 mm) rarely are contaminated. Conversely, fine organic sediments (less than 0.25 mm) generally retain the highest levels of contaminants. This information is helpful in determining the need for chemical analyses of the sediment. Generally, sediment-physical characterization is conducted when in-water disposal is proposed or contamination of sediment is suspected based upon the results of the Historical and Ecological Evaluation.
- c. **Sediment Chemical Analyses:** chemical characterization of the sediment can be done in two ways: The bulk analysis determines the total levels of sediment parameters on a dry-weight basis. Suggested parameters and criteria for evaluating the results are listed below. The elutriate test is designed to simulate the dredging and disposal processes, reflecting the immediate release of contaminants to the water column. Suggested parameters and criteria for evaluating the results are listed below. In both cases, the parameter list should be modified as necessary to address site-specific concerns. If the historic overview indicates the potential presence of organics, then sediment samples must be analyzed for these compounds. A parameter list should be prepared on a site-specific basis, using the U.S. EPA priority pollutants list and the Ohio Water Quality Standards as guidance.

Bulk Sediment Analysis

Parameters (dry weight)

Ammonia (NH ₃ -N)	Nickel (Ni)
Arsenic (As)	Oil & Grease
Cadmium (Cd)	Phosphorus (P, Total)
Chromium (Cr)	Total Kjeldahl Nitrogen
Chemical Oxygen Demand.	Volatile Solids <i>M</i>
Copper (Cu)	Total organic Carbon
Iran (Fe)	Cyanide, Total
Zinc (Zn)	Mercury (Ng)
Phenolics, Total.	

Sediment Evaluation Criteria

Guidelines. Criteria and Register for Great Lakes Dredging Projects. Report of the Dredging Subcommittee to the Water Quality Programs Committee of the Great Lakes Water Quality Board. International Joint Commission. March, 1981.

Guidelines for the Pollution Classification of Great Lakes Harbor Sediments. U.S. Environmental Protection Agency, Region V, Chicago, Illinois. April, 1977.

Evaluation of Illinois stream Sediment Data: 1974-1980: Illinois Environmental Protection Agency, Division of Water Pollution Control. 1984.

Elutriate Analysis

Parameters

Ammonia (NH ₃ -N)	Nickel (Ni)
Arsenic (As)	Oil & Grease
Cadmium (Cd)	Phosphorus (P, Total)
Chromium (Cr)	Iron (Fe)
Copper (Cu)	Mercury (Ng)
Zinc (Zn)	Phenolics, Total
Cyanide, Total	

Evaluation Criteria

Ohio EPA Water Quality Standards. Chapter 3745-1 of the Ohio Administrative Code.

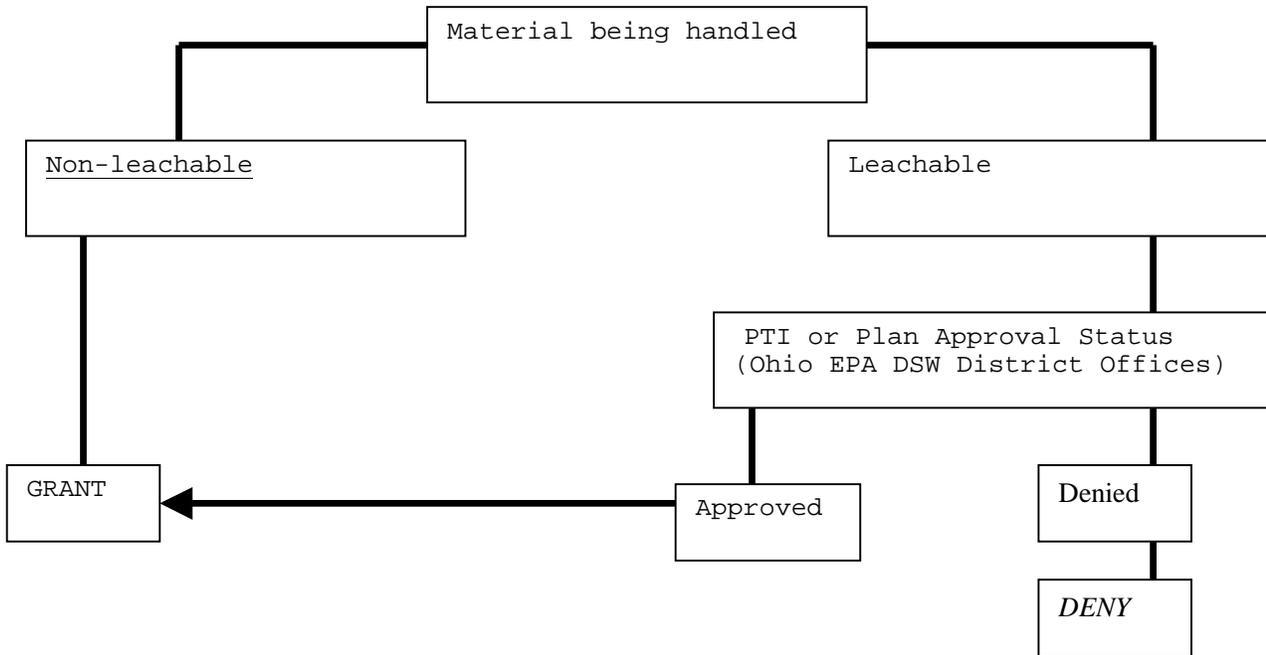
- d. **Sediment Bioassay:** An important consideration in evaluating a dredging or disposal activity is the impact-on the aquatic organisms. Two basic types of tests can be used to evaluate this impact: Algal bioassays, which measure effects on primary production and animal bioassays, which measure acute or chronic effects. Methods and test organisms vary and it is recommended that the bioassays be coordinated with U.S. EPA and the U.S. Fish & Wildlife Service.
- e. If sediment contamination levels warrant, upland disposal projects should be referred to the Ohio EPA's Division of Hazardous Waste Management for permitting. For other projects, specify conditions to minimize the adverse impacts from upland site runoff and discharge of decant water.
- f. All wetlands in Ohio are designated as State Resource Waters in OAC Section 3745-1-05(C) and are protected from degradation. Dredging of high quality wetlands (for example, wetland types which are regionally scarce or wetlands which provide habitat for threatened or endangered species) should be prohibited.

Wetland evaluations should include a plant and wildlife inventory and an evaluation of the wetland functions. High quality wetlands include, but are not limited to, those which provide habitat for threatened or endangered species and/or wetlands which are locally or regionally scarce or threatened.

- g. Dredging in other wetlands should be limited to the minimum volumes. Alternatives to dredging in wetlands should include excavation of upland property and reduction in total project size.
- h. Mitigation: All wetlands in Ohio are classified as State Resource Waters in Ohio's Antidegradation Policy (OAC Section 3745-1-05(C)) and are protected from degradation. However, in certain instances, limited degradation is permitted provided the applicant has worked to avoid impacts due to hydromodification (including reducing the scale of the proposed project), minimize the impacts, and agreed to mitigate for the destruction of wetland habitat.

Acceptable mitigation includes construction of a wetland designed to replace the wetland functions destroyed, and restoration or enhancement of an existing degraded wetland. Protection of an existing functional wetland is not acceptable mitigation for destruction of a wetland; however, as part of a mitigation plan, certification conditions may require protection of on-site wetlands through establishment of deed restrictions or easements.

Figure 3: Bulk Commodity Facilities



STATE OF OHIO
ENVIRONMENTAL PROTECTION AGENCY
EXCEPTIONS TO SECTION 404 NATIONWIDE PERMITS
(EXCERPTED)

The State of Ohio Environmental Protection Agency (Ohio EPA) has denied water quality certification for the following nationwide permits: nationwide permit number 17 - hydropower projects and nationwide permit number 21 - surface coal mining activities. The following general conditions apply to Nationwide Permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38 and 40:

Steps shall be taken, upon completion of the projects, to ensure bank stability. This may include, but is not limited to, the placement of riprap or bank seeding.

Any damages to the immediate environment of the project by equipment needed for construction or hauling will be repaired immediately.

Care must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside the project areas.

For Nationwide Permits 14, 21, 26 (1-3 acres), 29, 33, 37, 38, that require Agency coordination, in accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

In addition to the general conditions listed above, the following conditions apply to the Nationwide Permits as specified:

5. Scientific Measurement Devices:

This Nationwide Permit shall not authorize weirs and flumes.

7. Outfall Structures:

This Nationwide Permit shall authorize outfall structures which have been authorized by a Permit-to-Install and National Pollutant Discharge Elimination System permit by Ohio EPA pursuant to Ohio Revised Code Sections 6111.44 and 6111.04, and Ohio Administrative Code Sections 3745-31 and 3745-33.

12. Utility Line Backfill and Bedding:

The length of utility line crossings in streams and/or rivers shall not exceed twice the width of the waterbody at that location.

This Nationwide Permit shall authorize sidecasting or stockpiling of dredged material for a maximum of 3 months.

In wetlands, at least the top six inches of backfill over a utility line shall consist of the topsoil material removed from the trench.

The Ohio Administrative Code Rule 3745-1-01 requires that notice must be given to the Director of Ohio EPA before chemicals are applied for the control of aquatic plants or animals in waters of the State (including wetlands). Applicants who intend to use chemicals in waters of the State shall contact the Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049 prior to the applications of any chemicals.

This Nationwide Permit shall not authorize utility line installations greater than 1000 feet in length in forested wetlands, which are defined by Cowardin, Lewis M., 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Washington, D.C. to be characterized by woody vegetation that is 6 meters tall or taller. All water regimes are included except subtidal.

13. Bank Stabilization:

This Nationwide Permit shall not authorize the installation of vertical bulkheads and associated backfill except on river and harbor banks adjacent to federal navigation channels within the following harbors:

Sandusky Harbor	Rocky River Harbor
Huron Harbor	Cleveland Harbor
Vermilion Harbor	Fairport Harbor
Lorain Harbor	Ashtabula Harbor
Conneaut Harbor	Toledo Harbor
Port Clinton Harbor	

This Nationwide Permit shall only authorize the use of rock, stone, vegetative erosion control measures, broken concrete (without exposed reinforcing bar) and clean soil.

No material shall be placed in such a manner so as to restrict surface water flow into or out of any tributary.

This Nationwide Permit shall not authorize bank stabilization projects over 1000 feet in length.

16 Return Water from Upland Contained Disposal Areas:

This Nationwide Permit shall be limited to the authorization of the disposal of dredged materials dredged from state-owned properties, where there are no known areas of contaminated sediments, provided best management practices are used to minimize adverse impacts to water quality.

18 Minor Discharges:

This Nationwide Permit shall not authorize the installation of vertical bulkheads and associated backfill except on river and harbor banks adjacent to the federal navigation channels within the following harbors:

Sandusky Harbor	Rocky River Harbor
Huron Harbor	Cleveland Harbor
Vermilion Harbor	Fairport Harbor
Lorain Harbor	Ashtabula Harbor
Conneaut Harbor	Toledo Harbor
Port Clinton Harbor	

If used to authorize utility line backfills and bedding, this Nationwide Permit shall authorize sidelaying or stockpiling of dredged or fill material for a maximum of 3 months.

Dredged material shall be placed directly at an upland site in such a way that sediment runoff to any surface water is controlled and minimized.

This Nationwide Permit shall not authorize disposal of fill material into Lake Erie, where that is the primary project purpose.

19. Minor Dredging:

General conditions apply.

This Nationwide Permit shall not authorize dredging in stream riffles as defined in 40 CFR 230.45.

This Nationwide Permit shall not authorize dredging in surface waters that contain contaminated sediments. The applicant shall contact Ohio EPA for a determination whether a particular surface water contains contaminated sediments.

23. Approved Categorical Exclusions:

General conditions apply.

This Nationwide Permit shall only authorize activities described in 23 CFR Part 771.117 of the Federal Highway regulations except activities that impact 1) streams which are designated Exceptional Warmwater Habitat or Coldwater Habitat in Ohio's Water Quality Standards (Chapter 3745-1 of the Ohio Administrative Code (OAC), or 2) surface waters that contain contaminated sediments.

26. Headwaters and Isolated Waters Discharges:

This Nationwide Permit expires December 13, 1998. The U. S. Army Corps of Engineers should be contacted for specifics on Nationwide Permits that authorize headwaters and isolated waters discharges.

29. Single Family Housing:

This Nationwide Permit shall not authorize the discharge of fill material into the following waterbodies:

- Bogs and fens (see definitions in conditions to Nationwide Permit 26); or
- Headwater lakes or wetlands adjacent to headwater lakes (see definition in conditions to Nationwide Permit 26); or
- Designated components of the State Scenic River System; or
- Streams which are designated Coldwater, Exceptional Warmwater or Seasonal Salmonid aquatic life use habitat in Ohio's Water Quality Standards (Section 3745-1 of the Ohio Administrative Code); or
- Lake Erie, including Sandusky Bay, or wetlands adjacent to Lake Erie.

This Nationwide Permit shall not authorize fills which would result in stream channel diversions or rerouting.

This Nationwide Permit shall not authorize fills which would create impoundments of water.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

31. Maintenance of Existing Flood Control Projects:

This Nationwide Permit shall only authorize projects constructed by the Corps of Engineers and maintained by the Corps or transferred by the Corps to a local sponsor.

32. Completed Enforcement Actions:

This Nationwide Permit shall not authorize any impacts to bogs, fens, wetlands adjacent to headwater lakes (see definitions in condition to Nationwide Permit 26) or to streams which are designated as Exceptional Warmwater Habitat or Coldwater Habitat in Ohio Water Quality Standards (OAC 3745-1).

This Nationwide Permit shall not authorize any project with greater than 3 acres of wetland impacts, or impacts over 500 linear feet in any stream unless Ohio EPA has been informed in writing of each specific project that exceeds these criteria, and based on this information, has chosen not to issue a State Administrative Order, or Consent Order resulting from a State enforcement action.

The Corps of Engineers shall provide notification to Ohio EPA prior to any settlement agreement being finalized. The Corps shall provide such notification with a copy of the draft settlement document for Ohio EPA's review and comment. Ohio EPA will provide notice to the Corps that it intends to provide substantive site-specific comments within 5 days of the receipt of the draft settlement document. Ohio EPA will provide these comments to the Corps within 16 days of the receipt of the draft document. The Corps shall fully consider Ohio EPA's comments prior to finalizing the settlement document, and provide Ohio EPA with a copy of the final settlement agreement.

33. Temporary Construction and Access:

Temporary shall be defined as less than one year in duration.

This Nationwide Permit does not authorize construction, or maintenance, or modification of marina basins.

This Nationwide Permit does not authorize activities in special aquatic sites as defined in 40 CFR 230.3(q-1).

This Nationwide Permit shall not authorize temporary construction access and dewatering associated with mining activities.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

35. Maintenance Dredging of Existing Basins:

The dredged material shall be placed away from the water's edge and stabilized to prevent re-entry to any water of the State.

This Nationwide Permit shall not authorize changes in configuration, size, purpose, use or location of the marina basin.

Dredging must be conducted in accordance with all conditions of the original authorization including subsequent modification(s).

36. Boat Ramps:

This Nationwide Permit shall not authorize boat ramps where dredging is required to establish water depths necessary for boat launching.

In accordance with the Nationwide Permit General Condition entitled "Notification", Number 13(e)(i), the Corps shall submit a pre-construction notification to Ohio EPA for review and comment.

The director of Ohio EPA may revoke a section 401 water quality certification if he concludes at any time that any applicable laws or regulations have been or are likely to be violated (Ohio Administrative Code (OAC) Rule 3745-32-06). A section 401 water quality certification shall be issued, modified, revoked, or denied and may be challenged in accordance with the provisions of the rules of procedure of the Ohio EPA, Chapter 3745-47 of the Administrative Code. The Corps' regulation (33 CFR 330.4(c)(7)) states that the Corps' Division Engineer will review justifications for a State's attempt to modify, suspend or revoke a Section 401 certification action on a Nationwide Permit.

WETLANDS MITIGATION POLICIES
USED IN SECTION 401 REVIEWS

The following policies describe Ohio EPA's guidelines for reviewing applications for Clean Water Act Section 401 certifications. All applications must adhere to the Section 404(b)1 guidelines prior to approval of a mitigation proposal. These guidelines stipulate that an applicant must demonstrate there is no practicable alternative and then demonstrate that impacts will be minimized before proceeding with a mitigation proposal.

-The mitigation ratio shall be a minimum of 1.5 acres of mitigated (restored or created) acres for every one acre of impacted wetlands. Ratios greater than 1.5:1 are encouraged. Ratios less than 1.5:1 are generally not acceptable unless agreed to by the resource agencies. Enhancement may be considered as part of the mitigation proposal.

-Mitigation shall replace the functions and values of the impacted wetlands. Final assessments of the functions and values of the impacted wetlands shall be determined by the resource agencies. It is the applicant's responsibility to provide the data and information necessary to make such a determination. The resource agencies shall provide any relevant data to a specific project site.

Wetland mitigation projects shall replace the impacted wetland type. For example, an application proposing to fill a shrub/scrub wetland (subsequent to the avoidance and minimization demonstrations) shall propose mitigation to restore, enhance or create a shrub/scrub wetland.

- Wetland mitigation sites shall be located as close as possible to the impacted wetlands as practicable, preferably at the project site or within the same watershed. Mitigation sites at distant locations will be considered on a case by case basis after on-site or near-Bite locations have been determined to be impractical.

-Mitigation bank proposals will be reviewed on a case by case basis, adhering to the sequencing review and all the above listed policies.

-Applicants shall be required to monitor the establishment of the mitigated wetland for a period of at least five years and to submit this data to Ohio EPA. Ohio EPA will provide a list of standard monitoring requirements to applicants. Requirements for each project will be tailored to the specific needs of the mitigation site.

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**OHIO EPA POLICY FOR PURCHASE OF HIGH QUALITY
WETLANDS AS PARTIAL MITIGATION FOR WETLANDS DESTRUCTION**

This interim policy describes Ohio EPA's procedures for review of applications for Clean Water Act Section 401 certifications when an applicant proposes to mitigate for wetlands destruction by purchasing high quality wetlands. The policy describes a sequence of steps by which the Ohio EPA will review the application.

Ohio EPA may consider an applicant's proposal to purchase high quality wetlands as partial mitigation for direct and indirect impacts to wetlands associated with activities regulated by Clean Water Act Section 401 providing:

1. The wetland which will be impacted by the proposed project does not exhibit 'multiple wetland functions which are regionally significant.
2. The applicant demonstrates that it is not practical (for economic, technologic or sociologic reasons) to utilize alternative upland sites to fulfill the basic project purpose. (Upland sites are defined as sites which do not meet the definition of "waters of the state" according to Ohio Revised Code Chapter 6111. 01 (H) .) Ohio EPA will presume that alternate upland sites do exist, until an applicant demonstrates otherwise.

Once the applicant successfully demonstrates that it is not practical to utilize alternative upland sites, the applicant will minimize unavoidable adverse impacts to wetlands which occur as a result of project construction and/or operation. As requested by Ohio EPA, the applicant will modify his/her project plans appropriately to reduce or minimize adverse impacts and enhance water quality or other wetland functions.

4. To the extent practicable, the applicant will mitigate for wetland destruction caused by the construction and/or operation of his/her project by either creating, restoring or enhancing wetlands to replace the functions provided by the impacted wetlands. The total acreage of the on-site wetland mitigation project should be as close as possible to a ratio of 1 acre of wetland created, restored or enhanced for every 1 acre of wetland destroyed or adversely impacted by project construction and/or operation. Ohio EPA prefers that wetland mitigation sites be located as close as possible to the impacted wetlands, preferably at the project site or within the same watershed. The mitigation should replace the lost functions and values of the impacted wetland.

5. The wetland to be purchased is of high quality, as determined by Ohio EPA in consultation with the Ohio Department of Natural Resources and other environmental resource agencies. The high quality wetland should have important habitat and/or

water quality characteristics which are imminently threatened. The purchase and management of the wetland will result in preservation and/or enhancement of habitat and/or water quality characteristics.

6. The total acreage of purchased wetlands will be determined using a ratio of at least 0.5 acres of purchased wetland for every 1 acre of wetland which is adversely impacted by the project construction and/or operation. The total acreage of on-site mitigation and purchased wetland acreage must total at least 1.5 acres for every acre impacted. The purchased wetland must be deeded to a responsible party for management and/or enhancement in accordance with an Ohio EPA-approved plan. Ohio EPA prefers the purchased wetland acreage to be located in the same watershed as the impacted wetland.

7. Purchase and transfer of the deed for the high quality wetland will occur prior to any filling of wetlands at the project site.

8. The applicant demonstrates that a responsible, established professional party will undertake long-term management of the purchased wetland parcel in perpetuity. The purchased wetland must be maintained in perpetuity to prevent degradation of habitat and water quality functions and values.

9. Ohio EPA may require the preparation and submittal up to five annual wetland monitoring reports to be submitted to Ohio EPA. The applicant will be responsible for implementing and complying with all Section 401 water quality certification conditions.

OHIO EPA
STANDARD WETLAND MITIGATION CONDITIONS

NOTE: Each set of mitigation conditions is tailored to meet the unique factors involved with each wetland created, restored or enhanced. The following represent the conditions most often appearing in Section 401 water quality certifications:

- o Annual water quality, hydrology and vegetation surveys shall be conducted. A report containing these data shall be submitted to Ohio EPA for each of five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the year following completion of mitigation construction. All subsequent reports shall be submitted by December 31 of each of the five monitoring years. The reports shall contain, at a minimum, the following information:

Water Quality Monitoring: A grab sample shall be collected in May of each monitoring year in each wetland mitigation area. The samples shall be analyzed for ammonia, nitrates, total nitrogen, total and ortho-phosphorus, total organic carbon, total sulfates, total iron, total manganese, specific conductivity, pH, turbidity, total suspended solids, metals, and biochemical oxygen demand.

Hydrology Monitoring - : Water level data shall be collected in May and late- August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

Vegetation Monitoring: The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

A representative observation point shall be selected in each plant community type in each distinct wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (wood overstory), greatest height (woody understory), greatest percentage of aerial coverage (herbaceous understory, and/or greatest number of stems (woody vines)

Each sample point shall be photo-documented from the same position and angle during July of each monitoring year.

The applicant shall arrange an on-site meeting with Ohio EPA on the third year of the post-mitigation construction. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the wetland. The applicant is responsible for undertaking any reasonable modifications identified by the Ohio EPA.

The applicant is responsible for ensuring the wetland is not filled, drained or otherwise converted to upland. If the property is sold, the deed shall ensure that the wetland will not be filled, drained or otherwise converted to upland.

STATE OF OHIO
Executive Department
OFFICE OF THE GOVERNOR

Columbus

E X E C U T I V E O R D E R 90-68

WHEREAS, Ohio's wetlands consist of marshes, bogs, fens, bottomland forests, and other areas which may be isolated or connected with other waters of the state such as lakes, streams and ground waters; and

WHEREAS, wetlands are assets to society serving many functions important to the general public interest including critical habitat for fish and wildlife and endangered animals and rare plants and plant communities, water quality maintenance and improvement, flood and storm damage protection, groundwater recharge and surface water supply, harvest of natural products such as timber, furs, fish and fowl, aesthetics, scientific study and education, and outdoor recreation; and

WHEREAS, wetlands are critical natural resources because of their fragile physical and biological interconnection with other land and water resources, and because wetlands have become so diminished in Ohio and the nation through destruction, alteration, various forms of pollution and activities of man; and

WHEREAS, state government can profoundly affect the conservation of wetlands or their conversion to other uses through land acquisition, land management and surplus property disposal, state development projects, regulatory programs, and state financial assistance for public and private projects; and

WHEREAS, it is essential that conservation of soil, water, wetlands and other natural resources of this state be accomplished in a workable and practicable manner and that state actions do not irretrievably convert wetlands to other uses when alternatives are available.

NOW THEREFORE, I, Richard F. Celeste, Governor of the State of Ohio, pursuant to the authority vested in me by the Constitution and the laws of the State of Ohio, do hereby declare and order the following:

I. Each state agency shall provide leadership and shall take action to minimize adverse effects to wetlands and conserve, restore and enhance the environmental values and beneficial functions of wetlands in carrying out the agency's responsibilities. Each agency will do so with the overall goal to retain the state's remaining wetlands and to restore and create wetlands where feasible to increase the state's wetlands resource base.

II.(a) Each state agency, to the extent permitted by law, shall avoid undertaking or providing financial assistance for construction which will substantially degrade or destroy for long or permanent duration the functions of wetlands areas, unless the head of the agency finds that (1) the project or activity is in the overall public interest, (2) there is no reasonable alternative to such construction, and (3) the proposed action includes all practicable measures to minimize undesirable alterations and compensate or mitigate for unavoidable adverse impacts. These considerations shall also apply to offsite project impacts such as stormwater runoff and erosion and sedimentation and "offsite" activities attendant to construction projects such as borrow site excavations and disposal of demolition debris, dredged material or excess excavated materials.

(b) consistent with the policies of the Ohio Nonpoint Source Management Program and Coastal Management Program, each state agency shall apply this policy in support of decisions to issue or deny permits or to authorize activities subject to the approval--of the agency. To the extent permitted by law, state agencies will enforce the following sequence of mitigation options: avoidance of adverse impacts to wetlands, minimization of impacts to wetlands, and finally, mitigation or compensation measures for unavoidable wetlands Impacts.

(c) Each agency which has regulatory responsibilities will act affirmatively to develop or modify administrative policies and procedures consistent with this order.

III. each agency of the state, In considering this acquisition of real property, disposal of surplus real property, or granting of any lease, License or other Interest In state real property, will determine whether wetlands may be affected by the proposed action. To the extent permitted by law, all necessary steps will be undertaken to, protect existing wetlands, restore wetlands, and otherwise implement this policy.

When state-owned properties are proposed for lease, license, easement, right-of-way, or disposal to a non-state public or private interest, the state agency shall (a) attach appropriate restrictions to the uses of the property by the grantee or purchaser and any successor to help ensure the continued protection of wetlands, except where prohibited by law; or (b) withhold such properties from disposal.

It in further ordered that:

A cabinet cluster consisting of. **the Directors of Natural Resources, Environmental Protection, Health, and the Ohio Historical Society** or their designates shall convene for the purposes of (1) development and implementation of a state wetlands regulatory program; and (2) development and Implementation of an accelerated statewide funding program to assist the wetlands acquisition- protection initiatives of local, state, federal and independent organizations. In recognition of the need for swift action on wetlands protection, the cabinet cluster may at any time during its tenure make recommendations for administrative action and express its views regarding any impending state or federal legislative initiative that affects wetlands conservation.

The cluster will consult with and seek the views of the Attorney General, the Directors Of Development, Transportation, and Agriculture, and other state, local, regional and federal agencies, and representatives of public interest and special interest groups. A report with recommendations shall be submitted to the Governor and legislative leaders within one year of the effective date of this order.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Ohio to be affixed at Columbus, this 25th day of October in the year nineteen hundred and ninety.

Richard F. Celeste
Governor

ATTEST:

Secretary of State

Filed in the Office of the Secretary of State
at Columbus, Ohio on _____

SHERROD BROWN
Secretary of State

Per _____

POLICY STATEMENT

WETLANDS

The purpose of this statement is to affirm departmental policy to protect, restore and create wetland ecosystems thereby ensuring that Ohio and the nation continue to enjoy the many natural and beneficial functions Ohio's wetlands perform. This statement establishes the overall policy framework for the Ohio Department of Natural Resources' (ODNR) planning and land management and development, all regulation and financial assistance, water resources development, Lake Erie resources management, nonpoint source management and other cooperative programs, technical assistance and consultation, and external communication of departmental policy.

The Wetland Resource

Wetlands are ecosystems of unique and major importance to the people of Ohio. Wetlands are critical natural resources because of their many beneficial functions, their importance to many wildlife species, and their fragile physical and biological interconnection with other land and water resources. They have become so diminished through destruction, alteration; pollution and other activities of man that their benefits to man and the natural environment are being lost.

Definition of Wetlands

"Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." 33 C.F.R. 328.3(b); 40 C.F.R. 230 . 3M

In identifying and delineating wetlands, ODNR will utilize a multi-parameter approach which examines vegetation, soils, geology and hydrology. Potential atypical circumstances (such as below normal precipitation, and recent human activities) will be investigated when any wetland indicator (hydric soils, hydrophytic vegetation) at an apparent wetland site is absent. Also, the relative permanence of natural or man-induced changes in the landscape will be considered. Sites with wetland vegetation and hydrology (other than from irrigation) that have not yet developed hydric soil characteristics shall be considered to have soils that are functioning as hydric soils, and will be identified as wetlands.

Beneficial Functions of Wetlands

Ohio wetlands serve as habitat for mammals, many species of fish, waterfowl and other birds, reptiles and amphibians, rare and endangered species and significant plant and animal associations. These areas moderate extremes in water flow, aid in the natural purification of water and maintain and recharge ground water. They are the feeding, resting, nesting, spawning and nursery areas for a great number of wetland-dependent species and other wildlife. They are significant recreational areas of incalculable aesthetic value, and contain delicate and irreplaceable types of flora and fauna. Wetlands directly and indirectly support hunting, trapping, fishing, nature study, wildlife observation, scientific research, and many other beneficial human uses.

Wetlands support adjacent or downstream ecosystems in addition to the complex Web of life developed within the wetland environment itself. The nature of wetlands causes them to be vulnerable and fragile. When wetlands are destroyed, the environmental effects are not limited to the wetland area.

ODNR seeks to preserve, protect and restore Ohio's wetlands and the beneficial functions they perform with a comprehensive approach to land and water management, ODNR-sponsored developments, financial assistance, regulatory and environmental review activities, and public education.

POLICY

The goal of the Ohio Department of Natural Resources is to retain the state remaining wetlands and to restore and create wetlands in order to increase Ohio's wetland resource base. The Department will therefore use its utmost influence to preserve and protect wetlands from damaging misuses. Consistent with provisions in Ohio Water Quality Standards (Chapter 3745-1-05 Ohio Administrative Code, Anti-degradation Policy), the Department will work in partnership with the Ohio Environmental Protection Agency to protect wetlands as state resource waters. It is the Department's policy to disallow harmful alterations in the natural flow of water that nourishes wetlands and to protect wetlands from alteration by dredging, filling or draining, solid waste disposal, direct and indirect effects of construction activities, siltation, or the addition of pesticides and other pollutants arising from point and nonpoint sources of pollution.

Implementation

ODNR's wetlands conservation goal does not imply that alteration of individual wetlands will be avoided in every instance, nor that ODNR's preservation goal should be applied in every circumstance. ODNR acknowledges that programmatic implementation provides flexibility to accomplish wetlands conservation objectives on a watershed basis or within specific geographic or ecological contexts. The following provisions shall guide planning and decision making when ODNR projects or activities may affect wetlands resources:

1. ODNR's water resource developments and capital improvements will be planned and implemented with a clear preferred sequence of mitigation options that begins with avoidance of adverse impacts on wetlands and the reduction of unavoidable adverse impacts. Compensation measures for unavoidable impacts should be used only as a last resort. Opportunities for wetland restoration or creation will be identified and pursued.

Early in the planning process, ODNR will identify whether there are potential direct or secondary impacts upon wetlands. If wetlands would be affected by a proposed project, detailed planning and design will commence only after an alternatives analysis has been completed including consideration of no action as an alternative. Unavoidable impacts upon wetlands will be assessed in terms of acreage, beneficial functions and ecological significance. Mitigation plans will be developed and implemented in order to achieve ODNR's goal of retaining wetlands and restoring and creating wetlands, as defined by acreage and function. Planning will include consultation among appropriate ODNR divisions and other resource and regulatory agencies. An environmental assessment of site suitability will be made prior to wetland development activities. Mitigation or compensation measures will be planned (and may be implemented in advance of project construction when desirable) concurrent with project planning and development. ODNR will utilize pre-bid and pre-construction conferences to advise contractors of measures necessary to protect wetlands including offsite impacts.

2. Funds for wetlands acquisition and protection will be a top priority in capital improvements budget requests. Where possible, ODNR will allocate funds from the various federal and state assistance programs for wetlands acquisition and restoration.
3. ODNR will not provide federal or state financial assistance for projects which may directly or secondarily degrade or destroy wetlands, unless the sequence of mitigation options described above is followed. There must be no reasonable alternative to the project (including no action) and the project must include all practicable measures to minimize adverse impacts to wetlands, including compensation measures. Decision making will consider ODNR's overall goal of no net loss of wetlands. Each division and office will take appropriate steps to incorporate this policy in procedural guides and other documents and materials which provide guidance to grant applicants and recipients of state assistance.

4. The agencies administering OONR regulatory programs will, to the extent permitted by law, avoid unnecessary wetlands damages or losses which may occur as a consequence of a regulated activity (such as mineral extraction activities or construction) and will develop policies and procedures which encourage wetland creation as a part of project plans. To the extent possible, discretionary authority will be exercised and variances to normal standards will be granted if such action will avoid the loss or degradation of wetlands. Regulatory agencies will first seek to avoid impacts to wetlands, and second, will attempt to mitigate unavoidable losses. Each division which has regulatory responsibilities will act affirmatively to develop or modify administrative policies and procedures and promulgate rules which may be necessary to implement this policy.
- S. Land managing divisions will act affirmatively to manage wetlands which occur on ODNr property in order' to preserve and enhance their beneficial functions. ODNr offices and divisions will cooperate with one another and with other governmental and independent agencies to meet ODNr's goal and accomplish the objectives of applicable plans and programs. These include, but are not limited to, the North American Waterfowl Management Plan, The Statewide Comprehensive Outdoor Recreation Plan, Natural Areas and Scenic Rivers Preservation, Nongame and Endangered Species Management, and Floodplain Management. Wetlands will be inventoried and delineated in master plans and land management plans. Recreational uses and facility developments on or adjacent to any wetland will be controlled to protect the beneficial functions of the wetland and ensure its long-term productivity.
6. In considering the acquisition of property, disposal of surplus property or granting of any lease, license or other interest in state property, ODNr will determine whether wetlands may be affected by the proposed action. To the extent permitted by law, all necessary steps will be undertaken to protect existing wetlands, restore wetlands, and otherwise implement this policy.

Divisions and offices within the Department will work collaboratively to effect this policy to the maximum extent of authority in all program activities, planning, research, technical assistance, cost-sharing projects with other agencies, public education and the dissemination of information related to Departmental activities.

JOSEPH J. SOMMER
Director
September 8, 1989

OHIO DEPARTMENT OF NATURAL RESOURCES
1501-6-01 TO 1501-6-06

RULES FOR LEASING OF LAKE ERIE SUBMERGED LANDS

1501-6-01	Definition of terms.
1501-6-02	Application.
1501-6-03	Director's recommendations.
1501-6-04	Public hearing/public meeting.
1501-6-05	Lease.
1501-6-06	Rental.

1501-6-01 Definition of terms.

(A) "Applicant" means any person who applies to the department to develop or improve any part of the territory as defined in division (A) of section 1506.11 of the Revised Code.

(B) "Application" means the signed and completed form(s) and any supplemental information which may be required by the director in accordance with these rules and submitted to the director as provided in divisions (B) and (G) of section 1506.11 of the Revised Code.

(C) "Department" means the department of natural resources.

(D) "Development" or "improvement" means, but shall not be limited to, wharfs, breakwaters, piers, docks, bulkheads, marinas, groins, jetties, revetments, fill for the purpose of creating new lands or any structure of any kind which encroaches upon the territory.

(E) "Director" means the director of the department of natural resources.

(F) "Erosion control structure" means a structure solely and specifically designed to reduce or control lake Erie-related erosion of the shore. Examples include, but are not limited to, revetments, seawalls, bulkheads, and certain breakwaters and similar structures.

(G) "Fill" means any material used for the primary purpose of replacing lake Erie aquatic areas with dry land or changing the bottom elevation of lake Erie.

(H) "Governmental income producing facility" means any facility built in the territory managed by a governmental agency or by a contracted private management company which by the nature of the facility produces income above and beyond normal charges associated to cover operating costs. Said governmental agency shall include, but not be limited to, a county, township, village, municipality, port authority, park district or conservancy district.

(I) "Governmental non-income producing facility" means any facility built in the territory including, but not limited to, municipal water intake pipes, sewer outfall pipes, storm sewer outfall pipes, submerged cables or any other facility which is managed, owned, operated, occupied or utilized by a governmental agency for a governmental use or purpose at no charge or a nominal charge to cover operating cost. Said governmental agency shall include, but not be limited to, a county, township, village, municipality, port authority, park district, sewer district or conservancy district.

(J) "Large facility" means any semi-private or commercial facility built in the territory which exceeds four acres in total area and shall include, but not be limited to, an industrial facility such as a loading and off loading facility, an industrial water intake and an industrial water outfall, or fill to expand an upland or support facility for such use.

(K) "Lease" means a document prepared by the department containing terms and conditions for development or improvement of the territory of the state in lake Erie for a specified time, approved by the governor, and executed by the director in the manner prescribed by sections 1501.01, 1506.11 and 5301.13 of the Revised Code.

(L) "Littoral rights" means the right of an upland property owner to make reasonable use of the waters fronting the upland property and the right to wharf out to navigable waters within the projected boundaries of the upland property, said rights being subject to the rights of the state of Ohio and the United States.

(M) "Littoral zone" means the indefinite zone between the shoreline extending lakeward to the furthestmost line where waves begin to break.

(N) "Ohio coastal management program" means the comprehensive action of the state and its political subdivisions to preserve, protect, develop, restore or enhance the resources of the coastal area in accordance with established objectives, policies, standards and criteria concerning protection of the natural resources in the coastal area; management of coastal development and redevelopment; preservation and restoration of historic, cultural and aesthetic coastal features; public access to the coastal area for recreational purposes; and as otherwise described in divisions (B) and (C) of section 1506.01 of the Revised Code and the Ohio coastal management program document.

(O) "Nonpoint source management program" means the management program for controlling pollution added from nonpoint sources to the waters of the state and improving the quality of such waters submitted by the governor to the U.S. environmental protection agency and approved November 21, 1989, in accordance with section 319 of the federal water quality act of 1987 and any federally approved amendments to the program adopted in accordance with section 6217 of the coastal zone act reauthorization amendments of 1990.

(P) "Private floating dock or structure" means a dock or structure placed in the territory of lake Erie for the sole use of the upland owner for upland owner's personal benefit. Said structure or dock shall not be used for any monetary gain such as, but not limited to, dock space for rent, lease or sale.

(Q) "Public hearing" means a formal hearing conducted by the director, or designee, in which evidence may be presented and testimony given. These proceedings are recorded and an official transcript is made a part of the administrative record maintained by the department for the subject submerged lands lease application as provided for in division (C) of section 1506.11 of the Revised Code.

(R) "Public meeting" means an assembly conducted by the department, the purpose of which is to provide an opportunity for a lease applicant to explain the developments, improvements and/or activities upon lake Erie submerged lands to concerned agencies and the general public and afford an opportunity for interested parties to express any relevant issues or concerns as provided for in division (C) of section 1506.11 of the Revised Code.

(S) "Semi-private facility" means any facility built in the territory in conjunction with, but not limited to, condominiums, trailer parks, cooperatives, residential associations, campgrounds, or apartments.

(T) "Small commercial facility" means any facility built in the territory in connection with the providing of commercial services and does not occupy more than four acres of total area. A small commercial facility shall include, but not be limited to, a commercial marina, private club, yacht club, sailing club, transit ferry boat facility, or breakwalls constructed to protect inland marina channels and/or boat basin for access to lake Erie.

(U) "State resource waters" means surface waters of the state that lie within national, state and metropolitan park systems, wetlands, wildlife refuges, waters of exceptional recreational or ecological significance, and as otherwise described in state water quality standards, rule 3745-1-05 of the Administrative Code.

(V) "Structure" means any facility which requires fill being placed upon the submerged land of lake Erie, including, but not limited to, a rubble mound dock, rubble mound walk, rock filled timber crib dock, rock filled timber crib wall, pilings, steel sheet pile wall, revetment, unattached breakwall, precast concrete modular structure and riprap shore protection.

(W) "Territory" as used in these rules shall be as it is described in section 1506.10 and as it is defined in division (A) of section 1506.11 of the Revised Code. Where the territory has been artificially filled, the director shall determine the natural shoreline as accurately as possible, using the best practicable measures including, but not limited to, an analysis of the earliest known charts, maps or photographs.

(X) "Utility" shall mean any utility company regulated by; within the jurisdiction of; registered with, or licensed to do business in the state of Ohio by the public utilities commission of Ohio, that is engaged in an activity in the territory including, but not limited to, the placement of submerged cables, water intake pipes, water outfall pipes, sewer outfall pipes, storm sewer outfall pipes, and the related structures necessary for protection. This definition shall not include any existing fill or any proposed new fill used or proposed to be used for existing buildings, expansion of existing buildings, or any facilities related to the operation of the utility, including, but not limited to, electric power plants, coal storage facilities, coal loading and off loading facilities, or disposal sites for fly ash, bottom ash, dredged materials or other products.

HISTORY: Eff 4-30-92; 7-4-99

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99, 12/30/03

1501-6-02 Application.

An application shall be deemed unacceptable by the director if it is found to have incomplete or insufficient information for proper evaluation of the development, improvement or activity upon lake Erie submerged lands. The applicant shall be notified by the director if the application is unacceptable within sixty days of its receipt by the director. Upon receipt of said notification, the applicant may resubmit a new application for evaluation. The director must, within a reasonable period of time, process the application.

When the director finds that the effort to supplement the information on the application will be unavailing and that the application is not in accordance with the requirements of section 1506.10 and 1506.11 of the Revised Code and applicable rules, or that the applicant failed to respond to request for information within sixty days of notice, the director shall issue an order denying the application for a submerged lands lease, and shall notify the applicant of the opportunity for a hearing pursuant to section 119.06 to 119.13 of the Revised Code.

HISTORY: Eff 4-30-92

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

119.032 Review Date: 6-30-99, 12-30-03

1501-6-03 Director's recommendations.

(A) The director's recommendation to the governor as to whether to approve an application for a lease of submerged land shall be based upon an evaluation of whether the development, improvement or activity is consistent with the policies of the Ohio coastal management program document, in accordance with section 1506.03 of the Revised Code and does not otherwise contravene the general public's interest in lake Erie submerged lands, waters of the state, fish and wildlife, or cultural or other public trust resources. Notwithstanding the policies of the Ohio coastal management program document, the director, in said evaluation, shall give due consideration to any artificially filled area or filled portion of any area of the territory or any development, improvement or activity thereon existing on March 15, 1989, as set forth in this rule.

(B) Consistent with the protection of coastal area resources, the department will coordinate policies and decision-making with the rules and policies of other state and federal resource and regulatory agencies. In considering an application for a submerged lands lease, the department may solicit comments and relevant information from adjacent property owners, port authorities, local jurisdictions and planning agencies, the Ohio environmental protection agency, the Ohio historic preservation office, the general public and other agencies or individuals as deemed appropriate by the director.

(C) The department in determining whether the development, improvement or activity as set forth in an application for a lease will be compatible with the rights of the public and the public trust uses of the affected area will consider the following:

(1) Whether the project prejudices the littoral rights of any owner of land fronting on lake Erie without permission of that owner.

(2) Whether the project conforms to the permitted uses as regulated by the local government, where applicable.

(3) Whether public uses such as, navigation, water commerce, and fishing in the affected area would be destroyed or greatly impaired.

(4) Whether the diminution of the area of original use would be small compared to the use of the entire area.

(5) Whether the area has a history of use including, but not limited to, services rendered to the general public.

(D) In addition to any other laws or rules administered by any other state, local or federal agency, these are the criteria, if applicable, against which each application for a lease of submerged lands will be evaluated:

(1) WATER DEPENDENCY

Generally, an application for a lease to place fill and/or to construct facilities in the territory for a non-water dependent development or activity (i.e. an improvement which by its nature does not depend on being located in or upon the water) will not be approved. An exception to this water dependency criterion would be an improvement in the territory which is beneficial and important to the general public's health, safety or welfare as determined by the director. Under this exception, there shall be no practicable alternative to the improvement including an alternative upland site, and all reasonable measures shall be undertaken by the applicant to minimize any adverse impacts upon the waters and underlying lands of lake Erie and the beneficial functions these resources perform.

This criterion shall not apply to a lease application for development of the territory where the territory has been artificially filled prior to March 15, 1989.

(2) PROTECTION OF ENVIRONMENTAL QUALITY

The director may require an environmental impact assessment or other information in order to determine the probable direct, secondary and cumulative impacts of the development, improvement or activity upon the natural and human environment. With regard to any artificially filled area or filled portion of any area of the territory existing on March 15, 1989, the requirement for an environmental impact assessment shall be limited to any new development, improvement or activity or any change in an existing development, improvement or activity on said area of the territory.

The environment impact assessment shall include, but not be limited to, the following issues:

(a) Potential impact upon air and water quality;

(b) The likelihood that the development, improvement or activity may affect historic, cultural and aesthetic resources;

(c) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(d) Floral and faunal communities where loss of biological resources or threats to endangered or threatened species are of particularly important concern.

(e) Potential impact upon wetlands, or other state resource waters.

(f) Potential impact upon the littoral zone including sand transport.

(g) The potential individual and cumulative impacts of the lease activity in conjunction with other similar activities in the project area or geographic region will be considered.

To the maximum extent practicable the department's review of a lease application will utilize information and findings which may be developed in the public review process conducted by the U.S. department of the army, corps of engineers for authorization of activities in navigable waters, the section 401 water quality certification by the director of the Ohio environmental protection agency, and the consistency reviews of the state under the Ohio coastal management and nonpoint source management programs.

(3) PUBLIC RECREATION.

The potential impact of any development, improvement or activity upon the public right of recreation, including present or prospective recreational uses by the public during the term of the lease, will be evaluated. Provision for public access may be required as a condition of a lease or permit depending upon historic use patterns and suitability of the lease site for existing or prospective recreational uses.

(4) RELATIONSHIP TO PLANS FOR PORT DEVELOPMENTS, COMMERCIAL NAVIGATION AND URBAN WATERFRONT DEVELOPMENT.

The department in determining the compatibility of the development, improvement or activity with existing waterfront master plans, local land use plans and regulations and any other relevant plans or programs adopted by local or regional authorities, will consider the following:

(a) Whether the development, improvement or activity assists in the redevelopment of deteriorating urban waterfronts and ports, and is sensitive to the preservation and restoration of historic, cultural and aesthetic coastal features.

(b) Whether the development, improvement or activity allows for public access to the waterfront for recreational purposes consistent with orderly coastal-dependent uses. The potential for a development, improvement or activity in the territory to directly or indirectly, preempt future public access to the coast or waters of lake Erie will be examined.

(c) To the maximum extent practicable, priority consideration will be given to new commercial and port-related developments, improvements or activities in or adjacent to areas where such development, improvement or activity already exists.

(d) The importance of the development, improvement or activity to the local and regional economy. Interstate commerce and any other identified national, state or great lakes region interest which would be affected by the development, improvement or activity will be considered. To this end, documentation of relevant intergovernmental consultation may be supplied by the applicant.

(e) The history of pre-existing uses including, but not limited to, services to the general public. To the maximum extent practicable, consideration shall be given to such uses on any artificially filled area or filled portion of any area of the territory existing on March 15, 1989.

HISTORY: Eff 4-30-92

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

119.032 Review Date: 6-30-99, 12-30-03

1501-6-04 Public hearing/public meeting.

At any time during the lease application review period or upon completion of the department's evaluation, if the director finds that there is insufficient information upon which to base a decision, or if there are significant unresolved issues, the director may request the applicant to supply additional information and may declare that a public hearing or a public meeting be held to obtain the necessary information.

(A) If a public hearing is scheduled, said hearing shall be held at a time and place designated by the director. The hearing shall be of a formal nature. A court reporter shall be present and all parties shall have an opportunity to present evidence and/or provide testimony. Notice of said hearing shall be advertised in accordance with division (C) of section 1506.11 of the Revised Code. All costs pertaining to the hearing, including but not limited to the court reporter and advertisement, shall be paid by the applicant.

(B) If the director determines that a public meeting would serve to provide sufficient information to supplement the administrative record and support a decision whether or not a lease may properly be entered into, the director shall order a public meeting to be held in the geographic locality of the applicant's lease request. Notice of said public meeting shall be advertised in a manner to be determined by the director. All costs of the meeting shall be paid by the applicant.

(C) The public hearing or public meeting shall be limited to the gathering of information which directly pertains to the application in question and to the evaluation of the development, improvement or activity in accordance with section 1506.11 of the Revised Code and rules contained herein.

HISTORY: Eff 4-30-92

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

119.032 Review Date: 6-30-99, 12-30-03

1501-6-05 Lease.

A lease for lake Erie submerged land shall be prepared by the department of natural resources and shall contain, but not be limited to, language which reflects the following:

(A) A metes and bounds description of the submerged land to be occupied or an alternate description referenced to the applicant's upland property description that is considered adequate by the director as provided by the applicant.

(B) The director shall set the period of time (term) of the lease. The term of the lease shall be fifty years unless the director recommends a longer or shorter term. Should the director recommend a lease term less than or greater than fifty years, the director shall state in writing the specific findings, rationale and justification for the differential in setting the term. Applicant shall have the right of appeal in accordance with sections 119.06 to 119.13 of the Revised Code.

(C) A complete description of the development, improvement or activity upon the submerged lands. Said clause shall contain the following "any change in use approved by the director, Ohio department of natural resources, may also result in a re-evaluation of the rent. Said lease shall be amended to reflect the proper rent as assigned by the director, based upon the new use," or words of similar import.

(D) There shall be no assignment, sublease or mortgage of the leasehold without the expressed written consent of the director, which consent shall not be unreasonably withheld or unreasonably conditioned.

(1) A written request to assign, sublet, or mortgage shall be delivered by the lessee to the director not less than ninety days prior to the proposed effective date thereof, and the director shall respond within thirty days of the director's receipt of such request. Any assignment shall be held in escrow by the closing officer of the title company, bank, or attorney until the sale of the uplands has been completed. Should the sale not be consummated then the assignment shall automatically be null and void. If the director fails to act in any manner within ninety days of the receipt of the written request, then the request shall be deemed approved by the director.

(2) Rent and other lease terms shall be subject to revision at time of assignment.

(3) Applicants for the director's consent to sublease, assign or mortgage shall be entitled to an administrative review of and appeal from any decision of the director pursuant to section 119.06 of the Revised Code.

(E) Each lease area shall be subject to the public's right to navigation in and around any structures covered in the lease. However, the public's right of navigation is limited to the extent that it does not interfere with lessee's safe use of lessee's structure.

(F) No lessee shall refuse, during storms or other adverse conditions, safe harbor refuge to any vessel seeking such refuge, provided that the harbor can safely accommodate such vessel.

(G) Each lease shall require adequate liability insurance or self insurance documentation for lessee, municipal corporations or political subdivisions of the state for lessee's development, improvement or activity in the territory and lessee's occupation of the territory. Minimum limits of liability insurance shall be established by the department and shall contain a clause naming the state of Ohio as additional insured.

(H) Each lease shall be subject to any and all local, state or federal laws or regulations. The issuance of the lease does not release the lessee from obtaining any and all other permits or documents from any local, state or federal agency as required for the use of the territory. Failure to obtain any required permits or documents shall be a violation of the lease and subject to cancellation under the default provisions therein.

HISTORY: Eff 4-30-92; 7-4-99

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99, 12/30/03

1501-6-06 Rental.

The rent rates herein determined shall be applied equally throughout the entire lake Erie shoreline, including Sandusky bay, Maumee bay and the islands. Rates will be determined by the director using the description of the development, improvement or activity provided by the applicant according to the following schedule:

(A) Existing fill – any artificially filled area or filled portion of any area of the territory existing on March 15, 1989, shall be charged \$0.01 per square foot per year for the term of the lease or renewals. This rental rate shall apply only to the use of the filled area as it existed on March 15, 1989. If the lessee or its assigns change the use of the filled area, the rent may be modified to reflect the rent rate in effect for the new use at the time of the change of use.

The rental rate for any artificially filled area of the territory existing on March 15, 1989, which qualifies as a governmental non-income producing facility as determined by the director, shall be \$1.00 per year.

(B) Private floating dock – \$50 per year.

(C) Private structure – \$50 plus \$0.02 per square foot of leased area per year.

(D) Private erosion control structure – \$50 plus \$0.01 per square foot of leased area for the first year, and \$0.01 per square foot of leased area per year thereafter.

This rental rate shall be applied to all qualifying leases, or qualifying portion of the leased area for leases executed on or after the effective date of this rule. For existing leases executed after the April 30, 1992 effective date of the original rules, this lease rate will apply upon the rent renewal date for the lease, unless the lease is modified prior to such date. This rate shall not apply to leases executed prior to April 30, 1992 unless the lease is modified on or after the effective date of this rule.

(E) Semi-private and small commercial facility occupying no more than four acres – \$0.03 per square foot of leased area per year.

(F) Large facility and an industrial facility – \$0.04 per square foot of the leased area per year.

(G) Utility – \$500 per year.

(H) Governmental income producing facility shall pay the rent for the category of the facility.

(I) Governmental non-income producing facility shall pay \$1.00 per year. Where practicable, a lease for all such governmental uses or purposes shall be covered in one instrument for each political subdivision.

(J) "Escalator clause" – the rental rates as provided for in paragraphs (B) to (H) of this rule, shall be recalculated every five years beginning on the fifth anniversary of the effective date of this rule and any increase shall be at the same rate of increase as the "National Consumers Price Index" (C.P.I.). The annual base rate for calculation purposes shall be the rate established by the U.S. department of labor for the city of Cleveland, Ohio, urban, all categories (C.P.I.U.) for February, 1992. That annual base rate is 136.2. The new rate shall be most recent C.P.I.U. annual rate established to the nearest month prior to the date of recalculation by the U.S department of labor. Once the new annual rate has been determined and the amount of increase has been calculated, then the new annual rate shall become the base annual rate for calculation purposes for the next five year period of time. This change in rates shall continue until such time as the C.P.I.U. is no longer used or the director determines that another method may be more accurate. The rental rate percentage increase shall be the lesser of the following:

(1) The base annual rate shall be subtracted from the new annual rate, the base rate shall be divided into the difference between the base rate and the new rate and the answer will be the percentage of increase or decrease over that five year period of time:

example:

new rate (nr)	140.2
- base rate (br)	136.2
<hr/>	<hr/>
difference (df)	4.0
df 4.0	
<hr/>	
br 136.2	= .0293 or 2.93% increase

current rent: \$10,000.00 × .0293 increase = \$293.00

new rent: \$10,293.00

(2) At no time shall the increases of the rental rate exceed 20 percent in any given five year period of time, nor shall the aggregate increase of the rental rate exceed 150 percent over the term of the lease. Also at no time shall the rental rate charged in any lease written by the state of Ohio pursuant to sections 1506.10 and 1506.11 of the Revised Code or by these rules be lowered.

Should the United States department of labor discontinue the use of C.P.I. the director shall select as nearly compatible a statistical formula on the purchasing power of the consumer dollar as is then available and published in some responsible governmental publication.

This escalator method shall not affect the rent charged under paragraph (A) of this rule existing fill or paragraph (H) of this rule governmental non-income producing facility.

HISTORY: Eff 4-30-92; 7-4-99

Rule promulgated under: RC Chapter 119.

Rule authorized by: RC 1506.02

Rule amplifies: RC 1506.10, 1506.11

R.C. 119.032 review dates: 6/30/99, 12/30/03

APPENDIX M

SUMMARY OF SPECIAL MANAGEMENT AREA NOMINATIONS

The following Special Management Area (SMA) nominations were compiled from public comments submitted to ODNR in 1977 and the results of a survey conducted by the Lake Erie Shore Area Redevelopment Task Force in 1988. To simplify the list, duplicate nominations have been condensed into one reference.

The list begins with Ohio's easternmost coastal county, Ashtabula, and ends at Lucas, the westernmost coastal county in the state. Within each county, the sites are also listed from east to west. The issues or problems of each site are briefly described, followed by the nominator's recommended course of action. This list is not intended to be all-inclusive, nor is it a workplan outlining SMAs that will be the focus of the Ohio Coastal Management Program. Furthermore, the recommendations are not necessarily those that will be implemented. The list merely reflects public concern and opinion. It is offered here as background material to show how ODNR staff created the eight generic APC categories described in the document text.

Ashtabula County

1. Conneaut - Turkey Creek area
Cold water stream that provides excellent fish habitat; undeveloped natural area and coastline with state park or preserve potential.
2. Conneaut - Port of Conneaut
Industrial and commercial uses must be balanced with recreation and public access needs; increased sedimentation within breakwalls requires solution.
3. Conneaut - Conneaut Creek
Unique cold-water stream that should be protected from pollution; needs public access.
4. Conneaut - Conneaut Township Park
Needs erosion prevention and park maintenance to protect park's recreational values.
5. Route 531 Access Area
Increased access to lakefront could help area realize recreational use potential.
6. Geneva-on-the-Lake - Indian Creek
Beach area should be protected; creek offers scenic area and good fishing opportunities.
7. Geneva-on-the-Lake - Geneva Township Park
Needs erosion prevention structures and park maintenance; pollution from public use of area should be monitored.

8. Ashtabula - Lake Shore Park
Heavy public use necessitates facility improvement; increasing sedimentation threatens use of boat ramps and requires either dredging or building of sand control structures.
9. Ashtabula - Port of Ashtabula
Increasing and competing uses threaten harbor's role in shipping, thus requiring locally directed shore area development; proposal for boat ramps threatens natural dunes area; dredging needed to keep harbor open; approved disposal facility for contaminated sediments must be secured.
10. Ashtabula - Ashtabula River
Water pollution must be controlled; dredging needed to improve boating and fishing opportunities.
11. Ashtabula - Walnut Beach Park
Development should be restricted to prevent degradation of natural values.
12. Saybrook-on-the-Lake
Damage from erosion is a continual concern that must be addressed.

Lake County

1. Arcola Creek Estuary
One of Lake Erie's few remaining estuaries; harbors endangered plant species and may serve as spawning grounds; should be managed as a natural area.
2. Lake Erie Viticultural Region
Prime agricultural lands should be maintained for grape production.
3. North Perry - Perry Nuclear Power Plant
Must be carefully managed to prevent nuclear contamination of Lake Erie and surrounding area.
4. Painesville-on-the-Lake - Painesville Township Park
Severe coastal erosion threatens park and recreational use.
5. Diamond Shamrock
Hazardous waste site that must be protected from shoreline erosion.
6. Fairport Harbor - Grand River
Intense competition between users requires comprehensive management; need for increased boating facilities; dredge spoil disposal problems.
7. Fairport Harbor - Marsh along Grand River
Natural preserve or passive recreational area should be established to protect marshlands.

8. Mentor - Mentor Headlands State Park
Should be protected from increasing development pressures along adjacent proper ties.
9. Mentor - Mentor Marsh
Should be protected from threat of improper waste disposal and development.
10. Mentor - Mentor Lagoons
Area is used as a dump and public access is limited; should be managed to pro vide fishing and recreational use access.
11. Eastlake - Chagrin River
Low water levels and lack of dredging has created problems for recreational boaters; Chagrin River Islands are unique natural areas that should be protected against development.
12. Willowick
Severe erosion threatens private property; lakefront park and recreational access should be developed.

Cuyahoga County

1. Euclid - East 270th Street
Small, undeveloped area should be maintained as a park.
2. Euclid - Euclid Park
Park's natural values are endangered by proposed marina development and shoreline erosion.
3. Euclid - Sims Park
Natural area is threatened by proposed development and erosion.
4. Euclid - Shoreline area
Needs additional Lake Erie access facilities and erosion control structures.
5. Cleveland - Lakefront State Park
Parks (Edgewater, Donald Gray Gardens, Kirtland, Gordon, White City, Wildwood) need regular maintenance to provide adequate Lake Erie Access; erosion and pollution problems.
6. Cleveland to Lorain
Underwater park should be developed to preserve shipwrecks and maritime heritage.
7. Cleveland - Villa Angela site
Property adjacent to Wildwood Park offers recreational benefits that warrant protection for minimal development.
8. Cleveland - Nicholson Terminal

- Should be managed as a State Park to utilize recreation potential.
9. Cleveland - E. 55th Nike Site
Increased parking and access facilities are needed to develop use as a recreation area.
 10. Cleveland - Lakefront between E. 9th and E. 55th.
Intensive competition between users (recreational, industrial, commercial, shipping, etc.) requires comprehensive management to provide balance.
 11. Cleveland - The Flats
Increasing competition for land and growing conflicts between industrial, residential, and entertainment/retail concerns requires clear land-use planning.
 12. Cleveland - East bank of Cuyahoga River near Superior Ave.
Only part of downtown Cuyahoga River that is not bulkheaded; offers aesthetic and recreational values.
 13. Cleveland - Cuyahoga Riverfront/Harbor
Commercial harbor should be managed primarily for shipping concerns.
 14. Cleveland - Whiskey Island
Recreational development could yield better Lake Erie access.
 15. Lakewood - Lakewood Park
Threatened by intensive use and erosion of shale bluffs.
 16. Rocky River - Rocky River Park
Threatened by coastal erosion and overuse; needs facilities and safe harbor access.
 17. Bay Village - Bay Village Boat Club
Use of existing private launch area would yield greater public benefits if purchased and managed by the state.
 18. Bay Village - Huntington Park
Congested use dictates need for increased access and parking facilities.

Lorain County

1. Avon Lake
Breakwater needed to minimize erosion damage to property.
2. Avon Lake - Avon Lake Point
Good fishing structure needs better access facilities.
3. Avon Lake - Veteran's Memorial Park

Needs erosion control and additional development to maximize recreation potential.

4. Avon Lake - Miller Road Park
Needs additional access facilities (especially for anglers).
5. Sheffield Lake - City Park
Offers Lake Erie access, boating and fishing opportunities; proposed boat ramp would encourage use.
6. Lorain - Cromwell Park Area
Recreational boating should be encouraged by new marina development.
7. Lorain - Black River southwest of Henderson Ave. Bridge
Undeveloped, riverfront land that could support marina development.
8. Lorain - Black River south of Bascule Bridge
Revitalization would stimulate economy and provide access to riverfront.
9. Lorain - Griffith Asphalt Property
Launch facility is needed; only remaining site on the Black River where boat ramp is feasible.
10. Lorain - Diked Disposal Site
Could be developed to provide additional Lake Erie access.
11. Lorain - Port of Lorain
Commercial and recreational uses must be balanced by clear land-use planning.
12. Lorain - Lorain County Lakefront
Limit industry; emphasize recreation; develop Ohio version of "New York Seaway Trail;" revive lakefront state park idea.
13. Lorain - Lorain Lighthouse
Listed in National Register of Historic Places; needs structural restoration.
14. Lorain - Hole-in-the-Wall Beach
Natural beach needs protection and improvement, particularly increased access and clean-up; artificial reef should be completed.

Erie County

1. Vermilion - Vermilion River Park
Develop historical area, scenic park, beach, fishing wall, and boat harbor; provide for public access in Central Basin.

2. Vermilion - Lagoons Beach
Recreational area is being damaged by beach pollution and coastal erosion.
3. Vermilion - Port of Vermilion
Competing recreational and industrial uses must be balanced.
4. Vermilion - West Lake Road
Bird sanctuary that suffers from lakefront exposure to storm and flood erosion needs protection.
5. Vermilion - Sherod Park
City park needs increased access, erosion control, facilities and beach restoration.
6. Chappel Creek
Wetland characteristics and fish spawning potential should be preserved by state acquisition of land.
7. Old Woman Creek
As only remaining, undeveloped estuary in Lake Erie, should be further protected against additional encroachment.
8. Huron - Dikes Disposal Site
Increase recreational access for anglers on fill area.
9. Huron - Huron Harbor
Competing recreational and industrial concerns must be balanced by clear, land-use planning; area with little commercial use could be developed for recreation al boating.
10. Huron - Huron River marshes
Valuable ecological characteristics of riverine marsh should be protected.
11. Sandusky - Sheldon's Marsh State Nature Preserve
Potential development threatens wildlife; State should acquire additional lands, restrict development, and assure adequate funding for continued operations.
12. Sandusky - Cedar Point
Represents one of only three major sand spit complexes on Lake Erie; remaining undisturbed sand spits should be preserved whenever possible (such designation should be included within the Cedar Point Amusement Park Master Plan).
13. Sandusky - Port of Sandusky
Recreational interests are threatening industrial uses; proper balance must be maintained.
14. Kelleys Island - Kelleys Island State Park

Needs increased public access to realize recreational use potential (campground improvement and boating facilities).

15. Sandusky Bay - Mudflats
Natural values should be protected through government acquisition.
16. East Sandusky Bay
Comprehensive master plan must be developed to address shipping, hunting, fishing, marina, condominium, wetland issues; state park status could guard against threats to natural integrity.
17. East Sandusky Bay - Big Island Wetlands
Should be managed as wildlife refuge and outdoor education area.

Sandusky County

1. Miller's Spring
Wildlife values of unique natural spring should be protected.
2. Southern Sandusky Bay - Ohio Power lands
Beaches, woodlands and marshes should be preserved in a natural state.
3. Western Sandusky Bay (including Muddy Creek Bay)
Important stopover point for migratory waterfowl should be preserved in a natural state.
4. Fremont - Eastern Sandusky River Shoreline
Extensive riverbank erosion needs stabilization.
5. Fremont - Peninsular Farms
Area of great historical and natural value should be converted into a regional park.
6. Fremont - Brady's Island
Aesthetic and wildlife values must be protected against development.

Ottawa County

1. Bay Point
Wetlands should be protected from development.
2. Sandusky Bay
Needs organized zoning and planning to alleviate boat launch pressure; additional public access.
3. Sandusky Bay - West Harbor, East Harbor, Marblehead
Limit encroaching sprawl, condominium development, and boat overcrowding.
4. Marblehead - Marblehead Lighthouse

Historical significance of lighthouse could be preserved and promoted with more expenditures on signs, displays and parking.

5. East Harbor State Park
Excessive shoreline erosion should be controlled to prevent negative impacts on recreational use; development should be carefully planned to minimize negative impacts.
6. Catawba Island - Gem Beach
Only sand beach on island should be acquired for public benefit rather than private development.
7. Catawba Island - West Harbor Channel
Channel should be dredged and widened to promote access.
8. South Bass Island - Put-In-Bay
Needs better management to limit over-development and control shore erosion.
9. Middle Bass Island
Aesthetic and natural values should be preserved by using "planned" development.
10. North Bass Island - Fox's Marsh
Acquire this special island habitat for preservation purposes.
11. Port Clinton Area
Preserve natural areas against development pressures and manage harbor for water-dependent shipping interests.
12. Portage River
Channel from Port Clinton to Oak Harbor should be dredged to allow passage of recreational craft; canal from Portage River to Sandusky Bay should be considered; wetlands should be preserved.
13. Little Portage River, Oak Harbor, and Meadow Brook Area
Wetlands should be protected against encroaching growth.
14. Toussaint River
Should be dredged to allow for navigation into Lake Erie.
15. Turtle Creek
Boater safety problems require improved management.
16. Davis-Besse Nuclear Power Plant
Site should be carefully regulated to prevent destruction or harm to Lake Erie drinking water source.

Lucas County

1. Metzger Marsh
Prohibit erosion from damaging marshland values.

2. Jerusalem Township Shoreline
Restore sand beaches and minimize impact of shoreline erosion; protect historical sites; discourage development on sand beaches; rebuild pier and entrance to Cooley Canal.
3. Jerusalem Township - Niles Beach
Limit development to protect archaeological site.
4. Cedar Point National Wildlife Reserve
Control erosion to maintain marshland and wildlife values.
5. Oregon - Southshore Park
Needs renovation to enhance shoreline for public access.
6. Otter Creek
Because creek runs through two landfills and an oil refinery, water quality must be monitored.
7. Duck Creek
Lime sludge and refinery wastewater pollute creek; requires water quality monitoring.
8. Toledo - Port of Toledo
Industrial, shipping, and commercial activities yield substantial local, economic gains and must be properly managed to ensure continual benefits.
9. Toledo - Maumee River and Bay
Toxic effluents, siltation, raw sewage from ditches, waste landfills, and dredging all affect ecosystem; must be managed to protect natural values (particularly fisheries industry).
10. Toledo - Ottawa River
River runs through heavy industrial area and must be monitored for water quality.
11. Toledo - Point Place
Subject to lake and river flooding and poor internal drainage; structural protection is needed to minimize flooding damages.

Selected Highlights of Progress in Ohio Areas of Concern Page 1

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
<p>LAKE ERIE Black River</p> <p>This AOC is identified as the main stem, East and West Branches, French Creek, and those stretches of the upper basin and tributaries where use impairments exist. The AOC contains the nearshore area from the public swimming beaches at Lakeview Park (west side of Lorain) to Century Park (east side). This includes the inner and outer harbors and the areas surrounding the drinking water intakes of Elyria and Lorain.</p> <p>Previous water quality problems due to metals, ammonia, phenol, bacteria, and cyanide; sediments heavily polluted with metals, oil and grease, and PAHs; fish consumption advisories for all species; bacteriological contamination of water column; fish tumors, degraded biological communities, eutrophication, dredging restrictions, habitat destruction.</p>	<p>In 1979, USEPA sued USX for alleged Clean Air Act violations at its Lorain facility. In 1980, USEPA and USX filed a Consent Decree under which USX was to spend \$4 M during 4 years to suppress dust.</p> <p>In 1983, USX closed coke plant operations, eliminating coking wastewater discharges to the river.</p> <p>In 1985, EPA and USX filed an amendment to the 1980 Consent Decree under which USX agreed to dredge sediments contaminated with PAHs and cadmium from the Black River around a USX outfall, reduce nitrogen oxide emissions, reduce thermal pollution to the Black River, and pay a \$200 K penalty.</p> <p>West Side Lorain WWTP began operation in 1988, and upgrades completed in Oberlin, Wellington, and Lodi.</p> <p>Stanadyne eliminated its major river discharge by connecting to Elyria sanitary sewers.</p> <p>Elyria WWTP upgrade completed in 1989 under a Consent Judgement. GMC Lorain Plant closed, eliminating major industrial discharge.</p>	<p>Public workshop held to solicit the public perception of the environmental status of the Black River.</p> <p>The Black River RAP Coordinating Committee conducted a tour of the river to enhance their knowledge of the AOC and its concerns.</p> <p>Preliminary beneficial use impairment assessment completed.</p> <p>Ohio EPA conducted an intensive survey of the Black River, investigating water chemistry, fish tissue, fish and macro-invertebrate populations, sediment chemistry and habitat at 40 sites throughout the basin. Volunteers from the Black River RAP Committee and the Friends of the Black River are utilized in conducting the survey and sampling.</p> <p>The Friends of the Black River began a Volunteer River Sampling network using Hach kits to provide additional data to the OEPA survey and to promote interest in the health of the river.</p> <p>A Riparian Wildlife census project conducted using funds from planning and local health agencies. Further funding being sought for future RAP projects and investigations.</p>	<p>Ohio EPA to complete report on 1992 intensive survey results. This report to be utilized by Black River RAP Coordinating Committee as basis for completing use impairment identification for Stage 1 report.</p> <p>Drafting of Stage 1 report to be conducted by Study Team and approved by Coordinating Committee. Stage 1 report expected to be completed and submitted to IJC by end of 1993.</p> <p>RAP Committee to participate in Lorain Port Awareness Days and to conduct public participation/Stage 1 report review meetings.</p> <p>Funding/resources being sought to conduct creel survey, habitat investigations, wildlife surveys, and continuation of Volunteer River Monitoring program with Friends of the Black River.</p> <p>Elyria will not be able to complete relief sewer construction by end of 1993 as required under USEPA Consent Order. The City has undertaken an aggressive sewer rehabilitation program to reduce overflows from CSOs/SS'Os.</p>	<p>Ohio EPA to provide Stage 2 RAP report to IJC in 1995.</p> <p>Ohio EPA to issue renewal NPIDES permits for dischargers in Black River basin in FY 94.</p> <p>Development of biocriteria for the harbor and nearshore as a baseline for tracking progress in restoration of beneficial use.</p> <p>Continued improvements to Elyria sewer system.</p>

Selected Highlights of Progress in Ohio Areas of Concern Page 2

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
LAKE ERIE Black River	<p>In 1990, USX completed dredging about 32,000 cubic meters of contaminated sediments pursuant to the 1985 Consent Decree at a cost of \$1.5 M to USX. The dredged material was placed in a containment cell on USX property. In 1991, Ohio EPA established a local advisory board and began the public involvement process for the RAP. Oberlin College received a grant from the Nord Family Foundation to produce public information materials and to compile available data (1991). The Friends of the Black River, a citizens environmental action group, formed (1991).</p>		Lorain to initiate monitoring of SSOs as required by NPDES permit.	

Selected Highlights of Progress in Ohio Areas of Concern Page 3

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in ACIC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
<p>LAKE ERIE Cuyahoga River</p> <p>AOC identified as lower 45 miles of the river with basin upstream identified as a source.</p> <p>Most of the significant impairments occur in the navigation channel (lower 5 miles).</p> <p>Major impairments include: impoverished fish populations, elevated incidence of fish tumors/deformities, beaches and river impacted by high bacteria levels following wet weather, dredging restrictions, lowered aesthetics and habitat in the navigation channel.</p>	<p>Ohio EPA began the RAP process by forming a 35 member Cuyahoga Coordinating Committee in 1988. Numerous stakeholders became involved in the development of the plan.</p> <p>In 1989 RAP stakeholders began a 3-year fish tissue sampling program.</p> <p>Stakeholders conducted a study of bacterial contamination of the river downstream of Akron: the findings were that water quality standards are met during dry weather conditions.</p> <p>Stakeholders formed a non-profit corporation to provide funding support to the RAP.</p> <p>In 1990, stakeholders monitored bacterial conditions in river near Cleveland: the findings were significantly improved water quality.</p> <p>Fish tissue results from Akron area indicated no exceedences of FDA action levels. LTV Steel took steps that have cut contaminant loadings from their coking operations by 50%</p> <p>At a cost of \$200 K, the City of Akron reinforced the river bank near "Old City Landfill" to prevent debris entering river.</p>	<p>Cuyahoga Coordinating Committee approved the release of the Stage 1 RAP for public hearing in early 1992. The RAP was submitted to Ohio EPA 7/92.</p> <p>Stage 1 is to be submitted to the IJC 10/92.</p> <p>Promote and participate in River Sweep '92.</p> <p>Complete intensive water quality survey with report due late 1992. Findings indicate a general achievement of chemical water quality standards except for D.O. in the ship channel, recovery of benthic community in flowing portions of river, and impoverished fish community.</p> <p>2-year modeling effort indicates low D.O. in the navigation channel cannot be resolved by reductions in loadings.</p> <p>Completion of public opinion poll to assess attitudes, knowledge and priorities of cleanup. RAP process was utilized to obtain a community supported water quality standard use designation for the navigation channel.</p> <p>Will complete third year of fish tissue collection to assess safety for consumption.</p>	<p>Stage 1 Report reviewed and approved by 1JC.</p> <p>Update of Stage 1 Report to be compiled.</p> <p>Initiate development of Stage 2 with emphasis on developing lists of remedial alternatives.</p> <p>Work groups established to address wildlife habitat, education and pollution prevention, land use and institutional management, and recreation/access issues for Stage 2.</p> <p>Proposed standards rule-making for Cuyahoga Ship Channel recognize "shipping interests" in the Cleveland area partially responsible for attaining the new standards. The RAP process will continue to play a key role as the responsibilities of the "shipping interests" are delineated in the proposed rule.</p> <p>Begin activities/surveys to develop biocriteria for the harbor/nearshore area.</p>	<p>Continue studies and education projects for nonpoint source (NPS), stormwater, and combined sewer overflow sources; produce NIPS video.</p> <p>Assess benefits of remedial alternatives using a contingent evaluation.</p> <p>Public hearing on Stage 2 and submittal to Ohio EPA in 1994.</p> <p>Seek grants to support public education and awareness programs.</p> <p>Seek funding to continue investigation of nearshore biological community status.</p> <p>Seek funding to create challenge grants to fund priority research items.</p> <p>Complete NEORSID Master Plan for CSO Control (93-94).</p>

Selected Highlights of Progress, in Ohio Areas of Concern Page 4

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
LAKE ERIE Cuyahoga River	<p>Stakeholders agreed to the type of model of navigation channel. Ohio EPA started a 2-year study with support from stakeholders; estimated cost is \$200 K.</p> <p>Ohio EPA conducted intensive water quality surveys on Cuyahoga, including surveys of fish and benthic populations. Stakeholders identified 2 bacterial sources in the Cuyahoga Falls-Akron area. The City of Cuyahoga Falls effected an \$80 K repair to a section of sewer, and Akron effected a \$70 K repair to its source.</p> <p>NE Ohio Regional Sewer District and City of Akron started CSO studies to characterize contaminant loads</p> <p>The USEPA issued public notice that it intended to promulgate water quality standards for the Cuyahoga channel if Ohio EPA does not do so.</p> <p>Stakeholders recommended waiting for the results of Ohio EPA's intensive 2-year quality survey.</p>	Developing work plan for Stage 2 process.		

Selected Highlights of Progress in Ohio Areas of Concern Page 5

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
<p>LAKE ERIE Ashtabula River</p> <p>The AOC includes the lower 2 miles of the river, the harbor, adjacent shore, and Fields Brook, a tributary. Sediments heavily polluted with metals and PCBs, fish consumption advisories for all species, fish with tumors, loss of habitat, degraded benthic communities; dredging has been delayed due to issues of siting a disposal facility for polluted sediments, and the cost and responsibility for dredging.</p>	<p>Fields Brook was designated a Superfund NPL site in 1981. A RI/FS was conducted between 1983 and 1986. A ROD was issued in 1986 which included the removal of contaminated sediments.</p> <p>A RAP Advisory Council and subcommittees were formed in 1988.</p> <p>In 1989, the Ohio EPA conducted a biological study of the river as part of a natural resource damage assessment.</p> <p>USEPA issued Administrative Order for PRPs at Fields Brook Superfund site.</p> <p>The City of Ashtabula levied a boat dock tax to obtain revenue to improve the river (est. \$25 K per year).</p> <p>The river has not been dredged since 1962. Increased sedimentation has impaired full recreational use/enjoyment of the popular boating area.</p> <p>There are 20 NPDES dischargers to the Ashtabula AOC, 13 of which have had toxic substances in their discharge. Of these 13, 12 are now required to biomonitor their effluents. Due to the NPDES program, water quality has significantly improved.</p>	<p>Investigation on Fields Brook continues.</p> <p>Stage 1 RAP approved by IJC.</p> <p>ARCS conducted pilot-scale field demonstration of a thermal stripping process on contaminated sediments.</p> <p>Survey findings under USEPA's ARCS program indicate high incidence of tumors in brown bullheads in river.</p> <p>Superfund is currently investigating design of remediation for Fields Brook. Ecological assessment of floodplains begun.</p> <p>Human health risk assessment of river by GLNPO-ARCS.</p> <p>USEPA restrictions in place on COE open-lake disposal of harbor sediments (> 1 ppm PCB).</p> <p>COE begins planning CDF for harbor maintenance dredging.</p>	<p>Corps of Engineers will conduct interim dredging of non-toxic sediments from the river to relieve navigation problems. Sediments will be deposited in rehabilitated CDF on adjacent Conrail property.</p> <p>RAP Council to develop a Stage 2 program.</p> <p>Further assessment of sediments in outer harbor to determine PCB concentrations and options for harbor maintenance until CDF is constructed.</p> <p>RAP Council to place more emphasis on development of environmental education programs.</p> <p>Improve communication coordination between Fields Brook and river cleanup programs.</p> <p>ARCS program is conducting cost feasibility studies for potential application of thermal stripping technology process to remediate river sediments.</p>	<p>Human Health and ecological risk assessment of river (SF).</p> <p>Further negotiations with PRPs for brook cleanup (SF) 1993 and beyond.</p> <p>Remediation of Fields Brook NPL site; final cleanup projected to begin in 1994.</p> <p>Dredging and disposal of toxic and heavily polluted river sediments or alternative options.</p> <p>Siting and construction of CDF to contain heavily polluted sediments from outer harbor/commercial navigation channel by 1998.</p> <p>Submit Stage 2 Report to IJC in 1994.</p>

Selected Highlights of Progress in Ohio Areas of Concern Page 6

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
LAKE ERIE Ashtabula River	<p>Ohio EPA found the biological community of the river is the most improved among all major Ohio tributaries to Lake Erie. Nearshore water has become clearer and contaminants have declined in fish. Since 1985, recreational boat dockage has increased from 175 to 1,300.</p> <p>Results of PRPs intensive river study document TSCA regulated PCB contaminated sediments are buried deep and covered by less polluted sediments. Indicates no active sources of PCB.</p> <p>Ohio EPA has committed \$7 M towards removal and disposal of the contaminated Ashtabula River sediments contingent on matching federal funds.</p> <p>Oxychem Corporation completed a project to collect and treat stormwater runoff and ground water prior to discharge to Fields Brook. Estimated cost was \$3.5 M.</p> <p>Oxychem also contributed \$7,500 to the RAP process.</p> <p>Detrex Chemical Company constructed a system to collect and treat runoff from its property.</p>			

Selected Highlights of Progress In Ohio Areas of Concern Page 7

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
<p>LAKE ERIE Maumee River</p> <p>AOC is the lower 22.8 miles of river and Maumee Bay . Water quality problem due to ammonia, metals, pesticides, arsenic, low dissolved oxygen, nitrates and bacteria ; sediments moderately to heavily - polluted with metals, PCBs, and PAHs; fish advisories for, carp and catfish in Lake Erie; fish advisory for all species due to PCBs in lower 5.7 miles of Ottawa River which empties into north Maumee Bay; restrictions on swimming; Duck, Swan and Otter creeks have poor water quality, impaired fish and wildlife populations, habitat change and loss.</p>	<p>In 1984, Maumee began a 4 -phase program to separate its combined sewers by 1996 at an estimated cost of \$6 M. Toledo, which has 34 CSO points, began a 9-phase abatement program in 1985 to be completed in 1996 at an estimated cost of \$48 M. Perrysburg plans to expand its treatment plant and abate CSOs.</p> <p>The King Road Landfill (owned by Lucas County) and the Dura and Stickney landfills (owned by Toledo) are potential sources of pollution to the Ottawa River. The jurisdictions began remedial investigations.</p> <p>In 1986, Ohio EPA contracted with Toledo Metropolitan Area Council of Governments to develop RAP process (ongoing).</p> <p>In 1986, Dura and Stickney landfills were investigated.</p> <p>In 1987, Toledo dredged lime sludge from Duck Creek (87/88).</p> <p>Upgrades of Toledo WWTP completed.</p> <p>In 1989, NPS and CSO control measures were instituted; RI and actions at several dumpsites and landfills in river basin.</p>	<p>Stage 1 was approved by IJC 03/92.</p> <p>USEPA/OEPA/ODNR/SCS continued NPS project to educate local land users on pollution prevention methods.</p> <p>Began joint development of long-term dredged materials management plan among ACOE, OEPA, City of Toledo, USEPA, Toledo Port Authority, ODNR, USFWS and SCS.</p> <p>Dredging contracts (FY92) continued in accordance with the water quality certification.</p> <p>\$600 K awarded through USEPA's 319 program for agricultural equipment buy-down land use management.</p> <p>\$1.3 M in Congressional add-on was appropriated for a Maumee River and Bay basin-wide water quality assessment with focus on impacts landfills.</p> <p>Maumee RAP Advisory Council reorganized as the Implementation Committee.</p> <p>Education/monitoring program development with local high schools.</p> <p>RAP group proposes expansion of AOC to address more agricultural NIPS.</p>	<p>Develop priorities for focus of Stage 2.</p> <p>Analyze results of 1992 field investigations.</p> <p>\$1.2 M additional to Congressional add-on to continue investigation of landfills and Maumee AOC water quality.</p> <p>Implement sediment screening of Ottawa River via coordinated effort with GLNPO.</p> <p>Expand public education awareness projects.</p>	<p>Upgrade various municipal WW TPs at an estimated cost of \$27 M.</p> <p>Correct CSOs at an estimated investment of \$420 M.</p> <p>Abate agricultural and urban nonpoint source pollution in watershed.</p> <p>Address contaminated sediment problems in Swan Creek, Ottawa River and Maumee River; preserve Maumee Bay from further filling; protect wetlands and restore lost wetlands.</p> <p>River investigation to document impacts on environment and potential problems associated with landfill runoff.</p> <p>Negotiate for solution to sediments dredged from Toledo Harbor.</p> <p>Completion of Stage 2 RAP by June 1994.</p>

Selected Highlights Of Progress in Ohio Areas Of Concern Page 8

Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
<p>LAKE ERIE Maumee River</p>	<p>Libbey Owens Ford (LOF) installed collection system to capture leachate from its plant #6 and has eliminated previous discharge of arsenic to the Maumee River. LOF diverted Otter Creek so it does not flow under a contaminated lagoon at its plants, 4 and #8, and is de-watering this lagoon. The Village of Whitehouse was connected to the Lucas County sewage system in order to provide improved treatment. Cost was \$1.4 M. In 1990, Ohio EPA continued RAP development activities. Stage 1 RAP was drafted. The Maumee River RAP Advisory Committee (RAPAC) has 9 subcommittees. Swan Creek cleanup drew 779 volunteers who removed 164 tons of trash along the creek. 1990-1991 USEPA/Ohio EPA/ODNR/SCS nonpoint source project educated local land users on how to prevent pollution. Perrysburg completed a 5--year upgrade to its WWTP, doubling its treatment capacity.</p>			

Selected Highlights of Progress in Ohio Areas of Concern Page 9

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Area of Concern/Major Known Impairments	Background	Fiscal Year 1992 Activities in AOC	Fiscal Year 1993 Activities in AOC	Long-Term Agenda
LAKE ERIE Maumee River <small>ALU,HAFTUS J1</small>	Toledo continued construction of two downtown tunnels to store stormwater at a cost of \$12.5 M (phases 1 and 2 of CSO plan). Smaller tunnels are also being built along Swan Creek in phases 3 and 4.			

APPENDIX N (Continued)

The table in Appendix N provides a basic history of each AOC and progress through 1993. The following narrative updates the table and focuses on the some of the primary initiatives currently underway in each AOC.

Black River

The **Black River RAP** has expanded to include the entire basin and has recognized that nonpoint sources have the greatest impact on the watershed. The Black River RAP group is currently organizing a major initiative to address restoration of the Black River Riparian Corridor as a priority activity to improve the river quality. Organizational efforts and outreach to develop a proposal and seek grant funding is underway. Several habitat restoration projects have been implemented, mainly focusing on stabilizing streambanks with willow postings.

Both Elyria and Lorain continue to address problems with combined and separate sewer overflows. The Clean Water Section 319 program funded a low-cost loan equipment buydown to encourage farmers to adopt conservation tillage practices. Follow-up monitoring after the removal of PAH contaminated sediments near the USS/KOBE Steel outfall indicated an initial rise in tumor incidence in brown bullhead. Recent monitoring indicates the incidence is progressively decreasing. An agricultural wetland-habitat restoration project is underway in the upper watershed.

Cuyahoga River

Through the efforts of the many stakeholders in the Cuyahoga RAP, considerable resources, technical support, and volunteer participation have been amassed for RAP development and implementation. Some recent highlights are presented as follows:

Several habitat restoration projects have been implemented and several more are planned. An ad hoc group of health officials and wastewater treatment managers developed a brochure to advise beach-goers of potential health risks from elevated bacteria levels. The Northeast Ohio Regional Sewer District and the City of Akron have completed studies of their CSOs and are reviewing Master Plans. The Cuyahoga County Board of Health created an annual fee to be collected from homeowners with septic systems. This fee is used to support an aggressive inspection and management process for these systems. The RAP also sponsored a workshop on stormwater controls that promoted a model ordinance for stormwater control and sediment erosion, conducted an intensive analysis of contaminants in fish tissue that for the first time provided enough information to justify the issuance of a fish advisory for the lower Cuyahoga River, and conducted numerous public outreach events.

Ashtabula River

The Ashtabula River Partnership (ARP) has been established to address the main RAP issue of dredging the river to remove all contaminated sediments and restore beneficial uses. Additional sediment sampling has been conducted to better determine exactly what areas of the river need to be dredged and how deep to go. This effort has significantly elevated the level of local interest in the river restoration and brought together federal, state and local groups as equal partners. Extensive outreach and awareness efforts are underway to keep the public informed during every stage of the

process. Several upland sites have been identified as potential disposal sites for the dredged sediment, and environmental assessments are underway. An interim dredging project to remove nonto lightly-contaminated sediments to maintain recreational navigation was conducted in 1993. The RAP is exploring other options for river restoration beyond the removal of contaminated sediments, and continues an active public outreach effort.

Maumee River

The Maumee River is in the middle of a four-year multi-million-dollar effort to further investigate contamination at the numerous abandoned hazardous waste disposal sites in the AOC and their potential impact on the environmental quality of the river. Additional sediment sampling is being conducted under a supplemental effort for the mainstem Maumee River and Maumee Bay. Several landfills along the Ottawa River are in the midst of cleanup efforts. CSOs on Swan Creek have been eliminated, and additional CSO control programs are underway. Funds from the Clean Water Act 319 program supported a highly successful effort in the AOC to encourage farmers to adopt conservation tillage practices. A workshop was held to assist local officials in dealing with urban runoff issues. A number of public outreach efforts were implemented. A student monitoring program involves more than 300 students in monitoring of local streams and an annual student congress. A habitat restoration project was completed early in 1996.

APPENDIX O

PROGRAM MODIFICATIONS

To address changes in coastal resources concerns or public needs during OCMP implementation, procedures are needed to modify the initially adopted program. The procedures described below for program amendments and refinements will provide for such modifications and also meet Office of Ocean and Coastal Resource Management (OCRM) regulations pursuant to Section 306(e) of the Coastal Zone Management Act. 15 C.F.R. Part 923, Subpart I.

Substantive or "major" changes in policies or authorities related to the following aspects of the program will be amendments to the OCMP:

- Boundaries,
- Uses subject to management
- Criteria or procedures for designating Special Management Areas, and
- Policies or procedures for considering the national interest in planning or siting of facilities.

ODNR may propose amendments (including those suggested by any local or state agency or citizen participating in the program) to OCRM for approval subsequent to review by state and local agencies and the general public review, including hearings. The Director of ODNR is responsible for submitting program amendments to the Office of Ocean and Coastal Resource Management for federal approval. Depending upon the scope of the proposed amendment, OCRM may require an Environmental Impact Statement or may solicit comments from federal agencies and the public through the Federal Register.

When approved amendments change the requirements regarding data and other information necessary to assess the consistency of private activities requiring federal licenses or permits, the Ohio Department of Natural Resources shall send a copy of the amendment(s) to each relevant federal agency, pursuant to 15 C.F.R. § 930.56.

Changes in the OCMP other than those described above ("minor" changes) will be considered routine program implementation (RPI). An RPI is defined as "further detailing of a state's program that is the result of implementing provisions approved as part of a state's approved management program, that does not result in the type of action" that would define it as an amendment (15 C.F.R. § 923.84). ODNR may adopt RPI's subsequent to review by state and local agencies and the public. ODNR will notify OCRM and all affected parties of proposed and adopted program refinements.

State law requires that amendments to the OCMP document be preceded by a prescribed public notification process that may include public hearings (O.R.C. § 1506.02(A)). Rule changes likewise are guided by statute, requiring public notification, consultation, and hearings as required by O.R.C. Chapter 119 (O.R.C. § 1506.02(A)(3)).

APPENDIX P

COASTAL PROPERTY OWNED, LEASED OR MANAGED
BY THE U.S. GOVERNMENT

<u>Agency</u>	<u>Property</u>	<u>Location</u>	<u>Acreage (if known)</u>	<u>Map Key App. B</u>
U.S. Air Force	National Guard Facility (leased from State of Ohio)	Camp Perry, Port Clinton	40	FEL-1
U.S. Army Corps of Engineers	Projects Office	Toledo	2.4	
	Breakwater Maintenance Access	Port Clinton		
	Breakwater	Huron		
	Breakwater Maintenance Access	Cleveland		
	Piers	Rocky River		
	Breakwater Maintenance Access	Lorain		
	Breakwaters and Piers	Fairport		
	Breakwaters and Piers	Ashtabula		
	Breakwaters and Piers	Conneaut		
	East Ninth Street (warehouses, mooring slip, pier, wharf, dock)	Cleveland	20.4	FEL-2
Disposal Site #14	Cleveland	88	FEL-3	
Disposal Site	Lorain	58	FEL-4	
Disposal Site	Huron	63	FEL-5	
Disposal Site (Island 18)	Toledo	150	FEL-6	
Disposal Site (Facility 3)	Toledo	242	FEL-7	

<u>Agency</u>	<u>Property</u>	<u>Location</u>	<u>Acreage (if known)</u>	<u>Map Key App. B</u>
U.S. Coast Guard	Ashtabula CG Station	Ashtabula	.3	
	Ashtabula Harbor Light	Ashtabula	Offshore	
	Ashtabula LS Switch House	Ashtabula	1.6	
	Ballast Island Light	Put-in-Bay	.1	
	Cleveland Flag Quarters	Lakewood	.4	
	Cleveland West Pierhead Light	Cleveland	Offshore	
	Cleveland CG District Office/Dwellings	Cleveland	.3	
	Cleveland Sta. and MSO Office	Cleveland	1.3	
	Fairport CG Station	Fairport	4.8	
	Fairport Lifeboat Station	Fairport Harbor	.2	
	Green Island Light	(Off Put-In-Bay)	1.3	
	Huron Harbor Light	Huron	Offshore	
	Huron Island Station	Huron	.8	
	Lorain Coast Guard Station	Lorain	1.0	
	Lorain Dwelling	Lorain	.3	
	Manhattan Front Range Light	Maumee Bay, Lake Erie	.9	
	Manhattan Rear Range Light	North Toledo	.2	
Marblehead CG Station	Marblehead	1.9		

<u>Agency</u>	<u>Property</u>	<u>Location</u>	<u>Acreage (if known)</u>	<u>Map Key App. B</u>
	Marblehead Housing	Port Clinton	1.8	
	Marblehead Light Station	Marblehead	.2	
	Marblehead Lifeboat Station	Marblehead	1.1	
	Sandusky Bay Light Station (Range Lights)	Sandusky	11.9	
	Sandusky Inner Range Lights	Sandusky	11.9	
	South Bass Island Light	Put-in-Bay	.4	
	Toledo Coast Guard Station	Toledo	.9	
	Toledo Harbor Light Station	Toledo	1.6	
	West Sister Island Light		3.0	
	Light (under license from Norfolk and Western RR)	Huron		
	Antenna Tower (under license from Chemstone Corp.)	Marblehead		
	Light (under license from Vermilion Yacht Club)	Vermilion		
USFWS	Ottawa National Wildlife Refuge	Lucas and Ottawa Counties	8,316	FEL-8
	· Ottawa Unit		4,683	
	· Darby Marsh Unit		520	
	· Navarre Marsh Unit (owned by Cleveland Electric Illuminating and Toledo Edison, managed by U.S. FWS)		591	

<u>Agency</u>	<u>Property</u>	<u>Location</u>	<u>Acreage (if known)</u>	<u>Map Key App. B</u>
	· Cedar Point NWR		2,445	
	· West Sister Island Unit		77	
NASA	Rye Beach Pumping Station	Rye Beach	1.35	
NPS	International Peace Memorial	Put-in-Bay, South Bass Island	25	

APPENDIX Q

REGIONAL AND NATIONAL CONSIDERATION

Land and Water Uses of Regional Benefit

Subsection 306(e)(2) of the Coastal Zone Management Act requires a finding by the Secretary of Commerce that the OCMP provides for a method of assuring that local land and water use regulations within the coastal area do not unreasonably restrict or exclude land and water uses of regional benefit. In accordance with requirements of 15 C.F.R. § 930.12, the Ohio Coastal Management Program:

1. Identifies what constitute uses of regional benefit; and
2. Identifies methods to assure that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit.

Uses of regional benefit are those land or water uses that serve or affect more than a single unit of local government. Potential uses of regional benefit were identified by OCMP guidelines, Section 208 water quality management studies, federal agencies, and coastal regional planning and development organization studies. The following criteria were used to determine which of the potential uses would be subject to the regional benefit requirements:

1. Does the use affect or serve people in more than one unit of government?
2. Does this use provide a recognized regional or national need or value?
3. Does the use have a direct and significant impact on the land or waters in Ohio's identified coastal area?

A use must satisfy all three criteria to be considered a use of regional benefit.

By definition, the designated uses of regional benefit are essential or of importance to all Ohioans. Their siting, location and associated impacts sometimes result in conflicts between use or project proponents and local and state governments.

To assure adequate governmental consideration of regional uses, ODNR coordinates a review of proposed projects included as uses of regional benefit with coastal area planning and development agencies. The review process helps assure governmental consideration of regional uses in planning.

Uses of regional benefit identified in the OCMP also represent uses of statewide concern. Each use is administered by a state agency under existing statutory authority. The existence of these statutory authorities at the state level can preclude the unreasonable restriction or exclusion of the use of regional benefit by local regulation. This does not mean, however, that local concerns are not sought and

addressed. Each state agency administers a review process or other mechanism to assure consideration of all interests in the exercise of its authorities related to the regional use.

Energy Production, Generation and Transmission - Siting of electrical generating and transmission facilities is regulated by the Ohio Power Siting Board (O.R.C. Chapter 4906). Although its detailed review process provides for substantial local input, siting decisions ultimately rest with the board. A certificate issued pursuant to O.R.C. Chapter 4906 preempts any approval, consent, permit, certificate or other condition by other political subdivisions of the state. Board analyses of demand for electricity require consideration of regional, state and national benefits.

ODNR's Division of Geological Survey has authority to issue permits and leases for oil and gas production from the bed of Lake Erie (O.R.C. § 1505.07). The Division of Oil and Gas regulates offshore oil and gas drilling operations (O.R.C. § 1509.05-06). The Department of Development, Division of Energy formulates state energy policy that considers needs of more than local concern (O.R.C. Chapter 1551).

Recreation - ODNR is charged with providing outdoor recreation facilities for all Ohioans. State park development and public recreation projects using federal Land and Water Conservation Fund money are guided by Ohio's Statewide Comprehensive Outdoor Recreation Plan. The siting of state facilities is coordinated with local governments, but is not subject to local regulations. Purchase of recreation land is accomplished by negotiation and agreement with landowners; if these efforts fail, ODNR may exercise its power of eminent domain. The Ohio Parks and Recreation Council and the Recreation and Resources Commission review and advise ODNR on park acquisition and management policies (O.R.C. Chapters 1541, 1547, 1571).

Transportation - The Ohio Department of Transportation (ODOT) is responsible for the development of a balanced system of transportation throughout Ohio (O.R.C. Chapter 5501). The Division of Highways is responsible for planning, constructing, and maintaining state and federal roads. Although planning of state and federal roads is accompanied by substantial local coordination and review, final siting decisions are under the authority of ODOT. ODOT also may exercise its power of eminent domain when necessary to acquire lands for highway purposes (O.R.C. Chapter 163 and O.R.C. § 5511.01).

Unique Historic and Cultural Areas - Designated historic and archaeological sites in Ohio are studied and protected by the legislatively created Ohio Historical Society. Sites on the State Registry of Historic Landmarks or the State Registry of Archaeological Landmarks cannot be demolished or altered by any person or governmental agency without notifying the Director of OHS and allowing a survey of the property. Sites can also be protected by the power of eminent domain of the Ohio General Assembly through the request of OHS. The Ohio Historic Site Preservation Board guides OHS efforts, which may include the purchase, lease and excavation of significant sites (O.R.C. Chapter 149).

Unique Environmental Areas - The Division of Natural Areas and Preserves is authorized to establish state nature preserves to protect Ohio's unique natural areas, rare plants and animals, and valuable scenic resources. These preservation efforts are guided by the Natural Areas Council. The

Division of Wildlife manages and acquires lands to protect wildlife habitat. The Wildlife Council advises the Division in these efforts (O.R.C. Chapter 1571).

Wastewater Treatment and Public Water Supply - The Ohio Environmental Protection Agency administers several programs to ensure that regional wastewater and public water supply facilities are not arbitrarily excluded. These programs include effluent discharge permits for public and private dischargers, stream use designations and water quality standards, and Section 208 water quality management planning. Planning, design and construction of wastewater treatment facilities in Ohio, under Section 201 of the Clean Water Act, satisfies regional treatment needs. Federal funds are matched with state and local money for treatment facilities construction (O.R.C. Chapters 3701, 6111).

The Ohio Water Development Authority (OWDA) also finances construction of wastewater facilities and water management facilities cooperatively with public and private interests. OWDA's eight-member board is empowered to make loans or grants to governmental agencies, construct water development projects, issue water development revenue bonds, and acquire public or private lands through negotiated purchase or condemnation (O.R.C. Chapter 6121).

Responsibility for statewide water supply planning rests in the Ohio Department of Natural Resources (O.R.C. § 1521.03). A long-term Lake Erie Basin water resources plan is to be developed by the Division of Water by 1994 (O.R.C. § 1521.15).

Solid Waste Disposal - The Ohio EPA Division of Solid and Hazardous Waste Management administers Ohio's solid waste law, which, among other provisions, requires the formation of single or multi-county solid waste districts to help assure a more comprehensive approach to solid waste management, including the siting and management of landfills, recycling facilities and incinerators (O.R.C. Chapter 3734).

Hazardous Waste Regulation and Disposal - The Ohio EPA, Division of Solid and Hazardous Waste administers the state's hazardous waste law. In 1989, Ohio received federal approval to manage the Resource Conservation and Recovery Act. Siting of hazardous waste treatment, storage and disposal facilities is regulated by the Hazardous Waste Facility Board, which is the permitting body for hazardous waste facilities (O.R.C. § 3734.05).

Air Quality - The Ohio EPA Division of Air Pollution Control administers the state's air pollution laws, implements the federal Clean Air Act in Ohio, and regulates existing and new sources of air pollution (O.R.C. Chapter 3745). The Ohio Air Quality Development Authority provides reduced-cost financing of air pollution control facilities (O.R.C. Chapter 5703).

The following is a list of uses of regional benefit and the agencies responsible for assuring that they are not excluded or unreasonably restricted within Ohio's coastal area.

USES OF REGIONAL BENEFIT

<u>Categories</u>	<u>Agencies Preventing Arbitrary Exclusion</u>
Energy Production	Power Siting Board, Department of Natural Resources
Recreation	Department of Natural Resources
Transportation	Department of Transportation
Unique Historic and Cultural Areas	Ohio Historical Society
Unique Environmental Areas	Department of Natural Resources
Wastewater Treatment and Public Water Supply	Water Development Authority, Environmental Protection Agency, Department of Natural Resources
Solid Waste Management	Environmental Protection Agency
Hazardous Waste Management	Environmental Protection Agency, Hazardous Waste Facility Board
Air Quality Management	Environmental Protection Agency, Air Quality Development Authority

Coordination with Federal Agencies

During Program Development

Many federal and state agencies have cooperated in the past to manage resources and construct facilities in Ohio's coastal area. Direct contact with federal agencies provided information on the national interest and federally owned or managed lands in Ohio's coastal area. Ongoing cooperation will strengthen such arrangements during implementation of the OCMP.

The OCMP has incorporated federal agency concerns into this document to the extent that they do not conflict with state and local concerns.

During Program Implementation

Coordination of federal agency activities in the coastal area during program implementation will be provided through the following existing mechanisms as well as direct contact among local, state and federal agencies as appropriate:

Joint State-Federal Programs - Currently, many state agencies administer programs encouraged or mandated by the federal government, often with accompanying financial assistance. Generally, such state-administered programs are reviewed and approved by the sponsoring federal agency. These programs provide for substantial coordination as well as for meeting the goals of both state and federal agencies. Some of these programs serve as important means of OCMP implementation.

Review of Environmental Impact Statements - The National Environmental Policy Act of 1969 requires development of an Environmental Impact Statement (EIS) for any "major federal action significantly affecting the quality of the human environment." EIS's describing coastal impacts will be closely reviewed to determine if program objectives and policies have been adequately considered.

Intergovernmental Review - This process was established by the Intergovernmental Cooperation Act of 1968, Demonstration Cities and Metropolitan Development Act of 1966, and the National Environmental Policy Act of 1969 [Section 102(2)(C)]. Procedures have been established by the State of Ohio, Office of Budget and Management, State Clearinghouse, consistent with Presidential Executive Order 12372 of July 14, 1982. This OMB executive order revoked former Circular A-95, and each federal agency has promulgated rules consistent with new federal Office of Management and Budget Guidelines.

The "single point of contact" for transmitting the results of intergovernmental reviews is the State Clearinghouse. The process is designed to include state and local governments' elected officials in the review of federal and federally assisted programs and projects. Basically, applicants for federal assistance and agencies sponsoring federal development projects must notify the State Clearinghouse and areawide clearinghouses of their intent to apply for federal assistance. The Toledo Metropolitan Area Council of Governments (TMACOG), and the Northeast Ohio Areawide Coordinating Agency (NOACA) serve as areawide clearinghouses in the coastal area.

Consideration of the National Interest

Many facilities and resources in which there is a national interest are found in Ohio's coastal area. Section 306 of the Coastal Zone Management Act requires consideration of the national interest, defined as the planning for and siting of facilities, activities, or resources that are necessary to meet other than local needs. Coordination with federal agencies has helped assure the incorporation of adequate consideration of the national interest in the OCMP. Sources of information used during both program development and implementation include:

- Federal laws and regulations;
- Policy statements and executive orders from the President of the United States;
- Reports and studies from federal and state agencies and commissions; and
- Statements of national interest issued by federal agencies.

Input from these sources led to the development of a list of facilities and resources in which there is a current or potential national interest in Ohio's coastal area.

National interests in the listed facilities and resources may conflict with each other. Because the OCMP does not create a site-specific land use plan, it is impossible to prevent all such potential conflicts. The OCMP policies listed, and the authorities upon which they are based, regulate impacts of many land-use activities and thereby prevent potential conflicts. These policies also use or establish review procedures within which the national interest is considered.

ODNR, as designated lead agency for the OCMP, will help assure adequate consideration of the national interest through its coordinating role and through its role in monitoring policy implementation.

The points at which the national interest are considered are briefly described below and are more specifically described in the policies.

Energy

Ohio's coastal area provides many sites for electric generating and transmission facilities due to availability of large quantities of cooling water, proximity to coal reserves and presence of a large market. The electricity generated serves a large regional area. Transshipment and processing of basic energy resources, mainly coal and oil, is an important activity in Lake Erie ports. Existing statutory authority and OCMP policies ensure that adequate consideration of the national interest in these energy facilities will occur.

Specifically, Ohio's Power Siting Board regulates siting of electric generating facilities. The Board's review procedures prior to licensing, including public hearings and local, state and federal review, provide extensive opportunities for consideration of the national interest.

Exploration and recovery of offshore oil and gas is regulated by ODNR; prior approval of these activities is required by ODNR, Ohio EPA, the Attorney General and the Governor. Formulation of state energy policy, consideration of bills in the legislature, and processing of drilling permits and mineral extraction permits are points at which the national interest in these resources is considered.

In most cases, transshipment, storage and processing of energy resources is not regulated at the state level except when impacts on air and water quality occur. The OCMP recognizes the importance of these activities and encourages planning for them in port and electric generating sites. The State of Ohio has a legislative mandate to protect air and water quality. Through adherence to adopted air and water quality standards, the mandated protection of air and water will take precedence over the siting of transshipment facilities, and the storage and processing of energy resources.

To determine the national interest in activities related to energy production and transmission, the following were consulted: National Energy Plan, Federal Energy Policy and Conservation Act, U.S. Department of Energy, U.S. Geological Survey, Federal Power Act, Natural Gas Act, East Central Area Reliability Commission.

Historic and Archaeological Sites

The coastal area is rich in history. The programs and regulations of the Ohio Historical Society preserve and interpret this record, which is of value to all Americans (O.R.C. Chapter 149). OHS assists in implementing the National Historic Preservation Act of 1974. Specifically, its Historic Site Preservation Advisory Board receives nominations for historic and archaeological sites, solicits local comments and may recommend national designation to the Department of the Interior. The Department publishes proposed designations in the Federal Register, soliciting comments from agencies and citizens. After 30 days, they may add the site to the National Register of Historic Places. The OCMP supports preservation and restoration of historic and archaeological sites in the coastal area by local and state agencies through their designation as Areas of Particular Concern.

To determine the national interest in historic and archaeological sites, sources consulted include: The Antiquities Act of 1906, Historic Site Act of 1935, National Historic Preservation Act of 1966, Archaeological and Historic Preservation Act of 1974, National Historic Preservation Act of 1974, National Environmental Policy Act of 1969, and Executive Order 11593.

Hazard Areas

Erosion and flooding in the coastal area are serious problems, leading to loss of life and property. Average annual dollar losses reach far into the millions. Sediments degrade water quality in Lake Erie as well as the other Great Lakes. Management of these hazards is therefore in the national interest and requires the use of several means to effectively accomplish this management.

The OCMP will encourage property owners to establish Conservancy Districts and other special purpose districts to develop joint projects to control erosion. Judicial hearings prior to district establishment may consider the national interest in the proposed district. ODNR will continue to provide financial assistance where possible to local governments and citizens for erosion control.

All flood and erosion hazard areas are designated as Special Management Areas. Coordination of programs will continue with the Flood Insurance Administration and the U.S. Army Corps of Engineers, both in proposed Corps projects and in Section 10 and Section 404 permit reviews.

To determine the national interest in such hazard areas, the following sources were consulted: Flood Disaster Protection Act, National Flood Insurance Act of 1968, Water Resources Development Planning Act of 1974, and Executive Order 11988 on Flood Plain Management.

Wetlands

The extensive but diminishing wetlands in Ohio along Lake Erie provide important habitat for many kinds of animals and plants, support migratory waterfowl populations, and help protect lake water quality. Protection of remaining wetlands, therefore, is in the national interest. ODNR will review implementation of Section 404 of the federal Clean Water Act, which regulates the filling of wetlands, and the Presidential Executive Order 11990, which directs federal agency activities to avoid impacts on wetlands. Ohio EPA issues or denies Section 401 Water Quality Certification for projects involving disposal of dredged material or placement of fill material into waters of the state, including wetlands. ODNR staff will work with the Corps of Engineers to adopt comprehensive but streamlined permit review criteria. Adoption of these criteria (with public review) and hearings held on permit applications are points at which the national interest in wetlands is considered. ODNR staff will assist local governments in preserving environmentally sensitive areas of all kinds, including wetlands.

To determine the national interest in wetlands, the following sources were consulted: Fish and Wildlife Service, U.S. Army Corps of Engineers, Fish and Wildlife Coordination Act, Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, Executive Order No. 11990 (protection of wetlands), Executive Order No. 11988 (floodplain management), Fishery Conservation and Management Act of 1976, Food Security Act of 1985, Water Resources Development Act of 1986, North American Wetlands Conservation Act of 1989 and the National Wetlands Priority Conservation Plan.

Transportation

The Ohio Department of Transportation works with local governments and federal agencies to develop a safe, efficient, multi-modal transportation system to meet local, regional and national needs. For many projects, hearings are held at various preconstruction phases to assure that plans meet citizen needs and that environmental and social impacts are addressed. Such projects are subject to federal Department of Transportation approval and also the intergovernmental review process. The OCMP will encourage consideration of coastal concerns and resource protection in transportation planning.

Lake Erie's ports are a major link in the region's freight and cargo transportation network. State law authorizes creation of port authorities to plan and develop port facilities. The ports are also designated as Special Management Areas. Review procedures for the various permits required for typical port

projects (Section 10 and Section 404) are the major points at which national interest in ports is considered.

To determine the national interest in transportation, the following sources were consulted: Railway Safety Act of 1970, Environmental Impact Statements on the extended commercial navigation season and state participation on the Winter Navigation Board, Activities and development projects conducted by the Department of Commerce's Maritime Administration, Department of Transportation Act, Coast Guard, Primary Duties, technical studies sponsored by the U.S. Army Corps of Engineers, and the National Transportation Plan.

Recreation

Lake Erie provides extensive recreational opportunities for residents of Ohio and surrounding states. ODNR has established many recreation facilities along the shoreline and plans to expand them to meet the increasing demand for recreation areas. Every five years, ODNR develops and implements a Statewide Comprehensive Outdoor Recreation Plan (SCORP). The SCORP must be approved by the U.S. Department of the Interior's National Park Service (NPS) to receive continued funding from the Land and Water Conservation Fund. SCORPs are submitted to other federal agencies for review prior to NPS approval (principally the Fish and Wildlife Service, Bureau of Land Management, and the Forest Service). The proposed SCORP also undergoes State Clearinghouse review. Projects using LWCF money must have NPS approval and also undergo State Clearinghouse review. These procedures identify principal points at which the national interest in recreation is considered.

All state and local parks in the coastal area are designated as Special Management Areas. Also, the ODNR Division of Real Estate and Land Management administers the local community grants for the Lake Erie Access Program and encourages recreational use of urban rivers and lakefronts through other means as well.

To determine the national interest in recreation, the following sources were consulted: Statewide Comprehensive Outdoor Recreation Plan, National Park Service, Fish and Wildlife Service, Historic Preservation Act, Land and Water Conservation Fund Act, and the President's Commission on Americans Outdoors.

National Defense

Ohio cannot prevent siting of facilities related to national defense in the coastal area. The program recognizes the importance of such facilities to Ohio and the nation. Also, federally controlled lands are exempt from the authority of state programs. Through coordination with federal agencies, especially the Department of Defense, OCMP will ensure that any proposed facilities are developed with minimal environmental impact and that those with proposed locations on the immediate shoreline do, in fact, require lake frontage.

To determine the national interest in defense, the Department of Defense, and the Army, Navy, Air Force, U.S. Coast Guard, and the U.S. Army Corps of Engineers were consulted.

Air and Water Quality

Sources of pollution generated in one location may damage air and water many miles away. These resources that are vital to all Americans, and their management is therefore in the national interest. By incorporating Ohio EPA's federally approved air and water quality standards, criteria, rules, and regulations into the OCMP as well as its planning processes, the OCMP will actively work to protect coastal air and water resources. Review of Ohio EPA proposed programs, regulations, and projects by U.S. EPA and other federal agencies is the principal point for consideration of the national interest. These activities also undergo State Clearinghouse review. Additionally, hearings are conducted prior to adoption of new air and water quality regulations. The Environmental Board of Review considers appeals from citizens and agencies when their concerns are felt to have been inadequately or improperly addressed by Ohio EPA.

To determine the national interest in air and water quality, the following sources were consulted: Federal Water Pollution Control Act, Federal Clean Air Act and U.S. Environmental Protection Agency.

Endangered Species

A variety of rare or endangered plant and animal species is found in the coastal area. Several state and federal laws have been enacted to protect such species. ODNR's Division of Natural Areas and Preserves maintains the Natural Heritage Database. Resource planners may refer to this database information to determine whether a proposed project might impact rare species. All species native to Ohio that are listed on the federal list of endangered and threatened wildlife and plants, pursuant to the Endangered Species Act of 1973, as amended, are included on the state lists of endangered species of native plants and wild animals.

To determine the national interest in endangered species, the Endangered Species Act of 1973 and the U.S. Department of the Interior were consulted. As a result of ongoing coordination with the U.S. Department of the Interior, Fish and Wildlife Service, and in response to that Department's comments on the DEIS, ODNR and U.S.F.W.S. have entered into a Memorandum of Understanding (MOU). That MOU, signed by the Director of ODNR and the U.S.F.W.S. Reynoldsburg Field Office Supervisor, is included at the end of this appendix.

FEDERAL AGENCIES CONSULTED DURING PROGRAM DEVELOPMENT

- Department of Agriculture
 - Agricultural Stabilization and Conservation Service
 - Farmers Home Administration
 - Forest Service
 - Soil Conservation Service
- Department of Commerce
 - Economic Development Administration
 - National Marine Fisheries Service
 - Office of Ocean and Coastal Resource Management
- Department of Defense
 - Department of the Air Force, Central Region
 - Department of the Army
 - Department of the Army, Corps of Engineers, Buffalo District
 - Department of the Navy
- Department of Energy
- Department of Health and Human Services
- Department of Housing and Urban Development
- Department of the Interior
 - Bureau of Land Management
 - Fish and Wildlife Service
 - Geological Survey
 - National Park Service
 - Office of Surface Mining
- Department of Justice
- Department of Transportation
 - Coast Guard
 - Federal Railroad Administration
 - Maritime Administration
- Environmental Protection Agency
- Federal Aviation Administration
- Federal Emergency Management Agency
- Federal Energy Regulatory Commission
- Federal Highway Administration
- Federal Maritime Commission
- General Services Administration
- Interstate Commerce Commission
- National Aeronautics and Space Administration
- Nuclear Regulatory Commission

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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OHIO DEPARTMENT OF NATURAL RESOURCES
AND
THE U.S. FISH AND WILDLIFE SERVICE

This Memorandum of Understanding (MOU) is made and entered into on this _____ day of _____, 1997, by and between the Ohio Department of Natural Resources (ODNR), and the U.S. Fish and Wildlife Service (FWS).

PURPOSE

This MOU establishes project/program review responsibilities related to Federally listed threatened and endangered species that pertain to Ohio's Coastal Management Program. The general responsibilities and species-oriented roles of ODNR and the FWS are described below. The roles and responsibilities identified in this MOU represent necessary coordination of project/activity reviews under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1533), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). The roles and responsibilities identified in this MOU also represent integral coordination for consistency determinations on projects and activities subject to consistency requirements of the Coastal Zone Management Act (CZMA; 16 USC 1456) with implementing Federal regulations (30 CFR 930) and the Ohio Coastal Management Law (O.R.C. Section 1506.03) as further defined in the Ohio Coastal Management Program Document.

PERTINENT GENERAL RESPONSIBILITIES

The FWS is a primary Federal agency responsible for administration of the Endangered Species Act (ESA). The Reynoldsburg, Ohio, FWS Field Office implements the ESA for Federally listed threatened and endangered species in Ohio. The National Oceanic and Atmospheric Administration (NOAA) administers the Coastal Zone Management Act (CZMA) and, under the ESA, retains certain responsibilities for the conservation of Federally listed species which include ensuring ESA compliance of section 306A low cost construction projects, authorized by 16 U.S.C. 1455a.

The ODNR is the primary State agency in Ohio responsible for both State and Federally listed species. The ODNR contains three divisions involved in project/activity reviews that evaluate the impacts of projects/activities on State and Federally listed species. These are the Divisions of Wildlife (ODNR-DOW), Natural Areas and Preserves (ODNR-DNAP) and Real Estate and Land Management (ODNR-REALM). The ODNR-DOW is responsible for enforcing the laws of the state for the protection, preservation, propagation, and management of wild animals including restricting the take or possession of species that are Federally listed under the ESA. The ODNR-DNAP is

responsible for managing and regulating take of plant species that are Federally listed under the ESA. Within ODNR-DNAP, the Data Services Section maintains the Natural Heritage database containing records with specific plant and animal species locations and other pertinent data. Lead implementation of Ohio's Coastal Management Program is performed by ODNR-REALM.

ROLES IN SPECIES REVIEW

Projects and activities that are reviewed by ODNR for consistency with the policies of the Ohio Coastal Management Program shall undergo review for impacts to State and Federally listed species.

As mutually agreed upon between FWS and ODNR, applicants shall be instructed by ODNR-REALM, or by any other state agency networked in the Ohio Coastal Management Program, to contact the FWS, the ODNR-DOW Environmental Section, and the ODNR-DNAP Data Services Section for lists of State and Federally listed species that may be affected by the applicant's action. The State shall also ask the applicant to provide any other available information regarding State and Federally listed species on or near a proposed project site or otherwise affected by a proposed activity.

A. Projects Subject to Federal Consistency

Potential impacts to State and Federally listed species shall be assessed by the applicant and such assessment shall be reviewed for accuracy and concurrence by ODNR. If an adverse impact may occur to Federally listed species as the result of a Federal project or a project receiving Federal funding or a Federal license or permit, ODNR-REALM will contact the FWS to advise them of the need to initiate ESA Section 7 consultation with the Federal agency undertaking, funding or permitting the project or activity. The ODNR will also use any other available information to evaluate potential impacts of the project/activity on Federally listed species.

If a Federal agency, or a permit applicant or a Federal funds applicant seeking consistency approval has not adequately protected Federally listed species, ODNR will, to the extent permitted by law, determine that the applicant's project or activity is not consistent with coastal management policies. In this event, ODNR will clearly identify the rule, regulation or policy that the action does not meet and will describe alternative measures (if they exist) which would permit the proposed project/activity to be conducted in a manner consistent with coastal management policies and in compliance with the ESA.

B. Projects Subject to State Consistency

It is hereby recognized that Section 9 of the ESA prohibits the take of federally listed animal species. It is also recognized that ESA Section 9 prohibits the take of federally listed plant

species in cases that violate State law, or in cases where the plants occur in areas under Federal jurisdiction. In certain cases, take of federally listed species may be authorized under ESA Section 10 (incidental take permits), ESA Section 6 (cooperative agreements with States), and ESA Section 7 (consultation on incidental take).

In the case of non-Federal projects, including projects that do not use CZMA Section 306A funds or other Federal funds, compliance with ESA Section 9 is required, even though consultation under Section 7 is not required. For non-federal projects, ODNR or the applicant may voluntarily choose to consult with FWS about possible impacts to federally listed species. Such consultation would assure compliance with ESA Section 9 on the part of ODNR or the applicant in the event of a non-jeopardy biological opinion. ODNR will voluntarily ensure that non-Federal and non-Section 306A CZMA projects subject to state consistency will not take or otherwise adversely impact Federally listed species, unless authorized under State law and Sections 6, 7 or 10 of the ESA. Should biological opinion indicate possible jeopardy or adverse modification of designated critical habitat, agreement by ODNR or applicant to adopt all reasonable and prudent alternatives identified in the biological opinion would similarly ensure that the project or activity subject to State consistency, will not take or otherwise adversely impact federally listed species unless authorized under State law and Sections 6, 7 or 10 of the ESA.

C. **Projects/Activities Receiving Federal Section 306A CZMA Assistance**

The majority of Ohio's coastal projects/activities that will receive Federal funds from NOAA are low cost construction projects under Section 306A of the CZMA. The Office of Ocean and Coastal Resource Management (NOAA-OCRM) reviews specific Section 306A project proposals. As part of its annual application to NOAA-OCRM, the ODNR-REALM will submit a categorical checklist for each proposed Section 306A project. As part of the checklist, ODNR-REALM must certify that the proposed Section 306A project(s) will not result in adverse environmental impacts, including impacts to Federally listed species or their critical habitat.

For projects receiving Section 306A funds from NOAA, ODNR will ensure that the project will not result in adverse impacts on Federally listed species or Federally designated critical habitat. If ODNR-REALM indicates through completion of a categorical checklist, or other means, that there may be impacts on Federally listed species or critical habitat, ODNR-REALM will either prepare a detailed environmental assessment or environmental impact statement or will withdraw the proposed project from the application to NOAA-OCRM. It is understood that NOAA-OCRM may also opt to not fund the project. If a Section 306A project "may affect" a Federally listed species of plant or animal, and ODNR-REALM intends to proceed with the

project, early consultation with FWS and NOAA-OCRM will be undertaken to ensure responsibilities are met under Section 7 and 9 of the ESA.

To reduce workload, the ODNR-REALM and the FWS will mutually develop a list of types of projects or other activities, submitted by applicants for Coastal Zone Management Act Section 306A funding, that will not normally require FWS consultation under Section 7 of the ESA. The project/activity list will be attached to this MOU as an Appendix and mutually modified as needed.

COOPERATION, CONFLICT AVOIDANCE AND MEDIATION

The protection and preservation of threatened and endangered species is one of ODNR's highest priorities. Protection, enhancement and restoration of threatened and endangered species and their habitat are some important goals of the Ohio Coastal Management Program. The ODNR will work in close accord with the FWS to achieve these goals. This relationship will promote positive and unified initiatives for the conservation of threatened and endangered species and the maintenance of biodiversity important to a sustainable coastal ecosystem. If, for some reason, the FWS and ODNR disagree over determination of how impacts of a coastal area project/activity may affect Federally listed species, it is acknowledged and understood that the FWS may invoke the authority of the U.S. Endangered Species Act.

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Ohio Department of Natural Resources

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U.S. Fish and Wildlife Service,
Reynoldsburg, OH

Wayne R. Warren, Chief
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The above is mutually agreed between ODNR and the FWS from this date on, or until modified or discontinued by mutual consent, or discontinued unilaterally with a minimum of ninety (90) days advance notice by either party. Obligations of the State are subject to O.R.C. § 126.07. If this MOU is

discontinued, reinitiation of consultation with the FWS by NOAA for Ohio's Coastal Management under the CZMA may be necessary under the Endangered Species Act.