Ohio Department of Natural Resources

BOB TAFT, GOVERNOR

SAMUEL W. SPECK, DIRECTOR

Office of the Director
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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

OhioEPA

State of Ohio Environmental Protection Agency

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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 ~~Director Speck~~ Sam:

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

OHIO E.P.A.
MAR 2 2003
JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

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.

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

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.

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		
	SRW	WWH	EWH	MWH	SSH	CWH	LRW	PWS	AWS	IWS	BW	PCR	SCR
Maumee River													
- I-75 to confluence with Maumee Bay		o							*	*		*	
- Perrysburg Bridge to I-75	*	*							*	*		*	
- remaining segment within coastal area		*							*	*		*	
Portage River		*							*	*		*	
Toussaint River		*							*	*		*	
Sandusky River													
- Fremont Sewage Treatment Plant to confluence with Muskellunge Creek		o							*	*		*	
- remaining segment within coastal area		*							*	*		*	
Huron River													
- East Branch/West Branch confluence to Lake Erie		I			I				I	I		I	
- bordering Dupont Marsh	I	I			I				I	I		I	
Old Woman Creek													
- Estuary	o	*							*	*		*	
- within boundaries of Old Woman Creek NERR	o	*							*	*		*	
- remaining segment within coastal area		*							*	*		*	
Vermilion River			*		o				*	*		*	
Black River		I			I				I	I		I	
Rocky River	I	I			I				I	I		I	

I = based on results of biological field assessment performed by Ohio EPA; * = based on 1978 Water Quality Standards;
o = 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 = MWH = Modified Warmwater Habitat;
SSH = Seasonal Salmonid Habitat; CWH = 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		
	SRW	WWH	EWH	MWH	SSH	CWH	LRW	PWS	AWS	IWS	BW	PCR	SCR
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		*			o				*	*		*	
Ashtabula River		+			o					+		+	
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 installations 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, of a grouping of thirty-seven watershed 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 replaced the storm water and some water quality functions on-site. Peak post-development rates or 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 than 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 fo 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.