

**OHIO COASTAL MANAGEMENT PROGRAM
POLICY 39 – WATER DIVERSION**

IT IS THE POLICY OF THE STATE OF OHIO TO MANAGE DIVERSION OF LAKE ERIE AND TRIBUTARY WATERS BY:

- A. REGULATING WATER DIVERSIONS OF LAKE ERIE BASIN WATERS THROUGH THE OHIO DEPARTMENT OF NATURAL RESOURCES PERMIT PROCESS (O.R.C. 1501.30 THROUGH 1501.32);**
- B. OBTAINING THE PERMISSION OF THE GREAT LAKES STATES' GOVERNORS PRIOR TO APPROVING PERMITS FOR DIVERSIONS OF LAKE ERIE WATERS (O.R.C. 1501.32); AND**
- C. REVIEWING ALL NEW PROPOSALS FOR DIVERSIONS OUT OF THE GREAT LAKES BASIN AS WELL AS ALL NEW PROPOSALS FOR FEDERAL STUDIES THAT WOULD INVOLVE DIVERSIONS OUT OF THE GREAT LAKES BASIN, AND GRANTING OR DENYING PERMISSION FOR SUCH DIVERSIONS OR STUDIES (42 U.S.C. 1962D-20).**

Authorities and Administration

- A. ODNR regulates diversions in excess of 100,000 gallons per day out of and into the Lake Erie Basin (O.R.C. 1501.32 and O.A.C. 1501-2-01 through 1501-2-12). A diversion is any withdrawal of water from either the Lake Erie or Ohio River drainage basin and transfer to another basin without return. Diversion does not include evaporative loss within the basin of withdrawal. Any proposed diversion in excess of 100,000 gallons per day must receive a permit issued by the Director of ODNR. A permit will not be issued if it is determined that: (1) some or all of the water to be diverted will be needed for use within the basin, (2) the public health, safety, or welfare would be endangered, (3) the applicant has not demonstrated that the proposed diversion is for a reasonable and beneficial use and is necessary to serve the applicant's needs, (4) reasonable efforts to develop and conserve water resources in the importing basin have not been made, (5) the proposed diversion, alone or in combination with other diversions and water losses, will have a significant adverse impact on in-stream uses or on economic or ecological aspects of water levels, or (6) the proposed diversion is inconsistent with regional or state water resources plans (O.R.C. 1501.32(B)). Any person who receives notice of a denial of a permit application or modification of an existing permit under O.R.C. 1501.32 is entitled to a hearing under O.R.C. Chapter 119 upon written request (O.R.C. 1501.32(E)(2)).

The director shall revoke any permit issued under O.R.C. 1501.32 without a prior hearing if it is determined that the quantity of water being diverted exceeds the amount allowed by the permit.

A permit may be suspended if the director determines that continued diversions will endanger public health, safety or welfare. Within five days after the suspension, the director shall

provide the permittee an opportunity to be heard and to present evidence that the continued diversion of water will not endanger the public health, safety or welfare (O.R.C. 1501.32(F)).

- B. Through the Council of Great Lakes Governors, Ohio signed the Great Lakes Charter, in which it agreed to seek to implement a strategy to protect the waters of the Great Lakes. The Great Lakes Charter calls on the states to regulate and manage diversions out of the Great Lakes basin of more than 2 million gallons per day. Subsequent to the signing of the Great Lakes Charter, the federal Water Resources Development Act of 1986 (WRDA-1986) was passed. Section 1109 of WRDA-1986 (42 U.S.C. 1962d-20) prohibits the diversion of water from the U.S. portion of the Great Lakes and Great Lakes Basin without the approval of all the governors of the Great Lakes states. It also prohibits federal agencies from studying the feasibility of such diversions without the approval of the Great Lakes states' governors.

When applications are received for diversion of water from the Ohio portion of the Lake Erie basin in quantities greater than 100,000 gallons per day, the Director of ODNR shall consult and seek consensus with the governors and premiers of the Great Lakes states and provinces as called for in the Great Lakes Charter (O.R.C. 1501.32). The director shall not grant a permit for a diversion that is subject to the jurisdiction of Section 1109 of WRDA-1986 until all the governors of the Great Lakes states have approved the diversion (O.R.C. 1501.32). Further, pursuant to Section 1109 of WRDA-1986, the Governor of the State of Ohio must approve proposals for diversion of water out of the Great Lakes Basin in the other Great Lakes states before they can be implemented.

- C. The Council of Great Lakes Governors developed a process, pursuant to the Great Lakes Charter, for prior notice and consultation on proposed projects (*Managing the Waters of the Great Lakes Basin*, February 1987). It is the responsibility of the state or province in which the project is proposed to notify the other states and provinces and seek consensus. States and provinces have 45 days from notification to provide comments or request a consultation meeting. The Great Lakes states have used a modified form of the Great Lakes Charter process to consider diversion proposals under Section 1109 of WRDA-1986. Instead of seeking consensus, as under the Charter, states seek the approval of the governors.