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134th General Assembly

Final Analysis

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Primary Sponsor: Rep. Hillyer

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SUMMARY

Ephemeral features

- Excludes ephemeral features that are not waters of the United States (WOTUS) under the federal Clean Water Act from regulation under Ohio's water pollution control programs, including the section 401 water quality certification program.
- Specifies that an ephemeral feature is a surface water flowing or pooling only in direct response to precipitation, such as rain or snow, and does not include a wetland.
- For ephemeral features that are WOTUS under the federal Clean Water Act, maintains the authority of the Ohio Environmental Protection Agency (OEPA) to regulate impacts to these waters.
- Establishes mitigation requirements, best management practices, and reporting and monitoring requirements that apply when these regulated ephemeral features will be impacted and a section 401 water quality certification is required.
- Excludes particular types of projects, such as water quality improvement projects and small dredge and fill projects, from the act's mitigation requirements, best management practices, and reporting and monitoring requirements.
- Regarding a regulated ephemeral feature, prohibits the OEPA Director from both:
 - Imposing or requiring any mitigation standard, criteria, scientific method, process, or other procedure or policy not specified by the act with respect to a proposed impact to the ephemeral feature; and
 - Imposing any requirement on an activity impacting a regulated ephemeral feature beyond those specified in the act or by administrative rule for any activity impacting an ephemeral feature that requires the issuance of a section 401 water quality certification.

- Eliminates the section 401 water quality certification review fee that applied to all ephemeral streams (greater of \$5 per linear foot of stream to be impacted or \$200).

Federal Interagency Review Team

- Requires the OEPA Director, the Director of Natural Resources, and the Director of Transportation to each appoint an agency designee and an alternate to the federal Interagency Review Team (IRT) (which reviews documentation and advises U.S. Army Corps of Engineers district engineers on mitigation projects).
- Specifies that the appointees must have significant experience in at least one specified subject area: wetland or stream restoration, enhancement and protection of wetlands or streams, or compensatory mitigation plan development.
- Requires at least one appointee to maintain minutes of IRT meetings and specifies that those minutes are a public record.

Protocols for adoption of mitigation standards

- Alters a provision of law requiring all substantive standards used by the OEPA Director to evaluate section 401 water quality certification mitigation proposals to be adopted via rule in accordance with the Administrative Procedure Act to specify the following:
 - All substantive standards used by the IRT when reviewing documentation related to mitigation activities are also subject to that provision;
 - The provision applies to any guidance or guidelines used by the Director or the IRT;
 - A mitigation proposal may include proposals involving a wetland mitigation bank or stream mitigation bank, in-lieu fee mitigation, or permittee responsible mitigation; and
 - The provision also applies to the establishment of performance metrics, a request for credit release, or termination of monitoring requirements.
- Eliminates law that authorized the Director to use additional mitigation standards, criteria, etc. (without going through the Administrative Procedure Act) in reviewing a mitigation proposal if the Director notified the applicant in advance that additional standards would be considered.
- Establishes a 24-month timeline to implement the changes specified above.

Property tax exemption

- Establishes a property tax exemption for property held by a 501(c)(3) organization organized for conservation purposes if the property either:
 - Is subject to a mitigation requirement pursuant to a section 401 water quality certification or isolated wetland permit; or
 - Is a nature water project that receives funding through the H2Ohio program.

Class VI injection wells

- Requires the Department of Natural Resources (DNR) to begin working with the U.S. EPA and the U.S. Department of Energy to develop a state underground injection control program for Class VI injection wells (used to inject CO₂ into deep rock formations).

Indian Lake weed mitigation

- Requires the DNR Director to enter into a memorandum of understanding with the Indian Lake Watershed Project concerning weed harvesting services at Indian Lake.
- Appropriates \$500,000 for weed harvesting in FY 2022 and reappropriates the unspent, unencumbered balance for FY 2023.

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DETAILED ANALYSIS

Federal regulation of ephemeral features

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into “navigable waters,” which the statute defines as “waters of the

United States, including the territorial seas.”¹ The terms “navigable waters” and “waters of the United States” (WOTUS) are used for purposes of several CWA programs, including:

- Statutory schemes governing discharges of dredged or fill material under CWA Sections 404 and 401, administered jointly by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency (U.S. EPA), and the states and territories of the United States;
- Discharges of pollutants into WOTUS from “point sources” under CWA Section 402, delegated to most states for permitting under the National Pollution Discharge Elimination System (NPDES); and
- Spills of oil and hazardous substances under Section 311.

Over time, the U.S. EPA has adopted rules defining the types of water bodies that are encompassed within the term “navigable waters.” In 1985, the U.S. Supreme Court held that “navigable waters” includes more than only those waters that would be deemed “navigable” in the “classical” or traditional sense.² However, the scope of these terms remained somewhat unclear, and the Court revisited the issue in 2006.

In *Rapanos v. United States*, the Court offered a plurality decision, posing two possible interpretations of the term:

1. Justice Scalia and three other Justices found that these waters are “relatively permanent” waters that hold a “continuous surface connection” to a traditionally navigable water.
2. Justice Kennedy, in a concurring opinion, wrote that to be a navigable water, a WOTUS must have a “significant nexus” to a traditionally navigable water.³

Attempting to clarify the rule, in 2015, the U.S. EPA adopted the second approach, evaluating waters on a case-by-case basis under the “significant nexus” test. However, in 2017, President Trump signed an executive order directing U.S. EPA to rescind the 2015 rule and instead adopt a new WOTUS rule reflecting the first approach offered by Justice Scalia in *Rapanos*.⁴ That rule took effect on June 22, 2020.⁵ Shortly thereafter, several lawsuits were filed challenging it.⁶

¹ 33 United States Code (U.S.C.) § 1362(7).

² *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 133 (1985).

³ *Rapanos v. United States*, 547 U.S. 715 (2006).

⁴ Executive Order 13778 of February 28, 2017.

⁵ 33 Code of Federal Regulations (CFR) § 328.3 (April 21, 2020).

⁶ See *California v. Andrew Wheeler*, Civil Action No. 3:20-cv-03005 and *Pasqua Yaqui Tribe v. United States EPA*, 2021 U.S. Dist. Lexis 163921.

On August 31, 2021, a federal court in *Pasqua Yaqui Tribe vs. United States EPA* ruled that application of the 2020 WOTUS rule is suspended. The court vacated the WOTUS rule and reverted back to the 1985 version of the rule (as further interpreted under the *Rapanos* “significant nexus” test) nationwide. Thus, under this decision, whether or not a body of water is a WOTUS must be determined on a case-by-case basis, considering whether the water has a “significant nexus” to a traditionally navigable water. President Biden’s administration also began administrative rulemaking to revise and clarify the WOTUS definition. The public comment period for that rulemaking closed on February 7, 2022.⁷ Until the rule is finalized, the Court’s ruling in *Pasqua Yaqui Tribe* is the current WOTUS rule.⁸

Ephemeral features under state law

The act revises Ohio’s regulation of ephemeral features, which are surface waters, not including wetlands, that flow or pool only in response to precipitation, such as rain or snow, to align it with the federal WOTUS definition.⁹ Under prior law, all ephemeral features were subject to Ohio’s Water Pollution Control Law, meaning a person was required to obtain a permit from the Ohio Environmental Protection Agency (OEPA) to discharge dredge or fill material into an ephemeral feature. That permit is referred to as a section 401 water quality certification (401 certification). Any other discharge of pollutants into an ephemeral feature required a National Pollutant Discharge Elimination (NPDES) permit.¹⁰ The act, instead, establishes the following two classes of ephemeral features:

1. Ephemeral features that are WOTUS under the CWA and subject to regulation by the Army Corps of Engineers for dredge and fill operations. The discharge of dredge and fill material into this type of ephemeral feature requires a 401 certification issued by OEPA. Any other discharge of pollutants requires an NPDES permit from OEPA. In addition, other specific state requirements established by the act apply to these ephemeral features and the issuance of 401 certifications, including mitigation requirements, best management practices, and reporting and monitoring requirements.
2. Nonregulated ephemeral features. These ephemeral features are not WOTUS under the CWA and are not subject to regulation by the Army Corps of Engineers. The act deregulates these ephemeral features and no permit under Ohio’s Water Pollution Control Law is required from OEPA to conduct dredge or fill operations in them or discharge other pollutants in them (but see “**Other state environmental laws**,”

⁷ See [86 Fed.Reg. 69372](#), available at [federalregister.gov](#).

⁸ U.S. EPA, “[Current Implementation of Waters of the United States](#),” available on the U.S. EPA’s Waters of the United States webpage, [epa.gov/wotus](#).

⁹ R.C. 6111.01(V).

¹⁰ See R.C. 6111.03(J) and 6111.04, not in the act.

below). Thus, if the ephemeral feature is not regulated under federal law, it is not subject to regulation under the act.¹¹

Regulated ephemeral features

As indicated above, for those ephemeral features subject to regulation, the act requires the issuance of a 401 certification from OEPA whenever the ephemeral feature will be impacted by a dredge and fill operation. The act also establishes mitigation requirements, best management practices, and additional reporting and monitoring requirements that apply to the issuance of a 401 certification. These requirements vary, depending on whether the impact to the ephemeral feature is temporary or permanent. An impact is **temporary** when all of the following apply:

- It facilitates a proposed activity or aids in the access, staging, or development of any construction;
- It will not last more than two years; and
- On termination of the impact, the conditions of the ephemeral feature are expected to return to pre-impact functionality or better condition within 12 months after the termination.

A **permanent** impact is any impact that is not temporary.¹²

The act delineates four distinct categories of requirements and standards that the OEPA Director may impose:

1. Mitigation requirements and standards that apply when a feature will be permanently impacted;
2. Mitigation requirements and standards that apply when a feature will be temporarily impacted;
3. Best management practices that the Director may impose for:
 - a. Permanent impacts when the Director requires a person to conduct mitigation by constructing an equivalent area of channel or site-specific measurement to provide a geomorphically stable feature in the impacted watershed; or
 - b. Any temporary impact.¹³
4. Additional reporting and monitoring requirements the Director may impose for:

¹¹ R.C. 6111.01(H) and (V) and 6111.311 to 6111.316; see R.C. 6111.03(J), not in the act.

¹² R.C. 6111.311(F) and (G).

¹³ R.C. 6111.313 and 6111.315.

- a. Permanent impacts when the Director requires a person to conduct mitigation by constructing an equivalent area of channel or site-specific measurement to provide a geomorphically stable feature in the impacted watershed; and
- b. All impacts. These requirements include, additional reporting and demonstrations that the Director may impose (such as providing the minimum acreage of the mitigation and demonstrating other factors regarding the mitigation) up to two years after the completion of construction of any required mitigation.¹⁴

The act applies continuing law with respect to defined terms such as “mitigation,” “wetlands,” and “eight-digit hydrologic unit” when used in the context of the act’s new requirements.¹⁵

Permanent impact: mitigation requirements

The act authorizes the Director to require a person proposing to permanently impact an ephemeral feature subject to regulation to do any of the mitigation tasks shown in the table below.¹⁶

| Permanent impacts | | |
|---|---|---|
| Mitigation task | Calculation to be used¹⁷ | Additional specifications |
| Provide mitigation by constructing an equivalent area of channel at a 1:1 ratio | Use area of mitigation (AMIT) or site-specific measurements | The mitigation must provide a geomorphically stable feature within the 8-digit hydrologic unit watershed |
| Provide bioretention on the project site in accordance with the rainwater manual used by OEPA | Use AMIT or site-specific measurements | Performance and monitoring of performance can be no more than what is normally required for a bioretention structure |
| Provide increased volume and surface area to the water quality volume (WQV) | Use volume of mitigation (VMIT) or site specific measurements | <ul style="list-style-type: none"> ▪ WQV must be increased by the VMIT without increasing the maximum WQV discharge; ▪ Drawdown times may be increased proportionally; ▪ Additional required surface area may be in the form of a wetland shelf as |

¹⁴ R.C. 6111.314(A) and (B).

¹⁵ R.C. 6111.311(D).

¹⁶ R.C. 6111.313(B)(1).

¹⁷ See “**Mitigation calculations**” table, below.

| Permanent impacts | | |
|--|--|---|
| Mitigation task | Calculation to be used ¹⁷ | Additional specifications |
| | | <p>part of a wet extended detention basin sized using the rainwater and land development manual;</p> <ul style="list-style-type: none"> ▪ Where no onsite stormwater detention is planned, surface water storage volume with slow discharge may be provided using the VMIT as the temporary storage volume; and ▪ When storage practices will be used, performance and monitoring of performance must be no greater than normally required for a particular storage structure. |
| Provide mitigation by constructing an equivalent area of channel at a 1:1 ratio by purchasing credits at an approved wetland mitigation bank or in-lieu fee mitigation program for the ephemeral feature that is being impacted within the impacted 8-digit hydrologic watershed | N/A | <ul style="list-style-type: none"> ▪ If there are no wetland mitigation bank credits or in-lieu fee mitigation credits within the mitigation bank service area that includes the impacted 8-digit hydrologic unit watershed, credits may be purchased from another provider in the state; and ▪ When mitigation will occur at an approved wetland mitigation bank, in-lieu fee mitigation program, or mitigation paid to the Department of Natural Resources, mitigation credits must be acquired based on the acreage of streambed impacted and proof of acquisition must be sent to the Director before any impact may occur. |
| Provide equivalent area of channel at a 1:1 ratio by contributing funds to the Department of Natural Resources for the purpose of stream improvement activities to address acid mine drainage or other water quality impacts | Use AMIT or site-specific measurements | This mitigation may occur outside of the 8-digit hydrologic unit watershed where the impacts will occur. |

Mitigation calculations

For the mitigation calculations referenced in the table above, the act defines and specifies certain terms, as shown below.¹⁸

| Mitigation calculations | | |
|------------------------------|--|--|
| Term | Unit of measurement in which resulting term is expressed | Calculation |
| Area of mitigation (AMIT) | Expressed in feet squared | <ol style="list-style-type: none"> 1. First, calculate the area of the streamway (ASW) as: <ol style="list-style-type: none"> a. Width of a streamway (WSW) multiplied by the valley length of stream (LV). 2. Next, calculate the AMIT as follows: <ol style="list-style-type: none"> a. For streams with a slope that is less than or equal to 2%, the $AMIT = ASW \text{ divided by } 2$; b. For streams with a slope that is greater than 2%, but not more than 4%, the $AMIT = ASW \text{ divided by } 5$; c. For streams with a slope of greater than 4%, the $AMIT = ASW \text{ divided by } 8$. |
| Width of a streamway (WSW) | Expressed in feet | $147 \text{ multiplied by the drainage area (DA)}^{0.38}$ |
| Valley length of stream (LV) | Expressed in feet | N/A |
| Drainage area (DA) | Expressed in square miles | N/A |
| Volume of mitigation (VMIT) | Expressed in cubic feet | $VMIT = AMIT \text{ multiplied by } 1, \text{ assuming a } 1 \text{ foot stream depth}$ |

¹⁸ R.C. 6111.311(A), (B), (C), (E), (H), (I), and (J); R.C. 6111.313(A).

| Mitigation calculations | | |
|----------------------------|--|---|
| Term | Unit of measurement in which resulting term is expressed | Calculation |
| Site-specific measurements | N/A | Streambed area, bankfull width, entrenchment ratio, or flood prone area may be substituted for AMIT or VMIT |
| Water quality volume (WQV) | N/A | Surface area divided by drawdown depth |

Temporary impacts: mitigation requirements

The act requires the Director to require a person proposing to temporarily impact an ephemeral feature to do all of the following:

- Restore any ephemeral feature subject to regulation that is impacted on completion of the temporary impact;
- Restore the flow regime to that of the pre-impact ephemeral flow regime or better;
- Restore the physical integrity of the ephemeral feature to its pre-impact or better condition;
- Provide at least three high resolution color photographs taken at the restored area, including one facing upstream, one facing downstream, and a close-up that clearly depicts the substrate composition and size for each restored ephemeral feature. Photographs must accurately depict the quality of the ephemeral feature and must not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow, or ice.
- Continue to conduct monitoring or implement additional measures to meet performance standards if the restoration areas are not meeting restoration performance criteria within two years following the completion of restoration activities.¹⁹

Best management practices

The act authorizes the Director to require both of the following to perform best management practices:

1. Any person the Director required to perform mitigation for a permanent impact by constructing an equivalent area of channel or site-specific measurement to provide a

¹⁹ R.C. 6111.313(B)(2).

geomorphically stable feature in the impacted watershed (see, row 1 of the “**Permanent impacts mitigation table**,” above); and

2. Any person required to do mitigation for a temporary impact.

The act establishes best management practices including 15 specifications regarding how construction activities should be conducted and how an impacted area must be restored. For example, the specifications include requirements such as:

- The disturbance and removal of vegetation from the project construction area must be avoided where possible and minimized to the extent practicable;
- Fill material must consist of suitable non-erodible material and be maintained and stabilized to prevent erosion; and
- Chemically treated lumber must not be used in structures that come into contact with waters of the state.²⁰

Additional reporting and monitoring

The act authorizes the Director to impose reporting and monitoring requirements on any person or entity that the Director required to perform mitigation for a permanent impact by constructing an equivalent area of channel or site-specific measurement to provide a geomorphically stable feature in the impacted watershed (see, row 1 of the “**Permanent impacts mitigation table**,” above). Those additional reporting and monitoring requirements include:

1. A requirement that mitigation required for the ephemeral feature be monitored for up to two years after completion of mitigation construction activities (including specifications that no further monitoring be required if performance criteria are met, but that the monitoring may be extended and a mitigation plan revised if not);
2. A requirement that construction of required mitigation begin by 30 days after completion of fill activities and must be completed by one year thereafter, unless additional time is required for the project;
3. A requirement that annual monitoring reports be submitted to the Director by December 31 of each year following the first full growing season and completion of mitigation construction until performance criteria are met; and
4. Requirements specifying what information the reports must contain (such as the status of all required mitigation for the project, contact information, a list of native seed mixes planted in all mitigation areas, and specific color photographs).²¹

²⁰ R.C. 6111.315(E), (H), and (O). For a complete list of the 15 best management practices, see R.C. 6111.315.

²¹ R.C. 6111.314(A). For a complete list of details regarding what the annual report must contain, see R.C. 6111.314(A)(3)(a) to (h).

The act also establishes additional reporting and demonstration requirements that the Director may impose (such as providing the minimum acreage of the mitigation and demonstrating other factors regarding the mitigation) up to two years after completion of construction of any required mitigation, regardless of whether the impact of that mitigation was permanent or temporary.²²

Exclusions

The act specifically excludes two types of projects from the mitigation requirements, best management practices, and reporting and monitoring requirements. The Director cannot impose these requirements or practices or any additional requirements on either of the following:

1. A restoration or enhancement project that will result in a net improvement of water quality. Projects that will result in a net improvement of water quality may include a project under section 319 of the CWA, an H2Ohio project, a water resource restoration sponsor program, a wetland mitigation bank, or an in-lieu fee mitigation project. To qualify under this exception, a person must submit a demonstration as part of a mitigation proposal that the project will result in a net improvement in water quality.
2. A project for the filling or discharge of dredged material into a regulated ephemeral feature that impacts $\frac{3}{100}$ of an acre or less of streambed. For this exclusion, when culvert maintenance or replacement is involved in the project, only an impact to a regulated ephemeral feature that goes beyond the enclosed configuration of the existing culvert structure must be included in calculating the impacted streambed acreage.²³

Prohibition against additional requirements

Regarding ephemeral features subject to the act's requirements, the act specifically prohibits the Director from both:

- Imposing or requiring any mitigation standard, criteria, scientific method, process, or other procedure or policy not specified by the act with respect to a proposed impact to a regulated ephemeral feature; and
- Imposing any requirement on an activity impacting a regulated ephemeral feature beyond those specified in the act or by administrative rule for any activity impacting an ephemeral feature that requires the issuance of a 401 certification.²⁴

²² R.C. 6111.314(B).

²³ R.C. 6111.316.

²⁴ R.C. 6111.312.

Other state environmental laws

Though the act excludes certain ephemeral features from regulation under the Ohio's Water Pollution Control law, it specifies that other pollution control laws still apply to deposits of waste in ephemeral features. In particular, the improper disposal of solid, infectious, or hazardous wastes or construction and demolition debris in ephemeral features is still prohibited. And the OEPA Director and other state agencies may continue to take any actions regarding an excluded ephemeral feature under other laws (but not the Water Pollution Control Law) that apply to the discharge, deposit, dumping, or placement of waste, debris, or other materials in the ephemeral feature. For example, the Department of Health can still regulate the deposit of radioactive material in the ephemeral feature.²⁵

Impacts to other statutes

To exclude certain ephemeral features from regulation under Ohio's Water Pollution Control Law, the act alters the definition of "waters of the state." However, other chapters of the Revised Code that do not appear in the act use this definition. Thus, the act has the effect of also excluding those ephemeral features from regulation under the following programs:

| Citation | Heading |
|--------------|--|
| R.C. 903.01 | Concentrated Animal Feeding Facilities (CAFFs) |
| R.C. 1503.50 | Forest management |
| R.C. 3746.07 | Voluntary Action Program (VAP) |

In addition, many other provisions of the Revised Code refer to "waters of the state" with similar or slightly varying definitions than that used in the Water Pollution Control Law. In these provisions, the term "waters of the state" does not exclude any ephemeral features. The table below indicates all references to a defined term "waters of the state" that bear some relation to the Water Pollution Control Law.

| Revised Code sections containing "waters of the state" | Subject |
|--|------------------------------------|
| 6119.011 | Regional water and sewer districts |
| 1513.01 and 1513.07(A)(5) | Coal surface mining |

²⁵ R.C. 6111.011. See R.C. Chapter 3748, not in the act.

| Revised Code sections containing “waters of the state” | Subject |
|---|--|
| 1509.01 and 1509.22(C)(2) | Brine disposal |
| 6121.01 | Ohio Water Development Authority |
| 6112.01 | Private sewer systems |
| 939.01 and 939.10 | Soil and water conservation |
| 940.01 (F) and (G); see 940.02(G) | Soil and Water Conservation Commission |

Review fee

The act eliminates the review fee for a 401 certification that applied to any ephemeral stream. That fee was \$5 per linear foot of stream to be impacted, or \$200, whichever was greater.²⁶

Federal Interagency Review Team

The act requires the OEPA Director, the Director of Natural Resources, and the Director of Transportation to each appoint an agency designee and an alternate to the federal Interagency Review Team (IRT). Under the CWA, the IRT reviews documentation and advises the Army Corps of Engineers' district engineers on mitigation projects. Under the act, the appointees to the IRT must have significant experience in at least one of the following three subject areas:

- The restoration of wetlands or streams;
- The enhancement and protection of wetlands or streams; or
- The development of compensatory mitigation plans.

At least one appointee must maintain accurate and complete minutes of IRT meetings, including any documentation of the basis for any comments or decisions of the IRT with respect to wetland mitigation banks, stream mitigation banks, in-lieu fee mitigation proposals, permittee responsible mitigations, approvals, credit releases, or management. The minutes are a public record.²⁷ Prior law did not specify requirements concerning appointees to the IRT.

²⁶ R.C. 3745.114.

²⁷ R.C. 6111.31(A) and (B).

Protocols for adoption of mitigation standards

The act alters a provision of law requiring all substantive standards used by the OEPA Director to evaluate 401 certification mitigation proposals to be adopted via rule in accordance with the Administrative Procedure Act. In so doing, the provision specifies all of the following:

- All substantive standards used by the IRT when reviewing documentation related to mitigation activities are also subject to that provision;
- The provision applies to any guidance or guidelines used by the Director or the IRT;
- A mitigation proposal may include proposals involving a wetland mitigation bank or stream mitigation bank, in-lieu fee mitigation, or permittee responsible mitigation; and
- The provision also applies to the establishment of performance metrics, a request for credit release, or termination of monitoring requirements.

Prior law contained an exception to this requirement that all substantive mitigation standards be adopted by rule. Under that exception, the Director could use additional mitigation standards, criteria, etc. (not established via rule) in reviewing a mitigation proposal if the Director notified the applicant in advance that additional standards would be considered as part of the review process. The act eliminates this exception.

Finally, the act establishes the following timeline and specifications that the Director must adhere to when adopting the rules:

1. The Director must review and adopt the substantive standards by 24 months after the act's effective date; that is, by July 22, 2024.
2. Beginning on the date the Director adopts the standards or July 22, 2024, whichever is earlier, standards that have not been adopted by rule do not have the force of law and cannot be used in the review of any 401 certification, permit denial, or as a standard of mitigation.
3. The administrative actions taken by the Director are not subject to requirements governing the elimination of existing regulatory restrictions.
4. Until the effective date of actions taken by the Director or July 22, 2024, whichever is earlier, the Director may continue evaluating the adequacy of a mitigation proposal contained in an application for a 401 certification in accordance with current law.²⁸

Property tax exemption

The act authorizes a property tax exemption for certain property owned or held by a 501(c)(3) organization that is dedicated to the conservation of natural resources or improving water quality. To qualify, the property must be subject to one of the following:

²⁸ R.C. 6111.31(C) and Section 4.

1. A mitigation requirement pursuant to a section 401 water quality certification or isolated wetland permit; or
2. A project to improve the quality of the state's natural waters that receives funding through the H2Ohio program.²⁹

Class VI injection wells

The act requires the Department of Natural Resources (DNR) to begin working with the U.S. EPA and the U.S. Department of Energy to develop a statewide underground injection control program for Class VI injection wells (used to inject CO₂ into deep rock formations) in order to receive primary enforcement authority (primacy) in Ohio over those wells from the U.S. EPA.³⁰

Indian Lake weed mitigation

The act requires the DNR Director to enter into a memorandum of understanding with the Indian Lake Watershed Project concerning weed harvesting services at Indian Lake. It appropriates \$500,000 to DNR for weed harvesting projects in FY 2022. Any unused portion of those funds are reappropriated for FY 2023.³¹

HISTORY

| Action | Date |
|--|----------|
| Introduced | 03-03-21 |
| Reported, H. Agriculture & Conservation | 09-28-21 |
| Passed House (61-33) | 09-29-21 |
| Reported, S. Agriculture & Natural Resources | 03-30-22 |
| Passed Senate (25-8) | 03-30-22 |
| House concurred in Senate amendments (61-35) | 04-06-22 |

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²⁹ R.C. 5709.09.

³⁰ R.C. 1571.30. For more information regarding Class VI wells, see U.S. EPA, "[Class VI – Wells used for Geologic Sequestration of Carbon Dioxide](#)," available at epa.gov.

³¹ Sections 5 and 6.