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ACT SUMMARY

Evaluation and cleanup of landfill facilities and properties

- Revises the authority of the Director of Environmental Protection to take actions to abate pollution or contamination at a hazardous waste disposal location.
- Applies procedures and requirements governing the abatement of pollution at hazardous waste disposal locations to solid waste and construction and demolition debris (C&DD) disposal locations.
- Authorizes the Director to expend money in the Environmental Protection Remediation Fund to conduct investigations at any solid waste or C&DD disposal locations.
- With regard to an agreement with an owner of land on which cleanup activities will occur, specifies that an easement granted to the Director may authorize Environmental Protection Agency (OEPA) staff to enter on the land to construct, maintain, repair, remove, or make any other alteration or improvement.
- Specifies that methods of reimbursement for costs of cleanup activities under an agreement with a landowner may include assignment of royalties or proceeds from the sale of timber or other resources.

- Generally authorizes the Director to enter into an agreement with a property owner (other than the owner of the land that is subject to cleanup activities) for conducting cleanup activities, including obtaining soil that may be used on land where the activities will be conducted.
- Authorizes the Director to obtain an easement from a property owner who is not the owner of the land subject to cleanup activities to address the use of resources or materials for conducting the activities.
- Specifies that the Director, in the absence of an agreement for reimbursement, may record the unreimbursed portion of the costs of cleanup activities at the office of the county recorder of the county in which the property or facility is located.
- Specifies that the recorded costs constitute a lien against the property.
- Eliminates provisions of law that required the Director to use a specified competitive bidding process if the Director contracted for services related to the cleanup of land or a facility, thereby applying general competitive bidding procedures to those contracts.
- Declares that the state is immune from liability for any injury or damage resulting from specified cleanup or remediation activities, provided that the activities do not constitute reckless, willful, or wanton misconduct.
- Specifies that if the legislative or executive authority of a municipal corporation, county, or township has evidence to indicate that significant quantities of hazardous waste were disposed of in a C&DD facility within its boundaries, the authority may file a formal written request with the Director to survey the facility.

Construction and Demolition Debris Law

- Establishes requirements governing processing facilities in the C&DD Law.
- Specifies that a "processing facility" is, in part, a site, location, tract of land, installation, or building that is used or intended to be used for the purpose of processing, transferring, or recycling C&DD that was generated off the premises of the facility.
- Requires the Director to adopt rules governing processing facilities and the inspection of and issuance of licenses and permits to install for those facilities.
- Prohibits a person from operating a processing facility without an annual license issued by the board of health of the health district in which the facility is located or from the Director if a health district is not approved to regulate C&DD facilities.



- Establishes procedures and requirements governing the issuance of a permit to install and an annual license for a processing facility that are generally the same as the procedures and requirements governing a permit to install and an annual license for a C&DD facility.
- Generally requires the owner or operator of a processing facility existing prior to the effective date of the Director's rules to register the facility and to obtain a license and permit to install for the facility after the Director adopts the rules.
- Requires an applicant for an annual processing facility license to pay an application fee of \$100 plus a \$650 license fee.

Waste Management Fund

- Revises the uses of money in the Waste Management Fund by eliminating the earmarking of sources of revenue for specified purposes and instead allowing Fund money to be used for any of those purposes.

Public water system capability

- Requires all public water systems to demonstrate technical, managerial, and financial capability by implementing an asset management program by October 1, 2018.
- Authorizes the Director to take certain actions to improve and ensure the capability of a public water system that has failed to make the required demonstration.
- Requires a public water system to incorporate specified information in the program, including an inventory and evaluation of all assets and a long-term funding strategy to support asset management program implementation.
- Requires a public water system, if requested by the Director, to submit a written description of the asset management program within 30 days after receiving the request.
- Authorizes the Director to request a public water system to revise or resubmit a written description of the system's asset management program if the system fails to submit an acceptable written description of the system's asset management plan or otherwise fails to demonstrate technical, managerial, and financial capability.
- Authorizes OEPA staff to provide technical guidance to a public water system in preparing the asset management program or while addressing deficiencies noted in the asset management program.

- Requires the Director to make available a template for small public water systems to assist in preparing an asset management program and to provide information about the availability of sources of funding.
- Specifies that a small public water system may meet the requirement to submit a written description of an asset management program by submitting the template or by including with the template a statement that the activities described in the template are being implemented.

Receivership of a public water system

- Authorizes the Director to petition a court of common pleas to appoint a receiver to take possession of and operate a public water system when both of the following apply:
 - The system serves less than 500 service connections; and
 - Conditions existing at the system present a threat to public health or welfare.
- Prohibits a court from appointing a receiver to operate a system owned and operated by a public entity or regulated by the Public Utilities Commission.
- Establishes requirements governing the contents of a petition for receivership, notice and hearings regarding a petition, the appointment of receivers, powers and duties of a receiver, and the termination of a receivership.
- Requires the court to approve any expenditure made by a receiver exceeding \$15,000.
- Prohibits contracts necessary to carry out the powers and duties of a receiver that are valued at \$15,000 or more unless at least two cost quotations from different vendors are received by the receiver.
- Makes a receiver and the Director immune from liability for debts incurred by the owner or operator of a public water system.
- Requires the Director to provide technical assistance to an appointed receiver.

Public water systems exemptions

- Alters one criterion that is required for a public water system to be exempt from the law governing safe drinking water that specifies that the system may not sell water to any person by requiring the Director to determine whether the system sells or does not sell water.



- Subjects a public water system that is exempted from the law governing safe drinking water to the Director's plans and orders for the provision of safe drinking water in emergencies.

Financial assurance requirement for community water systems

- Requires the owners or operators of certain community water systems to provide financial assurance, in a form approved by the Director, when submitting plans to construct, install, or make a substantial modification to the system instead of requiring a cash deposit in escrow, as in former law.
- Requires the Director to approve the form of financial assurance.
- Increases the maximum financial assurance that the owner must provide from \$50,000 to \$100,000.

Discharge to a privately owned treatment works

- Specifies that the exclusion of the discharges of waste into a sewerage system to a treatment works from the law prohibiting polluting state waters does not authorize a discharge to a privately owned treatment works in violation of any permit conditions established under federal law.

Section 401 water quality certification

- Authorizes the Director to justifiably waive a section 401 water quality certification, pursuant to an appealable action, for any applicant for a federal license or permit to conduct any activity that may result in a discharge into state waters.
- Authorizes the Director, at the request or concurrence of a certification holder, to transfer or modify a certification.
- Authorizes the Director to revoke a certification if the approval of the certification was based on false or misleading information.

Dredged material

- Prohibits a person from using, managing, or placing dredged material in any location unless authorized to do so in circumstances specified by the act.
- Defines dredged material as material excavated or dredged from a federal navigation channel during harbor or navigation maintenance activities.
- Applies existing civil and criminal penalties to the prohibition.

- Authorizes the Director to adopt rules governing the beneficial use of dredged material and the beneficial use of material excavated or dredged from adjacent or connected commercial maritime port facilities necessary to protect public health, safety, and the environment.

Certified water quality professionals

- Requires the Director to establish a program and adopt rules governing the certification of water quality professionals to assess streams and categorize wetlands in support of applications for section 401 water quality certifications and isolated wetland permits.
- Requires the Director to establish a multi-sector work group to assist in the development of the rules.
- Revises the Director's rule-making authority regarding audits of certified water quality professionals and establishes rule-making authority regarding the public disclosure of information concerning a certified water quality professional.
- Requires the Director to issue or deny a section 401 water quality certification within 90 days after the receipt of a complete application when a certified water quality professional conducts a stream or wetland assessment to support the application.
- Specifies that an applicant for a certification or an isolated wetlands permit is not required to use the services of a certified water quality professional.

Blast furnace slag and steel slag

- Exempts blast furnace slag and steel slag from certain requirements of the Water Pollution Control Law, such as requirements governing permits for discharges into the waters of the state.
- Prohibits the placement or management of blast furnace slag and steel slag in a manner that results in an exceedance of water quality standards, primary or secondary contaminant levels for ground water, any discharge prohibited by federal environmental law, or a threat to public health, safety, or the environment.

Ohio Lake Erie Commission

- Adds two members from the Great Lakes Protection Fund Board to the Ohio Lake Erie Commission.
- Requires the Commission, by the last day of July of each odd-numbered year, to publish a Lake Erie Protection and Restoration Strategy that describes the



Commission's goals and prioritizes the uses of the Lake Erie Protection Fund and other funds for the following fiscal year.

- Establishes new duties for the Commission, such as serving as a repository and clearinghouse for public information and data related to Lake Erie and the Lake Erie basin and collecting and distributing that information and data at the Commission's discretion.
- Eliminates other Commission duties, such as recommending policies and programs to modify the coastal management program of Ohio.
- Authorizes the Commission to dissolve public advisory councils established to assist in implementing programs established under the laws governing the Commission, but retains the authority to establish the councils.
- Specifies that members of the Commission and members of a public advisory council may be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

Lake Erie Protection Fund

- Eliminates several of the purposes for which the Commission could use the Lake Erie Protection Fund, such as supplementing, in a stable and predictable manner, state commitments to policies and programs pertaining to Lake Erie water quality and resource protection.
- Revises one of the uses of the Fund by specifying that the Fund may be used for funding cooperative research, data gathering, or demonstration projects related to the priorities outlined in the Lake Erie Protection and Restoration Strategy.
- Allows grants made from the Fund to be used for projects and programs designed to address priorities outlined in the Lake Erie Protection and Restoration Strategy.

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CONTENT AND OPERATION

Evaluation and cleanup of landfill facilities and other properties

Investigatory and enforcement action

The act revises the authority of the Director of Environmental Protection to take certain actions to abate pollution or contamination at a parcel of property by doing all of the following:

- (1) Authorizing the Director to conduct investigations at a facility or property where solid wastes or construction and demolition debris (C&DD) are disposed, rather than only at hazardous waste disposal locations;
- (2) Authorizing the Director to spend money from the Environmental Protection Remediation Fund to conduct investigations and remediation and abatement activities at a solid waste or C&DD disposal location and provide for the closure and post-closure care of a solid waste or C&DD facility; and



(3) Requiring the Director to initiate appropriate actions under specified environmental laws or seek any other appropriate legal or equitable remedies if the Director determines that conditions at a solid waste or C&DD disposal location constitute a substantial threat to public health or safety. The Director must take the actions with regard to hazardous waste disposal locations when conditions at the location:

--Constitute a substantial threat to public health or safety; or

--Are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination.¹

Liens

Under continuing law, the Director may record costs of measures performed at a parcel of property, and those recorded costs constituted a lien against the property. That lien continues until it is discharged. The act specifies that the Director may record investigatory costs and that all recorded costs attach to the real property and constitute a perfected lien against the property. In addition, it specifies that a lien so imposed continues until discharged, or, until the Director files a release of the lien in the office of the county recorder of the county where the facility or property subject to the lien is located.²

Plan for cleanup activities

The act requires the Director to develop a plan for cleanup activities at *any* property at which solid waste or C&DD was disposed of. The act retains law that requires a plan for cleanup activities at any property where hazardous waste was disposed of.

Former law required the plan to include only those measures necessary to abate conditions that were causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination or that constituted a threat to public health or safety. Instead, the act provides that, with regard to a parcel of property contaminated with hazardous waste, the plan may include specified measures necessary for the following:

(1) The proper closure of the hazardous waste facility (or any solid waste facility containing significant quantities of hazardous waste);

¹ R.C. 3734.20(A) and (B) and 3734.21(B).

² R.C. 3734.20(B).



(2) The development and construction of suitable hazardous waste facilities to the extent the Director determines that the facilities are not available; and

(3) The abatement of conditions that are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination or that constitute a substantial threat to public health or safety.

With regard to property where solid waste or C&DD was disposed, the act requires the plan to include specified measures necessary for the following:

(1) The closure or post-closure care of the solid waste or C&DD facility; and

(2) Remediation or abatement of conditions that cause, contribute to, or threaten to cause or contribute to air or water pollution or soil contamination or that constitute a substantial threat to public health or safety at property where solid waste or C&DD was disposed of.³

Agreements regarding cleanup activities and reimbursement of costs

Under continuing law, the Director must endeavor to enter into an agreement with the owner of land on which cleanup activities will be conducted, specifying the activities to be performed and authorizing appropriate personnel to enter the land. Previously, those agreements were limited to cleanup activities at hazardous waste facilities. The act requires the Director to endeavor to enter into an agreement regarding any land on which solid waste or C&DD was disposed. Further, the Director may enter into an agreement with any other owner of real or personal property (other than the landowner where the cleanup activities will take place) for conducting cleanup activities, including obtaining soil that may be used on land where the activities will be conducted.

Agreements entered into by the Director may contain provisions for the reimbursement of the state for the costs of the activities. The act specifies that methods of reimbursement for costs of cleanup may include the assignment of royalties or the proceeds from the sale of timber or other resources present at the location. The act also adds that, "when necessary or appropriate," rather than only "when necessary" as in prior law, an agreement may require an owner to enter an environmental covenant with the Director.

The act amends the law specifying that the agreement may require the owner to execute an easement whereby the Director, an authorized employee of the

³ R.C. 3734.21(C).



Environmental Protection Agency (OEPA), or a contractor may enter the facility to sample, repair, or reconstruct air and water quality monitoring equipment. The act does so by adding that the easement may allow the Director to construct, maintain, repair, remove, or make any other alteration or improvement, as determined appropriate by the Director. The Director also may obtain an easement from any person who is not the land owner to address the use of resources or materials for conducting the cleanup activities.⁴

Acquisition of property for cleanup purposes

Under continuing law, the Director may acquire a hazardous waste facility or a solid waste facility with significant quantities of hazardous waste for cleanup purposes. The Director must perform closure or other measures necessary to abate conditions at the facility that threaten the environment or public health. The act adds that the Director also must perform post-closure care of the facility.⁵

Competitive bidding

The act eliminates provisions requiring the Director to use a specified competitive bidding process if the Director contracted for services, construction, and repair for the cleanup of a property or facility. Thus, it applies general competitive bidding procedures.⁶

Immunity

The act alters the law declaring that the state is immune from liability for any injury or damage resulting from the operation of a hazardous waste facility by a person other than an agency, department, or institution of the state or resulting from conditions present at a facility that is acquired by the state. The act does so by adding the following activities from which the state is immune:

(1) The operation of a solid waste or C&DD facility by a person other than an agency, department, or institution of the state; and

⁴ R.C. 3734.22.

⁵ R.C. 3734.23(A) and (B).

⁶ R.C. 3734.23(C).

(2) Cleanup or remediation conducted pursuant to state law, including activities for which money may be expended from specified state funds, provided that those activities do not constitute reckless, willful, or wanton misconduct.⁷

Request to survey facility

If a legislative or executive authority of a municipal corporation, county, or township has evidence to indicate that significant quantities of hazardous waste were disposed of in a C&DD facility within its boundaries, the legislative or executive authority may file a formal written request with the Director, accompanied by supporting evidence, to survey the location or facility. The act retains law that allows a legislative or executive authority to request a survey regarding solid or hazardous waste facilities.⁸

Definition of "soil contamination"

The act expands the meaning of soil contamination for the provisions outlined above to include solid waste or C&DD or any constituents thereof that pose a substantial threat to public health or safety or the environment.⁹

Environmental covenants

The act amends the definition of "environmental response project" under the law governing environmental covenants to include property subject to corrective action, closure, or post-closure under the C&DD Law and the use or reservation of soil to be used in the performance of the corrective action or closure or post-closure care.¹⁰

Construction and Demolition Debris Law

Processing facilities

The act establishes requirements governing processing facilities under the C&DD Law. A processing facility is a site, location, tract of land, installation, or building that is used or intended to be used for the purpose of processing, transferring, or recycling C&DD that was generated off the premises of the facility. Processing includes the receipt or storage of C&DD, or the movement of C&DD from vehicles or containers to a

⁷ R.C. 3734.30.

⁸ R.C. 3734.19(A).

⁹ R.C. 3734.19(B).

¹⁰ R.C. 5301.80(E)(1)(a).



working surface, for separating the debris into individual types of materials as a commodity for use in a beneficial manner that does not constitute disposal.¹¹

Rules

The Director must adopt rules governing processing facilities and the inspection of and issuance of permits to install and licenses for those facilities. The rules must ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution.¹² The rules may establish all of the following:

(1) Requirements for the location, design, construction, operation, and closure of processing facilities;

(2) Requirements for the acceptance, storage, and accumulation of materials, including the accumulation of material for product development;

(3) The authorized maximum daily receipts;

(4) Fire prevention measures;

(5) Record-keeping procedures;

(6) The process for the closure of a processing facility;

(7) Financial assurance requirements;

(8) The management of storm water and leachate; and

(9) Standards and procedures for the issuance of permits to install (see "**Permits to install**," below) that must include all of the following:

--Information that must be included in the designs and plans required to be submitted with the application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;

--Information that must be included with an application for a permit to install in addition to the information required under the act;

--Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install;

¹¹ R.C. 3714.01.

¹² R.C. 3714.022(A).



--Grounds for the denial, modification, suspension, or revocation of permits to install;

--A requirement that a person who is required to obtain both a permit to install and an operation license must do so;

--Criteria for establishing time periods after which a permit to install expires;

--Any other requirements that the Director determines necessary in order to establish the program for the issuance of permits to install.¹³

Rules establishing financial assurance requirements for the closure of a processing facility must require that prior to being issued an initial license for the facility, the owner or operator of a facility must submit:

(1) A surety bond, a letter of credit, or other acceptable financial assurance in a fixed amount as specified by the Director; and

(2) The fixed per cubic yard cost of transportation to and disposal of mixed construction and demolition debris at an authorized disposal facility.¹⁴

The Director may not adopt rules governing processing facilities that prohibit the open burning of construction debris on a construction site if done in compliance with specified air pollution control laws.¹⁵

Permitting and licensing a processing facility

Permit to install

The Director must establish a program for the issuance of permits to install for processing facilities. A permit to install allows a person to construct a processing facility. On and after October 6, 2017, a person cannot establish a processing facility without first obtaining a permit to install issued by the board of health, or from the Director if the facility is or is to be located in a health district that is not approved to regulate C&DD. An applicant for a permit to install must submit an application to a board of health or the Director on a form and in the manner that the Director prescribes.¹⁶

¹³ R.C. 3714.022(B).

¹⁴ R.C. 3714.022(C).

¹⁵ R.C. 3714.022(D).

¹⁶ R.C. 3714.051(H).



The board or Director may issue a permit to install with terms and conditions that the board or Director finds necessary to ensure that the facility will comply with the C&DD Law and to protect public health and safety and the environment. The board or Director may issue, deny, modify, suspend, or revoke a permit to install in accordance with rules.¹⁷

Processing license

The act prohibits a person from operating a processing facility without an annual license issued by the board or the Director. The board or Director may issue a license with terms and conditions as are necessary to ensure that the processing facility will comply with C&DD Law and to protect the public health and safety and the environment. Processing facility licenses expire annually on December 31. The act establishes procedures and requirements governing the issuance of an annual processing facility license that are generally the same as the procedures and requirements governing an annual license to operate a C&DD facility under continuing law.¹⁸

An applicant for an annual processing facility license must submit an application to the board or Director on a form that the Director prescribes. The applicant must include with the application a nonrefundable application fee of \$100. If the application is submitted after September 30 of the year preceding that for which the license is sought, the applicant must pay a 10% late fee of the amount owed for the application fee.

After issuance of a license, the licensee must pay to the board or Director an annual license fee of \$650. The annual license fee applies to private operators and the state and its political subdivisions. The licensee must pay the annual license fee within 30 days after the issuance of the license. Each license must specify that it is conditioned on the payment of the annual license fee within that time frame. All application, license, and late fees must be credited to the special fund of the health district or, if the application is submitted to the Director, the existing Waste Management Fund.¹⁹

The act prohibits a board or Director from issuing a license for a processing facility when the horizontal limits of C&DD processing at the proposed facility or at a facility at which an expansion is proposed are to be located in any of the following locations:

¹⁷ R.C. 3714.051(I).

¹⁸ R.C. 3714.06(A), (B), and (D).

¹⁹ R.C. 3714.06(C).



- (1) Within 100 feet of a perennial stream as defined by the U.S. Geological Survey 7½ minute quadrangle map or a category 3 wetland;
- (2) Within 100 feet of the facility's property line; or
- (3) Within 500 feet of an occupied dwelling.²⁰

The provisions in (1) through (3) above do not apply to a processing facility that was in operation prior to October 6, 2017. However, they do apply if that processing facility makes a request to the board or Director to expand the horizontal limits of the C&DD processing areas at the facility.²¹

The board or Director is also prohibited from issuing a license for a processing facility unless the facility will have both of the following:

- (1) Access roads constructed in a manner that allow use in all weather conditions and that will withstand the anticipated degree of use and minimize erosion and generation of dust; and
- (2) Surface water drainage and sediment controls that are required by the Director.²²

The act authorizes the Director to adopt rules allowing for the issuance of a single license governing both a C&DD facility and a processing facility located on the same property.²³

Registration of existing processing facilities

The act establishes requirements and procedures for the registration of a processing facility that was in operation prior to October 6, 2017, or that was not in operation prior to that date, but is in operation prior to the effective date of any rules adopted under the act governing the licensing of processing facilities.

The owner or operator of a facility must submit an application for the registration in accordance with the act's procedures. If the application concerns a processing facility that was not in operation on October 6, 2017, the applicant must then submit with the application a notarized statement certifying that the proposed

²⁰ R.C. 3714.06(E).

²¹ R.C. 3714.06(H).

²² R.C. 3714.06(F).

²³ R.C. 3714.022(E).

horizontal limits of C&DD processing at the time the application is submitted are not located:

- (1) Within 100 feet of a perennial stream as defined by the U.S. Geological Survey seven and one-half minute quadrangle map or a category 3 wetland;
- (2) Within 100 feet of the facility's property line; or
- (3) Within 500 feet of an occupied dwelling.

The board or Director must issue the registration to the processing facility if the registration application for the processing facility meets the criteria set forth in the act.²⁴ If the registration application is incomplete, the applicant has up to 30 days to correct noted deficiencies and resubmit the registration application.

Any registrant proposing to continue to operate a processing facility on the effective date of the rules adopted under the act must, within six months after that date, submit to the board or Director an application for an initial processing facility license and permit to install. Registrations terminate on the date that the board or Director issues or denies a license.²⁵

Processing facility operator continuing education training

The Director, in consultation with boards of health, must establish a certification program for operators of processing facilities, including a continuing education training program for the operators. Law unchanged by the act requires the Director to establish those programs for operators of C&DD facilities.²⁶ The new program must include instruction in and must emphasize, at a minimum, both of the following:

- (1) The laws governing C&DD facilities, processing facilities, and the disposal of Cⅅ and
- (2) Best management practices governing C&DD facilities, processing facilities, and disposal of C&DD.²⁷

Law generally unchanged by the act also requires the Director to accredit educational programs and approve statewide associations representing C&DD facilities

²⁴ Section 4(D).

²⁵ Section 4.

²⁶ R.C. 3714.062(A).

²⁷ R.C. 3714.062(B).



to provide continuing education training for operators of C&DD facilities. The act requires operators of processing facilities to be included in these education program requirements.²⁸

Waste Management Fund

The act revises the uses of money in the Waste Management Fund by eliminating the earmarking of sources of revenue for specified purposes. Instead, it requires the Fund money to be used by OEPA to pay for all of the following:

(1) The costs of administering and enforcing the laws governing solid, hazardous, and infectious waste, and Cⅅ

(2) Ground water evaluations related to solid wastes, infectious wastes, and Cⅅ and

(3) Addressing violations of the Air Pollution Control Law and the Water Pollution Control Law at solid, hazardous, and infectious waste facilities and C&DD facilities.²⁹

Public water system capability

The act requires all public water systems to demonstrate technical, managerial, and financial capability by implementing an asset management program by October 1, 2018. However, the Director may require a system to implement an asset management program prior to that date.³⁰

A public water system must include in the asset management program all of the following information:

(1) An inventory and evaluation of all assets;

(2) Operation and maintenance programs;

(3) An emergency preparedness and contingency planning program;

(4) Criteria and timelines for infrastructure rehabilitation and replacement;

(5) Approved capacity projections and capital improvement planning; and

²⁸ R.C. 3714.062(C).

²⁹ R.C. 3734.061.

³⁰ R.C. 6109.24(B)(1) and (2).

(6) A long-term funding strategy to support asset management program implementation.³¹

A public water system, if requested by the Director, must submit a written description of the asset management program by 30 days after the date of the request. If a public water system fails to submit an acceptable written description of the system's asset management program or otherwise fails to demonstrate technical, managerial, and financial capability, the Director may request the owner or operator of the system to revise and resubmit the written description. OEPA staff may provide technical guidance to a public water system in preparing the asset management program or while addressing deficiencies noted in the asset management program.³²

If a public water system fails to demonstrate technical, managerial, and financial capability, the Director also may take specified actions to improve and ensure the capability of the public water system, including denying a plan for the construction or installation of, or substantial change in, a public water system.³³

Finally, the Director must make available both of the following either on OEPA's website or via another public forum:

(1) A template for small public water systems to prepare an asset management program;

(2) Information about sources of funding available to assist public water systems with preparing and completing an asset management program.³⁴

A small public water system may meet the requirement to submit the written description by submitting the template or by including with the completed template a statement that the activities described in the template are being implemented.³⁵

Under prior law, a public water system that was a community water system, or that was not a community water system but served a nontransient population had to include with the submission of plans for the construction or installation of, or substantial change in, a public water system required documentation that demonstrated the technical, managerial, and financial capability of the system to comply with laws

³¹ R.C. 6109.24(B)(3).

³² R.C. 6109.24(D).

³³ R.C. 6109.24(E).

³⁴ R.C. 6109.24(F).

³⁵ R.C. 6109.24(C).

related to safe drinking water. The Director could have denied the plans if the public water system failed the demonstration.³⁶

Receivership of a public water system

The act authorizes the Director to petition a court of common pleas to appoint a receiver to take possession of and operate a public water system when the system serves less than 500 service connections and conditions at the system present a threat to public health or welfare. However, the Director may not petition the court to appoint a receiver for a system owned and operated by a public entity or a system regulated by the Public Utilities Commission.³⁷ A public water system generally is a system for the provision to the public of water for human consumption that has at least 15 service connections or regularly serves at least 25 individuals.³⁸

Procedure for appointing a receiver

The Director must include all of the following in the petition for receivership:

(1) A description of the specific conditions existing at the public water system that present a threat to public health or welfare;

(2) A statement of the absence of other adequate remedies at law;

(3) The population served by the public water system;

(4) A statement that declares both of the following:

--The facts concerning the conditions at the public water system have been brought to the attention of the owner and operator or that efforts to contact the owner or operator have been unsuccessful; and

--The conditions have not been remedied within a reasonable period of time or that the conditions, though remedied periodically, habitually exist at the public water system as a pattern or practice.

(5) The name and address of the owner of the public water system.³⁹

³⁶ R.C. 6109.24.

³⁷ R.C. 6109.25(A)(1).

³⁸ R.C. 6109.01, not in the act.

³⁹ R.C. 6109.25(A)(2).



The Director must provide notice of the petition to any party with a known ownership interest in the public water system, the appropriate board of health, customers of the public water system, and any other appropriate persons identified by the Director.

Once a petition is filed, the court must hold a hearing on the petition within five court days. However, the court may appoint a receiver prior to conducting a hearing if the court determines that the circumstances require action. If the court appoints a receiver before the hearing, the court must provide notice of the appointment to any party with a known ownership interest in the system. Following the hearing on the petition, and after determining that appointment of a receiver is warranted, the court must appoint a receiver and notify the Director, any party with a known ownership interest in the system, and any other appropriate persons of the appointment.⁴⁰

Appointment of a receiver; powers and duties

The court may not appoint a person as a receiver who has a financial or ownership interest in the public water system or who is not an Ohio resident. In selecting a qualified receiver, the court must give priority consideration to any qualified person nominated by the Director. However, the court is not obligated to select the nominated person. Prior to acting as a receiver, the receiver must be sworn to perform the duties of receiver faithfully. The receiver must execute a bond in an amount required by the court, to the effect that the receiver will faithfully discharge the duties of receiver and obey the order of the court.⁴¹

In establishing a receivership, a court must set forth the powers and duties of the receiver. The court may authorize the receiver to take actions necessary to safely and efficiently operate the public water system within the requirements of state and federal law. However, the receiver must obtain court approval prior to making any single expenditure exceeding \$15,000. In addition, if the receiver proposes to enter into a contract that is necessary to carry out the receiver's duties that is valued at \$15,000 or more, the receiver must present the court with at least two cost quotations from different vendors before entering the contract. The court must closely review the conduct of the receiver and require the receiver to submit monthly detailed reports.⁴² Furthermore, a receiver, under the control of the appointing court, may bring and defend actions in the receiver's own name, and take and keep possession of property. The court must authorize the receiver to do all of the following:

⁴⁰ R.C. 6109.25(B)(1) and (2).

⁴¹ R.C. 6109.25(C) and (D).

⁴² R.C. 6109.25(E).



(1) Collect payment for all goods and services provided to persons served by the public water system during the receivership at the same rate as was charged by the owner at the time the petition for receivership was filed, unless a different rate is set by the court;

(2) Honor all leases, mortgages, and secured transactions governing all buildings, goods, and fixtures of which the receiver has taken possession and continues to use, subject to the following conditions:

--In the case of a rental agreement, only to the extent of payments that are for the use of the property during the receivership;

--In the case of a purchase agreement, only to the extent of payments that come due during the receivership.

(3) Make monthly reports on the status of the public water system to the Director and the owner of the system;

(4) Compromise demands or claims;

(5) Take actions necessary for the operation of the public water system in compliance with the laws governing safe drinking water; and

(6) Perform any other action regarding the public water system as the court authorizes.⁴³

Neither the receiver nor the Director is liable for debts incurred by the owner or operator of a public water system for which a receiver is appointed. The Director must provide technical assistance to an appointed receiver.⁴⁴

Termination of receivership

The court must terminate a receivership if the court determines either of the following:

(1) The public water system is closed and no longer operating; or

(2) Circumstances no longer exist at the public water system that present a threat to public health or welfare, and there is no deficiency in the public water system likely to create a future risk of harm.

⁴³ R.C. 6109.25(F).

⁴⁴ R.C. 6109.25(G) and (I).



However, a court may not terminate a receivership for a public water system if the system previously operated under another receivership under the same owner unless the responsibility for the operation of the system is transferred to an owner or operator approved by the court and the Director.⁴⁵

Public water systems exemptions

The act alters the criteria under which a public water system is exempt from the law governing safe drinking water. Under continuing law, a public water system is exempt if the system meets all of the following conditions:

- (1) Its consists only of distribution and storage facilities and does not have any collection and treatment facilities;
- (2) It obtains all of its water from, but is not owned or operated by, a public water system;
- (3) It does not sell water to any person; and
- (4) Is not a carrier which conveys passengers in interstate commerce.

The act adds to the third criterion by specifying that the Director must determine whether a public water system sells water to any person. It also makes an exempted public water system potentially subject to any order or plan of the Director during safe drinking water emergencies.⁴⁶

Financial assurance requirement for community water systems

The act alters the financial assurance requirements for community water systems that serve fewer than 500 service connections. Specifically, the owner or operator of a system must provide financial assurance, in a form acceptable to the Director, when the person submits plans to the Director for the construction, substantial modification, or installation of the system. The financial assurance must be 15% of the cost of the system or part thereof, up to \$100,000. The Director may not approve the plans unless the owner or operator provides the financial assurance. The financial assurance requirements do not apply to a community water system that is operated by a public entity or regulated by the Public Utilities Commission. A community water system is a public water system (see above) that has at least 15 service connections used by year-round residents or that serves at least 25 year-round residents.

⁴⁵ R.C. 6109.25(H).

⁴⁶ R.C. 6109.02(C).



Under prior law, the owner or operator of a community water system had to deposit in escrow 15% of the cost of the system or part thereof, up to \$50,000, prior to approval of plans for the construction, substantial modification, or installation of the system.⁴⁷

Discharge to a privately owned treatment works

Under continuing law, the discharge of sewage, industrial waste, or other wastes into a sewer system to a treatment works is generally exempt from the prohibition against polluting the waters of the state. However, the act specifies that the exemption does not authorize a discharge to a privately owned treatment works in violation of any permit conditions issued under federal law governing privately owned treatment works.⁴⁸

Section 401 water quality certification

Section 404 of the Federal Water Pollution Control Act, which is administered by the U.S. Army Corps of Engineers, requires the implementation of a program to regulate the discharge of dredged and fill material into the waters of the U.S., including wetlands.⁴⁹ Under section 404, prior to placing dredged or fill material, a person must obtain a section 404 permit from the Army Corps. Before a person can obtain a section 404 permit, the person must obtain a section 401 water quality certification from the state in which the discharge will take place. The certification must confirm that the proposed activity that would cause the discharge will comply with state water quality standards as well as provisions of the Federal Water Pollution Control Act. In Ohio, the OEPA administers the Section 401 program.

The act authorizes the Director, pursuant to section 401, to do any of the following:

(1) Waive a certification pursuant to an appealable action. Any waiver must contain a justification for the action.

(2) At the request or concurrence of the certification holder, transfer or modify the certification; and

(3) Revoke a certification when the Director determines that the certification approval was based on false or misleading information.

⁴⁷ R.C. 6109.08 and 6109.01, not in the act.

⁴⁸ R.C. 6111.04(F)(6); see also 40 C.F.R. 122.44(m).

⁴⁹ 33 U.S.C. 1344.



Under prior law, the Director could certify or deny a certification, but could not specifically undertake the expanded duties set forth above.⁵⁰

Dredged material

Prohibition against placing dredged material

The act prohibits a person from using, managing, or placing dredged material in any location unless authorized to do so in accordance with one of the following:

- (1) The law governing the deposit of dredged material in Lake Erie;
- (2) Rules governing the beneficial use of dredged material (see below);
- (3) Permits issued under the Water Pollution Control Law; or
- (4) Any authorization issued by the Director.⁵¹

Existing civil and criminal penalties apply to a violation of the prohibition as follows:

Criminal Penalty	Civil Penalty
Any person who purposefully violates the prohibition is guilty of a felony, punishable by a fine of up to \$25,000, imprisonment for up to four years, or both. Each day of violation is a separate offense.	Any person who violates the prohibition must pay a civil penalty of up to \$10,000 per day of violation.
Any person who knowingly violates the prohibition is guilty of a misdemeanor, punishable by a fine of up to \$10,000, imprisonment for up to one year, or both. Each day of violation is a separate offense.	

The Attorney General, on request of the Director, must criminally prosecute a violation of the prohibition or commence a civil action regarding the prohibition.⁵²

⁵⁰ R.C. 6111.03(P).

⁵¹ R.C. 6111.33(B)

⁵² R.C. 6111.07(A) and (B); R.C. 6111.09 and 6111.99, not in the act.

Dredged material is material excavated or dredged from a federal navigation channel during harbor or navigation maintenance activities.⁵³

Beneficial use of dredged material

The Director must adopt rules governing the beneficial use of dredged material and the beneficial use of material excavated or dredged from adjacent or connected commercial maritime port facilities that are necessary to protect public health, safety, and the environment. The Director must ensure that the rules establish both of the following:

(1) Criteria for determining when dredged material and material excavated or dredged from adjacent or connected commercial maritime port facilities does not constitute solid wastes or other wastes; and

(2) Requirements and procedures for the issuance, modification, suspension, revocation, and denial of an authorization, authorization by rule, and general and individual permits for the beneficial use of dredged material and the beneficial use of material excavated or dredged from adjacent or connected commercial maritime port facilities.⁵⁴

The Director also must ensure that the criteria and requirements in rules are no less stringent than any standard established under the federal Water Pollution Control Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Comprehensive Environmental Response, Compensation, and Liability Act, and the Safe Drinking Water Act.⁵⁵

Certified water quality professionals

Certified water quality professionals assess streams to determine existing aquatic life and categorize wetlands in support of applications for section 401 water quality certifications (see above) and isolated wetlands permits. Generally, the Director must issue or deny a certification within 180 days after receiving a complete application. The act specifies that when a certified water quality professional conducts a stream or wetland assessment to support an application, the Director must issue or deny the certification within 90 days after receiving the complete application.⁵⁶

⁵³ R.C. 6111.33(A).

⁵⁴ R.C. 6111.34(A) and (B).

⁵⁵ R.C. 6111.34(C).

⁵⁶ R.C. 6111.30(G).

The act requires, rather than authorizes as in prior law, the Director to establish a program and adopt rules to certify water quality professionals. The Director must establish a multi-sector work group to assist in the development of the rules.⁵⁷

The act also alters and expands the required scope of the rules by doing both of the following:

(1) Requiring the rules to authorize audits, rather than random audits as in prior law, of documentation developed or submitted by certified water quality professionals;

(2) Requiring the rules to authorize the Director to require public disclosure, including publication of specified information on OEPA's website, of the following information for each certified water quality professional:

--Name;

--Qualifications and credentials;

--Status of the professional's certifications;

--Documents and reports submitted by the certified water quality professional;

--Documentation and results of agency audits of the certified water quality professional's work; and

--Any final disciplinary action related to the certified water quality professional's performance.⁵⁸

The act specifies that nothing in the law regarding certified water quality professionals requires an applicant for a certification or a permit for impacts to an isolated wetland to use the services of a certified water quality professional.⁵⁹

Blast furnace slag and steel slag

The act excludes blast furnace slag and steel slag from the definition of industrial and other wastes in the law governing water pollution, thereby exempting them from certain requirements of that law, including the requirement to obtain an NPDES (National Pollutant Discharge Elimination System) permit. It further specifies that the exemption applies regardless of whether the blast furnace slag or steel slag is placed on

⁵⁷ R.C. 6111.30(J).

⁵⁸ R.C. 6111.30(J)(6) and (8).

⁵⁹ R.C. 6111.30(K).

the ground, placed below grade, or used in products that come into contact with the ground or are placed below grade.⁶⁰

For both the exemption above and the prohibition described further below, the act defines blast furnace slag and steel slag as follows:⁶¹

Defined Term	Definition
Blast furnace slag	A nonmetallic material that is an intended output or intended result of the melting of iron ore or iron pellets together with coke and a flux in a blast furnace, that is sold and distributed in the stream of commerce as a product.
Steel slag	<p>An intended output or intended result of the use of an electric arc furnace or basic oxygen furnace to make steel that is all of the following:</p> <p>(1) Not a hazardous waste;</p> <p>(2) Poured from the furnace in a molten state, cooled, and processed to remove all free metallic; and</p> <p>(3) Sold and distributed in the stream of commerce as a product.</p>

The act prohibits the placement or management of blast furnace slag and steel slag in a manner that results in an exceedance of water quality standards or primary or secondary contaminant levels for ground water; any discharge prohibited by federal environmental law, except in accordance with a permit; or a threat to public health, safety, or the environment.⁶² Existing civil and criminal penalties apply to this prohibition as follows:

Criminal Penalty	Civil Penalty
Any person who purposefully violates the prohibition is guilty of a felony, punishable by a fine of up to \$25,000, imprisonment for up to four years, or both. Each day of violation is a separate offense.	Any person who violates the prohibition must pay a civil penalty of up to \$10,000 per day of violation.

⁶⁰ R.C. 6111.052(B), and 6111.03(J)(1), not in the act.

⁶¹ R.C. 6111.052(A).

⁶² R.C. 6111.052(C).

Criminal Penalty	Civil Penalty
Any person who knowingly violates the prohibition is guilty of a misdemeanor, punishable by a fine of up to \$10,000, imprisonment for up to one year, or both. Each day of violation is a separate offense.	

The Attorney General, on request of the Director, must criminally prosecute a violation of the prohibition or commence a civil action regarding the prohibition.⁶³

Ohio Lake Erie Commission

Membership

The act adds the two members of the Great Lakes Protection Fund Board who are appointed to that Board by the Governor to the Ohio Lake Erie Commission. The Commission also consists of the Directors of Environmental Protection, Natural Resources, Health, Agriculture, Transportation, and Development Services, or their designees, and five additional members appointed by the Governor.

The act specifies that the terms of the five additional members appointed prior to October 6, 2017, expire on that date. The Governor may reappoint those individuals. The Governor must appoint the initial five additional members with the advice and consent of the Senate by November 20, 2017. The terms of the initially appointed five additional members are as follows:

- Two members must serve a term ending on September 1, 2017;⁶⁴
- Two members must serve a term ending on September 1, 2018;
- One member must serve a term ending September 1, 2019.

After the initial terms are completed, the five members serve three-year terms.

The act also requires the agencies represented on the Commission to furnish administrative services required by the Commission in the performance of its duties (in addition to clerical, technical, and other services provided for in continuing law).⁶⁵

⁶³ R.C. 6111.07(A) and (B); R.C. 6111.09 and 6111.99, not in the act.

⁶⁴ Please note, this date is prior to the effective date of the act and it is unclear when the terms of these two initial members will expire.

⁶⁵ R.C. 1506.21(A) and Section 5.

Duties of the Commission

The act requires the Commission to do all of the following:

(1) Ensure the coordination of funding and monitoring federal, state, and local policies, programs, and priorities pertaining to Lake Erie, including issues related to nutrient related water quality and beneficial use of dredged material. The Commission must prioritize policies, programs, and priorities identified in the Lake Erie Protection and Restoration Strategy (see below). Prior law required the Commission to ensure the coordination of state and local policies and programs pertaining to Lake Erie water quality, toxic pollution control, and resource protection.

(2) Review, and make recommendations concerning, the development and implementation of policies, programs, and issues that are consistent with the Great Lakes Water Quality Agreement and other international, federal, and state compacts and agreements. Former law required the Commission to review, and make recommendations concerning, the development and implementation of policies, programs, and issues for long-term, comprehensive protection of Lake Erie water resources and water quality that were consistent with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Agreement.

(3) Serve as a repository and clearinghouse for public information and data related to Lake Erie and the Lake Erie basin and collect and distribute that information and data at the Commission's discretion;

(4) Publish and submit the Lake Erie Protection and Restoration Strategy (see below) rather than the Lake Erie protection agenda as in former law.

(5) Provide representation regarding the interests of Ohio in state, regional, national, and international forums pertaining to Lake Erie and the Lake Erie basin. Former law required the Commission to provide that representation regarding the resources and water quality of Lake Erie and the Lake Erie basin.

(6) Develop, implement, and coordinate an education, public information, and community relations program concerning the Commission's policies, programs, and issues and the resources of Lake Erie, rather than promoting education concerning the wise management of the resources of Lake Erie as in former law; and

(7) Develop and implement a marketing program promoting the sale of the Lake Erie license plate and other public and private fundraising initiatives to support the Commission's programs.⁶⁶

The act eliminates all of the following duties previously required of the Commission:

(1) A requirement that the Commission consider matters relating to the laws governing the Commission and its funding at each regular meeting of the Commission;

(2) A requirement that the Commission ensure the implementation of a basinwide approach to Lake Erie issues; and

(3) A requirement that the Commission recommend policies and programs to modify the coastal management program of Ohio.⁶⁷

The act authorizes the Commission to dissolve public advisory councils established for the purpose of assisting in implementing programs established under the laws governing the Commission. Former law only required the Commission to establish the councils.⁶⁸

Lake Erie Protection and Restoration Strategy

As indicated above, the act requires the Commission to publish a Lake Erie Protection and Restoration Strategy. The Commission must publish the Strategy by July 31 of each odd-numbered year. The Strategy must describe the goals of the Commission and prioritize the uses of the Lake Erie Protection Fund (see below) and other funds for the following fiscal year. The Commission must hold at least one public meeting in the Lake Erie basin regarding the Strategy and submit the Strategy to the Governor, the President of the Senate, and the Speaker of the House. Former law required the Commission to publish a Lake Erie Protection Agenda each March that described the proposed uses of the Lake Erie Protection Fund for the following fiscal year.⁶⁹

Lake Erie Protection Fund

The act eliminates all of the following purposes for which the Commission could use money in the Lake Erie Protection Fund:

⁶⁶ R.C. 1506.21(B).

⁶⁷ R.C. 1506.21(B)(3), (4), and (6).

⁶⁸ R.C. 1506.21(B)(8).

⁶⁹ R.C. 1506.21(B)(4) and 1506.23(C).



(1) Funding cooperative research and data collection regarding Lake Erie water quality and toxic contamination;

(2) Developing improved methods of measuring water quality and establishing a firm scientific base for implementing a basinwide system of water quality management for Lake Erie and its tributaries;

(3) Supporting research to improve the scientific knowledge on which protection policies are based and devising new and innovative clean-up techniques for toxic contaminants; and

(4) Supplementing, in a stable and predictable manner, state commitments to policies and programs pertaining to Lake Erie water quality and resource protection.⁷⁰

The act authorizes Fund money to be used for funding cooperative research, data gathering, or demonstration projects related to the priorities outlined in the Lake Erie Protection and Restoration Strategy. Former law authorized Fund money to be used for accelerating the pace of research into the economic, environmental, and human health effects of contamination of Lake Erie and its tributaries.⁷¹

The Commission also may use Fund money for encouraging cooperation with and among leaders representing agriculture in the Lake Erie basin. The act retains law that authorizes the Commission to encourage cooperation with and among leaders of political subdivisions, business and industry, labor, institutions of higher education, environmental organizations, and conservation groups in the basin.⁷²

The act revises the use of the Fund for awarding grants to allow grants from the Fund to be made for projects and programs that are designed to address priorities outlined in the Lake Erie Protection and Restoration Strategy, rather than for projects and programs designed to protect Lake Erie by reducing toxic contamination or improving water quality in Lake Erie.⁷³

⁷⁰ R.C. 1506.23(A)(2) through (5).

⁷¹ R.C. 1506.23(A)(1).

⁷² R.C. 1506.23(A)(2).

⁷³ R.C. 1506.23(A)(3).

HISTORY

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