

## Chapter 6111: WATER POLLUTION CONTROL

### 6111.01 Water pollution control definitions.

As used in this chapter:

(A) "Pollution" means the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state.

(B) "Sewage" means any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.

(C) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present.

(D) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other "pollutants" or "toxic pollutants" as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste.

(E) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne sewage, industrial waste, or other wastes to a point of disposal or treatment, but does not include plumbing fixtures, building drains and subdrains, building sewers, and building storm sewers.

(F) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, building sewer connected directly to treatment works, incinerator, or other works used for the purpose of treating, stabilizing, blending, composting, or holding sewage, sludge, sludge materials, industrial waste, or other wastes, except as otherwise defined.

(G) "Disposal system" means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.

(H) "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

(I) "Person" means the state, any municipal corporation, any other political subdivision of the state, any person as defined in section [1.59](#) of the Revised Code, any interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof.

(J) "Industrial water pollution control facility" means any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, pipeline or conduit, pumping station, force main, or installation constructed, used, or placed in operation primarily for the purpose of collecting or conducting industrial waste to a point of disposal or treatment; reducing, controlling, or eliminating water pollution caused by industrial waste; or reducing, controlling, or eliminating the discharge into a disposal system of industrial waste or what would be industrial waste if discharged into the waters of the state.

(K) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with standards and rules adopted under sections [6111.041](#) and [6111.042](#) of the Revised Code or compliance with terms and conditions of permits set under division (J) of section [6111.03](#) of the Revised Code.

(L) "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, and all other amendments to that act.

(M) "Historically channelized watercourse" means the portion of a watercourse on which an improvement, as defined in divisions (C)(2) to (4) of section [6131.01](#) of the Revised Code, was constructed pursuant to Chapter 940., 6131., or 6133. of the Revised Code or a similar state law that preceded any of those chapters and authorized such an improvement.

(N) "Sludge" means sewage sludge and a solid, semi-solid, or liquid residue that is generated from an industrial wastewater treatment process and that is applied to land for agronomic benefit. "Sludge" does not include ash generated during the firing of sludge in a sludge incinerator, grit and screening generated during preliminary treatment of sewage in a treatment works, animal manure, residue generated during treatment of animal manure, or domestic septage.

(O) "Sludge materials" means solid, semi-solid, or liquid materials derived from sludge and includes products from a treatment works that result from the treatment, blending, or composting of sludge.

(P) "Storage of sludge" means the placement of sludge on land on which the sludge remains for not longer than two years, but does not include the placement of sludge on land for treatment.

(Q) "Sludge disposal program" means any program used by an entity that begins with the generation of sludge and includes treatment or disposal of the sludge, as "treatment" and "disposal" are defined in division (Y) of section [3745.11](#) of the Revised Code.

(R) "Agronomic benefit" means any process that promotes or enhances plant growth and includes, but is not limited to, a process that increases soil fertility and moisture retention.

(S) "Sludge management" means the use, storage, treatment, or disposal of, and management practices related to, sludge and sludge materials.

(T) "Sludge management permit" means a permit for sludge management that is issued under division (J) of section [6111.03](#) of the Revised Code.

(U) "Sewage sludge" has the same meaning as in division (Y) of section [3745.11](#) of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Effective Date: 03-17-2000 .

### **[6111.02 Isolated wetland permit definitions.](#)**

As used in this section and sections [6111.021](#) to [6111.028](#) of the Revised Code:

(A) "Category 1 wetland," "category 2 wetland," or "category 3 wetland" means a category 1 wetland, category 2 wetland, or category 3 wetland, respectively, as described in rule 3745-1-54 of the Administrative Code, as that rule existed on July 17, 2001, and as determined to be a category 1, category 2, or category 3 wetland, respectively, through application of the "Ohio rapid assessment method for wetlands version 5.0," including the Ohio rapid assessment method for wetlands version 5.0 quantitative score calibration dated August 15, 2000, unless an application for a section 401 water quality certification was submitted prior to February 28, 2001, in which case the applicant for the permit may elect to proceed in accordance with Ohio rapid assessment method for wetlands version 4.1.

(B) "Creation" means the establishment of a wetland where one did not formerly exist and that involves wetland construction on nonhydric soils.

(C) "Enhancement" means activities conducted in an existing wetland to improve or repair existing or natural wetland functions and values of that wetland.

(D) "Fill material" means any material that is used to fill an aquatic area, to replace an aquatic area with dry land, or to change the bottom elevation of a wetland for any purpose and that consists of suitable material that is free from toxic contaminants in other than trace quantities. "Fill material" does not include either of the following:

(1) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products;

(2) Material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.

(E) "Filling" means the addition of fill material into a wetland for the purpose of creating upland, changing the bottom elevation of the wetland, or creating impoundments of water. "Filling" includes, without limitation, the placement of the following in wetlands: fill material that is necessary for the construction of any structure; structures or impoundments requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands, property protection, or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill material for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and underwater utility lines; and artificial reefs.

(F) "Isolated wetland" means a wetland that is not subject to regulation under the Federal Water Pollution Control Act.

(G) "Mitigation" means the restoration, creation, enhancement, or, in exceptional circumstances, preservation of wetlands expressly for the purpose of compensating for wetland impacts.

(H) "Mitigation bank service area" means the designated area where a mitigation bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and other aquatic resources and that is designated as such in accordance with the process established in 33 C.F.R. 332.8 and 40 C.F.R. 230.98.

(I) "Off-site mitigation" means wetland restoration, creation, enhancement, or preservation occurring farther than one mile from a project boundary, but within the same watershed.

(J) "On-site mitigation" means wetland restoration, creation, enhancement, or preservation occurring within and not more than one mile from the project boundary and within the same watershed.

(K) "Practicable" means available and capable of being executed with existing technology and without significant adverse effect on the economic feasibility of the project in light of the overall project purposes and in consideration of the relative environmental benefit.

(L) "Preservation" means the long-term protection of ecologically important wetlands through the implementation of appropriate legal mechanisms to prevent harm to the wetlands. "Preservation" may include protection of adjacent upland areas as necessary to ensure protection of a wetland.

(M) "Restoration" means the reestablishment of a previously existing wetland at a site where it has ceased to exist.

(N) "State isolated wetland permit" means a permit issued in accordance with sections [6111.02](#) to [6111.027](#) of the Revised Code authorizing the filling of an isolated wetland.

(O) "Watershed" means an eight-digit hydrologic unit.

(P) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. "Wetlands" includes swamps, marshes, bogs, and similar areas that are delineated in accordance with the 1987 United States army corps of engineers wetland

delineation manual and any other procedures and requirements adopted by the United States army corps of engineers for delineating wetlands.

(Q) "Wetland mitigation bank" means a site where wetlands have been restored, created, enhanced, or, in exceptional circumstances, preserved expressly for the purpose of providing mitigation for impacts to wetlands and that has been approved in accordance with the process established in 33 C.F.R. 332.8 and 40 C.F.R. 230.98.

(R) "Eight-digit hydrologic unit" means a common surface drainage area corresponding to one from the list of thirty-seven adapted from the forty-four cataloging units as depicted on the hydrologic unit map of Ohio, United States geological survey, 1988, and as described in division (F)(2) of rule 3745-1-54 of the Administrative Code or as otherwise shown on map number 1 found in rule 3745-1-54 of the Administrative Code. "Eight-digit hydrologic unit" is limited to those parts of the cataloging units that geographically lie within the borders of this state.

(S) "In-lieu fee mitigation" means a payment made by an applicant to satisfy a wetland mitigation requirement established in sections [6111.02](#) to [6111.027](#) of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 129th General Assembly File No. 115, SB 294, §1, eff. 9/5/2012.

Effective Date: 07-17-2001 .

### **6111.021 General and individual isolated wetland permits.**

(A)

(1) The director of environmental protection shall issue a general state isolated wetland permit or permits to cover activities within this state for purposes of section [6111.022](#) of the Revised Code. A general permit is effective for five years. Upon the expiration of a general permit, the director shall issue a new general permit.

(2) The director may issue an individual state isolated wetland permit for purposes of sections [6111.023](#) and [6111.024](#) of the Revised Code. An individual permit issued under either of those sections is effective for five years.

(B) A person that proposes to engage in an activity that involves the filling of an isolated wetland shall apply to the director for coverage under a general state isolated wetland permit or shall apply for an individual state isolated wetland permit, as applicable, in accordance with sections [6111.02](#) to [6111.027](#) of the Revised Code. No person shall engage in the filling of an isolated wetland unless authorized to do so by a general or individual state isolated wetland permit. Sections [6111.02](#) to [6111.027](#) of the Revised Code do not apply to isolated wetlands created by previous coal mining activities where re-mining is proposed, except for wetlands created for mitigation purposes.

(C) The issuance of a general or individual state isolated wetland permit constitutes the issuance of a section 401 water quality certification for purposes of the Federal Water Pollution Control Act.

Effective Date: 07-17-2001 .

### **6111.022 Proposed filling of wetland subject to level one review.**

(A) A proposed filling of a category 1 or a category 2 isolated wetland of one-half acre or less shall require a general state isolated wetland permit and be subject to level one review requirements established under division (B) of this section.

(B) Level one review shall apply only to the filling of a category 1 or a category 2 isolated wetland as described in division (A) of this section requiring a general state isolated wetland permit. A level one review shall require the submission of a pre-activity notice that includes an application, an acceptable wetland delineation, a wetland categorization, a description of the project, a description of the acreage of the isolated wetland that will be subject to filling, site photographs, and a mitigation proposal for the impact to the isolated wetland.

(C) The proposed filling of an isolated wetland that is subject to level one review is authorized by a general state isolated wetland permit unless the director of environmental protection notifies the applicant within thirty days after receipt of a pre-activity notice that the filling of the isolated wetland will result in a significant negative impact on state water quality. An applicant that receives such a notice may apply for an individual state isolated wetland permit in accordance with the procedures and requirements established under section [6111.023](#) of the Revised Code.

(D) Mitigation for the proposed filling of an isolated wetland that is subject to level one review shall be conducted in the following preferred order:

(1) Without the objection of the director and at the discretion of the applicant, either on site mitigation, mitigation at a wetland mitigation bank within the same United States army corps of engineers district as the location of the proposed filling of the isolated wetland, or off-site mitigation;

(2) In-lieu fee mitigation.

The director, at the director's discretion, may allow an applicant to deviate from the preferred order established in division (D) of this section. If the proposed filling of an isolated wetland will be mitigated by in-lieu fee mitigation, an applicant shall provide documentation to the director that demonstrates that the applicant evaluated the mitigation alternatives established in division (D)(1) of this section.

(E) A person that has submitted a pre-activity notice for coverage under a general state isolated wetland permit under this section shall complete the filling within two years after the end of the thirty-day period following the receipt of the pre-activity notice by the director. If the person does not complete the filling within that two-year period, the person shall submit a new pre-activity notice in accordance with this section.

Amended by 129th General Assembly File No.115, SB 294, §1, eff. 9/5/2012.

Effective Date: 07-17-2001 .

### **[6111.023 Proposed filling of wetland subject to level two review.](#)**

(A) A proposed filling of a category 1 isolated wetland of greater than one-half acre or the proposed filling of a category 2 isolated wetland of greater than one-half acre, but less than or equal to three acres shall require an individual state isolated wetland permit and be subject to level two review requirements established under division (B) of this section.

(B) Level two review shall apply to the filling of a category 1 or a category 2 isolated wetland described in division (A) of this section and shall require all of the following:

(1) All of the information required to be submitted with a pre-activity notice as described in division (B) of section [6111.022](#) of the Revised Code;

(2) The submission of an analysis of practicable on-site alternatives to the proposed filling of the isolated wetland that would have a less adverse impact on the isolated wetland ecosystem;

(3) The submission of information indicating whether high quality waters, as defined in rule 3745-1-05 of the Administrative Code, are to be avoided by the proposed filling of the isolated wetland.

(C) The director of environmental protection shall issue or deny an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level two review not later than ninety days after the receipt of an application for the permit. The director shall issue an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level two review unless the director determines that the applicant for the permit has failed to demonstrate all of the following:

(1) There is no practicable on-site alternative to the proposed filling of the isolated wetland that would have a less adverse impact on the isolated wetland ecosystem.

(2) Reasonable buffers have been provided for any isolated wetland that will be avoided at the site where the proposed filling of the isolated wetland will take place.

(3) The isolated wetland that will be subject to filling is not locally or regionally scarce within the watershed in which it is located and does not contain rare, threatened, or endangered species.

(4) The impact would not result in significant degradation to the aquatic ecosystem.

(5) Appropriate mitigation has been proposed for any unavoidable impacts.

(6) Storm water and water quality controls will be installed to ensure that peak post-development rates of surface water runoff from the impacted isolated wetland do not exceed the peak pre-development rates of runoff from the on-site isolated wetland. Water quality improvement measures shall be incorporated into the design of the storm water control measures to the maximum extent practicable. Examples of these measures include, but are not limited to, incorporating vegetated areas in a storm water control plan.

(7) Any additional, practicable, site-specific requirements that are determined necessary by the director to protect water quality have been satisfied.

(D)

(1) Notwithstanding an applicant's demonstration under division (C) of this section, the director may deny an application for an individual state isolated wetland permit submitted under this section if the director determines that the proposed filling of the isolated wetland will result in an adverse short-term or long-term impact on water quality.

(2) The director may impose any practicable terms and conditions on an individual state isolated wetland permit issued under this section that are appropriate or necessary to ensure adequate protection of state water quality and to ensure compliance with this chapter and rules adopted under it.

(3) Prior to the issuance of an individual state isolated wetland permit under this section, or prior to, during, or after the filling of the isolated wetland that is the subject of the permit, the director may require that the applicant or permit holder perform various environmental quality tests, including, without limitation, chemical analyses of water, sediment, or fill material and bioassays, in order to ensure adequate protection of water quality.

(E)

(1) Mitigation for the proposed filling of a category 1 isolated wetland that is subject to level two review shall be conducted in the following preferred order:

(a) Without the objection of the director and at the discretion of the applicant, either on-site mitigation, mitigation at a wetland mitigation bank within the same United States army corps of engineers district as the location of the proposed filling of the isolated wetland, or off-site mitigation;

(b) In-lieu fee mitigation.

The director, at the director's discretion, may allow an applicant to deviate from the preferred order established in division (E)(1) of this section. If the proposed filling of an isolated wetland will be mitigated by in-lieu fee mitigation, an applicant shall provide documentation to the director that demonstrates that the applicant evaluated the mitigation alternatives established in division (E)(1)(a) of this section.

(2) Mitigation for the proposed filling of a category 2 isolated wetland that is subject to level two review shall be conducted in the following preferred order:

(a)

Mitigation at a wetland mitigation bank with a service area that includes the location of the proposed filling of the isolated wetland.

(b) Mitigation at a wetland mitigation bank with a service area that is adjacent to the watershed in which the proposed filling of the isolated wetland is located, provided that the watershed is located within the same United States army corps of engineers district. If mitigation occurs in accordance with division (E)(2)(b) of this section, the applicable mitigation ratio calculated under section [6111.027](#) of the Revised Code shall be multiplied by one and one-half.

(c) In-lieu fee mitigation;

(d) Reasonably identifiable, available, and practicable mitigation within the same watershed

The director, at the director's discretion, may allow an applicant to deviate from the preferred order established in division (E)(2) of this section. If the proposed filling of an isolated wetland will be mitigated by in-lieu fee mitigation, an applicant shall provide documentation to the director that demonstrates that the applicant evaluated the mitigation alternatives established in divisions (E)(2)(a) and (b) of this section.

Amended by 129th General Assembly File No.115, SB 294, §1, eff. 9/5/2012.

Effective Date: 07-17-2001 .

### **6111.024 Proposed filling of wetland subject to level three review.**

(A) A proposed filling of a category 2 isolated wetland of greater than three acres or a category 3 isolated wetland shall require an individual state isolated wetland permit and be subject to level three review requirements established under division (B) of this section.

(B) Level three review shall apply to the filling of a category 2 or a category 3 isolated wetland described in division (A) of this section and shall require all of the following:

(1) All of the information required to be submitted with a pre-activity notice as described in division (B) of section [6111.022](#) of the Revised Code;

(2) A full antidegradation review conducted in accordance with rules adopted under section [6111.12](#) of the Revised Code;

(3) The submission of information indicating whether high quality waters, as defined in rule 3745-1-05 of the Administrative Code, are to be avoided by the proposed filling of the isolated wetland.

(C) The director of environmental protection shall issue or deny an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level three review not later than one hundred eighty days after the receipt of an application for the permit. The director shall not issue an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level three review unless the director determines that the applicant for the permit has demonstrated that the proposed filling will not prevent or interfere with the attainment or maintenance of applicable state water quality standards.

(D)

(1) Notwithstanding division (C) of this section, the director also may deny an application for an individual state isolated wetland permit submitted under this section if the director determines that the proposed filling of the isolated wetland will result in an adverse short-term or long-term impact on water quality.

(2) The director may impose terms and conditions on an individual state isolated wetland permit issued under this section that are appropriate or necessary to ensure adequate protection of state water quality and to ensure compliance with this chapter and rules adopted under it.

(3) Prior to the issuance of an individual state isolated wetland permit under this section, or prior to, during, or after the filling of the isolated wetland that is the subject of the permit, the director may require that the applicant or permit holder perform various environmental quality tests, including, without limitation, chemical

analyses of water, sediment, or fill material and bioassays, in order to ensure adequate protection of water quality.

(E) Mitigation for the proposed filling of a category 2 or a category 3 isolated wetland that is subject to level three review shall be conducted in the following preferred order:

(1)

Reasonably identifiable, available, and practicable mitigation within the same watershed;

(2) Mitigation at a wetland mitigation bank with a service area that includes the location of the proposed filling of the isolated wetland.

(3) Mitigation at a wetland mitigation bank with a service area that is adjacent to the watershed in which the proposed filling of the isolated wetland is located, provided that the watershed is located within the same United States army corps of engineers district. If mitigation occurs in accordance with division (E)(3) of this section, the applicable mitigation ratio calculated under section [6111.027](#) of the Revised Code shall be multiplied by one and one-half.

(4) In-lieu fee mitigation;

(5) If there is a significant ecological reason that the mitigation location should not be limited to the watershed in which the isolated wetland is located and if the proposed mitigation will result in a substantially greater ecological benefit, in a watershed that is adjacent to the watershed in which the isolated wetland is located.

The director, at the director's discretion, may allow an applicant to deviate from the preferred order established in division (E) of this section. If the proposed filling of an isolated wetland will be mitigated by in-lieu fee mitigation, an applicant shall provide documentation to the director that demonstrates that the applicant evaluated the mitigation alternatives established in divisions (E)(1),(2), and (3) of this section.

Amended by 129th General Assembly File No.115, SB 294, §1, eff. 9/5/2012.

Effective Date: 07-17-2001 .

### **6111.025 Wetland mitigation banks.**

(A) The department of natural resources, the division of wildlife in that department, or any other division in that department that is designated by the director of natural resources may establish and operate a wetland mitigation bank for purposes of sections [6111.02](#) to [6111.027](#) of the Revised Code. A mitigation bank so established may be used by any individual or entity, including any agency or department of the state, for mitigation purposes under those sections. Nothing in this division precludes any other private or public entity from developing a mitigation bank, provided that it is approved by the director of environmental protection under division (C) of this section.

(B) The environmental protection agency, the department of natural resources, the division of wildlife in that department, or any other division in that department that is designated by the director of natural resources may establish and operate an in-lieu fee mitigation program for purposes of sections [6111.02](#) to [6111.027](#) of the Revised Code. An in-lieu fee mitigation program so established may be used by any individual or entity, including any agency or department of the state, for mitigation purposes under those sections.

Nothing in this division precludes any other private or public entity from developing an in-lieu fee mitigation program, provided that it is approved by the director of environmental protection under division (C) of this section.

(C) The director of environmental protection in consultation with the director of natural resources shall approve and publish a list of approved wetland mitigation banks and in-lieu fee mitigation programs that shall be used by applicants for state isolated wetland permits for mitigation purposes . In establishing the approved list, the director of environmental protection shall give preference to wetland mitigation banks that are comprised of areas involving the restoration of previously existing wetlands. Applicants for isolated wetland permits shall not use

mitigation from a mitigation bank or an in-lieu fee mitigation program that has not been approved under this section.

(D) The director of environmental protection annually shall issue a report to the members of the general assembly on the total number of acres of wetlands and lineal feet of stream that were subject to filling during the immediately preceding fiscal year . The report also shall include the total number of acres of wetlands that were restored, created, enhanced, or preserved through compensatory mitigation that same year as a result of state isolated wetland permits issued under sections [6111.02](#) to [6111.027](#) of the Revised Code and the state section 401 water quality certification program administered under section [6111.30](#) of the Revised Code.

(E) Any wetland category determined through the use of the appropriate Ohio rapid assessment method and verified by the environmental protection agency for purposes of an isolated wetlands permit issued under sections [6111.02](#) to [6111.027](#) of the Revised Code is valid for a period of five years following verification.

Amended by 129th General Assembly File No.115, SB 294, §1, eff. 9/5/2012.

Effective Date: 07-17-2001 .

### **[6111.026 Application for a general and individual state isolated wetland permit - notice and hearing.](#)**

(A)

(1) The director of environmental protection shall prescribe the form of the application for a general state isolated wetland permit and for an individual state isolated wetland permit.

(2) The director shall provide an explanation to an applicant for an individual state isolated wetland permit of the basis for the proposed denial of the application.

(B) Within fifteen business days after the receipt of an application for an individual state isolated wetland permit or an application for coverage under a general state isolated wetland permit, the director shall notify the applicant if the application is complete. If the application is not complete, the director shall include in the notice an itemized list of the information or materials that are necessary to complete the application. Time periods specified in sections [6111.02](#) to [6111.027](#) of the Revised Code shall not apply until the application is determined by the director to be complete. If the applicant fails to provide information or materials that are necessary to complete the application within sixty days after the director's receipt of the application, the director may return the incomplete application to the applicant and take no further action on the application.

(C) Except as provided in division (D) of this section, the director shall publish notice of the receipt of a complete application for an individual state isolated wetland permit in a newspaper of general circulation in the county in which the proposed filling of the isolated wetland that is the subject of the application is to take place. The director shall accept comments concerning the application and requests for a public hearing concerning the application for not more than twenty days following the publication of notice concerning the application.

If a public hearing is requested during the twenty-day comment period and the director determines that there is significant public interest, the director or the director's representative shall conduct a public hearing concerning the application. Notice of the public hearing shall be published not later than thirty days prior to the date of the hearing in a newspaper of general circulation in the county in which the proposed filling of the isolated wetland that is the subject of the application is to take place. If a public hearing is requested concerning an application, the director shall accept comments concerning the application until five business days after the public hearing. A public hearing conducted under this division shall take place not later than seventy days after the receipt of the application.

(D) Applications for individual state isolated wetland permits submitted under section [6111.024](#) of the Revised Code and the issuance of a general state isolated wetland permit under section [6111.021](#) of the Revised Code are subject to rules adopted under section [6111.12](#) of the Revised Code governing public notice and participation.

(E) When an application for a state isolated wetland permit is changed, altered, or amended after a public hearing was conducted in accordance with division (C) or (D) of this section, a second hearing shall not be required for the changed, altered, or amended application if the scope of the proposed filling that is proposed by the original application has not changed or the proposed filling has been reduced from that proposed in the original application.

(F) If the isolated wetland that is the subject of an application for an individual state isolated wetland permit submitted under section [6111.023](#) or [6111.024](#) of the Revised Code is part of a project that is subject to section 404 of the Federal Water Pollution Control Act, the director, at the request of the applicant, may revise the time periods established in this section for the public comment period and public hearing, if applicable, to coincide with the time periods for an application for a 401 water quality certification. If the applicant makes such a request, the director also may revise the time periods established in sections [6111.023](#) and [6111.024](#) of the Revised Code solely for the purpose of eliminating duplicative public comment and public hearing procedures as authorized by this division.

Effective Date: 07-17-2001 .

### **6111.027 Mitigation for impacts to isolated wetlands.**

(A) Mitigation for impacts to isolated wetlands under sections [6111.02](#) to [6111.027](#) shall be conducted in accordance with the following ratios:

(1) For category 1 and category 2 isolated wetlands, other than forested category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted, or mitigation shall be paid for under an in-lieu fee mitigation program, at a rate of two times the size of the area of isolated wetland that is being impacted.

(2) For forested category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted, or mitigation shall be paid for under an in-lieu fee mitigation program, at a rate of two and one-half times the size of the area of isolated wetland that is being impacted.

(3) All other mitigation shall be subject to mitigation ratios established in division (F) of rule 3745-1-54 of the Administrative Code.

(B) Mitigation that involves the enhancement or preservation of isolated wetlands shall be calculated and performed in accordance with rule 3745-1-54 of the Administrative Code.

(C) An applicant for coverage under a general state isolated wetland permit or for an individual state isolated wetland permit under sections

[6111.022](#) to [6111.024](#) of the Revised Code shall demonstrate that the mitigation site will be protected long term and that appropriate practicable management measures are, or will be, in place to restrict harmful activities that jeopardize the mitigation.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 129th General Assembly File No. 115, SB 294, §1, eff. 9/5/2012.

Effective Date: 07-17-2001 .

### **6111.028 Discharge of dredged material into isolated wetlands.**

(A) The discharge of dredged material into isolated wetlands is subject to sections [6111.021](#) to [6111.027](#) of the Revised Code.

(B) As used in this section:

(1) "Discharge of dredged material" has the same meaning as in 33 CFR 323.2 as effective February 16, 2001.

(2) "Dredged material" means material that is excavated or dredged from isolated wetlands. "Dredged material" does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

Effective Date: 07-17-2001 .

### **6111.029 [Repealed].**

Repealed by 130th General Assembly File No. 25, HB 59, §105.01, eff. 9/29/2013.

Effective Date: 07-17-2001 .

### **6111.03 Water pollution control powers of director of environmental protection.**

The director of environmental protection may do any of the following:

(A) Develop plans and programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(B) Advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter. Before adopting, amending, or rescinding a standard or rule pursuant to division (G) of this section or section [6111.041](#) or [6111.042](#) of the Revised Code, the director shall do all of the following:

(1) Mail notice to each statewide organization that the director determines represents persons who would be affected by the proposed standard or rule, amendment thereto, or rescission thereof at least thirty-five days before any public hearing thereon;

(2) Mail a copy of each proposed standard or rule, amendment thereto, or rescission thereof to any person who requests a copy, within five days after receipt of the request therefor;

(3) Consult with appropriate state and local government agencies or their representatives, including statewide organizations of local government officials, industrial representatives, and other interested persons.

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

(C) Administer grants from the federal government and from other sources, public or private, for carrying out any of its functions, all such moneys to be deposited in the state treasury and kept by the treasurer of state in a separate fund subject to the lawful orders of the director;

(D) Administer state grants for the construction of sewage and waste collection and treatment works;

(E) Encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution, and the causes, prevention, control, and abatement thereof, that are advisable and necessary for the discharge of the director's duties under this chapter;

(F) Collect and disseminate information relating to water pollution and prevention, control, and abatement thereof;

(G) Adopt, amend, and rescind rules in accordance with Chapter 119. of the Revised Code governing the procedure for hearings, the filing of reports, the issuance of permits, the issuance of industrial water pollution control certificates, and all other matters relating to procedure;

(H) Issue, modify, or revoke orders to prevent, control, or abate water pollution by such means as the following:

(1) Prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state;

(2) Requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof;

(3) Prohibiting additional connections to or extensions of a sewerage system when the connections or extensions would result in an increase in the polluting properties of the effluent from the system when discharged into any waters of the state;

(4) Requiring compliance with any standard or rule adopted under sections [6111.01](#) to [6111.05](#) of the Revised Code or term or condition of a permit.

In the making of those orders, wherever compliance with a rule adopted under section [6111.042](#) of the Revised Code is not involved, consistent with the Federal Water Pollution Control Act, the director shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of this chapter.

(I) Review plans, specifications, or other data relative to disposal systems or any part thereof in connection with the issuance of orders, permits, and industrial water pollution control certificates under this chapter;

(J)

(1) Issue, revoke, modify, or deny sludge management permits and permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state, and for the installation or modification of disposal systems or any parts thereof in compliance with all requirements of the Federal Water Pollution Control Act and mandatory regulations adopted thereunder, including regulations adopted under section 405 of the Federal Water Pollution Control Act, and set terms and conditions of permits, including schedules of compliance, where necessary. In issuing permits for sludge management, the director shall not allow the placement of sewage sludge on frozen ground in conflict with rules adopted under this chapter. Any person who discharges, transports, or handles storm water from an animal feeding facility, as defined in section [903.01](#) of the Revised Code, or pollutants from a concentrated animal feeding operation, as both terms are defined in that section, is not required to obtain a permit under division (J)(1) of this section for the installation or modification of a disposal system involving pollutants or storm water or any parts of such a system on and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section [903.02](#) of the Revised Code. In addition, any person who discharges, transports, or handles storm water from an animal feeding facility, as defined in section [903.01](#) of the Revised Code, or pollutants from a concentrated animal feeding operation, as both terms are defined in that section, is not required to obtain a permit under division (J)(1) of this section for the discharge of storm water from an animal feeding facility or pollutants from a concentrated animal feeding operation on and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section [903.08](#) of the Revised Code.

Any permit terms and conditions set by the director shall be designed to achieve and maintain full compliance with the national effluent limitations, national standards of performance for new sources, and national toxic and pretreatment effluent standards set under that act, and any other mandatory requirements of that act that are imposed by regulation of the administrator of the United States environmental protection agency. If an applicant for a sludge management permit also applies for a related permit for the discharge of sewage, industrial waste, or other wastes into the waters of the state, the director may combine the two permits and issue one permit to the applicant.

A sludge management permit is not required for an entity that treats or transports sewage sludge or for a sanitary landfill when all of the following apply:

(a) The entity or sanitary landfill does not generate the sewage sludge.

(b) Prior to receipt at the sanitary landfill, the entity has ensured that the sewage sludge meets the requirements established in rules adopted by the director under section [3734.02](#) of the Revised Code concerning disposal of municipal solid waste in a sanitary landfill.

(c) Disposal of the sewage sludge occurs at a sanitary landfill that complies with rules adopted by the director under section [3734.02](#) of the Revised Code.

As used in division (J)(1) of this section, "sanitary landfill" means a sanitary landfill facility, as defined in rules adopted under section [3734.02](#) of the Revised Code, that is licensed as a solid waste facility under section [3734.05](#) of the Revised Code.

(2) An application for a permit or renewal thereof shall be denied if any of the following applies:

(a) The secretary of the army determines in writing that anchorage or navigation would be substantially impaired thereby;

(b) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act;

(c) The administrator of the United States environmental protection agency objects in writing to the issuance or renewal of the permit in accordance with section 402 (d) of the Federal Water Pollution Control Act;

(d) The application is for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into the waters of the United States.

(3) To achieve and maintain applicable standards of quality for the waters of the state adopted pursuant to section [6111.041](#) of the Revised Code, the director shall impose, where necessary and appropriate, as conditions of each permit, water quality related effluent limitations in accordance with sections 301, 302, 306, 307, and 405 of the Federal Water Pollution Control Act and, to the extent consistent with that act, shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of removing the polluting properties from those wastes and to evidence relating to conditions calculated to result from that action and their relation to benefits to the people of the state and to accomplishment of the purposes of this chapter.

(4) Where a discharge having a thermal component from a source that is constructed or modified on or after October 18, 1972, meets national or state effluent limitations or more stringent permit conditions designed to achieve and maintain compliance with applicable standards of quality for the waters of the state, which limitations or conditions will ensure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the body of water into which the discharge is made, taking into account the interaction of the thermal component with sewage, industrial waste, or other wastes, the director shall not impose any more stringent limitation on the thermal component of the discharge, as a condition of a permit or renewal thereof for the discharge, during a ten-year period beginning on the date of completion of the construction or modification of the source, or during the period of depreciation or amortization of the source for the purpose of section 167 or 169 of the Internal Revenue Code of 1954, whichever period ends first.

(5) The director shall specify in permits for the discharge of sewage, industrial waste, and other wastes, the net volume, net weight, duration, frequency, and, where necessary, concentration of the sewage, industrial waste, and other wastes that may be discharged into the waters of the state. The director shall specify in those permits and in sludge management permits that the permit is conditioned upon payment of applicable fees as required by section [3745.11](#) of the Revised Code and upon the right of the director's authorized representatives to enter upon the premises of the person to whom the permit has been issued for the purpose of determining compliance with this chapter, rules adopted thereunder, or the terms and conditions of a permit, order, or other determination. The director shall issue or deny an application for a sludge management permit or a permit for a new discharge, for the installation or modification of a disposal system, or for the renewal of a permit, within one hundred eighty days of the date on which a complete application with all plans, specifications, construction schedules, and other pertinent information required by the director is received.

(6) The director may condition permits upon the installation of discharge or water quality monitoring equipment or devices and the filing of periodic reports on the amounts and contents of discharges and the quality of receiving waters that the director prescribes. The director shall condition each permit for a government-owned disposal system or any other "treatment works" as defined in the Federal Water Pollution Control Act upon the reporting of new introductions of industrial waste or other wastes and substantial changes in volume or character thereof being introduced into those systems or works from "industrial users" as defined in section 502 of that act, as necessary to comply with section 402(b)(8) of that act; upon the identification of the character and volume of

pollutants subject to pretreatment standards being introduced into the system or works; and upon the existence of a program to ensure compliance with pretreatment standards by "industrial users" of the system or works. In requiring monitoring devices and reports, the director, to the extent consistent with the Federal Water Pollution Control Act, shall give consideration to technical feasibility and economic reasonableness and shall allow reasonable time for compliance.

(7) A permit may be issued for a period not to exceed five years and may be renewed upon application for renewal. In renewing a permit, the director shall consider the compliance history of the permit holder and may deny the renewal if the director determines that the permit holder has not complied with the terms and conditions of the existing permit. A permit may be modified, suspended, or revoked for cause, including, but not limited to, violation of any condition of the permit, obtaining a permit by misrepresentation or failure to disclose fully all relevant facts of the permitted discharge or of the sludge use, storage, treatment, or disposal practice, or changes in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity. No application shall be denied or permit revoked or modified without a written order stating the findings upon which the denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or permit holder by certified mail.

(K) Institute or cause to be instituted in any court of competent jurisdiction proceedings to compel compliance with this chapter or with the orders of the director issued under this chapter, or to ensure compliance with sections 204(b), 307, 308, and 405 of the Federal Water Pollution Control Act;

(L)

Certify to the government of the United States or any agency thereof that an industrial water pollution control facility is in conformity with the state program or requirements for the control of water pollution whenever the certification may be required for a taxpayer under the Internal Revenue Code of the United States, as amended;

(M) Issue, modify, and revoke orders requiring any "industrial user" of any publicly owned "treatment works" as defined in sections 212(2) and 502(18) of the Federal Water Pollution Control Act to comply with pretreatment standards; establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods; sample discharges in accordance with methods, at locations, at intervals, and in a manner that the director determines; and provide other information that is necessary to ascertain whether or not there is compliance with toxic and pretreatment effluent standards. In issuing, modifying, and revoking those orders, the director, to the extent consistent with the Federal Water Pollution Control Act, shall give consideration to technical feasibility and economic reasonableness and shall allow reasonable time for compliance.

(N) Exercise all incidental powers necessary to carry out the purposes of this chapter;

(O) Pursuant to section 401 of the Federal Water Pollution Control Act, do any of the following:

(1) Issue or deny a section 401 water quality certification to, or, pursuant to an appealable action, waive a section 401 water quality certification for, any applicant for a federal license or permit to conduct any activity that may result in any discharge into the waters of the state . Any waiver shall contain a justification for the action.

(2) At the request or concurrence of the certification holder, transfer or modify a section 401 water quality certification;

(3) Revoke a section 401 water quality certification when the director determines that the certification approval was based on false or misleading information.

(P) Administer and enforce the publicly owned treatment works pretreatment program in accordance with the Federal Water Pollution Control Act. In the administration of that program, the director may do any of the following:

(1) Apply and enforce pretreatment standards;

(2) Approve and deny requests for approval of publicly owned treatment works pretreatment programs, oversee those programs, and implement, in whole or in part, those programs under any of the following conditions:

(a) The director has denied a request for approval of the publicly owned treatment works pretreatment program;

(b) The director has revoked the publicly owned treatment works pretreatment program;

(c) There is no pretreatment program currently being implemented by the publicly owned treatment works;

(d) The publicly owned treatment works has requested the director to implement, in whole or in part, the pretreatment program.

(3) Require that a publicly owned treatment works pretreatment program be incorporated in a permit issued to a publicly owned treatment works as required by the Federal Water Pollution Control Act, require compliance by publicly owned treatment works with those programs, and require compliance by industrial users with pretreatment standards;

(4) Approve and deny requests for authority to modify categorical pretreatment standards to reflect removal of pollutants achieved by publicly owned treatment works;

(5) Deny and recommend approval of requests for fundamentally different factors variances submitted by industrial users;

(6) Make determinations on categorization of industrial users;

(7) Adopt, amend, or rescind rules and issue, modify, or revoke orders necessary for the administration and enforcement of the publicly owned treatment works pretreatment program.

Any approval of a publicly owned treatment works pretreatment program may contain any terms and conditions, including schedules of compliance, that are necessary to achieve compliance with this chapter.

(Q) Except as otherwise provided in this division, adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and hazardous substances into the waters of the state. The rules shall be consistent with and equivalent in scope, content, and coverage to section 311(j)(1)(c) of the Federal Water Pollution Control Act and regulations adopted under it. The director shall not adopt rules under this division relating to discharges of oil from oil production facilities and oil drilling and workover facilities as those terms are defined in that act and regulations adopted under it.

(R) (1) Administer and enforce a program for the regulation of sludge management in this state. In administering the program, the director, in addition to exercising the authority provided in any other applicable sections of this chapter, may do any of the following:

(a) Develop plans and programs for the disposal and utilization of sludge and sludge materials;

(b) Encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to the disposal and use of sludge and sludge materials and the impact of sludge and sludge materials on land located in the state and on the air and waters of the state;

(c) Collect and disseminate information relating to the disposal and use of sludge and sludge materials and the impact of sludge and sludge materials on land located in the state and on the air and waters of the state;

(d) Issue, modify, or revoke orders to prevent, control, or abate the use and disposal of sludge and sludge materials or the effects of the use of sludge and sludge materials on land located in the state and on the air and waters of the state;

(e) Adopt and enforce, modify, or rescind rules necessary for the implementation of division (R) of this section. The rules reasonably shall protect public health and the environment, encourage the beneficial reuse of sludge and sludge materials, and minimize the creation of nuisance odors.

The director may specify in sludge management permits the net volume, net weight, quality, and pollutant concentration of the sludge or sludge materials that may be used, stored, treated, or disposed of, and the manner and frequency of the use, storage, treatment, or disposal, to protect public health and the environment from adverse effects relating to those activities. The director shall impose other terms and conditions to protect public health and the environment, minimize the creation of nuisance odors, and achieve compliance with this chapter and rules adopted under it and, in doing so, shall consider whether the terms and conditions are consistent with the goal of encouraging the beneficial reuse of sludge and sludge materials.

The director may condition permits on the implementation of treatment, storage, disposal, distribution, or application management methods and the filing of periodic reports on the amounts, composition, and quality of sludge and sludge materials that are disposed of, used, treated, or stored.

An approval of a treatment works sludge disposal program may contain any terms and conditions, including schedules of compliance, necessary to achieve compliance with this chapter and rules adopted under it.

(2) As a part of the program established under division (R)(1) of this section, the director has exclusive authority to regulate sewage sludge management in this state. For purposes of division (R)(2) of this section, that program shall be consistent with section 405 of the Federal Water Pollution Control Act and regulations adopted under it and with this section, except that the director may adopt rules under division (R) of this section that establish requirements that are more stringent than section 405 of the Federal Water Pollution Control Act and regulations adopted under it with regard to monitoring sewage sludge and sewage sludge materials and establishing acceptable sewage sludge management practices and pollutant levels in sewage sludge and sewage sludge materials.

This chapter authorizes the state to participate in any national sludge management program and the national pollutant discharge elimination system, to administer and enforce the publicly owned treatment works pretreatment program, and to issue permits for the discharge of dredged or fill materials, in accordance with the Federal Water Pollution Control Act.

This chapter shall be administered, consistent with the laws of this state and federal law, in the same manner that the Federal Water Pollution Control Act is required to be administered.

(S) Develop technical guidance and offer technical assistance, upon request, for the purpose of minimizing wind or water erosion of soil, and assist in compliance with permits for storm water management issued under this chapter and rules adopted under it.

(T) Study, examine, and calculate nutrient loading from point and nonpoint sources in order to determine comparative contributions by those sources and to utilize the information derived from those calculations to determine the most environmentally beneficial and cost-effective mechanisms to reduce nutrient loading to watersheds in the Lake Erie basin and the Ohio river basin. In order to evaluate nutrient loading contributions, the director or the director's designee shall conduct a study of the nutrient mass balance for both point and nonpoint sources in watersheds in the Lake Erie basin and the Ohio river basin using available data, including both of the following:

(1) Data on water quality and stream flow;

(2) Data on point source discharges into those watersheds.

The director or the director's designee shall report and update the results of the study to coincide with the release of the Ohio integrated water quality monitoring and assessment report prepared by the director.

(U) Establish the total maximum daily load (TMDL) for waters of the state where a TMDL is required under the Federal Water Pollution Control Act.

This section does not apply to residual farm products and manure disposal systems and related management and conservation practices subject to rules adopted pursuant to division (E)(1) of section [939.02](#) of the Revised Code. For purposes of this exclusion, "residual farm products" and "manure" have the same meanings as in section [939.01](#) of the Revised Code. However, until the date on which the United States environmental protection agency

approves the NPDES program submitted by the director of agriculture under section [903.08](#) of the Revised Code, this exclusion does not apply to animal waste treatment works having a controlled direct discharge to the waters of the state or any concentrated animal feeding operation, as defined in 40 C.F.R. 122.23(b)(2). On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section [903.08](#) of the Revised Code, this section does not apply to storm water from an animal feeding facility, as defined in section [903.01](#) of the Revised Code, or to pollutants discharged from a concentrated animal feeding operation, as both terms are defined in that section. Neither of these exclusions applies to the discharge of animal waste into a publicly owned treatment works.

Not later than December 1, 2016, a publicly owned treatment works with a design flow of one million gallons per day or more, or designated as a major discharger by the director, shall be required to begin monthly monitoring of total and dissolved reactive phosphorus pursuant to a new NPDES permit, an NPDES permit renewal, or a director-initiated modification. The director shall include in each applicable new NPDES permit, NPDES permit renewal, or director-initiated modification a requirement that such monitoring be conducted. A director-initiated modification for that purpose shall be considered and processed as a minor modification pursuant to Ohio Administrative Code 3745-33-04. In addition, not later than December 1, 2017, a publicly owned treatment works with a design flow of one million gallons per day or more that, on July 3, 2015, is not subject to a phosphorus limit shall complete and submit to the director a study that evaluates the technical and financial capability of the existing treatment facility to reduce the final effluent discharge of phosphorus to one milligram per liter using possible source reduction measures, operational procedures, and unit process configurations.

Amended by 132nd General Assembly File No. TBD, SB 2, §1, eff. 10/6/2017.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Amended by 131st General Assembly File No. TBD, SB 1, §1, eff. 7/3/2015.

Amended by 130th General Assembly File No. TBD, SB 150, §1, eff. 8/21/2014.

Amended by 129th General Assembly File No. 115, SB 294, §1, eff. 9/5/2012.

Amended by 128th General Assembly File No. 12, HB 363, §1, eff. 12/22/2009.

Effective Date: 11-05-2003 .

### **6111.031 Modification of terms and conditions of permit.**

(A) The director of environmental protection, where consistent with the "Federal Water Pollution Control Act," may modify the terms and conditions of a permit or issue a permit upon conditions at variance from a national effluent limitation set under section 301 of the "Federal Water Pollution Control Act" upon application filed therefor after July 1, 1977, and a showing satisfactory to the director that such modified terms and conditions (1) will require the maximum use of technology within the economic capability of the owner or operator, and (2) will result in reasonable further progress toward the elimination of the discharge of sewage, industrial waste, and other wastes into the waters of the state.

(B) The director may, after opportunity for a public hearing in accordance with section [3745.07](#) of the Revised Code, issue a permit upon conditions at variance from a national or state effluent limitation for the thermal component of a discharge, upon a showing satisfactory to the director that the national or state limitation for the thermal component is more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made or is to be made. If the director so finds, he shall impose a limitation on the thermal component, as a condition of the permit, that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is made or is to be made, taking into account the interaction of such thermal component with sewage, industrial waste, or other wastes, and including a margin

of safety that takes into account any lack of knowledge concerning the development of thermal water quality criteria for such purposes.

Effective Date: 07-25-1980 .

**6111.032 Primary authority to reside in legislative authority or governing board.**

(A) The legislative authority of a municipal corporation or the governing board of a county or special district owning or operating a publicly owned treatment works or sewerage system, subject to compliance with the exercise of lawful authority granted to or rules adopted by the director of environmental protection pursuant to section [6111.03](#) of the Revised Code, shall exercise primary authority to adopt, amend, rescind, administer, and enforce rules with respect to all of the following:

- (1) The establishment, construction, reconstruction, improvement, repair, operation, and maintenance of its sewerage systems, treatment works, and disposal systems;
- (2) The establishment and modification of rates or charges to be made of users of its sewerage systems, treatment works, and disposal systems, which need not be uniform throughout the territory served by the systems or works, to assure that the systems and works will be properly and efficiently operated and maintained; that the principal of and interest on bonds, notes, and certificates of indebtedness will be timely paid; and that reserves and other terms and conditions required by any ordinance, resolution, mortgage, or trust agreement with respect to debt obligations will be met;
- (3) Industrial water pollution control facilities discharging into its sewerage systems, treatment works, and disposal systems;
- (4) The establishment, operation, administration, and enforcement of its publicly owned treatment works pretreatment program, including inspection, monitoring, and reporting programs and activities.

(B) The rules adopted by the legislative authority or governing board pursuant to division (A) of this section shall be applicable, and enforceable by civil or other actions, within any territory served by its sewerage systems, treatment works, or disposal systems regardless of whether the territory served is within the territorial boundaries of the municipal corporation, county, or special district, provided that the rules are consistent with the provisions of any contracts or agreements in effect with other municipal corporations, counties, or special districts served by or on whose behalf the publicly owned treatment works or sewerage systems are owned or operated, in whole or in part.

(C) The director, by rule or through contracts or other means, may authorize a municipal corporation, county, or special district that owns or operates a publicly owned treatment works or sewerage system and that has an approved program under this section to operate, administer, and enforce an industrial pretreatment program, to review and approve industrial permits to install in connection with indirect discharges by industrial users of its treatment works or sewerage system.

(D) The authority granted to municipal corporations, counties, and special districts by this section is in addition to and not in derogation of any other authority granted pursuant to the Constitution and laws of this state, the "Federal Water Pollution Control Act," or the rules of any agency of federal or state governments.

Effective Date: 07-01-1993 .

**6111.033 [Repealed].**

Repealed by 132nd General Assembly File No. TBD, HB 49, §105.01, eff. 9/29/2017.

Effective Date: 07-01-1985 .

**6111.034 [Repealed].**

Repealed by 129th General Assembly File No.129, SB 314, §2, eff. 9/28/2012.

Effective Date: 07-01-1985 .

### **6111.035 Coal mining and reclamation operations general permits.**

(A) The director of environmental protection, consistent with the Federal Water Pollution Control Act and the regulations adopted thereunder, without application therefor, may issue, modify, revoke, or terminate a general permit under this chapter for both of the following:

- (1) Discharge of stormwater; the discharge of liquids, sediments, solids, or water-borne mining related waste, such as, but not limited to, acids, metallic cations, or their salts, from coal mining and reclamation operations ; or treatment works whose discharge would have de minimis impact on the waters of the state receiving the discharge;
- (2) Installation or modification of disposal systems or any parts thereof, including disposal systems for stormwater or for coal mining and reclamation operations .

A general permit shall apply to a class or category of discharges or disposal systems or to persons conducting similar activities, within any area of the state, including the entire state.

A general permit shall not be issued unless the director determines that the discharges authorized by the permit will have only minimal cumulative adverse effects on the environment when the discharges are considered collectively and individually and if, in the opinion of the director, the discharges, installations, or modifications authorized by the permit are more appropriately authorized by a general permit than by an individual permit.

A general permit shall be issued subject to applicable mandatory provisions and may be issued subject to any applicable permissive provision of the Federal Water Pollution Control Act and the regulations adopted thereunder.

The director, at the director's discretion, may require any person authorized to discharge or to install or modify a disposal system under a general permit to apply for and obtain an individual permit for the discharge, installation, or modification. When a particular discharge, installation, or modification is subject to an individual permit, a general permit shall not apply to that discharge, installation, or modification until the individual permit is revoked, terminated, or modified to exclude the discharge, installation, or modification.

In the case of a general permit issued by the director under this section for coal mining and reclamation operations, a person seeking coverage under such a general permit shall submit a notice of intent to be covered by the general permit and to be subject to the terms and conditions of the general permit. The notice of intent shall be submitted in accordance with the forms and deadlines specified for the applicable general permit for which coverage is sought. If the director has not granted or denied coverage under the general permit within forty-five days after receipt of the notice of intent, the person seeking coverage shall submit written notice to the director restating the person's request for coverage under the general permit. The director shall grant or deny coverage under the general permit not later than sixty days after receipt of the notice of intent. If, not later than fifteen days after receipt of the person's written notice restating the person's request for coverage, but not earlier than sixty days after receipt of the original notice of intent for coverage under the general permit, the director fails to act on the notice of intent, the discharge that is the subject of the notice of intent is deemed to be permitted and covered by the general permit related to coal mining and reclamation operations. Nothing in this section alters or limits the authority of the director to enforce the terms and conditions of the general permit or limits the director's authority to issue or deny other required permits.

As used in this division, "coal mining and reclamation operations" has the same meaning as in section [1513.01](#) of the Revised Code.

(B) Notwithstanding any requirement under Chapter 119. of the Revised Code concerning the manner in which notice of a permit action is provided, the director shall not be required to provide certified mail notice to persons subject to the issuance, modification, revocation, or termination of a general permit under division (A) of this section.

Notwithstanding section [3745.07](#) of the Revised Code concerning the location of newspapers in which notices of permit actions are published, the director shall cause notice of the issuance, modification, revocation, or termination of a general permit to be published in the newspapers of general circulation determined by the director to provide reasonable notice to persons affected by the permit action in the geographic area covered by the general permit within the time periods prescribed by section [3745.07](#) of the Revised Code. Any notice under this section or section [3745.07](#) of the Revised Code concerning the issuance, modification, revocation, or termination of a general permit shall include a summary of the permit action and instructions on how to obtain a copy of the full text of the permit action. The director may take other appropriate measures, such as press releases and notice to trade journals, associations, and other persons known to the director to desire notification, in order to provide notice of the director's actions concerning the issuance, modification, revocation, or termination of a general permit; however, the failure to provide such notice shall not invalidate any general permit.

(C) Notwithstanding any other provision of the Revised Code, a person subject to the proposed issuance, modification, revocation, or termination of a general permit under division (A) of this section may request an adjudication hearing pursuant to section [119.07](#) of the Revised Code concerning the proposed action within thirty days after publication of the notice of the proposed action in newspapers of general circulation pursuant to division (B) of this section. This division shall not be interpreted to affect the authority of the director to take actions on general permits in forms other than proposed general permits.

(D) The director may exercise all incidental powers required to carry out this section, including, without limitation, the adoption, amendment, and rescission of rules to implement a general permit program for classes or categories of dischargers or disposal systems.

(E) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section [903.08](#) of the Revised Code, this section does not apply to storm water from an animal feeding facility, as defined in section [903.01](#) of the Revised Code, or to manure, as defined in that section.

(F) As used in this section, "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, the "Act of October 21, 1980," 94 Stat. 2360, 33 U.S.C.A. 1254, the "Municipal Wastewater Treatment Construction Grant Amendments of 1981," 95 Stat. 1623, 33 U.S.C.A. 1281, and the "Water Quality Act of 1987," 101 Stat. 7, 33 U.S.C.A. 1251.

Amended by 129th General Assembly File No. 115, SB 294, §1, eff. 9/5/2012.

Effective Date: 09-05-2001 .

### **6111.036 Water pollution control loan fund.**

(A) There is hereby created the water pollution control loan fund to provide financial, technical, and administrative assistance as follows:

(1) For the construction of publicly owned wastewater treatment works, as "construction" and "treatment works" are defined in section 212 of the Federal Water Pollution Control Act, by municipal corporations, other political subdivisions, state agencies, and interstate agencies having territory in this state;

(2) For the implementation of a nonpoint source pollution management program under section 319 of that act;

(3) For the development and implementation of estuary conservation and management programs under section 320 of that act;

(4) For the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(5) For measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(6) For measures to reduce the demand for publicly owned wastewater treatment works capacity through water conservation, efficiency, or reuse by any municipal corporation, other political subdivision, state agency, or interstate agency having territory in this state;

(7) For the development and implementation of watershed projects meeting the criteria established in section 122 of that act;

(8) For measures to reduce the energy consumption needs of publicly owned wastewater treatment works by any municipal corporation, other political subdivision, state agency, or interstate agency having territory in this state;

(9) For reusing or recycling wastewater, stormwater, or subsurface drainage water;

(10) For measures to increase the security of publicly owned wastewater treatment works;

(11) To any qualified nonprofit entity, as determined by the director of environmental protection, to provide assistance to owners and operators of small and medium publicly owned wastewater treatment works for either of the following:

(a) To plan, develop, and obtain financing for eligible projects under this division, including planning, design, and associated preconstruction activities;

(b) To assist such treatment works in achieving compliance with the Federal Water Pollution Control Act.

To the extent they are otherwise allowable as determined by the director, the purposes identified under division (A) of this section are intended to include activities benefiting the waters of the state that are authorized under Chapter 3746. of the Revised Code.

The fund shall be administered by the director consistent with the Federal Water Pollution Control Act; regulations adopted under it, including, without limitation, regulations establishing public participation requirements applicable to the providing of financial assistance; this section; and rules adopted under division (O) of this section.

Moneys in the water pollution control loan fund shall be separate and apart from and not a part of the state treasury or of the other funds of the Ohio water development authority. Subject to the terms of the agreements provided for in divisions (B), (C), (D), and (F) of this section, moneys in the fund shall be held in trust by the Ohio water development authority for the purposes of this section, shall be kept in the same manner that funds of the authority are kept under section [6121.11](#) of the Revised Code, and may be invested in the same manner that funds of the authority are invested under section [6121.12](#) of the Revised Code. No withdrawals or disbursements shall be made from the water pollution control loan fund without the written authorization of the director or the director's designated representative. The manner of authorization for any withdrawals or disbursements from the fund to be made by the authority shall be established in the agreements authorized under division (C) of this section.

(B) The director may enter into agreements to receive and assign moneys credited or to be credited to the water pollution control loan fund. The director may reserve capitalization grant moneys allotted to the state under sections 601 and 604(c)(2) of the Federal Water Pollution Control Act for the other purposes authorized for the use of capitalization grant moneys under sections 603(d)(7) and 604(b) of that act.

(C) The director shall ensure that fiscal controls are established for prudent administration of the water pollution control loan fund. For that purpose, the director and the Ohio water development authority shall enter into any necessary and appropriate agreements under which the authority may perform or provide any of the following:

(1) Fiscal controls and accounting procedures governing fund balances, receipts, and disbursements;

(2) Administration of loan accounts;

(3) Maintaining, managing, and investing moneys in the fund.

Any agreement entered into under this division shall provide for the payment of reasonable fees to the Ohio water development authority for any services it performs under the agreement and may provide for reasonable fees for the assistance of financial or accounting advisors. Payments of any such fees to the authority may be made from the water pollution control loan fund to the extent authorized by division (H)(7) of this section or from the water pollution control loan administrative fund created in division (E) of this section. The authority may enter into loan agreements with the director and recipients of financial assistance from the fund as provided in this section.

(D) The water pollution control loan fund shall consist of the moneys credited to it from all capitalization grants received under sections 601 and 604(c)(2) of the Federal Water Pollution Control Act, all moneys received as capitalization grants under section 205(m) of that act, all matching moneys credited to the fund arising from nonfederal sources, all payments of principal and interest for loans made from the fund, and all investment earnings on moneys held in the fund. On or before the date on which a quarterly capitalization grant payment will be received under that act, matching moneys equal to at least twenty per cent of the quarterly capitalization grant payment shall be credited to the fund. The Ohio water development authority may make moneys available to the director for the purpose of providing the matching moneys required by this division, subject to such terms as the director and the authority consider appropriate, and may pledge moneys that are held by the authority to secure the payment of bonds or notes issued by the authority to provide those matching moneys. The authority may make moneys available to the director for that purpose from any funds now or hereafter available to the authority from any source, including, without limitation, the proceeds of bonds or notes heretofore or hereafter issued by the authority under Chapter 6121. of the Revised Code. Matching moneys made available to the director by the authority from the proceeds of any such bonds or notes shall be made available subject to the terms of the trust agreements relating to the bonds or notes. Any such matching moneys shall be made available to the director pursuant to a written agreement between the director and the authority that contains such terms as the director and the authority consider appropriate, including, without limitation, a provision providing for repayment to the authority of those matching moneys from moneys deposited in the water pollution control loan fund, including, without limitation, the proceeds of bonds or notes issued by the authority for the benefit of the fund and payments of principal and interest on loans made from the fund, or from any other sources now or hereafter available to the director for the repayment of those matching moneys.

(E) All moneys credited to the water pollution control loan fund, all interest earned on moneys in the fund, and all payments of principal and interest for loans made from the fund shall be dedicated in perpetuity and used and reused solely for the purposes set forth in division (A) of this section, except as otherwise provided in division (D) or (F) of this section. The director may establish and collect fees to be paid by recipients of financial assistance under this section, and all moneys arising from the fees shall be credited to the water pollution control loan administrative fund, which is hereby created in the state treasury, and shall be used to defray the costs of administering this section or other water quality related programs administered by the environmental protection agency.

(F) The director and the Ohio water development authority shall enter into trust agreements to enable the authority to issue and refund bonds or notes for the sole benefit of the water pollution control loan fund, including, without limitation, the raising of the matching moneys required by division (D) of this section. These agreements may authorize the pledge of moneys accruing to the fund from payments of principal and interest on loans made from the fund adequate to secure bonds or notes, the proceeds of which bonds or notes shall be for the sole benefit of the water pollution control loan fund. The agreements may contain such terms as the director and the authority consider reasonable and proper for the security of the bondholders or noteholders.

(G) The director shall enter into binding commitments to provide financial assistance from the water pollution control loan fund in an amount equal to one hundred twenty per cent of the amount of each capitalization grant payment received, within one year after receiving each such grant payment. The director shall provide the financial assistance in compliance with this section and rules adopted under division (O) of this section. The director shall ensure that all moneys credited to the fund are disbursed in an expeditious and timely manner. During the second year of operation of the water pollution control loan program, the director also shall ensure that not less than twenty-five per cent of the financial assistance provided under this section during that year is provided for the purpose of division (H)(2) of this section for the purchase or refinancing of debt obligations incurred after March 7, 1985, but not later than July 1, 1988, except that if the amount of money reserved during

the second year of operation of the program for the purchase or refinancing of those debt obligations exceeds the amount required for the projects that are eligible to receive financial assistance for that purpose, the director shall distribute the excess moneys in accordance with the current priority system and list prepared under division (I) of this section to provide financial assistance for projects that otherwise would not receive assistance in that year.

(H) Moneys credited to the water pollution control loan fund shall be used only for the following purposes:

(1) To make loans, subject to all of the following conditions:

(a) The loans are made at or below market rates of interest, including, without limitation, interest free loans.

(b) Periodic payments of principal and interest, on the dates and in the amounts approved by the director, shall commence not later than one year after completion of the project, and all loans shall be fully amortized not later than thirty years after project completion.

(c) Each recipient of a loan shall establish a dedicated source of revenue for repayment of the loan.

(d) All payments of principal and interest on the loans shall be credited to the fund, except as otherwise provided in division (D) or (F) of this section.

(2) To purchase or refinance at or below market rates of interest debt obligations incurred after March 7, 1985, by municipal corporations, other political subdivisions, and interstate agencies having territory in the state. If, and to the extent allowed under the Federal Water Pollution Control Act, debt obligations are purchased or refinanced under this section to provide financial assistance for any of the purposes allowed under division (A) of this section, the repayment period may extend up to forty-five years. However, the repayment period shall not exceed the expected useful life of any facilities that are financed by the obligations.

(3) To guarantee or purchase insurance for debt obligations of municipal corporations, other political subdivisions, and interstate agencies having territory within the state when the guarantee or insurance would improve the borrower's access to credit markets or would reduce the interest rate paid on those obligations;

(4) As a source of revenue or security for the payment of principal and interest on general obligation or revenue bonds or notes issued by this state if the proceeds of the sale of the bonds or notes will be deposited in the fund;

(5) To provide loan guarantees for revolving loan funds established by municipal corporations and other political subdivisions that are similar to the water pollution control loan fund;

(6) To earn interest on moneys credited to the fund;

(7) For the payment of the reasonable costs of administering the fund and conducting activities under this section, except that those amounts shall not exceed four per cent of the total amount of the capitalization grants received, four hundred thousand dollars per year, or one-fifth of one per cent per year of the current valuation of the fund, whichever amount is greater, plus the amount of any fees collected by the state for that purpose regardless of the source;

(8) To provide assistance in any manner or for any purpose that is consistent with Title VI of the Federal Water Pollution Control Act or with any other federal law related to the use of federal funds administered under Title VI of the Federal Water Pollution Control Act, including, without limitation, the awarding of principal forgiveness assistance under that act.

(I) The director periodically shall prepare in accordance with rules adopted under division (O) of this section a state priority system and list ranking assistance proposals principally on the basis of their relative water quality and public health benefits and the financial need of the applicants for assistance. Assistance for proposed activities from the water pollution control loan fund shall be limited to those activities appearing on that priority list and shall be awarded based upon their priority sequence on the list and the applicants' readiness to proceed with their proposed activities. The director annually shall prepare and circulate for public review and comment a

plan that defines the goals and intended uses of the fund, as required by section 606(c) of the "Federal Water Pollution Control Act.

(J) Financial assistance from the water pollution control loan fund first shall be used to ensure maintenance of progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements under the "Federal Water Pollution Control Act" that are pertinent to the purposes of the fund set forth in divisions (A)(1) to (3) of this section, including, without limitation, the municipal compliance deadline under that act.

(K) The director may provide financial assistance from the water pollution control loan fund for a publicly owned treatment works project only after determining that:

(1) The applicant for financial assistance has the legal, institutional, managerial, and financial capability to construct, operate, and maintain its publicly owned treatment works.

(2) The applicant will implement a financial management plan that includes, without limitation, provisions for satisfactory repayment of the financial assistance, a user charge system to pay the operation, maintenance, and replacement expenses of the project, and, if appropriate in the director's judgment, an adequate capital improvements fund.

(3) The proposed disposal system of which the project is a part is economically and nonmonetarily cost-effective, based upon an evaluation of feasible alternatives that meet the waste water treatment needs of the planning area in which the proposed project is located.

(4) Based upon the environmental review conducted by the director under division (L) of this section, there are no significant adverse environmental effects resulting from the proposed disposal system and the system has been selected from among environmentally sound alternatives.

(5) Public participation has occurred during the process of planning the project in compliance with applicable requirements under the Federal Water Pollution Control Act.

(6) The applicant has submitted a facilities plan for the project that meets the applicable program requirements and that has been approved by the director.

(7) The application meets the requirements of this section and rules adopted under division (O) of this section and is consistent with the intent of Title VI of the Federal Water Pollution Control Act and regulations adopted under it.

(8) The application meets such other requirements as the director considers necessary or appropriate to protect the environment or ensure the financial integrity of the fund while implementing this section.

(L) The director shall perform and document for public review an independent, comprehensive environmental review of the assistance proposal for each activity receiving financial assistance under this section. The review shall serve as the basis for the determinations to be made under division (K)(4) or (Q)(4) of this section, as applicable, and may include, without limitation, an environmental assessment, any necessary supplemental studies, and an enforceable mitigation plan. The director may establish environmental impact mitigation terms or conditions for the implementation of an assistance proposal, including, without limitation, the installation or modification of a disposal system, in the director's approval of the plans for the installation or modification as authorized by section [6111.44](#) of the Revised Code or through other legally enforceable means. The review shall be conducted in accordance with applicable rules adopted under division (O) of this section.

(M) The director, consistent with this section and applicable rules adopted under division (O) of this section, may enter into any agreement with an applicant that is necessary or appropriate to provide assistance from the water pollution control loan fund. Based upon the director's review of an assistance proposal, including, without limitation, approval for the project under section [6111.44](#) of the Revised Code, the environmental review conducted under division (L) of this section, and the other requirements of this section and rules adopted under it, the director may establish in the agreement terms and conditions of the assistance to be offered to an applicant. In addition to any other available remedies, the director may terminate, suspend, or require immediate repayment of financial assistance provided under this section to, or take any other enforcement action available

under this chapter against, a recipient of financial assistance under this section who defaults on any payment required in the agreement for financial assistance or otherwise violates a term or condition of the agreement or of the plan approval for the project under section [6111.44](#) of the Revised Code.

(N) Based upon the director's judgment as to the financial need of the applicant and as to what constitutes the most effective allocation of funds to achieve statewide water pollution control objectives, the director may establish the terms, conditions, and amount of financial assistance to be offered to an applicant from the water pollution control loan fund. The director, to the extent consistent with the water quality improvement priorities reflected in the current priority system and list prepared under division (I) of this section and with the long-term financial integrity of the fund, shall ensure each year that financial assistance in an amount equal to the cost of the assistance proposals of applicants having a high level of economic need that are on the current priority list and for which funding is available in that year is made available from the fund to those applicants at an interest rate that is lower than that offered to other applicants for financial assistance from the fund for assistance proposals that are on the current priority list and for which funding is available in that year.

The director shall determine the economic need of applicants for financial assistance in accordance with uniform criteria established in rules adopted under division (O) of this section.

(O) The director may adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section and section [6111.037](#) of the Revised Code. Any such rules governing the planning, design, and construction of water pollution control projects, establishing an environmental review process, establishing requirements for the preparation of environmental impact reports and mitigation plans, governing the establishment of priority systems for providing financial assistance under this section and section [6111.037](#) of the Revised Code, and governing the terms and conditions of assistance, shall be consistent with the intent of Titles II and VI and sections 319 and 320 of the Federal Water Pollution Control Act. The rules governing the establishment of priority systems for financial assistance and governing terms and conditions of assistance shall provide for the most effective allocation of moneys from the water pollution control loan fund to achieve water quality and public health objectives throughout the state as determined by the director.

(P)

(1) For the purpose of this section, appealable actions of the director pursuant to section [3745.04](#) of the Revised Code are limited to the following:

(a) Approval of draft priority systems, draft priority lists, and draft written program administration policies;

(b) Approval or disapproval of project facility plans under division (K)(6) of this section;

(c) Approval or disapproval of plans and specifications for a project under section [6111.44](#) of the Revised Code and issuance of a permit to install in connection with a project pursuant to rules adopted under section [6111.03](#) of the Revised Code;

(d) Approval or disapproval of an application for assistance.

(2) Notwithstanding section [119.06](#) of the Revised Code, the director may take final action described in division (P)(1)(a), (b), (c), or (d) of this section without holding an adjudication hearing in connection with the action and without first issuing a proposed action under section [3745.07](#) of the Revised Code.

(3) Each action described in divisions (P)(1)(a), (b), (c), and (d) of this section is a separate and discrete action of the director. Appeals of any such action are limited to the issues concerning the specific action appealed, and the appeal shall not include issues determined under the scope of any prior action.

(Q) The director may provide financial assistance for the implementation of a nonpoint source management program activity only after determining all of the following:

(1) The activity is consistent with the state's nonpoint source management program.

(2) The applicant has the legal, institutional, managerial, and financial capability to implement, operate, and maintain the activity.

(3) The cost of the activity is reasonable considering monetary and nonmonetary factors.

(4) Based on the environmental review conducted by the director under division (L) of this section, the activity will not result in significant adverse environmental impacts.

(5) The application meets the requirements of this section and rules adopted under division (O) of this section and is consistent with the intent of Title VI of the Federal Water Pollution Control Act and regulations adopted under it.

(6) The applicant will implement a financial management plan, including, without limitation, provisions for satisfactory repayment of the financial assistance.

(7) The application meets such other requirements as the director considers necessary or appropriate to protect the environment and ensure the financial integrity of the fund while implementing this section.

(R) As used in this section, "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, the "Act of October 21, 1980," 94 Stat. 2360, 33 U.S.C.A. 1254, the "Municipal Wastewater Treatment Construction Grant Amendments of 1981," 95 Stat. 1623, 33 U.S.C.A. 1281, the "Water Quality Act of 1987," 101 Stat. 7, 33 U.S.C.A. 1251, and applicable portions of the "American Recovery and Reinvestment Act of 2009," Pub. L. 111-5, 123 Stat. 115, and the "Water Resources Reform and Development Act of 2014," 128 Stat. 1227, 33 U.S.C. 2223.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 131st General Assembly File No. TBD, HB 512, §1, eff. 9/9/2016.

Amended by 128th General Assembly File No. 47, SB 181, §1, eff. 9/13/2010.

Effective Date: 09-28-1994 .

### **6111.037 Nonpoint source pollution management fund.**

(A) For purposes of state nonpoint source pollution management and pursuant to section 319 of the "Federal Water Pollution Control Act," the director of environmental protection may enter into agreements to receive grant moneys for nonpoint source pollution management for deposit into the state treasury to the credit of the water quality protection fund created in section 6111.0381 of the Revised Code. The director may enter into agreements to make grants of moneys credited to the fund under this section, including, without limitation, passthrough grants to other state departments or agencies.

(B) The director shall periodically prepare and, by rules adopted under division (O) of section 6111.036 of the Revised Code, establish a priority system for identifying activities eligible for assistance under this section. The priority system shall ensure that financial assistance available under this section is first provided to:

(1) Control particularly difficult or serious nonpoint source pollution problems, including, without limitation, problems resulting from mining activities;

(2) Implement innovative methods or practices for controlling nonpoint sources of pollution, including, without limitation, regulatory programs that the director determines are appropriate;

(3) Control interstate nonpoint source pollution problems;

(4) Implement ground and surface water quality protection activities that the director determines are part of a comprehensive nonpoint source pollution control program, which activities include research, planning, water quality assessments, demonstration programs, enforcement, technical assistance, education, and training to protect water quality from nonpoint sources of pollution.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Effective Date: 05-26-1989 .

**6111.038 Surface water protection fund.**

There is hereby created in the state treasury the surface water protection fund, consisting of moneys distributed to it. The director of environmental protection shall use moneys in the fund solely for administration and implementation of surface water protection programs, including at least programs required under the Federal Water Pollution Control Act and programs necessary to carry out the purposes of this chapter. Those programs shall include at least the development of water quality standards; the development of wasteload allocations; the establishment of water quality-based effluent limits; the monitoring and analysis of chemical, physical, and biological surface water quality; the issuance, modification, and renewal of NPDES permits and permits to install; the ensurance of compliance with permit conditions; the management and oversight of pretreatment programs; the provision of technical assistance to publicly owned treatment works; and the administration of the water pollution control loan fund created in section [6111.036](#) of the Revised Code.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 07-01-1993 .

**6111.039 Class B sludge rules requiring the posting of notice regarding the land application.**

The director of environmental protection shall adopt rules in accordance with Chapter 119. of the Revised Code requiring the posting of notice regarding the land application of sludge that is classified as class B sludge under 40 C.F.R. 503.

Effective Date: 03-17-2000 .

**6111.0381 Water quality protection fund.**

There is hereby created in the state treasury the water quality protection fund. The fund shall consist of federal grants, including grants made pursuant to the Federal Water Pollution Control Act, and contributions made to the environmental protection agency for water quality protection and restoration. The director of environmental protection shall use money in the fund for water quality protection and restoration.

Effective Date: 2007 HB119 06-30-2007 .

**6111.0382 Surface water improvement fund.**

(A) There is hereby created in the state treasury the surface water improvement fund. The fund shall include, but is not limited to, money derived from any of the following:

- (1) Payments, contributions, and donations made to the environmental protection agency for water quality restoration and protection projects;
- (2) Payments made under an in-lieu fee mitigation program established by the agency under section [6111.025](#) of the Revised Code;
- (3) Funds for supplemental environmental projects for water quality improvements required by orders of the director of environmental protection, settlement agreements, consent decrees, or court orders;
- (4) Mitigation fees for impacts to waters of the state for mitigation not required by the United States environmental protection agency or the United States army corps of engineers.

(B) Money in the fund shall be used by the director to complete water quality protection and restoration projects. The director may enter into contracts and agreements, including grant agreements with federal, state, or local government agencies, environmental nonprofit organizations, and universities, for purposes of those projects.

(C) If the agency becomes an approved sponsor of a federal in-lieu fee mitigation program in accordance with 33 C.F.R. 332, money for the federally approved program may be maintained in the fund, provided that the money is segregated from all other money in the fund.

Added by 129th General Assembly File No.115, SB 294, §1, eff. 9/5/2012.

#### **6111.04 Water pollution and sludge management violations prohibited.**

(A) Both of the following apply except as otherwise provided in division (A) or (F) of this section:

(1) No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

(2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.

Divisions (A)(1) and (2) of this section do not apply if the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in sections [6111.01](#) to [6111.08](#) of the Revised Code or if the person's application for renewal of such a permit is pending.

(B) If the director of environmental protection administers a sludge management program pursuant to division (R) of section [6111.03](#) of the Revised Code, both of the following apply except as otherwise provided in division (B) or (F) of this section:

(1) No person, in the course of sludge management, shall place on land located in the state or release into the air of the state any sludge or sludge materials.

(2) An action prohibited under division (B)(1) of this section is hereby declared to be a public nuisance.

Divisions (B)(1) and (2) of this section do not apply if the person placing or releasing the sludge or sludge materials holds a valid, unexpired permit, or renewal of a permit, governing the placement or release as provided in sections [6111.01](#) to [6111.08](#) of the Revised Code or if the person's application for renewal of such a permit is pending.

(C) No person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.

(D) No person to whom a sludge management permit has been issued shall place on the land or release into the air of the state any sludge or sludge materials in excess of the permissive amounts specified under the existing sludge management permit without first receiving a modification of the existing sludge management permit or a new sludge management permit to do so from the director.

(E) The director may require the submission of plans, specifications, and other information that the director considers relevant in connection with the issuance of permits.

(F) This section does not apply to any of the following:

(1) Waters used in washing sand, gravel, other aggregates, or mineral products when the washing and the ultimate disposal of the water used in the washing, including any sewage, industrial waste, or other wastes contained in the waters, are entirely confined to the land under the control of the person engaged in the recovery and processing of the sand, gravel, other aggregates, or mineral products and do not result in the pollution of waters of the state;

(2) Water, gas, or other material injected into a well to facilitate, or that is incidental to, the production of oil, gas, artificial brine, or water derived in association with oil or gas production and disposed of in a well, in compliance with a permit issued under Chapter 1509. of the Revised Code, or sewage, industrial waste, or other wastes injected into a well in compliance with an injection well operating permit. Division (F)(2) of this section does not

authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States environmental protection agency.

(3) Application of any materials to land for agricultural purposes or runoff of the materials from that application or pollution by residual farm products, manure, or soil sediment, including attached substances, resulting from farming, silvicultural, or earthmoving activities regulated by Chapter 307. or 939. of the Revised Code. Division (F)(3) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it. As used in division (F)(3) of this section, "residual farm products" and "manure" have the same meanings as in section [939.01](#) of the Revised Code.

(4) The excrement of domestic and farm animals defecated on land or runoff therefrom into any waters of the state. Division (F)(4) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it.

(5) On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section [903.08](#) of the Revised Code, any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture;

(6) The discharge of sewage, industrial waste, or other wastes into a sewerage system tributary to a treatment works. Division (F)(6) of this section does not authorize any discharge into a publicly owned treatment works in violation of a pretreatment program applicable to the publicly owned treatment works or any discharge to a privately owned treatment works in violation of any permit conditions established in accordance with 40 C.F.R. 122.44(m).

(7) A household sewage treatment system or a small flow on-site sewage treatment system, as applicable, as defined in section [3718.01](#) of the Revised Code that is installed in compliance with Chapter 3718. of the Revised Code and rules adopted under it. Division (F)(7) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States environmental protection agency.

(8) Exceptional quality sludge generated outside of this state and contained in bags or other containers not greater than one hundred pounds in capacity. As used in division (F)(8) of this section, "exceptional quality sludge" has the same meaning as in division (Y) of section [3745.11](#) of the Revised Code.

(G) The holder of a permit issued under section 402 (a) of the Federal Water Pollution Control Act need not obtain a permit for a discharge authorized by the permit until its expiration date. Except as otherwise provided in this division, the director of environmental protection shall administer and enforce those permits within this state and may modify their terms and conditions in accordance with division (J) of section [6111.03](#) of the Revised Code. On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section [903.08](#) of the Revised Code, the director of agriculture shall administer and enforce those permits within this state that are issued for any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture.

Amended by 132nd General Assembly File No. TBD, SB 2, §1, eff. 10/6/2017.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Amended by 130th General Assembly File No. TBD, SB 150, §1, eff. 8/21/2014.

Amended by 128th General Assembly File No.12, HB 363, §4, eff. 12/22/2009.

Amended by 128th General Assembly File No.9, HB 1, §640.22, eff. 7/1/2010.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 11-05-2003; 05-06-2005; 03-29-2007; 2007 HB119 09-29-2007; 2007 HB119 07-01-2009

#### **6111.041 Standards of water quality.**

In furtherance of sections [6111.01](#) to [6111.08](#) of the Revised Code, the director of environmental protection shall adopt standards of water quality to be applicable to the waters of the state. Such standards shall be adopted pursuant to a schedule established, and from time to time amended, by the director, to apply to the various waters of the state, in accordance with Chapter 119. of the Revised Code. Such standards shall be adopted in accordance with section 303 of the "Federal Water Pollution Control Act" and shall be designed to improve and maintain the quality of such waters for the purpose of protecting the public health and welfare, and to enable the present and planned use of such waters for public water supplies, industrial and agricultural needs, propagation of fish, aquatic life, and wildlife, and recreational purposes. Such standards may be amended from time to time as determined by the director. Prior to establishing, amending, or repealing standards of water quality the director shall, after due notice, conduct public hearings thereon. Notice of hearings shall specify the waters to which the standards relate, and the time, date, and place of hearing.

Standards of quality for the waters of the state, or any amendment or repeal thereof, become effective upon adoption by the director. The director shall implement the standards so established in the issuance, revocation, modification, or denial of permits.

Effective Date: 07-25-1980 .

#### **6111.042 Rules requiring compliance with Federal Water Pollution Control Act.**

In accordance with Chapter 119. of the Revised Code, the director of environmental protection shall adopt and enforce, and may modify and rescind, rules setting forth and requiring compliance with national effluent limitations, national standards of performance for new sources, national toxic and pretreatment effluent standards, and national sludge use and disposal standards, as necessary in order to ensure compliance with sections 301, 306, 307, and 405 of the Federal Water Pollution Control Act. No person shall violate any such rule, except in compliance with the terms and conditions of a permit issued under section [6111.03](#) of the Revised Code.

To the extent the effluent limitations adopted by the administrator of the United States environmental protection agency pursuant to section 304 of the Federal Water Pollution Control Act are inapplicable, the director may establish on a case-by-case basis effluent limitations in a permit issued under section [6111.03](#) of the Revised Code, based upon best professional judgment. In establishing such effluent limitations, the director shall take both of the following into consideration:

(A) The appropriate technology for the category or class of point sources of which the applicant is a member, based on all available information, including the administrator's draft or proposed development documents or guidance; the total cost of achieving the limitations in relation to the effluent reduction benefits to be achieved; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques and process changes; nonwater quality environmental impact, including energy requirements; and other factors that would have been appropriate for the administrator to consider pursuant to section 304 of the Federal Water Pollution Control Act;

(B) As to the applicant for the permit, any unique factors regarding the considerations set forth in division (A) of this section.

Effective Date: 03-17-2000 .

#### **6111.043 Regulation of the injection of sewage, industrial waste, hazardous waste, and other wastes into wells.**

(A) As used in this section and sections [6111.044](#) to [6111.047](#) of the Revised Code, "area of review" means the area of review of an injection well as determined under regulations adopted under the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended, or under rules adopted under this section.

(B) This section and sections [6111.044](#) to [6111.049](#) of the Revised Code establish a program for regulation of the injection of sewage, industrial waste, hazardous waste, and other wastes into wells in order to control pollution of the waters of the state, to prevent contamination of underground sources of drinking water, and to satisfy all requirements of the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended, regarding injection wells as defined in regulations adopted under that act. This section and sections [6111.044](#) to [6111.049](#) of the Revised Code do not apply to the drilling, conversion, and operation of wells that are subject to Chapter 1509. of the Revised Code.

The director of environmental protection, in consultation with the director of natural resources, shall adopt rules in accordance with Chapter 119. of the Revised Code governing the injection of sewage, industrial waste, hazardous waste, and other wastes into wells. The rules shall include provisions regarding all of the following:

(1) Applications for and issuance and renewal of injection well drilling and injection well operating permits. The term of an injection well operating permit shall be five years, except that in the case of the injection well drilling permit or renewal of an injection well operating permit, as appropriate, that is first issued on or after the effective date of this amendment for a class I injection well that is in operation on that date, the term of the permit shall be not less than four nor more than six years as determined by the director.

(2) Terms and conditions of such permits;

(3) Entry to conduct inspections to ascertain compliance with this section, sections [6111.044](#), [6111.045](#), and [6111.047](#) of the Revised Code, and rules adopted and orders and terms and conditions of permits issued thereunder;

(4) Contingencies involving the mechanical integrity of class I injection wells, including requirements for the automatic shutdown of an injection well if pressures or the temperature or specific gravity of the sewage, industrial waste, hazardous waste, or other wastes differs from prescribed allowances;

(5) A requirement that a seismic reflection data survey be conducted at each injection site where a class I injection well is located or proposed to be located in order to determine the presence or absence of such geologic faults or fractures as may be identified by seismic reflection survey data within or near the area around the well where formation pressures may be increased due to the operation of the well. If, prior to the effective date of division (B)(5) of this section, a seismic reflection data survey was conducted at an injection site in accordance with a work plan approved by the director or a seismic reflection data survey was conducted at an injection site and the results were approved in writing by the director, the rules adopted under that division shall not require that a new survey be conducted. If there is a change in the area of review of an injection well that is located at an injection site for which a seismic reflection data survey has been conducted, or if a new injection well is proposed to be located at such an injection site, the rules shall require that the owner or operator of the injection site reevaluate the data obtained from the survey. The rules shall require that if, after a reevaluation of the existing survey data, the director determines that the existing data are inadequate to determine the presence or absence of geologic faults or fractures within the altered area of review or to determine the presence or absence of geologic faults or fractures within the area of pressure buildup of the new well, the director may require the owner or operator to submit such additional seismic reflection data as the director considers necessary or appropriate. All seismic reflection data surveys shall be conducted in accordance with the standards established in rules adopted by the director.

(6) A requirement that when the director has reason to believe that the operation of a class I injection well may cause seismic disturbances, a passive seismicity monitoring program be maintained at or near the injection site. The rules adopted under division (B)(6) of this section may require that a microseismicity monitoring program be maintained at an injection site when determined to be necessary or appropriate by the director. All seismicity monitoring programs shall be conducted in accordance with standards established in rules adopted by the director.

(7) Definitions of the various classes of injection wells;

(8) A determination of the areas of review of injection wells;

(9) Other provisions in furtherance of the goals of this section and the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended. The rules adopted under this section shall be consistent with that act and the regulations adopted under it, except that the director may adopt rules under this section that are more stringent than that act and the regulations adopted under it when he determines that they are inadequate to protect human health or the environment.

(C) Unless otherwise authorized by rule of the director, no person shall drill a new well or convert an existing well for the purpose of injecting sewage, industrial waste, hazardous waste, or other wastes, without having obtained an injection well drilling permit issued by the director of environmental protection. The original permit or a true copy thereof shall be displayed in a conspicuous and easily accessible place at the well site. An application for an injection well drilling permit shall be filed with the director upon such form as the director prescribes and shall contain such information as the director requires by rule, including all of the following information:

(1) The name and address of the owner and, if a corporation, the name and address of the statutory agent;

(2) In the case of an applicant for a permit to drill a class I injection well who, at the time of submitting the application, does not hold an injection well operating permit or renewal of such a permit issued under section [6111.044](#) of the Revised Code, a statement of all relevant expertise of the owner or, if the well is to be operated by a person other than the owner, of the operator, in the operation of class I injection wells and a listing of all class I injection wells that the owner or operator has operated and is operating; the date that each such well was first placed in service or, if the well was first placed in service before the applicant acquired the well, the date that the applicant acquired the well; and the date of issuance, identification number, and expiration date of the permits issued for each such well by the United States or the state in which the injection well is located and, for each such permit, the name and address of the federal or state agency that issued the permit;

(3) The signature of the owner or his authorized agent. When an authorized agent signs an application, it shall be accompanied by a certified copy of his appointment as such agent.

(4) The proposed well location identified by latitude and longitude, and the location of the tract on which the well is to be drilled identified by latitudes and longitudes, section or lot number, city, village, or township, as applicable, and county;

(5) Designation of the well by name and number;

(6) The name of the geological formation and the approximate depth interval to be tested or used and the proposed total depth of the well;

(7) The type of drilling, completion, and injection equipment proposed to be used;

(8) The plan for disposal of water and other waste substances resulting from or obtained or produced in connection with the drilling, conversion, or testing of the well;

(9) The chemical composition and physical properties of the substance proposed to be injected.

(D) Based upon conditions observed by the director or his authorized representative during drilling or completion of a class I injection well, the director may request the holder of an injection well drilling permit issued under section [6111.044](#) of the Revised Code to submit to the director such information and test results in addition to those submitted with the application as the director considers necessary to more adequately define hydrogeologic conditions at the site of the well and to protect the lowermost underground source of drinking water near the injection well. The director shall include in each injection well drilling permit issued under section [6111.044](#) of the Revised Code the condition that, upon receiving such a request from the director, the permit holder promptly submit the additional information or test results to the director.

(E) Unless otherwise authorized by rule of the director, no person shall use a well for the injection of sewage, industrial waste, hazardous waste, or other wastes without first obtaining an injection well operating permit issued by the director. An application for an injection well operating permit or a renewal of such a permit shall be filed on such form as the director prescribes and shall contain the information prescribed in the applicable provisions of divisions (C)(1) to (9) of this section. In addition, an application for an injection well operating

permit or renewal of such a permit for a class I injection well shall contain such information as the director requires by rule, including all of the following:

(1) The results of such seismic reflection data surveys, seismic monitoring, and geophysical testing surveys in and surrounding the injection area as are required pursuant to rules adopted under divisions (B)(5) and (6) of this section;

(2) A plan for ensuring the annual review and testing of the integrity of the well casing and associated well features and, if the application is for a renewal, the results of all such testing since the issuance of the current permit or renewal permit. If this information has been submitted to the director previously as required by rule or applicable technical guidance, it may be included in the application by reference.

(3) A plan for monitoring the lowermost underground source of drinking water near the injection well. When determined to be necessary by the director, the application also shall include a plan for monitoring conditions of other formations within the area of review of the well, including formation pressures, formation transmissivity, or the vertical or horizontal migration of the injected fluids. If the application is for the renewal of an injection well operating permit, it shall be accompanied by all of the results from the monitoring of the lowermost underground source of drinking water near the well, and from other formation monitoring activities, conducted during the term of the current permit or renewal that had not been submitted to the director previously in accordance with rules adopted under this section, the terms and conditions of the current permit or renewal, or applicable technical guidance.

(4) A plan for conducting a seismicity monitoring program at the injection site when such a monitoring program is required pursuant to rules adopted under division (B)(6) of this section;

(5) The results of downhole monitoring; geophysical logs; core samples, to the extent that they are available; results of laboratory tests of core samples, to the extent that they are available; results of laboratory tests of formation fluids from the injection zone; and such other data or samples as the director may require to be submitted. If any such information, test results, or samples have been submitted to the director previously upon the request of the director or as required by rule, the terms and conditions of the injection well drilling permit or injection well operating permit or renewal of that operating permit for the well, or applicable technical guidance, the information, test results, or results of the analysis or evaluation of the samples may be included in the application by reference.

(6) A determination accompanied by supporting documentation describing all areas around the well where formation pressures are predicted by the applicant to be increased due to the operation of the well and an evaluation of whether any resulting potential exists for contamination of any underground source of drinking water or migration of substances injected into the well outside of the anticipated injection zone. The determination shall be made through the use of an hydraulic model acceptable to the director.

(7) An evaluation of all artificial penetrations through the base of any underground source of drinking water within the area of review of the well and a determination of whether the wells are completed or plugged in accordance with the applicable rules adopted under this section or section [1509.15](#) of the Revised Code;

(8) Such additional information as the director determines to be necessary to carry out his responsibilities under this section and section [6111.044](#) of the Revised Code.

(F) Unless otherwise authorized by rule of the director, each application for an injection well drilling or operating permit or renewal of an injection well operating permit shall be accompanied by a map, on a scale not smaller than four hundred feet to the inch, prepared by an Ohio registered surveyor, showing the location of the well and containing such other data as may be prescribed by the director. If the well is or is to be located within the excavations and workings of an active mine, the map also shall include the location of the mine, the name of the mine, and the name of the person operating the mine. If the well is or is to be located within the excavations of an abandoned mine, the map also shall include the location of the mine and, to the extent that the information is available, the name of the mine and approximate dates when mining activities occurred at the mine.

(G) Each application for an injection well drilling permit, an injection well operating permit, a renewal of an injection well operating permit, or a modification of an injection well drilling or operating permit or renewal permit shall be accompanied by a nonrefundable fee prescribed by the director by rule as necessary to defray the cost of processing the application.

Effective Date: 05-28-1992 .

#### **6111.044 Injection well drilling or operating permit.**

Upon receipt of an application for an injection well drilling permit, an injection well operating permit, a renewal of an injection well operating permit, or a modification of an injection well drilling permit, operating permit, or renewal of an operating permit, the director of environmental protection shall determine whether the application is complete and demonstrates that the activities for which the permit, renewal permit, or modification is requested will comply with the Federal Water Pollution Control Act and regulations adopted under it; the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended, and regulations adopted under it; and this chapter and the rules adopted under it. If the application demonstrates that the proposed activities will not comply or will pose an unreasonable risk of inducing seismic activity, inducing geologic fracturing, or contamination of an underground source of drinking water, the director shall deny the application. If the application does not make the required demonstrations, the director shall return it to the applicant with an indication of those matters about which a required demonstration was not made. If the director determines that the application makes the required demonstrations, the director shall transmit copies of the application and all of the accompanying maps, data, samples, and information to the chief of the division of oil and gas resources management, the chief of the division of geological survey, the chief of the division of water resources, and, if the well is or is to be located in a coal bearing township designated under section [1561.06](#) of the Revised Code, the chief of the division of mineral resources management in the department of natural resources.

The chief of the division of geological survey shall comment upon the application if the chief determines that the proposed well or injection will present an unreasonable risk of loss or damage to valuable mineral resources. If the chief submits comments on the application, those comments shall be accompanied by an evaluation of the geological factors upon which the comments are based, including fractures, faults, earthquake potential, and the porosity and permeability of the injection zone and confining zone, and by the documentation supporting the evaluation. The director shall take into consideration the chief's comments, and the accompanying evaluation of geologic factors and supporting documentation, when considering the application. The director shall provide written notice to the chief of the director's decision on the application and, if the chief's comments are not included in the permit, renewal permit, or modification, of the director's rationale for not including them.

The chief of the division of oil and gas resources management shall comment upon the application if the chief determines that the proposed well or injection will present an unreasonable risk that waste or contamination of recoverable oil or gas in the earth will occur. If the chief submits comments on the application, those comments shall be accompanied by an evaluation of the oil or gas reserves that, in the best professional judgment of the chief, are recoverable and will be adversely affected by the proposed well or injection, and by the documentation supporting the evaluation. The director shall take into consideration the chief's comments, and the accompanying evaluation and supporting documentation, when considering the application. The director shall provide written notice to the chief of the director's decision on the application and, if the chief's comments are not included in the permit, renewal permit, or modification, of the director's rationale for not including them.

The chief of the division of water resources shall assist the director in determining whether all underground sources of drinking water in the area of review of the proposed well or injection have been identified and correctly delineated in the application. If the application fails to identify or correctly delineate an underground source of drinking water, the chief shall provide written notice of that fact to the director.

The chief of the division of mineral resources management shall review the application as follows:

If the application concerns the drilling or conversion of a well or the injection into a well that is not or is not to be located within five thousand feet of the excavation and workings of a mine, the chief of the division of mineral resources management shall note upon the application that it has been examined by the division of mineral

resources management, retain a copy of the application and map, and immediately return a copy of the application to the director.

If the application concerns the drilling or conversion of a well or the injection into a well that is or is to be located within five thousand feet, but more than five hundred feet from the surface excavations and workings of a mine, the chief of the division of mineral resources management immediately shall notify the owner or lessee of the mine that the application has been filed and send to the owner or lessee a copy of the map accompanying the application setting forth the location of the well. The chief of the division of mineral resources management shall note on the application that the notice has been sent to the owner or lessee of the mine, retain a copy of the application and map, and immediately return a copy of the application to the director with the chief's notation on it.

If the application concerns the drilling or conversion of a well or the injection into a well that is or is to be located within five thousand feet of the underground excavations and workings of a mine or within five hundred feet of the surface excavations and workings of a mine, the chief of the division of mineral resources management immediately shall notify the owner or lessee of the mine that the application has been filed and send to the owner or lessee a copy of the map accompanying the application setting forth the location of the well. If the owner or lessee objects to the application, the owner or lessee shall notify the chief of the division of mineral resources management of the objection, giving the reasons, within six days after the receipt of the notice. If the chief of the division of mineral resources management receives no objections from the owner or lessee of the mine within ten days after the receipt of the notice by the owner or lessee, or if in the opinion of the chief of the division of mineral resources management the objections offered by the owner or lessee are not sufficiently well founded, the chief shall retain a copy of the application and map and return a copy of the application to the director with any applicable notes concerning it.

If the chief of the division of mineral resources management receives an objection from the owner or lessee of the mine as to the application, within ten days after receipt of the notice by the owner or lessee, and if in the opinion of the chief the objection is well founded, the chief shall disapprove the application and immediately return it to the director together with the chief's reasons for the disapproval. The director promptly shall notify the applicant for the permit, renewal permit, or modification of the disapproval. The applicant may appeal the disapproval of the application by the chief of the division of mineral resources management to the reclamation commission created under section [1513.05](#) of the Revised Code, and the commission shall hear the appeal in accordance with section [1513.13](#) of the Revised Code. The appeal shall be filed within thirty days from the date the applicant receives notice of the disapproval. No comments concerning or disapproval of an application shall be delayed by the chief of the division of mineral resources management for more than fifteen days from the date of sending of notice to the mine owner or lessee as required by this section.

The director shall not approve an application for an injection well drilling permit, an injection well operating permit, a renewal of an injection well operating permit, or a modification of an injection well drilling permit, operating permit, or renewal of an operating permit for a well that is or is to be located within three hundred feet of any opening of any mine used as a means of ingress, egress, or ventilation for persons employed in the mine, nor within one hundred feet of any building or flammable structure connected with the mine and actually used as a part of the operating equipment of the mine, unless the chief of the division of mineral resources management determines that life or property will not be endangered by drilling and operating the well in that location.

Upon review by the chief of the division of oil and gas resources management, the chief of the division of geological survey, and the chief of the division of water resources, and if the chief of the division of mineral resources management has not disapproved the application, the director shall issue a permit, renewal permit, or modification with any terms and conditions that may be necessary to comply with the Federal Water Pollution Control Act and regulations adopted under it; the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f) as amended, and regulations adopted under it; and this chapter and the rules adopted under it. The director shall not issue a permit, renewal permit, or modification to an applicant if the applicant or persons associated with the applicant have engaged in or are engaging in a substantial violation of this chapter that is endangering or may endanger human health or the environment or if, in the case of an applicant for an injection well drilling permit, the applicant, at the time of applying for the permit, did not hold an injection well operating

permit or renewal of an injection well drilling permit and failed to demonstrate sufficient expertise and competency to operate the well in compliance with the applicable provisions of this chapter.

If the director receives a disapproval from the chief of the division of mineral resources management regarding an application for an injection well drilling or operating permit, renewal permit, or modification, if required, the director shall issue an order denying the application.

The director need not issue a proposed action under section [3745.07](#) of the Revised Code or hold an adjudication hearing under that section and Chapter 119. of the Revised Code before issuing or denying a permit, renewal permit, or modification of a permit or renewal permit. Before issuing or renewing a permit to drill or operate a class I injection well or a modification of it, the director shall propose the permit, renewal permit, or modification in draft form and shall hold a public hearing to receive public comment on the draft permit, renewal permit, or modification. At least fifteen days before the public hearing on a draft permit, renewal permit, or modification, the director shall publish notice of the date, time, and location of the public hearing in at least one newspaper of general circulation serving the area where the well is or is to be located. The proposing of such a draft permit, renewal permit, or modification does not constitute the issuance of a proposed action under section [3745.07](#) of the Revised Code, and the holding of the public hearing on such a draft permit, renewal permit, or modification does not constitute the holding of an adjudication hearing under that section and Chapter 119. of the Revised Code. Appeals of orders other than orders of the chief of the division of mineral resources management shall be taken under sections [3745.04](#) to [3745.08](#) of the Revised Code.

The director may order that an injection well drilling permit or an injection well operating permit or renewal permit be suspended and that activities under it cease after determining that those activities are occurring in violation of law, rule, order, or term or condition of the permit. Upon service of a copy of the order upon the permit holder or the permit holder's authorized agent or assignee, the permit and activities under it shall be suspended immediately without prior hearing and shall remain suspended until the violation is corrected and the order of suspension is lifted. If a violation is the second within a one-year period, the director, after a hearing, may revoke the permit.

The director may order that an injection well drilling permit or an injection well operating permit or renewal permit be suspended and that activities under it cease if the director has reasonable cause to believe that the permit would not have been issued if the information available at the time of suspension had been available at the time a determination was made by one of the agencies acting under authority of this section. Upon service of a copy of the order upon the permit holder or the permit holder's authorized agent or assignee, the permit and activities under it shall be suspended immediately without prior hearing, but a permit may not be suspended for that reason without prior hearing unless immediate suspension is necessary to prevent waste or contamination of oil or gas, comply with the Federal Water Pollution Control Act and regulations adopted under it; the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended, and regulations adopted under it; and this chapter and the rules adopted under it, or prevent damage to valuable mineral resources, prevent contamination of an underground source of drinking water, or prevent danger to human life or health. If after a hearing the director determines that the permit would not have been issued if the information available at the time of the hearing had been available at the time a determination was made by one of the agencies acting under authority of this section, the director shall revoke the permit.

When a permit has been revoked, the permit holder or other person responsible for it immediately shall plug the well in the manner required by the director.

The director may issue orders to prevent or require cessation of violations of this section, section [6111.043](#), [6111.045](#), [6111.046](#), or [6111.047](#) of the Revised Code, rules adopted under any of those sections, and terms or conditions of permits issued under any of them. The orders may require the elimination of conditions caused by the violation.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 7/17/2009.

Effective Date: 09-05-2001 .

**6111.045 Waste minimization and treatment plan for class I injection well facility.**

(A) Not later than twenty-four months after May 28, 1992, each owner or operator of a class I injection well facility shall prepare and adopt a waste minimization and treatment plan to identify the specific technically and economically feasible measures that will be taken to prevent or reduce releases into the environment of the industrial waste and other wastes generated at the facility and, in the case of such an injection well facility that is located on the premises of the industrial facility generating the wastes disposed of at the injection facility, the industrial waste and other wastes generated at that industrial facility. The plan shall cover a three-year planning period and shall include all of the following:

- (1) The name, address, and, if applicable, standard industrial classification code of the facility;
- (2) A summary of the industrial wastes and other wastes generated at the facility, including supporting data and calculations;
- (3) A description of the facility's historic efforts at waste minimization and treatment and of existing waste minimization and treatment, source reduction, and recycling practices undertaken at the facility in 1987 and subsequent years;
- (4) An assessment of the technically and economically feasible options for the further elimination or reduction of such wastes that considers the impacts of cross-media transfers and gives preference to source reduction over the recycling, treatment, or disposal of the wastes;
- (5) The identification of specific objectives to prevent, reduce, or recycle releases of such wastes when technically and economically feasible options exist;
- (6) An explanation of the rationale for the objectives identified under division (A)(5) of this section;
- (7) A signed policy statement articulating the commitment of upper management and the corporation to implement the waste minimization and treatment plan and its objectives.

(B) Each waste minimization and treatment plan prepared and adopted under division (A) of this section shall be retained at the facility to which it applies and shall be made available for inspection and review by the director of environmental protection or the director's authorized representative. The disclosure of any trade secret information contained in any such plan is subject to prosecution as a theft offense, as defined in section [2913.01](#) of the Revised Code.

(C) Every three years after the adoption of a waste minimization and treatment plan under division (A) of this section, the owner or operator of the facility to which the plan applies, on or before the anniversary of the date of the adoption of the plan, shall do all of the following:

- (1) Review the operation of the facility for any changes in the type and amount of industrial waste or other wastes generated at the facility that have occurred since the adoption of the plan or the most recent revision of the plan;
- (2) If necessary or appropriate, reevaluate the technically and economically feasible options for reducing or eliminating the generation of industrial waste or other wastes at the facility;
- (3) If any changes in the type or amount of wastes generated at the facility are identified under division (C)(1) of this section or if, after a reevaluation conducted under division (C)(2) of this section, the owner or operator of the facility determines that the waste minimization and treatment options in the plan or most recent revision of the plan should be updated, amend the plan to update the information contained in it and include in the amendment an explanation of the need for the amendment.

(D)

(1) Not later than May 28, 1994, each owner or operator of a class I injection well facility shall submit to the director of environmental protection an executive summary of the waste minimization and treatment plan adopted by the owner or operator under division (A) of this section. The executive summary shall include a synopsis of each of the elements required to be included in the plan under divisions (A)(2) to (6) of this section and shall include a signed policy statement articulating the commitment of upper management and the corporation to implement the plan and its objectives.

(2) Every three years after the adoption of a waste minimization and treatment plan under division (A) of this section, the owner or operator of a class I injection well facility, on or before the anniversary of the date of the adoption of the plan, shall submit to the director a revised executive summary of the plan that meets the requirements of division (D)(1) of this section and contains revisions to the previous executive summary that reflect any amendments to the plan made by the most recent review of the plan required under division (C) of this section.

(E) No person shall fail to comply with this section.

(F) As used in this section:

(1) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any industrial waste or other wastes into or on any land or ground or surface water or into the air, except if the disposition constitutes storage or treatment.

(2) "Recycling" means to use, reuse, or reclaim a material.

(3) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, injecting, escaping, leaching, dumping, or discharging into the environment of any industrial waste or other wastes, including the abandonment or discarding of barrels, containers, or other closed receptacles that contained an industrial waste or other waste.

(4) "Source reduction" means any practice that reduces the amount of any industrial waste or other wastes entering any waste stream or otherwise released into the environment, including fugitive emissions, prior to recycling, treatment, or disposal and that reduces the hazards to public health and the environment associated with the release of such wastes. "Source reduction" includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. "Source reduction" does not include any practice that alters the physical, chemical, or biological characteristics or the volume of an industrial waste or other wastes through a process or activity that is not integral to and necessary for the production of a product or the providing of a service.

(5) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological characteristics or composition of any industrial waste or other wastes; to neutralize the waste; to recover energy or material resources from the waste; to render the waste nonhazardous or less hazardous, safer to transport, store, or dispose of, or amenable for recovery, storage, further treatment, or disposal; or to reduce the volume of the waste.

(6) "Waste minimization" means any effort to reduce or recycle the quantity of waste generated and, when feasible, to reduce or eliminate toxicity. "Waste minimization" does not include treatment unless the treatment is part of the recycling process.

Effective Date: 07-01-1996 .

### **6111.046 Annual permit fee - underground injection control fund.**

(A) Each person who is issued an injection well operating permit or a renewal of an injection well operating permit for a class I injection well shall pay an annual permit fee of twelve thousand five hundred dollars, except that a person who is issued such a permit or renewal of such a permit for a class I injection well that disposes of any hazardous waste identified or listed in rules adopted under section [3734.12](#) of the Revised Code and that is located on the premises where the hazardous waste injected into the well is generated shall pay an annual permit

fee of thirty thousand dollars. The appropriate permit fee shall be paid to the director of environmental protection within thirty days after the issuance of the injection well operating permit or renewal of such a permit. Annually thereafter during the term of the permit or renewal, the appropriate annual permit fee shall be paid to the director on or before the anniversary of the date of issuance of the injection well operating permit or renewal of such a permit. The director, by rules adopted in accordance with Chapter 119. of the Revised Code, shall prescribe the procedures for collecting the annual permit fees established in this section and may prescribe other requirements necessary to carry out this section.

No person shall fail to comply with this division.

(B) All moneys received by the director under division (A) of this section shall be credited to the underground injection control fund, which is hereby created in the state treasury. Beginning July 1, 1992, and annually thereafter, the director shall request the office of budget and management to, and the office shall, transfer fifteen per cent of the moneys in the fund to the geological mapping fund created in section [1505.09](#) of the Revised Code for the purpose of paying the expenses of the department of natural resources incurred in executing its duties under sections [6111.043](#) to [6111.047](#) of the Revised Code. The director shall use the remainder of the moneys credited to the underground injection control fund solely to administer and enforce the requirements of sections [6111.043](#) to [6111.047](#) of the Revised Code and rules adopted under them pertaining to class I injection wells.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 05-28-1992 .

#### **[6111.047 Tonnage fees for injection of waste.](#)**

(A) For the purpose of defraying the costs to the environmental protection agency of implementing, administering, and enforcing sections [6111.043](#) to [6111.047](#) of the Revised Code pertaining to class I injection wells, a fee of one dollar per ton is hereby levied on the injection of industrial waste or other wastes into a class I injection well. The fee levied by this division does not apply to the injection into such a well of any hazardous waste identified or listed in rules adopted under section [3734.12](#) of the Revised Code. The maximum annual fee for wastes injected at a class I injection facility shall be twenty-five thousand dollars regardless of the number of wells being used at the facility.

The owner or operator of the class I injection facility, as a trustee for the state, shall collect the fee levied under this division and forward it to the director of environmental protection in accordance with the rules adopted under division (C) of this section. The owner or operator shall remit the fee collected under this division to the director upon the anniversary of the date of issuance of his injection well operating permit or renewal of such a permit, as appropriate. If the class I injection facility consists of more than one injection well, the owner or operator shall remit the fee to the director on the anniversary of the date of issuance of the injection well operating permit or renewal of such a permit for which the anniversary of the date of issuance next succeeds the first day of January. If payment is late, the owner or operator shall pay to the director a penalty of ten per cent of the amount of the fee for each month that it is late.

(B) The director shall credit the moneys received under division (A) of this section to the underground injection control fund created in section [6111.046](#) of the Revised Code.

(C) The director, by rules adopted in accordance with Chapter 119. of the Revised Code, shall prescribe any dates not specified in this section and procedures for collecting and forwarding the fee levied by this section. The rules may prescribe other requirements for implementing and administering this section.

(D) No person shall fail to comply with this section or a rule adopted under it.

Effective Date: 05-28-1992 .

#### **[6111.048 Temporary assistance of state employees.](#)**

In the discharge of his duties under sections [6111.043](#) to [6111.045](#) of the Revised Code, the director of environmental protection may call to his assistance temporarily employees of any state department, agency,

authority, or institution, or any college or university financed wholly or partly by the state. The employees shall not receive any additional compensation above that which they receive from the departments, agencies, authorities, institutions, or colleges or universities by which they are employed. From moneys available to the director for the administration and enforcement of sections [6111.043](#) to [6111.045](#) of the Revised Code, the director may reimburse the department, agency, authority, institution, or college or university for the regular salary and fringe benefit costs of the employees and for the costs of any necessary equipment or supplies provided in connection with the assistance provided to the director.

Effective Date: 05-28-1992 .

#### **6111.049 Tonnage fees for injection of waste - exceptions.**

Section [6111.047](#) and rules adopted under division (B)(5) of section [6111.043](#) of the Revised Code do not apply to any nonhazardous class I injection well that disposes of naturally occurring formation fluids extracted during salt mining processes into an injection zone consisting of the Oriskany sandstone at depths of not more than one thousand five hundred feet.

Effective Date: 05-28-1992 .

#### **6111.05 Investigation of alleged act of pollution or failure to comply.**

The director of environmental protection, on the director's own initiative, may investigate or make inquiries into any alleged act of pollution or failure to comply with this chapter or any order, any rule, the terms and conditions of a permit, or any other determination pursuant thereto. However, upon written complaint by any person, the director shall conduct any investigations and make any inquiries that are required.

The director or the director's duly authorized representative may enter at reasonable times upon any private or public property to inspect and investigate conditions relating to pollution of any air of the state or land located in the state related to the use, storage, treatment, or disposal of sludge or sludge materials or pollution of any waters of the state, inspect any monitoring equipment, inspect the drilling, conversion, or operation of any injection well, and sample any discharges, including discharges by "industrial users" into a publicly owned "treatment works" as those terms are defined in sections 212 and 502 of the Federal Water Pollution Control Act, and may apply to the court of common pleas having jurisdiction for a warrant permitting the entrance and inspection.

Any authorized representative of the director at reasonable times may examine any records or memoranda pertaining to sludge management, the operation of disposal systems, the drilling, conversion, or operation of injection wells, or discharges by "industrial users" into publicly owned "treatment works" as defined in sections 212 and 501 of the Federal Water Pollution Control Act. The director may require the maintenance of records relating to sludge management, discharges, or the operation of disposal systems or injection wells. The director may make copies of the records. Any authorized representative of a publicly owned "treatment works" may enter at reasonable times upon the premises of any "industrial user" that discharges into the works to inspect any monitoring equipment or method of the user, to sample any discharges of the user into the works, or to inspect any records or memoranda pertaining to discharges by the user into the works, in order to ascertain compliance by the user with applicable pretreatment standards. The representative may make copies of the records. Any records, reports, or information obtained under this chapter shall be available for public inspection, except that:

(A) Upon a showing satisfactory to the director by any person that the records, reports, or information, or any particular part thereof, other than data concerning the amounts or contents of discharges or the quality of the receiving waters, to which the director has access under this chapter, if made public would divulge information entitled to protection as trade secrets of the person, the director shall consider the record, report, or information or particular portion thereof confidential. Prior to divulging any alleged trade secret information pursuant to this division, the director shall give ten days' written notice to the person claiming trade secrecy.

(B) The record, report, or information may be disclosed to other officers, employees, or authorized representatives of the state, another state, or the United States when necessary to sustain an action brought

pursuant to this chapter or during an adjudication hearing or when otherwise necessary to fulfill any requirement of the Federal Water Pollution Control Act.

No person to whom a permit has been issued shall refuse entry to any authorized representative of the director or willfully hinder or thwart the representative in the exercise of any authority granted by this section.

The director or the director's authorized representative, or, where necessary to monitor compliance with pretreatment standards, the authorized representative of a publicly owned "treatment works," may apply for, and any judge of a court of common pleas may issue, a warrant necessary to achieve the purposes of this chapter.

Effective Date: 03-17-2000 .

### **6111.051 Use, management, or disposal of structural products.**

(A) As used in this section, "structural products" means products that are created from clay, shale, or a combination of clay and shale, are generated as a result of a manufacturing process that is designed to create products intended to form part of a building or other structure, and are no longer wanted for that originally intended use. "Structural products" includes floor tiles, bricks, paving bricks, terra-cotta facing tiles, roofing tiles, clay pipes, chimney pipes, flue liners, and drainage tiles and pipes.

(B) No person shall use, manage, or dispose of structural products in a manner that results in any of the following:

- (1) A nuisance;
- (2) An exceedance of a water quality standard adopted under section [6111.041](#) of the Revised Code;
- (3) An exceedance of a primary or secondary maximum contaminant level established in rules adopted under section [6109.04](#) of the Revised Code;
- (4) An emission of an air contaminant as defined in section [3704.01](#) of the Revised Code;
- (5) A threat to public health or safety or the environment.

(C) No person shall place, accumulate, or store for further processing structural products in any of the following locations:

- (1) Within the boundaries of a sole source aquifer designated under the "Safe Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C. 300f, as amended, and regulations adopted under it;
- (2) Within the boundaries of a source water protection area;
- (3) Above an unconsolidated aquifer capable of yielding at least one hundred gallons per minute.

Division (C) of this section does not apply to structural products that have been sold and distributed in the stream of commerce as desired commodities.

(D) The director of environmental protection or the director's authorized representative may enter private or public property at reasonable times to inspect and investigate conditions or examine records relating to alleged noncompliance with this section and may apply to the court of common pleas having jurisdiction for a warrant permitting the entrance and inspection or examination.

(E) The director may adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures and requirements that are necessary to administer this section.

Added by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

### **6111.052 Blast furnace and steel slag.**

(A) As used in this section:

(1) "Blast furnace slag" means 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.

(2) "Steel slag" means 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:

(a) Not a hazardous waste;

(b) Poured from the furnace in a molten state, cooled, and processed to remove all free metallic;

(c) Sold and distributed in the stream of commerce as a product.

(B) For purposes of this chapter, "industrial waste" and "other wastes" do not include blast furnace slag or steel slag regardless of whether it is placed on the ground, placed below grade, or used in products that come into contact with the ground or are placed below grade.

(C) No person shall place or manage blast furnace slag or steel slag in a manner that results in any of the following:

(1) An exceedance of a water quality standard, including narrative standards, adopted under section [6111.041](#) of the Revised Code;

(2) An exceedance of a primary or secondary maximum contaminant level in ground water adopted under section [6109.04](#) of the Revised Code;

(3) A discharge that is prohibited by, or for which a permit is required by, United States environmental protection agency regulations, except in accordance with such permit;

(4) A threat to public health or safety or the environment.

(D) The director of environmental protection or the director's duly authorized representative may enter at reasonable times on any private or public property to inspect and investigate conditions or examine records relating to alleged noncompliance with this section.

Added by 132nd General Assembly File No. TBD, SB 2, §1, eff. 10/6/2017.

### **6111.06 Administrative procedures - emergencies.**

(A) All proceedings of the director of environmental protection or of the director's officers or agents under sections [6111.01](#) to [6111.08](#) of the Revised Code, including the adoption, issuance, modification, rescission, or revocation of rules and regulations, permits, orders, and notices, and the conduct of hearings, except standards of water quality adopted pursuant to section [6111.041](#) of the Revised Code, shall be subject to and governed by sections [119.01](#) to [119.13](#), and Chapter 3745. of the Revised Code.

(B) The director shall not refuse to issue a permit, nor modify or revoke a permit already issued, unless the applicant or permit holder has been afforded an opportunity for a hearing prior to the refusal to issue the permit or prior to the modification or revocation of the permit.

(C) Whenever the director officially determines that an emergency exists requiring immediate action to protect the public health or welfare, the director may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding division (A) of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the director shall be afforded a hearing as soon as possible, and not later than twenty days after such application. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it. No such emergency order shall remain in effect for more than sixty days after its issuance.

Effective Date: 09-26-2003 .

### **6111.07 Prohibited acts - prosecutions and injunction by attorney general.**

(A) No person shall violate or fail to perform any duty imposed by sections [6111.01](#) to [6111.08](#) or division (B) of section [6111.33](#) of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.

(B) The attorney general, upon the written request of the director, shall prosecute any person who violates, or who fails to perform any duty imposed by, sections [6111.01](#) to [6111.08](#) or division (B) of section [6111.33](#) of the Revised Code or who violates any order, rule, or condition of a permit issued or adopted by the director pursuant to those sections.

The attorney general, upon written request of the director, shall bring an action for an injunction against any person violating or threatening to violate this chapter or violating or threatening to violate any order, rule, or condition of a permit issued or adopted by the director pursuant to this chapter. In an action for injunction to enforce any final order of the director brought pursuant to this section, the finding by the director, after hearing, is prima-facie evidence of the facts found therein.

(C) No person knowingly shall submit false information or records or fail to submit information or records pertaining to discharges of sewage, industrial wastes, or other wastes or to sludge management required as a condition of a permit or knowingly render inaccurate any monitoring device or other method required to be maintained by the director.

Amended by 132nd General Assembly File No. TBD, SB 2, §1, eff. 10/6/2017.

Effective Date: 03-17-2000 .

### **6111.08 Rights in equity or under common law not affected.**

Chapter 6111: of the Revised Code does not abridge rights of action or remedies in equity or under the common law, nor does such chapter, or any act done under such chapter, estop the state, or any municipal corporation or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law to suppress nuisances or to abate pollution.

Effective Date: 07-25-1980 .

### **6111.09 Civil penalties for water pollution control violations.**

(A) Any person who violates section [6111.07](#) of the Revised Code shall pay a civil penalty of not more than ten thousand dollars per day of violation. Any person who purposely violates section [6111.10](#) or [6111.11](#) of the Revised Code shall pay a civil penalty of fifty dollars for a first violation and a civil penalty of not more than five hundred dollars for each subsequent violation occurring within twelve months of the first violation.

The attorney general, upon written request by the director of environmental protection, shall commence an action under this section against any person who violates section [6111.07](#) of the Revised Code. The director shall notify in writing any person who is allegedly selling or offering for sale a product in violation of section [6111.10](#) or [6111.11](#) of the Revised Code of the alleged specific violation and shall request the person to remove the product from the person's sales area. If at least ten days after providing that notification the director determines that the person has failed to remove the product from the person's sales area, the director in writing shall request the attorney general to, and the attorney general shall, commence an action under this section against the person. Any action under this section is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

(B) One-half of the moneys collected as civil penalties under division (A) of this section shall be credited to the environmental education fund created in section [3745.22](#) of the Revised Code. The remainder of the moneys so collected shall be credited to the water pollution control administration fund, which is hereby created in the state treasury. The water pollution control administration fund shall be administered by the director. Moneys in the water pollution control administration fund shall be used to supplement other moneys available for the

administration and enforcement of this chapter and the rules adopted and terms and conditions of orders and permits issued under it, including, without limitation, the issuance of permits under it, and shall not be used to satisfy any state matching fund requirements for the receipt of any federal grant funds.

The director may expend not more than seven hundred fifty thousand dollars of the moneys credited to the water pollution control administration fund under this division in any fiscal year for the purposes specified in this division. The director may request authority from the controlling board to expend any moneys credited to that fund in any fiscal year in excess of that amount.

Effective Date: 07-22-1994; 2008 SB214 09-01-2008 .

**6111.10 Sale of household laundry detergent containing phosphorus above certain limits prohibited in certain counties.**

After January 1, 1990, no person shall sell, offer for sale, or distribute for sale in the counties of Ashtabula, Trumbull, Lake, Geauga, Portage, Stark, Cuyahoga, Summit, Medina, Lorain, Ashland, Richland, Huron, Erie, Crawford, Marion, Wyandot, Seneca, Sandusky, Ottawa, Lucas, Wood, Hancock, Hardin, Fulton, Henry, Putnam, Allen, Auglaize, Shelby, Mercer, Van Wert, Paulding, Defiance, and Williams, a household laundry detergent containing phosphorus in any form in excess of one-half per cent by weight expressed as elemental phosphorus.

This section does not apply to:

(A) A cleanser, rinsing aid, sanitizing agent, or detergent intended primarily for use in an automatic or machine dishwasher;

(B) An industrial or commercial conversion coating agent, corrosion remover, paint remover, rust inhibitor, metal brightener, etchant, or other surface conditioner;

(C) A solvent cleaner or other similar product not normally used with water;

(D) A disinfectant, detergent, or sanitizer used in institutions, hospitals, veterinary hospitals or clinics, nursing homes, or other health care facilities or by commercial laundries that provide laundry services for those institutions and facilities or for other commercial establishments;

(E) A compound or product used in the manufacture or processing of foods or food products, including those used in dairy, beverage, egg, fish, poultry, meat, fruit, or vegetable processing facilities;

(F) A product intended primarily for personal use, including, but not limited to, bathing soaps, dentifrices, shampoos, cleansing creams, toothpastes, or other products for the care of the human body;

(G) A product subject to registration or control under federal or state law governing foods, drugs, cosmetics, insecticides, fungicides, or rodenticides;

(H) A product normally not used with water, such as a cleanser for windows, ovens, or other hard surfaces;

(I) A water softening chemical, anti-scale chemical, or corrosion inhibitor intended for use in circulatory systems, such as boilers, air conditioners, cooling towers, or hot water heating systems;

(J) A product used as a cleanser in the washing of milking or milk storage equipment normally used in the production of milk for market;

(K) A compound or product used for cleaning in transportation, commercial, or industrial activities;

(L) Retail sales or offers for sale from a retailer's inventory of a product otherwise covered by this section that remains at the end of the business day on December 31, 1989, if the retailer's inventory of the product during December, 1989, does not exceed the retailer's average monthly inventory during the previous twelve months.

A person who unknowingly sells, offers for sale, or distributes for sale a household laundry detergent in violation of this section is not subject to the imposition of a civil penalty under section [6111.09](#) of the Revised Code for

that violation if the sale, offer for sale, or distribution for sale occurred because of the inadvertent or unintentional delivery of the detergent to a business location in a county where such sale, offer for sale, or distribution for sale is prohibited under this section.

This section is intended for general application throughout the counties enumerated in it. Therefore, no such county and no political subdivision located within any such county shall adopt or enforce any law, ordinance, rule, resolution, requirement, or policy regulating the phosphorus content of any household laundry detergent that is to be sold, offered for sale, or distributed for sale in that county or political subdivision.

Effective Date: 06-28-1988; 2008 SB214 09-01-2008 .

### **6111.11 Sale of dishwasher detergent with phosphorous content above certain limits prohibited.**

On and after July 1, 2010, no person shall sell, offer for sale, or distribute for sale a cleanser, rinsing aid, sanitizing agent, or detergent that is intended primarily for use in an automatic or machine dishwasher and that contains phosphorus in any form in excess of one-half per cent by weight expressed as elemental phosphorus.

This section does not apply to either of the following:

(A) Cleansers, rinsing aids, sanitizing agents, or detergents that are used in an automatic or machine dishwasher in a commercial or institutional facility;

(B) Retail sales or offers for sale from a retailer's inventory of a product that is otherwise covered by this section and that remains at the end of the business day on June 30, 2010, if the retailer's inventory of the product during June 2010 does not exceed the retailer's average monthly inventory during the previous twelve months.

Effective Date: 2008 SB214 09-01-2008 .

### **6111.12 Antidegradation policy applicable to surface waters of the state pursuant to applicable federal laws and regulations.**

(A) The director of environmental protection shall establish an antidegradation policy applicable to surface waters of the state pursuant to applicable federal laws and regulations. The purpose of the policy shall be to maintain levels of water quality that are currently better than prescribed by applicable standards except in situations when a need to allow a lower level of water quality is demonstrated based on technical, social, and economic criteria. Not later than March 31, 1994, the director shall revise the existing antidegradation policy established in rules adopted under section [6111.041](#) of the Revised Code and revise any necessary implementation procedures to conform them to the following principles and any mandatory regulations adopted under the Federal Water Pollution Control Act:

(1) The use of existing effluent quality as a method of calculating antidegradation-based limits shall be imposed only to the extent that the use is explicitly required by federal law or regulation as the only means available to implement antidegradation.

(2) No degradation shall be allowed in waters for any pollutant that currently does not meet applicable standards. For all remaining waters, there shall be provisions requiring federal antidegradation requirements to be met and provisions ensuring that waters of exceptional recreational or ecological value are maintained as high quality resources for future generations. There shall be at least two categories of surface waters identified in the state for that purpose and for the purpose of establishing priorities for the administrative and technical resources expended on antidegradation reviews.

(3) Whenever current ambient water quality is determined to be of a higher quality than prescribed in the standards, on a pollutant-by-pollutant basis, and the water body lacks exceptional recreational or ecological value, the director may allocate to existing sources eighty per cent of the pollutant assimilative capacity as determined by appropriate total maximum daily load procedures without further antidegradation review. The permittee for any existing source may receive an effluent limitation based on not more than one hundred per cent

of the mass or concentration levels necessary to meet applicable water quality in the receiving water body as determined by appropriate total maximum daily load procedures, provided that there has been a satisfactory demonstration of the need to allow lower water quality based on technical, social, and economic criteria and the action is preceded by a public notice. Sources other than existing sources that result in ten per cent or greater change, that is, degradation, of ambient chemical water quality shall require a demonstration of technical, social, and economic need and shall be the subject of a public notice.

(4) Degradation of waters identified as possessing exceptional recreational or ecological value shall be determined through an analysis of the expected perceptible change in ambient concentrations of pollutant or alternatively through an analysis of the expected change in the biological condition of the water body. Either determination shall constitute a lowering of water quality and shall require an antidegradation review. The director shall establish, by rules adopted in accordance with Chapter 119. of the Revised Code, a definition of perceptible change that shall be applicable to those waters identified in rule as possessing exceptional recreational or ecological value. Antidegradation reviews shall be required for any activity resulting in a perceptible change in ambient chemical or biological quality on waters identified as possessing exceptional recreational or ecological value. Allowances shall be made for existing sources to retain their current permit limits with no requirement to demonstrate technical, social, and economic need.

(5) The director shall establish reasonable protocols for completing technical, social, and economic need demonstrations based on existing federal guidance and on input from the department of development, the regulated community, and the general public.

(B) Effluent limitations established by the director for any existing source in any permit issued under division (J) of section [6111.03](#) of the Revised Code prior to July 1, 1993, shall continue in effect unless the permit is modified by the director. A discharger seeking modification of antidegradation-based limitations that were based on existing quality of discharge when the permit was issued shall apply to the director for modification of the permit, consistent with rules adopted under division (A) of this section, not later than one hundred eighty days after July 1, 1993. If the permittee has filed such a timely application for modification, the director shall not pursue administrative or judicial enforcement actions for violations of antidegradation-based limitations based on the existing quality of effluent that occur after July 1, 1993.

(C) A historically channelized watercourse provides technical, social, and economic benefits. Therefore, with regard to a historically channelized watercourse, the director shall not require further antidegradation review during the review of an application for and the issuance or denial of a permit under this chapter or a water quality certification under section 401 of the Federal Water Pollution Control Act if the director finds, after public notice and opportunity for comment, and a public hearing if significant public interest is shown, that all of the following apply:

(1) Work is necessary to restore or maintain a drainage or other improvement provided by a historically channelized watercourse.

(2) The work is performed pursuant to section 940.06 of the Revised Code or a petition filed under section [6131.04](#) or [6133.02](#) of the Revised Code.

(3) Without the work, flooding threatens public health and safety or may result in significant damage to public or private property.

(4) The work will not result in the loss of designated or existing beneficial uses as those uses are described in rules adopted under section [6111.041](#) of the Revised Code.

(5) The work will not harm or interfere with the protection of federal or state designated endangered or threatened species.

(6) The historically channelized watercourse is not designated as coldwater habitat, exceptional warmwater habitat, or a state resource water in rules adopted under section [6111.041](#) of the Revised Code.

(7) If information is available concerning resident fishery or macroinvertebrate communities, or both, in the historically channelized watercourse, the historically channelized watercourse does not support a particularly diverse or unique warmwater habitat as that term is defined in rules adopted under section [6111.041](#) of the Revised Code.

(8) Plans for the work have been submitted to the applicable soil and water conservation district organized under Chapter 940. of the Revised Code.

(9) A storm water runoff plan has been developed for the watershed prior to or during planning and design of the work and the work is consistent with the plan.

(D) As used in this section:

(1) "Existing sources" means any treatment works that were built and operational under the terms of an NPDES permit prior to July 1, 1993, but does not include expansions or upgrades of existing treatment works authorized in rules adopted under section [6111.03](#) of the Revised Code after that date.

(2) "Appropriate total maximum daily load procedures" means the procedures, policies, and guidelines used by the director prior to July 1, 1993, or subsequent revisions to those procedures established in rules adopted in accordance with Chapter 119. of the Revised Code.

(3) "Antidegradation review" means the consideration by the director of the technical, social, and economic need demonstration completed by any person requesting to lower water quality as provided in this section, including the public notice of the application and, at the discretion of the director, a public hearing on it.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Effective Date: 10-20-1999 .

### **6111.13 Discharge limit for a pollutant less than the practical quantification level.**

(A) As used in this section:

(1) "Method detection limit" has the same meaning as in 40 C.F.R. part 136, appendix B, and shall be determined in accordance with the procedures set forth in that appendix.

(2) "Practical quantification level" means a concentration that is five times the method detection limit for the most sensitive available analytical procedure currently approved under 40 C.F.R. part 136 for a pollutant unless the director of environmental protection, by rules adopted in accordance with Chapter 119. of the Revised Code, establishes a different practical quantification level for the pollutant that is consistent with and no more stringent than the appropriate national consensus standard or other generally accepted standard.

(B) Notwithstanding any other provisions of this chapter to the contrary, and until the director has adopted rules specifying a different basis for determining compliance consistent with and no more stringent than an appropriate national consensus standard or other generally accepted standard, if a discharge limit is set below the practical quantification level for a particular parameter, any value reported at or below the practical quantification level shall be considered to be in compliance with that limit.

(C) Whenever a discharge limit for a pollutant is less than the practical quantification level, the director may require the permit holder to identify the possible sources of that pollutant. The director, by rule, may specify additional actions that the permit holder may be required to take when the director finds the actions to be necessary to prevent or mitigate significant adverse effects on public health or environmental quality. Failure of a permit holder to comply with additional actions required by the director under this division constitutes a violation of the permit holder's discharge permit.

Effective Date: 07-01-1993 .

#### **6111.14 Agreement for review of plans for extension of sewerage system or increase in number of service connections.**

The director of environmental protection may enter into an agreement with a political subdivision or investor-owned public utility that owns or operates a disposal system and that intends to extend the sewerage lines of its disposal system or to increase the number of service connections to its sewerage system, which agreement authorizes a qualified official or employee of the political subdivision or investor-owned public utility, as determined by the director, to review plans for the extension of the sewerage system or increase in the number of service connections for compliance with this chapter and the rules adopted under it and to certify to the director whether the plans comply with this chapter and the rules adopted under it. If, pursuant to such an agreement, the official or employee of the political subdivision or investor-owned public utility designated in the agreement certifies to the director that the plans comply with this chapter and the rules adopted under it and if the plans and certification are accompanied by an administrative service fee calculated in accordance with division (L)(2) of section [3745.11](#) of the Revised Code, the director, by final action, shall approve the plans without further review. The director or the director's authorized representative may inspect the construction or installation of an extension of a sewerage system or additional service connections for which plans have been approved under this section.

The approval of plans by the director pursuant to this section constitutes the approval of the plans for the purposes of any rules adopted under division (E) of section [6111.03](#) of the Revised Code that require the approval of plans for extensions of sewerage systems or increases in the number of service connections to sewerage systems.

As used in this section, "investor-owned public utility" means a person, other than an individual, that is a sewage disposal system company, as defined in section [4905.03](#) of the Revised Code, and that is not owned or operated by a municipal corporation or operated not-for-profit.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Effective Date: 11-26-1997 .

#### **6111.15 to 6111.17 Amended and Renumbered RC 6109.13 to 6109.15.**

Effective Date: 12-14-1978 .

#### **6111.18, 6111.19 [Repealed].**

Effective Date: 12-14-1978 .

#### **6111.20 Orders to secure a quality effluent from water purification or sewage treatment works.**

When the director of environmental protection finds upon investigation, that any water purification or sewage treatment works, on account of incompetent supervision or inefficient operation is not producing an effluent of such quality as might be reasonably obtained from such water purification or sewage treatment works, and by reason of such neglect the public water supply has become impure and dangerous to health, or that a stream, watercourse, canal, lake, pond, or body of water has become offensively polluted or has become a public nuisance or that a public water supply taken from such stream, watercourse, canal, lake, pond, or body of water has been rendered impure and dangerous to health, the director shall issue an order to the mayor or managing officer or officers of the municipal corporation, public institution, or person having charge of or owning such water purification or sewage treatment works, to secure an effluent of such quality as might be reasonably expected from such works and satisfactory to the director.

If such managing officer or officers of a municipal corporation, public institution, or person fails, for a period of five days after receiving such order, to secure an effluent satisfactory to the director, the director shall order such managing officer or officers or person owning such works to appoint, within ten days, and pay the salary of a

competent person to be approved by the director, to take charge of and operate such works as to secure the results demanded by the director.

Effective Date: 10-23-1972 .

**6111.21, 6111.22 [Repealed].**

Effective Date: 10-23-1972 .

**6111.23 Amended and Renumbered RC 6109.19.**

Effective Date: 12-14-1978 .

**6111.24 to 6111.27 [Repealed].**

Effective Date: 10-23-1972 .

**6111.28, 6111.29 Amended and Renumbered RC 6109.17, 6109.18.**

Effective Date: 12-14-1978 .

**6111.30 Application for federal water quality certification - hearing.**

(A) Applications for a section 401 water quality certification required under division (O) of section [6111.03](#) of the Revised Code shall be submitted on forms provided by the director of environmental protection and shall include all information required on those forms as well as all of the following:

- (1) A copy of a letter from the United States army corps of engineers documenting its jurisdiction over the wetlands, streams, or other waters of the state that are the subject of the section 401 water quality certification application;
- (2) If the project involves impacts to a wetland, a wetland characterization analysis consistent with the Ohio rapid assessment method;
- (3) If the project involves a stream for which a specific aquatic life use designation has not been made, data sufficient to determine the existing aquatic life use;
- (4) A specific and detailed mitigation proposal, including the location and proposed real estate instrument or other available mechanism for protecting the property long term;
- (5) Applicable fees;
- (6) Site photographs;
- (7) Adequate documentation confirming that the applicant has requested comments from the department of natural resources and the United States fish and wildlife service regarding threatened and endangered species, including the presence or absence of critical habitat;
- (8) Descriptions, schematics, and appropriate economic information concerning the applicant's preferred alternative, nondegradation alternatives, and minimum degradation alternatives for the design and operation of the project;
- (9) The applicant's investigation report of the waters of the United States in support of a section 404 permit application concerning the project;
- (10) A copy of the United States army corps of engineers' public notice regarding the section 404 permit application concerning the project.

(B) Not later than fifteen business days after the receipt of an application for a section 401 water quality certification, the director shall review the application to determine if it is complete and shall notify the applicant in

writing as to whether the application is complete. If the director fails to notify the applicant within fifteen business days regarding the completeness of the application, the application is considered complete. If the director determines that the application is not complete, the director shall include with the written notification an itemized list of the information or materials that are necessary to complete the application. If the applicant fails to provide the information or materials within sixty days after the director's receipt of the application, the director may return the incomplete application to the applicant and take no further action on the application. If the application is returned to the applicant because it is incomplete, the director shall return the review fee levied under division (A)(1), (2), or (3) of section [3745.114](#) of the Revised Code to the applicant, but shall retain the application fee levied under that section.

(C) Not later than twenty-one days after a determination that an application is complete under division (B) of this section, the applicant shall publish public notice of the director's receipt of the complete application in a newspaper of general circulation in the county in which the project that is the subject of the application is located. The public notice shall be in a form acceptable to the director. The applicant shall promptly provide the director with proof of publication. The applicant may choose, subject to review by and approval of the director, to include in the public notice an advertisement for an antidegradation public hearing on the application pursuant to section [6111.12](#) of the Revised Code. There shall be a public comment period of thirty days following the publication of the public notice.

(D) If the director determines that there is significant public interest in a public hearing as evidenced by the public comments received concerning the application and by other requests for a public hearing on the application, the director or the director's representative shall conduct a public hearing concerning the application. Notice of the public hearing shall be published by the applicant, subject to review and approval by the director, at least thirty days prior to the date of the hearing in a newspaper of general circulation in the county in which the project that is the subject of the application is to take place. If a public hearing is requested concerning an application, the director shall accept comments concerning the application until five business days after the public hearing. A public hearing conducted under this division shall take place not later than one hundred days after the application is determined to be complete.

(E) The director shall forward all public comments concerning an application submitted under this section that are received through the public involvement process required by rules adopted under this chapter to the applicant not later than five business days after receipt of the comments by the director.

(F) The applicant shall respond in writing to written comments or to deficiencies identified by the director during the course of reviewing the application not later than fifteen days after receiving or being notified of them.

(G) The director shall issue or deny a section 401 water quality certification not later than one hundred eighty days after the complete application for the certification is received. The director shall provide an applicant for a section 401 water quality certification with an opportunity to review the certification prior to its issuance. However, when a certified water quality professional conducts a stream or wetland assessment to support an application and the application does not require or necessitate a public hearing, the director shall issue or deny a section 401 water quality certification not later than ninety days after the complete application for the certification is received.

(H) The director shall maintain an accessible database that includes environmentally beneficial water restoration and protection projects that may serve as potential mitigation projects for projects in the state for which a section 401 water quality certification is required. A project's inclusion in the database does not constitute an approval of the project.

(I) Mitigation required by a section 401 water quality certification may be accomplished by any of the following:

- (1) Purchasing credits at a mitigation bank approved in accordance with 33 C.F.R. 332.8;
- (2) Participating in an in-lieu fee mitigation program approved in accordance with 33 C.F.R. 332.8;
- (3) Constructing individual mitigation projects.

Notwithstanding the mitigation hierarchy specified in section 3745-1-54 of the Administrative Code, mitigation projects shall be approved in accordance with the hierarchy specified in 33 C.F.R. 332.3 unless the director determines that the size or quality of the impacted resource necessitates reasonably identifiable, available, and practicable mitigation conducted by the applicant. The director shall adopt rules in accordance with Chapter 119. of the Revised Code consistent with the mitigation hierarchy specified in 33 C.F.R. 332.3.

(J) The director shall establish a program and adopt rules in accordance with Chapter 119. of the Revised Code for the purpose of certifying water quality professionals to assess streams to determine existing aquatic life use and to categorize wetlands in support of applications for section 401 water quality certification under divisions (A) (2) and (3) of this section and isolated wetland permits under sections [6111.022](#) to [6111.024](#) of the Revised Code. The director shall establish a multi-sector work group to assist in the development of rules adopted under this division. The director shall use information submitted by certified water quality professionals in the review of those applications.

Rules adopted under this division shall do all of the following:

(1) Provide for the certification of water quality professionals to conduct activities in support of applications for section 401 water quality certification and isolated wetland permits, including work necessary to determine existing aquatic life use of streams and categorize wetlands. Rules adopted under division (J)(1) of this section shall do at least all of the following:

(a) Authorize the director to require an applicant for water quality professional certification to submit information considered necessary by the director to assess a water quality professional's experience in conducting stream assessments and wetlands categorizations;

(b) Authorize the director to establish experience requirements and to use tests to determine the competency of applicants for water quality professional certification;

(c) Authorize the director to approve applicants for water quality professional certification who comply with the requirements established in rules and deny applicants that do not comply with those requirements;

(d) Require the director to revoke the certification of a water quality professional if the director finds that the professional falsified any information on the professional's application for certification regarding the professional's credentials;

(e) Require periodic renewal of a water quality professional's certification and establish continuing education requirements for purposes of that renewal.

(2) Establish an annual fee to be paid by water quality professionals certified under rules adopted under division (J)(1) of this section in an amount calculated to defray the costs incurred by the environmental protection agency for reviewing applications for water quality professional certification and for issuing those certifications;

(3) Authorize the director to suspend or revoke the certification of a water quality professional if the director finds that the professional's performance has resulted in submission of documentation that is inconsistent with standards established in rules adopted under division (J)(7) of this section;

(4) Authorize the director to review documentation submitted by a certified water quality professional to ensure compliance with requirements established in rules adopted under division (J) (7) of this section;

(5) Require a certified water quality professional to submit any documentation developed in support of an application for a section 401 water quality certification or an isolated wetland permit upon the request of the director;

(6) Authorize audits by the director of documentation developed or submitted by certified water quality professionals to ensure compliance with requirements established in rules adopted under division (J)(7) of this section;

(7) Establish technical standards to be used by certified water quality professionals in conducting stream assessments and wetlands categorizations;

(8) Authorize the director to require public disclosure, including publication on the environmental protection agency's web site, of all of the following information for each certified water quality professional:

(a) Name;

(b) Qualifications and credentials;

(c) Status of the professional's certifications;

(d) Documents and reports submitted by the certified water quality professional;

(e) Documentation and results of agency audits of the certified water quality professional's work;

(f) Any final disciplinary action related to the certified water quality professional's performance.

(K) Nothing in this section requires an applicant for a section 401 water quality certification or a permit for impacts to an isolated wetland under this chapter to use the services of a certified water quality professional.

(L) As used in this section and section [6111.31](#) of the Revised Code, "section 401 water quality certification" means certification pursuant to section 401 of the Federal Water Pollution Control Act and this chapter and rules adopted under it that any discharge, as set forth in section 401, will comply with sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act.

Amended by 132nd General Assembly File No. TBD, SB 2, §1, eff. 10/6/2017.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 129th General Assembly File No. 115, SB 294, §1, eff. 9/5/2012.

Effective Date: 09-29-2005 .

### **6111.31 Adoption and review of standards for evaluating mitigation proposals.**

All substantive wetland, stream, or lake mitigation standards, criteria, scientific methods, processes, or other procedures or policies that are used in a uniform manner by the director of environmental protection in evaluating the adequacy of a mitigation proposal contained in an application for a section 401 water quality certification shall be adopted and reviewed in accordance with sections 119.03 and 106.03 of the Revised Code before those standards, criteria, or scientific methods have the force of law. Until that time, any such mitigation standards, criteria, scientific methods, processes, or other procedures or policies that are used by or approved for use by the director to evaluate, measure, or determine the success, approval, or denial of a mitigation proposal, but that have not been subject to review under sections 119.03 and 106.03 of the Revised Code shall not be used as the basis for any certification or permit denial or as a standard applied to mitigation unless the applicant has been notified in advance that additional mitigation standards, criteria, scientific methods, processes, or procedures will be considered as part of the review process.

Amended by 130th General Assembly File No. TBD, SB 3, §1, eff. 9/17/2014.

Effective Date: 09-29-2005 .

### **6111.32 Dredging plan.**

(A) In order to ensure the regular and orderly maintenance of federal navigation channels and ports in this state, the director of environmental protection shall endeavor to work with the United States army corps of engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the requirements established in this section.

(B) On and after July 1, 2020, no person shall deposit dredged material in the portion of Lake Erie that is within the jurisdictional boundaries of this state or in the direct tributaries of Lake Erie within this state that resulted from harbor or navigation maintenance activities unless the director has determined that the dredged material is suitable for one of the locations, purposes, or activities specified in division (C) of this section and has issued a section 401 water quality certification authorizing the deposit.

(C) The director may authorize the deposit of dredged material in the portion of Lake Erie that is within the jurisdictional boundaries of this state or in the direct tributaries of Lake Erie within this state that resulted from harbor or navigation maintenance activities for any of the following:

- (1) Confined disposal facilities;
- (2) Beneficial use projects;
- (3) Beach nourishment projects if at least eighty percent of the dredged material is sand;
- (4) Placement in the littoral drift if at least sixty percent of the dredged material is sand;
- (5) Habitat restoration projects;
- (6) Projects involving amounts of dredged material that do not exceed ten thousand cubic yards, including material associated with dewatering operations related to dredging operations.

(D) In order to coordinate the activities and responsibilities established under this chapter and Chapter 1506. of the Revised Code, the director shall consult with the director of natural resources when approving the location in which dredged material is proposed to be deposited in the portion of Lake Erie that is within the jurisdictional boundaries of this state or in the direct tributaries of Lake Erie within this state.

(E) The director of environmental protection, in consultation with the director of natural resources, may determine that financial, environmental, regulatory, or other factors exist that result in the inability to comply with this section. After making that determination, the director of environmental protection, through the issuance of a section 401 water quality certification, may allow for open lake placement of dredged material from the Maumee river, Maumee bay federal navigation channel, and Toledo harbor.

(F) The director may adopt rules in accordance with Chapter 119. of the Revised Code that are necessary for the implementation of this section.

Added by 131st General Assembly File No. TBD, SB 1, §1, eff. 7/3/2015.

### **6111.33 Dredged material.**

(A) As used in this section and in sections [6111.32](#) and 6111.34 of the Revised Code, "dredged material" means material excavated or dredged from a federal navigation channel during harbor or navigation maintenance activities.

(B) No person shall use, manage, or place dredged material in any location except in accordance with the following:

- (1) Section [6111.32](#) of the Revised Code;
- (2) Rules adopted under Chapter 6111. of the Revised Code;
- (3) A permit issued under any other section of this chapter or under rules adopted under any such section; or
- (4) Any other authorization issued by the director of environmental protection.

Added by 132nd General Assembly File No. TBD, SB 2, §1, eff. 10/6/2017.

### **6111.34 Rules governing beneficial use of dredged material.**

(A) The director of environmental protection, in accordance with Chapter 119. of the Revised Code, may 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.

(B) The director shall ensure that rules adopted under this section 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 either of the following:

(a) Solid wastes;

(b) Other wastes.

(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.

(C) The director shall ensure that the criteria and requirements established in rules adopted under this section are no less stringent than any applicable standard established under federal environmental laws and regulations adopted under them, including the "Federal Water Pollution Control Act Amendments of 1972." 86 Stat. 886. 33 U.S.C. 1251; the "Resource Conservation and Recovery Act of 1976." 90 Stat. 2806. 42 U.S.C. 6921; the "Toxic Substances Control Act." 90 Stat. 2003 (1976). 15 U.S.C. 2601; the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980." 94 Stat. 2779. 42 U.S.C. 9601; and the "Safe Drinking Water Act." 88 Stat. 1660 (1974). 42 U.S.C. 300f.

(D) As used in this section, "solid wastes" has the same meaning as in section [3734.01](#) of the Revised Code.

Added by 132nd General Assembly File No. TBD, SB 2, §1, eff. 10/6/2017.

### **[6111.34 to 6111.39 \[Repealed\].](#)**

Effective Date: 06-26-2003 .

### **[6111.40 \[Repealed\].](#)**

Repealed by 132nd General Assembly File No. TBD, HB 49, §105.01, eff. 9/29/2017.

Effective Date: 07-01-1985 .

### **[6111.41 Comprehensive water resource management planning by directors of environmental protection and natural resources.](#)**

The director of environmental protection shall prepare and maintain a comprehensive plan or plans for the development, use, and protection of water resources, covering all aspects of water management and including regional water development plans. The director of natural resources shall prepare and maintain the elements of such plans relating to recreation, fish, wildlife, flood control, and flood plain management.

The director of environmental protection shall not adopt any comprehensive plan until the director of natural resources approves those portions of the plan relating to recreation, fish, wildlife, flood control, and flood plain management.

In the performance of his functions relating to comprehensive water resource management planning, the director of environmental protection may plan different beneficial uses for different bodies of water and different reaches thereof, and in connection therewith shall give due consideration to the practicability and the physical and economic feasibility of compliance with requirements that would be necessary to attain the water quality to support such uses, and to the equities involved therein.

The director may review water management plans and studies made by, for, or required by law to be submitted to, governmental agencies, and render staff planning assistance to such agencies.

The director may develop, implement, and coordinate a comprehensive plan for water management research by state universities and other public and private institutions.

Effective Date: 03-22-1973 .

#### **6111.42 Water quality powers of director of environmental protection.**

The environmental protection agency shall do all of the following:

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

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

(C) Be authorized to perform stream gauging and contract with the United States government or any other agency for the gauging of any streams within the state;

(D) Have authority to furnish information to all public officials, offices, and agencies of and in the state, and to farmers, well drillers, water consumers, industries, and any other persons seeking information regarding water resources;

(E) Adopt rules in accordance with Chapter 119. of the Revised Code for the drilling, operation, maintenance, and abandonment of wells that are determined to be necessary by the director of environmental protection to prevent the contamination of the ground waters in the state, except that the rules shall not apply to wells for the provision of water for human consumption unless they are used, or are for use, by a public water system as defined in section [6109.01](#) of the Revised Code. No person shall violate a rule adopted under this division.

(F) Have access to all information and statistics that any public authority within the state has available and that the director determines are pertinent to its duties;

(G) Have authority to prepare an accurate map and description of the territorial boundaries of proposed watershed districts within the state. The map and description shall follow the property line, section line, half section line, or patent line that is nearest to the hydrologic boundary of the proposed watershed district. There shall be not less than fifteen nor more than eighteen proposed watershed districts in the state, and each shall be composed of one or more major river watersheds. When a map and a description of a proposed watershed district has been completed, the director shall cause a copy of them to be filed with the secretary of state and the board of county commissioners of each county contained in whole or in part within the territorial boundaries of the proposed watershed district.

Effective Date: 03-18-1999 .

#### **6111.43 Amended and Renumbered RC 1521.05.**

Effective Date: 11-01-1977 .

#### **6111.44 Plans for installation or changes to sewerage systems to be submitted to director of environmental protection.**

(A) Except as otherwise provided in division (B) of this section, in section [6111.14](#) of the Revised Code, or in rules adopted under division (G) of section [6111.03](#) of the Revised Code, no municipal corporation, county, public institution, corporation, or officer or employee thereof or other person shall provide or install sewerage or treatment works for sewage, sludge, or sludge materials disposal or treatment or make a change in any sewerage

or treatment works until the plans therefor have been submitted to and approved by the director of environmental protection. Sections [6111.44](#) to [6111.46](#) of the Revised Code apply to sewerage and treatment works of a municipal corporation or part thereof, an unincorporated community, a county sewer district, or other land outside of a municipal corporation or any publicly or privately owned building or group of buildings or place, used for the assemblage, entertainment, recreation, education, correction, hospitalization, housing, or employment of persons.

In granting an approval, the director may stipulate modifications, conditions, and rules that the public health and prevention of pollution may require. Any action taken by the director shall be a matter of public record and shall be entered in the director's journal. Each period of thirty days that a violation of this section continues, after a conviction for the violation, constitutes a separate offense.

(B) Sections [6111.45](#) and [6111.46](#) of the Revised Code and division (A) of this section do not apply to any of the following:

(1) Sewerage or treatment works for sewage installed or to be installed for the use of a private residence or dwelling;

(2) Sewerage systems, treatment works, or disposal systems for storm water from an animal feeding facility or manure, as "animal feeding facility" and "manure" are defined in section [903.01](#) of the Revised Code;

(3) Residual farm products and manure treatment or disposal works and related management and conservation practices that are subject to rules adopted under division (E)(1) of section 939.02 of the Revised Code. As used in division (B)(3) of this section, "residual farm products" and "manure" have the same meanings as in section 939.01 of the Revised Code.

(4) Sewerage or treatment works for the on-lot disposal or treatment of sewage from a small flow on-site sewage treatment system, as defined in section [3718.01](#) of the Revised Code, if the board of health of a city or general health district has notified the director of health and the director of environmental protection under section [3718.021](#) of the Revised Code that the board has chosen to regulate the system, provided that the board remains in compliance with the rules adopted under division (A)(13) of section [3718.02](#) of the Revised Code.

The exclusions established in divisions (B)(2) and (3) of this section do not apply to the construction or installation of disposal systems, as defined in section [6111.01](#) of the Revised Code, that are located at an animal feeding facility and that store, treat, or discharge wastewaters that do not include storm water or manure or that discharge to a publicly owned treatment works.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Amended by 130th General Assembly File No. TBD, SB 150, §1, eff. 8/21/2014.

Amended by 128th General Assembly File No.12, HB 363, §4, eff. 12/22/2009.

Amended by 128th General Assembly File No.9, HB 1, §640.22, eff. 7/1/2010.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 05-06-2005; 2007 HB119 09-29-2007; 2007 HB119 07-01-2009 .

### **[6111.441 Sewage treatment systems regulated by board of health exempt from chapter.](#)**

In addition to the exemption established under division (B)(4) of section [6111.44](#) of the Revised Code, sewerage or treatment works for the on-lot disposal or treatment of sewage from a small flow on-site sewage treatment system, as defined in section [3718.01](#) of the Revised Code, concerning which the board of health of a city or general health district has notified the director of health and the director of environmental protection under section [3718.021](#) of the Revised Code that the board has chosen to regulate the system are exempt from the administrative and permitting requirements established in this chapter and rules adopted under it and the fees

established under section [3745.11](#) of the Revised Code, provided that the board remains in compliance with the rules adopted under division (A)(13) of section [3718.02](#) of the Revised Code.

Amended by 128th General Assembly File No.12, HB 363, §6, eff. 12/22/2009.

Amended by 128th General Assembly File No.9, HB 1, §640.20, eff. 7/17/2009.

Effective Date: 05-06-2005; 2007 HB119 07-01-2007

#### **6111.45 Plans for the disposal of the waste to be submitted to director of environmental protection.**

No municipal corporation, county, public institution, corporation, or officer or employee thereof or other person shall establish as proprietor, agent, employee, lessee, or tenant, any garbage disposal plant, shop, factory, mill, industrial establishment, process, trade, or business in the operation of which an industrial waste is produced, or make a change in or enlargement of a garbage disposal plant, shop, factory, mill, industrial establishment, process, trade, or business whereby an industrial waste is produced or materially increased or changed in character, or install works for the treatment or disposal of any such waste until the plans for the disposal of the waste have been submitted to and approved by the director of environmental protection. As used in sections [6111.44](#) to [6111.46](#) of the Revised Code, "industrial waste" means sludge or sludge materials or a water-carried or liquid waste resulting from any process of industry, manufacture, trade, or business or development of any natural resource, but does not include storm water from any animal feeding facility, as defined in section [903.01](#) of the Revised Code, or manure, as defined in that section. In granting an approval, the agency may stipulate modifications, conditions, and rules that the public health and welfare may require. Any action taken by the director shall be a matter of public record and shall be entered in the director's journal. Each period of thirty days that a violation of this section continues, after a conviction of the violation, constitutes a separate offense.

Effective Date: 03-15-2001 .

#### **6111.451 Sewage construction activities not requiring plan approval.**

Not later than one hundred eighty days after the effective date of this section, the director of environmental protection shall adopt rules in accordance with Chapter 119. of the Revised Code specifying construction activities that do not, by themselves, constitute installing works for the treatment or disposal of sewage or other waste for which approval of plans is required under section [6111.44](#) or [6111.45](#) of the Revised Code. The activities shall include the grading and clearing of land, on-site storage of portable parts and equipment, and the construction of foundations or buildings that are not directly related to the installation of treatment or disposal works. The rules also shall allow specified initial activities that are part of the installation of treatment or disposal works, such as the installation of electrical and other utilities for the works, prior to the approval of the plans for the works, provided that the owner or operator of the works has submitted the complete plans for the works to the director and has notified the director that this activity will be undertaken prior to the approval of the plans. Any activity that is undertaken under the rules adopted under this section shall be at the risk of the owner or operator. The rules adopted under this section, to the extent possible, shall be consistent with rules adopted under division (F) (5) of section [3704.03](#) of the Revised Code.

Effective Date: 03-29-2007 .

#### **6111.46 Environmental protection agency general supervision of treatment and disposal of sewage and industrial wastes and operation and means therefor.**

(A) The environmental protection agency shall exercise general supervision of the treatment and disposal of sewage and industrial wastes and the operation and maintenance of works or means installed for the collection, treatment, and disposal of sewage and industrial wastes. Such general supervision shall apply to all features of construction, operation, and maintenance of the works or means that do or may affect the proper treatment and disposal of sewage and industrial wastes.

(B)

(1) The agency shall investigate the works or means employed in the collection, treatment, and disposal of sewage and industrial wastes whenever considered necessary or whenever requested to do so by local health officials and may issue and enforce orders and shall adopt rules governing the operation and maintenance of the works or means of treatment and disposal of such sewage and industrial wastes. In adopting rules under this section, the agency shall establish standards governing the construction, operation, and maintenance of the works or means of collection, treatment, and disposal of sewage that is generated at recreational vehicle parks, recreation camps, combined park-camps, and temporary park-camps that are separate from such standards relative to manufactured home parks.

(2) As used in division (B)(1) of this section:

(a) "Manufactured home parks" has the same meaning as in section [4781.01](#) of the Revised Code.

(b) "Recreational vehicle parks," "recreation camps," "combined park-camps," and "temporary park-camps" have the same meanings as in section [3729.01](#) of the Revised Code.

(C) The agency may require the submission of records and data of construction, operation, and maintenance, including plans and descriptions of existing works or means of treatment and disposal of such sewage and industrial wastes. When the agency requires the submission of such records or information, the public officials or person, firm, or corporation having the works in charge shall comply promptly with that order.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 03-17-2000; 10-31-2004

### **6111.50 Credible data definitions.**

As used in sections 6111.50 to [6111.56](#) of the Revised Code:

(A) "Credible data" means scientifically valid chemical, physical, or biological water quality monitoring data concerning surface waters, including qualitative scoring of physical habitat characteristics and the sampling of fish, macroinvertebrates, and water quality, that have been collected by or submitted to the director of environmental protection and that comply with the requirements established in rules adopted under section [6111.51](#) of the Revised Code. "Credible data" may include historical data if the director identifies compelling reasons as to why the data are credible.

(B) "Historical data" means data that are more than five years old.

(C) "Naturally occurring condition" means any condition affecting water quality that is not caused by human influence on the environment, including, but not limited to, soils, geology, hydrology, climate, wildlife, and water flow with specific consideration given to seasonal and other natural variations.

(D) "Qualified data collector" means an individual who meets the requirements established in rules adopted under section [6111.53](#) of the Revised Code.

Effective Date: 10-21-2003 .

### **6111.51 Criteria for three levels of credible data related to surface water monitoring and assessment.**

(A)

(1) The director of environmental protection shall adopt rules that establish criteria for three levels of credible data related to surface water monitoring and assessment. The rules pertaining to each level shall establish requirements for data assessment, sample collection and analytical methods, and quality assurance and quality control procedures that must be followed in order to classify data as credible at that level. The rules shall provide that level three credible data are collected by employing the most stringent methods and procedures, level two credible data are collected using methods and procedures that are less stringent than methods and procedures

used to collect level three credible data, but more stringent than methods and procedures used to collect level one, and level one credible data are collected by employing the least stringent methods and procedures.

The requirements established in the rules for each level of credible data shall be commensurate with, and no more stringent than necessary to support, the purposes for which the data will be used. In adopting rules under this section, the director shall consider the cost of data collection methods and procedures to persons or entities collecting data, and the burden of compliance with those methods and procedures for those persons or entities, while ensuring the degree of accuracy commensurate with the purpose for which the data will be used. No data shall be classified as credible data unless they have been collected in compliance with the applicable methods and procedures for collecting the data established in rules adopted under this section.

(2) The director shall file the rules required to be adopted under division (A)(1) of this section with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review in accordance with divisions (B) and (C) of section 119.03 of the Revised Code not later than one year after October 21, 2003. As soon as practicable thereafter, the director shall proceed to adopt the rules in accordance with all other applicable provisions of Chapter 119. of the Revised Code.

(B)

(1) Level three credible data shall be used for the purposes specified in section 6111.52 of the Revised Code.

(2) Levels two and three credible data shall be used for the purpose of evaluating the effectiveness of pollution controls for point sources and nonpoint sources and initial screening of water quality problems to determine if additional study is needed.

(3) Levels one, two, and three credible data shall be used for public awareness and education activities.

(C) No data shall be considered credible unless the data originate from studies and samples collected by the environmental protection agency, its contractors, federal or state environmental agencies, or qualified data collectors. However, data submitted pursuant to the requirements of a permit issued by an agency of the state or submitted as a result of findings and orders issued by the director or pursuant to a court order shall be considered credible unless the director identifies reasons why the data are not credible.

(D) If the director has obtained credible data for a surface water, the director also may use historical data for the purpose of determining whether any water quality trends exist for that surface water.

(E) Sections 6111.50 to 6111.56 of the Revised Code do not apply to civil or criminal enforcement actions brought under section 6111.07 of the Revised Code.

(F) The director's use of credible data shall be consistent with the Federal Water Pollution Control Act.

(G) Nothing in sections 6111.50 to 6111.56 of the Revised Code is an exception to statutory, common, or municipal law of trespass.

Amended by 130th General Assembly File No. TBD, SB 3, §1, eff. 9/17/2014.

Effective Date: 10-21-2003 .

### **6111.52 Level three credible data activities.**

The director of environmental protection shall use only level three credible data to conduct any of the following activities:

(A) Developing, reviewing, and revising use designations in water quality standards;

(B) Developing a statewide water quality inventory or other water assessment report;

(C) Identifying, listing, and delisting waters of the state for the purpose of section 303(d) of the Federal Water Pollution Control Act;

(D) Determining whether a water of the state is supporting its designated use or other classification;

(E) Establishing a total maximum daily load for a water of the state.

Effective Date: 10-21-2003 .

**6111.53 Water quality monitoring program to collect levels one, two, and three credible data for surface water monitoring and assessment.**

(A) The director of environmental protection shall establish and maintain a water quality monitoring program to collect levels one, two, and three credible data for surface water monitoring and assessment. In the same manner provided in division (A)(2) of section [6111.51](#) of the Revised Code, the director shall adopt rules establishing the program. The rules shall describe the training and experience that are required for a person to become a qualified data collector in the program. The requirements shall be commensurate with the type and level of data collected. The rules shall require the training to include a thorough knowledge of applicable sampling protocols and field methods so that the data collection and interpretation are reproducible, scientifically defensible, and free from preconceived bias. The rules shall authorize individuals with the necessary academic credentials and experience to train other persons to be qualified data collectors.

The rules also shall require that the data collectors follow plans containing data collection methods, sampling and analysis methods, and quality assurance and quality control procedures that comply with those established in rules adopted under section [6111.51](#) of the Revised Code. The rules shall require that the plans contain the certification required under division (D) of this section. Plans shall not be required under the rules for credible data that are collected by the environmental protection agency, its contractors, or federal or state environmental agencies. Except as otherwise required by a permit issued by an agency of the state, by findings and orders issued by the director, or pursuant to a court order, plans shall not be required under the rules for data that are submitted pursuant to the requirements of the permit. The director may develop generic plans or generic components of plans for use by qualified data collectors.

(B) A qualified data collector may submit credible data to the director in accordance with a generic plan without submitting a plan to the director for approval under division (C) of this section.

(C) In lieu of submitting data pursuant to a generic plan, a qualified data collector who intends to submit credible data to the director may submit a site-specific plan that complies with the rules adopted under division (A) of this section. If a qualified data collector will be assisted by other persons who are not qualified data collectors, the plan shall include procedures for the supervision of their work to ensure the accuracy of the data collection. The plan shall identify whether the data to be collected are level one, two, or three credible data. The director shall review the plan to determine if it complies with the rules adopted under division (A) of this section and with this division. After reviewing the plan, the director shall either approve or disapprove it. A plan that is not disapproved within sixty days shall be considered to have been approved.

(D) A person who chooses to submit data for consideration as credible data shall document the person's status as a qualified data collector, demonstrate compliance with a generic plan or a site-specific plan, certify to the best knowledge and belief of the qualified data collector that the credible data were collected in accordance with the procedures required by the plan developed or approved under this section, and certify that the person has not been convicted of or pleaded guilty to a violation of section [2911.21](#) of the Revised Code or a substantially similar municipal ordinance within the previous five years. The director shall not consider data submitted by a qualified data collector that are not accompanied by the certification required under this division.

No person is required to submit any of the data collected pursuant to a plan developed or approved under this section unless submission of the data is otherwise required by law, but a person submitting some data pursuant to such a plan shall submit all data collected pursuant to the plan.

(E) The director shall verify that a person submitting data is a qualified data collector, review all data collected by a qualified data collector, and determine that all components of the plan for the collection of the data were followed. If the director determines that the data were collected by a qualified data collector in accordance with required procedures, the director shall approve the data as credible. The director shall provide the qualified data

collector with written notice informing the qualified data collector as to whether the data have been approved, including the level at which the data qualify as credible data.

(F) The director shall retain all information submitted by a qualified data collector for a period of not less than ten years from the date of receipt. All information submitted is a public record.

Effective Date: 10-21-2003 .

#### **6111.54 Submission of surface water quality data.**

Each state agency in possession of surface water quality data shall submit the data to the environmental protection agency in a format designated by the director of environmental protection. Each such agency shall submit the data to the director at the same time that the agency compiles or summarizes the data for its own use, but at a minimum shall submit the data to the director annually. If the director determines that the data were collected in accordance with the rules adopted under section [6111.51](#) of the Revised Code, the director shall approve the data as credible.

Effective Date: 10-21-2003 .

#### **6111.55 Computerized database or databases composed of all credible data.**

Following the adoption of rules under sections [6111.51](#) and [6111.53](#) of the Revised Code, the director of environmental protection shall establish and maintain a computerized database or databases composed of all credible data in the director's possession and shall make the data available to other agencies and all other interested persons. The data shall be stored in such a manner that they are easily retrieved and analyzed and are available for sharing with other agencies and all other interested persons.

Effective Date: 10-21-2003 .

#### **6111.56 Determining source or sources of water impairment.**

(A) If the source or sources of a pollutant causing an impairment of a water of the state are unknown, the water of the state may be identified and listed under section 303(d) of the Federal Water Pollution Control Act. However, the director of environmental protection shall continue to monitor the water of the state to determine the source or sources of the impairment before a total maximum daily load is established for the water of the state pursuant to that section.

(B) The director shall not include a water of the state on a list established under section 303(d) of the Federal Water Pollution Control Act or establish a total maximum daily load for a water of the state if the failure of the water of the state to comply with an applicable water quality standard results solely from the existence of a naturally occurring condition or conditions.

(C) The director shall establish narrative water quality standards where numerical criteria cannot be established or to supplement numerical criteria.

Effective Date: 10-21-2003 .

#### **6111.561 Development and establishment of total maximum daily load.**

(A) As used in sections 6111.561 to 6111.654 of the Revised Code:

- (1) "NPDES" means national pollutant discharge elimination system.
- (2) "TMDL" means total maximum daily load.

(B) The director of environmental protection shall develop and establish a TMDL for waters of the state where required under section 1313(d) of the Federal Water Pollution Control Act. The director shall establish a TMDL only for pollutants that the administrator of the United States environmental protection agency has identified under section 1314(a)(2) of that act as suitable for such calculation. The director may modify a TMDL subsequent to the

establishment of the TMDL in accordance with division (G) of section 6111.563 of the Revised Code. The development, establishment, or modification of a TMDL is not subject to the rule adoption, amendment, and rescission procedures under Chapters 106., 111., 119., and 121. of the Revised Code. The director shall develop any plans or actions necessary for implementing a TMDL in accordance with this chapter.

The director shall establish each TMDL at a level necessary to achieve the applicable water quality standards for which the water of the state is impaired that accounts for seasonal variations, a margin of safety, and lack of knowledge concerning the relationship between effluent limitations and water quality.

The establishment of a final TMDL by the director is not a final action of the director and does not have the force and effect of law, but may be challenged in accordance with section 6111.564 of the Revised Code.

(C) A TMDL submitted to and approved by the United States environmental protection agency prior to March 24, 2015, is valid and remains in full force and effect as approved. The director may modify such a TMDL, but a modification of the TMDL shall be developed in accordance with sections 6111.562 and 6111.563 of the Revised Code. The TMDL, as established, and any modification of the TMDL, is not subject to the rule adoption, amendment, and rescission procedures of Chapters 106., 111., 119., and 121. of the Revised Code.

Added by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

### **6111.562 Notice and opportunity for input from stakeholders.**

(A)

(1) The director of environmental protection shall provide notice of and opportunity for input from potentially affected dischargers, county soil and water conservation districts, and other stakeholders during the development of a TMDL after March 24, 2015, at each of the following stages of development of a TMDL and plans and actions necessary for TMDL implementation:

(a) The project assessment study plan, including portions of the plan that seek to determine the causes and sources of impairments or threats;

(b) The biological and water quality study report or its equivalent;

(c) The loading analysis plan, including, but not limited to, the proposed modeling approach and the water quality restoration targets, goals, or criteria;

(d) The preliminary modeling results including any management choices, load allocations, wasteload allocations, allowances for margin of safety and future growth, and permit limits necessary to achieve a water quality target, goal, or criterion and the preliminary TMDL implementation plan establishing specific actions, schedules, and monitoring proposed to effectuate a TMDL.

The director shall allow not less than thirty days for input at each stage described in divisions (A)(1)(a) to (d) of this section.

(2) The director shall make available to stakeholders documentation, including, but not limited to, data and modeling that was relied on during each stage of development of a TMDL and plans and actions necessary for TMDL implementation, as described in divisions (A)(1)(a) to (d) of this section. The director also shall make the documentation available on the environmental protection agency's web site, to the extent the director determines it is practical.

(3) The director shall provide at least two opportunities for stakeholder input on a TMDL and the plans and actions necessary for TMDL implementation if the stages described in divisions (A)(1)(a) to (d) of this section have been completed but the TMDL has not been submitted to the United States environmental protection agency for approval prior to the effective date of this section.

As used in this section, "input" means opportunity for comment and, if warranted by the level of interest or nature of the comments, input includes meetings with stakeholders.

(B) In developing wasteload and load allocations in connection with a TMDL, and in evaluating plans and actions necessary for TMDL implementation, the director of environmental protection shall consider and evaluate, at a minimum, all of the following factors:

- (1) The relative contribution of pollutant loading between point sources and nonpoint sources;
- (2) The flow dynamics, including but not limited to, periodic or seasonal flow variations, runoff, groundwater, and hydrologic or channel modifications;
- (3) The degree to which point source reductions would influence attainment of applicable water quality standards for which the water of the state is impaired;
- (4) The degree to which nonpoint source reductions would influence attainment of the applicable water quality standards for which the water of the state is impaired;
- (5) Reasonable assurances that reductions can be implemented;
- (6) The site of the impairment relative to the location of the source;
- (7) The degree to which habitat affects impairment and restoration potential.

(C) Unless inconsistent with the Federal Water Pollution Control Act or this chapter, and in addition to the factors described in division (A) of this section, when developing wasteload and load allocations, pollution control measures to achieve pollutant load reductions, and implementation plans and schedules, the director shall consider and evaluate, at a minimum, all of the following:

- (1) The feasibility of available demonstrated treatment technology to achieve the degree of pollutant treatment removal necessary to attain the point source reduction recommended in the TMDL wasteload allocation;
- (2) Sources of funding available for point and nonpoint sources;
- (3) Alternative approaches and actions for point and nonpoint sources to achieve TMDL-recommended pollutant reductions, agreements between and among point and nonpoint sources to jointly achieve pollutant load reductions, and adaptive management;
- (4) The implementation of the recommended wasteload reductions over multiple NPDES permit renewals to achieve compliance with water quality standards, as appropriate, to mitigate potential economic impacts of the TMDL's recommended load reductions on such sources;
- (5) The estimated economic impact, on a categorical basis, on governmental subdivisions, point sources, agricultural operations, and nonpoint sources;
- (6) Information submitted by indirect dischargers or other stakeholders relating but not limited to cost, economic impact, environmental benefit, and technical feasibility.

Added by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

**6111.563 Official draft.**

(A) Before establishing a final TMDL and plans and actions necessary for TMDL implementation, the director of environmental protection shall prepare an official draft TMDL. The official draft TMDL shall include, at a minimum, both of the following:

- (1) An estimate of the total amount of each pollutant that causes water quality impairment from all sources;
- (2) An estimate of the total amount of pollutants that may be added to the water of the state while still allowing the water of the state to achieve and maintain applicable water quality standards.

(B) The director shall provide all of the following:

(1) Public notice of the official draft TMDL. At a minimum, the director shall send the public notice to all individual NPDES permit holders that discharge into the water of the state to which the official draft TMDL relates, all significant industrial users listed in the permit holders' annual report, and any other stakeholder that has provided input in accordance with section 6111.562 of the Revised Code.

(2) A time period for comment of not less than sixty days on the official draft TMDL;

(3) An opportunity for a public hearing regarding the official draft TMDL if there is significant public interest, as determined by the director.

(C) The director shall specify both of the following in the public notice required under division (B)(1) of this section:

(1) The water of the state to which the official draft TMDL relates;

(2) The time, date, and location of the public hearing, if applicable.

(D) After the time period for comment expires on an official draft TMDL, the director shall prepare and make available a written responsiveness summary of the comments.

(E)

(1) After conclusion of the public comment period, completion of the responsiveness summary under division (D) of this section, completion of any public hearing, and if the director determines it is appropriate to complete the TMDL, the director shall establish a final TMDL.

(2) The director shall modify a TMDL that is successfully challenged under section 6111.564 of the Revised Code and to which no further appeals are available to conform to the final decision of the highest tribunal of competent jurisdiction. The director then shall submit the modified TMDL to the United States environmental protection agency for approval.

(F) When establishing schedules of compliance in NPDES permits necessary to meet TMDL-based limits or conditions, the director shall consider the likelihood of a legal challenge based on comments received during the development of the TMDL or during the public comment period on a draft NPDES permit. The director also shall consider the likely time before an appeal is concluded.

(G) The director may modify an official draft, final, or United States environmental protection agency approved TMDL. A modification, other than a modification consistent with comments received, is subject to the same notice, comment, and public hearing requirements of divisions (B), (C), and (D) of this section that apply to an official draft TMDL and is subject to rules adopted under division (H) of this section. A revised effluent limit, pretreatment limit, or other term or condition based on such a modification may be challenged in accordance with section 6111.564 of the Revised Code.

(H) Not later than December 31, 2018, the director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish both of the following:

(1) Procedures for providing notice to stakeholders;

(2) Criteria for determining significant public interest in TMDL development.

Added by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

### **6111.564 Final TMDL; appeal.**

(A) A final TMDL established by the director of environmental protection or a United States environmental protection agency approved TMDL may be challenged during the appeal of an NPDES permit containing TMDL-based effluent limits, pretreatment limits derived therefrom, or other terms and conditions based on that TMDL before the environmental review appeals commission in accordance with Chapter 3745. of the Revised Code.

(B) In the case of a TMDL-based permit appeal by a publicly owned treatment works, the environmental review appeals commission shall join as parties to the appeal, subject to a right of voluntary dismissal, all significant industrial users listed in those NPDES permit holders' annual pretreatment program reports who are known to discharge a significant amount of a pollutant limited by the TMDL into the publicly owned treatment works.

(C)

(1) In the case of an NPDES permit issued in draft or final form to a publicly owned treatment works that contains TMDL-based effluent limits, pretreatment limits derived therefrom, or other terms and conditions based on that TMDL, the director shall notify the NPDES permit holder and all significant industrial users listed in that NPDES permit holder's annual pretreatment program report that are known to discharge a significant amount of a pollutant recommended to be limited by the TMDL and for whom a new or modified pretreatment limit may be required.

(2) The director shall include in the notice, at a minimum, both of the following:

(a) A statement that the TMDL-based effluent limits or other terms and conditions based on the TMDL may result in more stringent direct or indirect discharge limits;

(b) A statement that notifies the significant industrial users that an appeal of the NPDES permit may be filed by a significant industrial user with the environmental review appeals commission in accordance with Chapter 3745. of the Revised Code.

(D)

(1) A direct or indirect discharger pursuing an appeal or an indirect discharger joined to an appeal shall not be dismissed from the proceeding on grounds that the matter is not ripe for review.

(2) A challenge of TMDL based effluent limits, pretreatment limits derived therefrom, or other terms and conditions based on that +TIDAL during the appeal of an NPDES permit shall not be dismissed on grounds that the matter is not ripe for review.

Added by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

### **6111.60 Issuance of NPDES permits.**

Before issuing a national pollutant discharge elimination system permit for discharges from a publicly owned sewerage system, requiring and approving a long-term control plan for wet weather discharges from a publicly owned sewerage system, or enforcing the Federal Water Pollution Control Act as applied to publicly owned sewerage systems, the director of environmental protection, to the extent allowable under that act and regulations adopted under that act, shall consider all of the following, as applicable, notwithstanding any other provisions of this chapter to the contrary:

(A) Limitations on the ability of an applicant for a permit or of a permittee to pay for or to secure money to pay for a required project;

(B) An evaluation of the effectiveness and cost of a long-term control plan;

(C) An evaluation of the effectiveness and cost of specific wet weather flow control technologies;

(D) An evaluation of the impact of a long-term control plan on the environment as a whole and of the promotion of alternative control options that will minimize the impact on the environment;

(E) Reducing the economic impacts on an applicant for a permit or on a permittee, other state and local government entities, and residents of the state;

(F) Allowing for reasonable flexibility in the implementation of a long-term control plan when the plan would impose a disproportionate financial hardship compared to its environmental benefits;

(G) Giving preference, when proposed by an applicant for a permit or by a permittee, to control options that comply with the presumption approach performance criteria established in the combined sewer overflow control policy adopted under 33 U.S.C. 1342 and that demonstrate significant pollution reduction rather than mandating specific designs;

(H) Allowing adequate time and flexibility for implementation of the schedule specified in the long-term control plan when justified by a clear environmental benefit;

(I) Factors specified in the combined sewer overflow control policy adopted under 33 U.S.C. 1342 that may ease the financial burdens of implementing a long-term control plan, including, but not limited to, small publicly owned sewerage system considerations, the attainability of water quality standards, and the development of wet weather standards;

(J) All other requirements imposed on an applicant for a permit or on a permittee to undertake capital improvements under the Federal Water Pollution Control Act, the Safe Drinking Water Act as defined in section [6109.01](#) of the Revised Code, this chapter, Chapter 6109. of the Revised Code, or rules adopted under either chapter.

Added by 129th General Assembly File No.32, SB 22, §1, eff. 9/30/2011.

### **6111.99 Penalties.**

(A) Whoever purposely violates section [6111.04](#), [6111.042](#), [6111.05](#), or division (A) or (C) of section [6111.07](#) of the Revised Code is guilty of a felony and shall be fined not more than twenty-five thousand dollars or imprisoned not more than four years, or both. Each day of violation is a separate offense.

(B) Whoever knowingly violates section [6111.04](#), [6111.042](#), [6111.045](#), [6111.047](#), [6111.05](#), [6111.45](#), or division (A) or (C) of section [6111.07](#) of the Revised Code is guilty of a misdemeanor and shall be fined not more than ten thousand dollars or imprisoned not more than one year, or both. Each day of violation is a separate offense.

(C) Whoever violates section [6111.46](#) of the Revised Code shall be fined not more than five hundred dollars.

(D)

Whoever violates section [6111.42](#) of the Revised Code shall be fined not more than one hundred dollars for a first offense; for each subsequent offense, the person shall be fined not more than one hundred fifty dollars.

(E) Whoever violates section [6111.44](#) of the Revised Code shall be fined not more than ten thousand dollars. Each day of violation is a separate offense.

(F) If a person is convicted of or pleads guilty to a violation of any section of this chapter, in addition to the financial sanctions authorized by this chapter or section [2929.18](#) or [2929.28](#) or any other section of the Revised Code, the court imposing the sentence on the person may order the person to reimburse the state agency or a political subdivision for any actual costs that it incurred in responding to the violation, including the cost of restoring affected aquatic resources or otherwise compensating for adverse impact to aquatic resources directly caused by the violation, but not including the costs of prosecution.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Effective Date: 05-28-1992 .