# OHIO'S WASTEWATER DISCHARGE PERMIT PROGRAM

Ohio Environmental Protection Agency

(Prepared for program approval pursuant to Section 402(b) of the United States Public Law 92-500)

TABLE OF CONTENTS

1.0 Introduction

2.0 State Program

2.1 Description of State Responsibilities

2.2 Organization and Structure of the Ohio EPA

2.2.1 Executive Branch/State of Ohio
2.2.2 Organization Chart of the Ohio EPA
2.2.3 Ohio EPA District Offices

2.3 Permit Processing

2.3.1 Permit Program Procedures
2.3.2 Priority System for Permit Issuance
2.3.3 Categories of Point Sources Not Required to Have NPDES Discharge Permits
2.3.4 Public Notices and Participation Procedures
2.3.5 Monitoring, Reporting and Recording Procedures
2.3.6 Outstanding State Permits

2.4 Manpower and Funding Support

2.5 Forms Other Than Uniform National Forms for Use in NPDES to Be Used by Ohio EPA

2.6 Environmental Board of Review Membership

2.7 Disposal of Pollutants by Subsurface Injection into Deep Disposal Wells

3.0 Appendix

4.0 Attorney General's Statement

## 1.0 Introduction

This document is the application submitted by Governor John J. Gilligan for authority to administer the National Pollution Discharge Elimination System (NPDES) in the State of Ohio. The application is made to the Administrator of the United States Environmental Protection Agency (U.S. EPA) through the Regional Administrator, Region V, U.S. EPA. When the application is approved, the Ohio Environmental Protection Agency (Ohio EPA) will be solely responsible for issuing NPDES permits to almost all point source dischargers to waters of the state, the exception being federal facilities discharging to waters of the state.

The NPDES program was created by the Federal Water Pollution Control Act, 1972, FWPCA, 1972. Its final goal is to eliminate the discharge of pollutants into navigable waters by 1985. The mechanism for controlling point source dischargers in order to meet this goal is the NPDES discharge permit. After December 31, 1974, this permit will be required of every point source discharger as defined by Ohio EPA regulations EP-31-02, Appendix 3.4. When an applicant receives an NPDES discharge permit, he is given the conditions under which he must operate in order to discharge to waters of the state. A permit will specify the amount of pollutants that may be discharged, the monitoring and reporting that must be made about the discharge, and, if necessary, a schedule for constructing the facilities necessary to control the pollutants in the discharge. Through the renewal process, every point source will be taken through a number of steps that are necessary in order to meet the 1985 goal.

Section 402(b) of the FWPCA, 1972, allows the Administrator of U.S. EPA to delegate the authority to administer the NPDES program. Before the authority can be delegated, the Ohio EPA must demonstrate that it meets the necessary requirements. These requirements are contained in Section 402(b) of the FWPCA, 1972, and in regulations 40 CFR 124 *et. seq.*

This document is written to meet these legal requirements. It is composed of two sections. One section is the program description. This section details how the Ohio EPA will administer the NPDES program. It includes descriptions of the Ohio EPA organization, the permit procedures, and resources devoted to the permit program. Two important parts of this section are the Ohio NPDES regulations and the Memorandum of Agreement between U.S. EPA and Ohio EPA. The regulations detail how the NPDES permits will be written. The Memorandum of Agreement details the responsibilities of the Ohio EPA and U.S. EPA in the NPDES program.

The second section of the document is the Attorney General's statement. This statement certifies the Ohio EPA as having sufficient legal authority and satisfactory regulations in order to administer the NPDES program within federal requirements. It further certifies that no person issuing NPDES permits is subject to a conflict of interest as defined by federal regulations.

## 2.0 State Program

### 2.1 Description of State Responsibilities

Basic authority for water pollution control in Ohio is Ohio Revised Code Chapter 6111, as amended. Chapter 6111 was amended in 1972 and again in 1973 to institute a discharge permit system compatible with the National Pollutant Discharge Elimination System (NPDES) initiated by the 92nd Federal Congress through the enactment of the Federal Water Pollution Control Act of 1972 (PL 92-500) for all persons discharging wastes into the surface or ground waters of the state, or onto the ground.

Ohio Revised Code Section 6111.04 now provides that no person shall place any pollutant, i.e., sewage, industrial waste, or other waste, into any waters of the state, or place such matter in a location where it causes such pollution, unless he holds a valid and unexpired permit from the Ohio Environmental Protection Agency (Ohio EPA) or unless an application for renewal is pending.

Revised Code Section 6111.03 (J) further provides that all discharge permits issued by the Ohio EPA must comply with all requirements of the Federal Water Pollution Control Act of 1972 and regulations adopted thereunder. In addition, no permit shall be issued if the Administrator of the U.S. EPA objects in writing to the issuance, if the Secretary of the Army determines in writing that anchorage or navigation would be substantially impaired by the proposed discharge, or if a discharge of radiological chemical, biological warfare agent or high-level radioactive waste is proposed. All persons discharging or proposing to discharge sewage, industrial waste, or other waste into surface waters of the state will be issued a discharge permit pursuant to PL 92-500, Chapter 6111, and the procedural and substantive rules of the Ohio EPA. Persons injecting into wells any substance that may pollute waters of the state must apply to the Ohio EPA for an NPDES permit. In addition, persons injecting water, gas, or other material into a well to facilitate the production of oil or gas or for disposal purposes must obtain a permit from the Ohio Department of Natural Resources in compliance with Ohio Revised Code Section 1509.081.

NPDES permits issued by the Ohio EPA for all discharges will contain appropriate effluent limitations and restrictions and schedules of compliance, and other conditions deemed necessary by the Ohio EPA to give adequate protection to waters of the state. No permit will be valid for more than five years. Monitoring and other reporting requirements will be included in the permit whenever necessary. Mixing zones are already provided in the Ohio Water Quality Standards, EP-1. (Appendix 3.4)

The Ohio EPA and the U.S. EPA, Region V, have arrived at a Memorandum of Agreement, which outlines the procedures by which Ohio will implement the 40 CFR 124 guidelines of U.S. EPA. This Memorandum will be signed by the Director of the Ohio EPA and constitutes an official part of this program submittal. The Agreement contains the following procedures which the Ohio EPA will pursue as part of its implementation of the NPDES permit program:

a. Receipt and use of Federal data
b. Transmission of data to U.S. EPA Regional Administrator
c. Public access to information
d. Draft permit objections
e. Schedules of Compliance in issued NPDES permits
f. Transmission to U.S. EPA Regional Administrator of proposed and issued NPDES permits
g. Monitoring
h. Modification, Suspension, and Revocation of NPDES permits
i. Enforcement
j. Control of disposal of pollutants into wells

Ohio law authorizes the Ohio EPA to adopt regulations to carry out the functions and purposes of the law. The Director has adopted regulations entitled "Chapter EP-31, Ohio NPDES Discharge Permits", which set forth provisions governing NPDES discharge permits. These regulations will include:

1. A requirement that all persons discharging wastes into waters of the state shall apply for NPDES permits from the Ohio EPA
2. Exceptions
3. Criteria for issuing permits
4. Description of compliance schedules
5. Description of conditions that will be included in permits
6. Provisions for transfer, revocation, termination, and modification of permits

Procedures whereby permits are granted and denied, as well as appeal procedures, are set forth in Ohio Revised Code Chapter 119, the Administrative Procedure Act; in Chapter EP-40, Procedural Rules of the Ohio EPA; in O.R.C. Chapter 3745; and the Rules of the Environmental Board of Review.

In addition to the state responsibilities for the Ohio Wastewater Discharge Permit System described above, the Ohio EPA has submitted for approval by the U.S. EPA a continuing planning process and water quality standards, as required by Section 303 of PL 92-500.

The Ohio Attorney General has prepared an "Attorney General's Statement" as required by Section 402(b) of PL 92-500 outlining the authority of the State of Ohio to carry out the NPDES Wastewater Discharge Permit Program.

## 2.2 Organization and Structure of the Ohio EPA

The Ohio Environmental Protection Agency is a cabinet-level department whose Director is appointed by the Governor with consent of the Senate. It began operations on October 23, 1972, with personnel transferred from the Ohio Water Pollution Control Board, Ohio Air Pollution Control Board, Ohio Department of Natural Resources and the Ohio Department of Health. Since October, the Agency has grown and its statutory authority revised to meet the requirements of the NPDES program. Under existing law, the Ohio Environmental Protection Agency is responsible for all environmental protection programs of the state. It has sole state authority to administer the NPDES program.

To carry out the Agency's environmental programs, the organization has a functional structure. Most of the burden for the permit program is borne by the Divisions of Surveillance and Waste Management and Engineering. Other important functions are performed by the Divisions of Planning, Data and Systems, and Litigation and NPDES Permit Records. The organization chart, 2.2.2, shows the relationships of the various Divisions.

### Division of Waste Management and Engineering

The Division operates through four district offices with central office coordination. Personnel of this Division are responsible for determining the time needed for compliance with permit effluent limitations. When a plan is developed for dealing with the wastewater discharge, this Division is responsible for plan approval. Once the facility is operating, they are responsible for inspecting the facilities to insure proper operation and maintenance. The district offices have primary responsibility for establishing the compliance schedules, approving plans, and inspecting facilities. The central office coordinates district operations and reviews proposed permits for consistency with policy.

### Division of Surveillance

This Division operates through four district offices with central office coordination and technical support. The determination of allowable levels of pollutant discharge from a point source is one of the Division's responsibilities. Through a self-monitoring and field sampling program, the Division polices compliance with permit effluent limitations. To measure the effectiveness of the permit program, a water quality sampling program is carried out. The district offices are primarily responsible for determining permit conditions and following up on compliance monitoring. The central office develops the methods for surveillance, coordinates district activities and supports district operations.

### Division of Planning

This Division's primary concern is with the long-term effects of a permit and consistency of permits with water quality basin plans.

Division of Data and Systems

This Division supplies the data processing support needed to monitor compliance with permit conditions. The support requires the entry of application data and permit values into the computer system as well as entry of effluent reporting data and compliance reporting data. This Division will supply data directly to the General Point Source File (GPSF) of U.S. EPA.

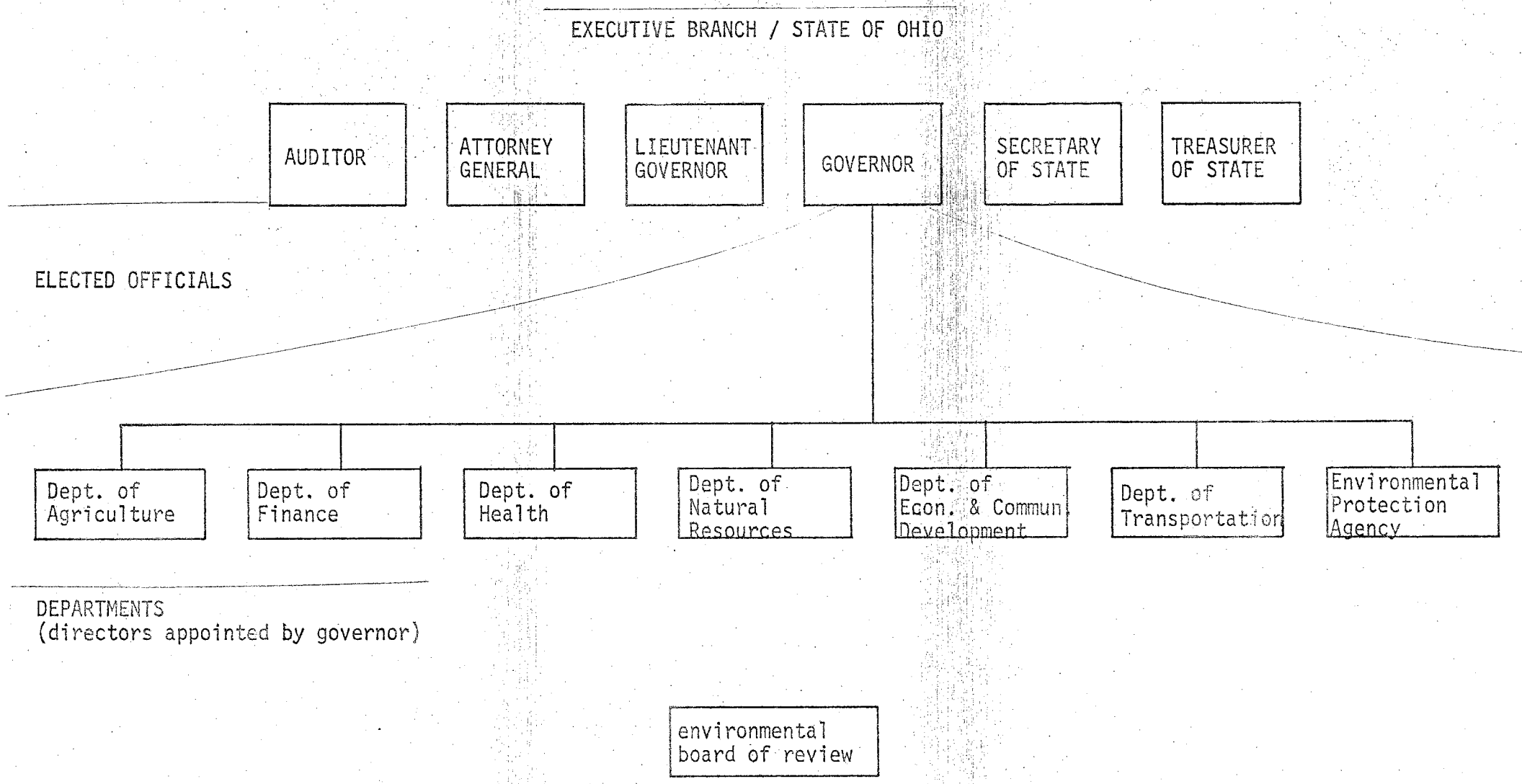
Division of Litigation and NPDES Permit Records

This Division is responsible for the activities necessary to provide the required public notice, arrange the public meetings, collect the comments on proposed permits, and issue proposed and final permits.

Once a permit is effective, the Division will be responsible for receiving event reports required by the permit compliance schedule and monitoring the official recrods. The district operations are the initial contact for NPDES applications ans are responsible for logging permits into the processing system. The central office coordinates district operations as well as keeps records on all public and adjudicatory hearings.

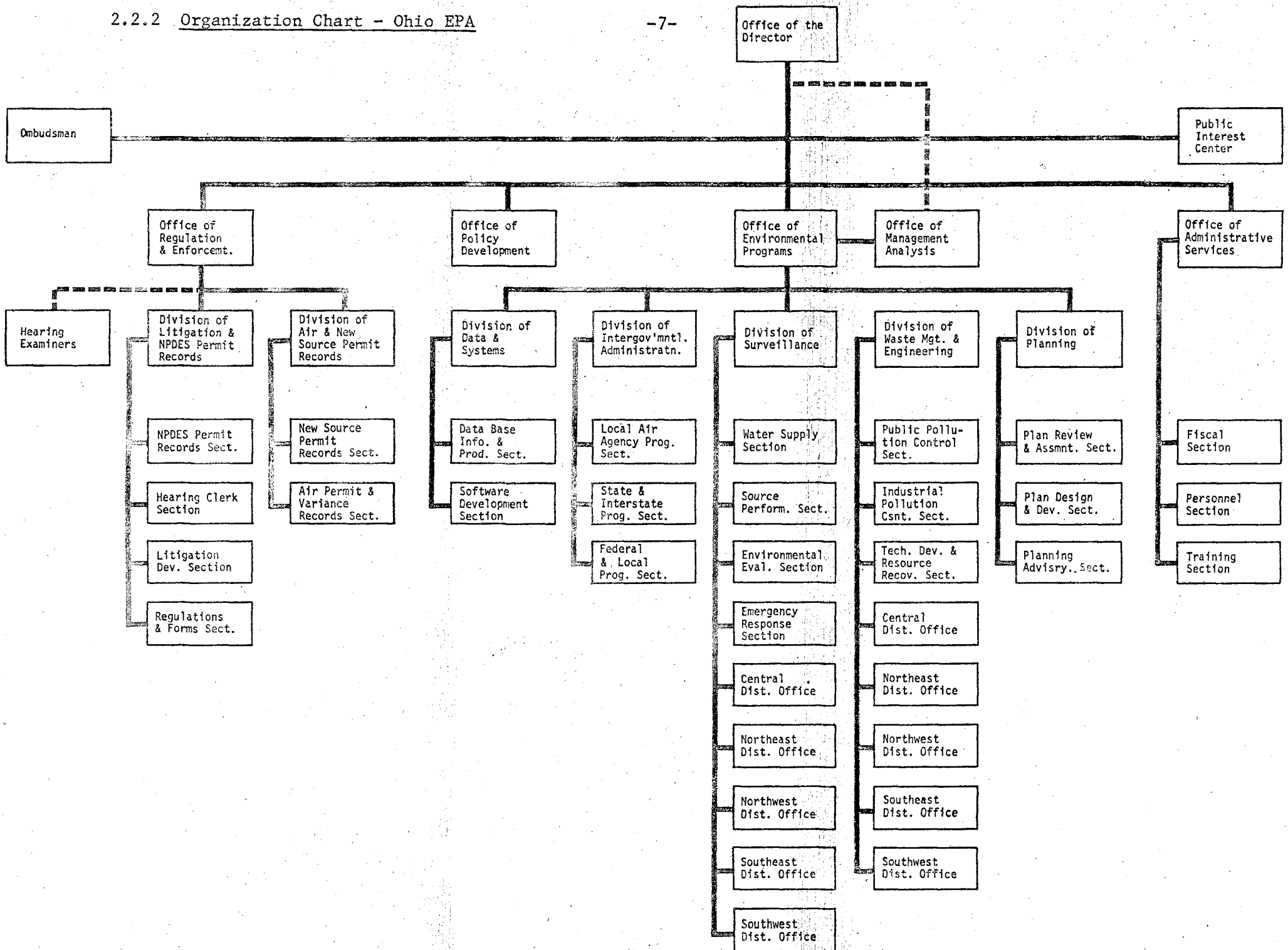
Director

The Director or his designated representative will issue each NPDES permit. The Director is legally responsible for the content of all permits.


EXECUTIVE BRANCH / STATE OF OHIO
AUDITOR
ATTORNEY GENERAL
LIEUTENANT GOVERNOR
GOVERNOR
SECRETARY OF STATE
TREASURER OF STATE
ELECTED OFFICIALS
Dept. of Agriculture
Dept. of Finance
Dept. of Health
Dept. of Natural Resources
Dept. of Econ. & Commun Development
Dept. of Transportation
Environmental Protection Agency
DEPARTMENTS
(directors appointed by governor)
environmental board of review
SEMI-INDEPENDANT AGENCY
(members appointed by governor for 6 year terms)

## 2.2.2 Organization Chart - Ohio EPA





OhioEPA

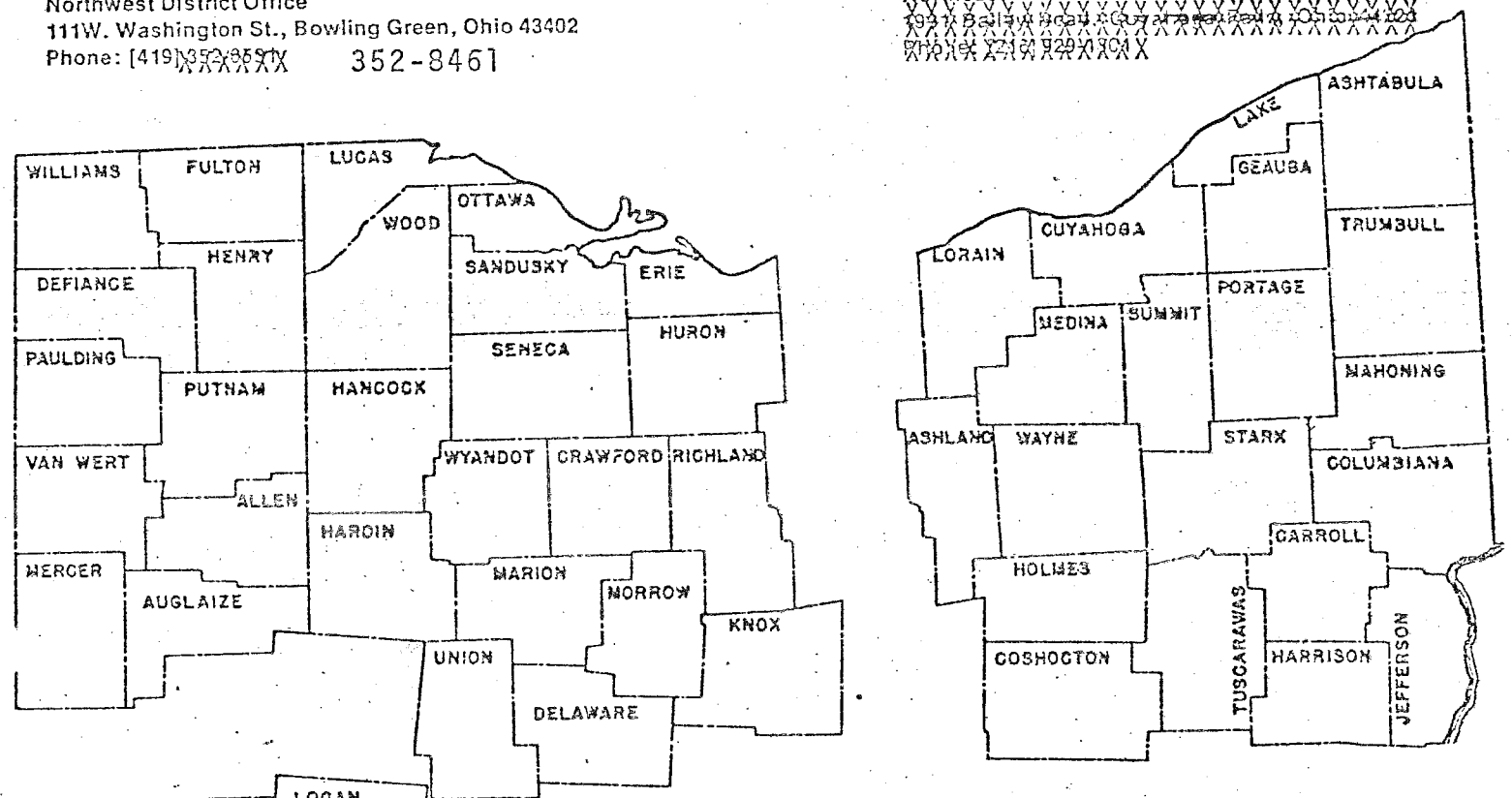
THE STATE OF OHIO
Environmental Protection Agency
Districts & District Offices

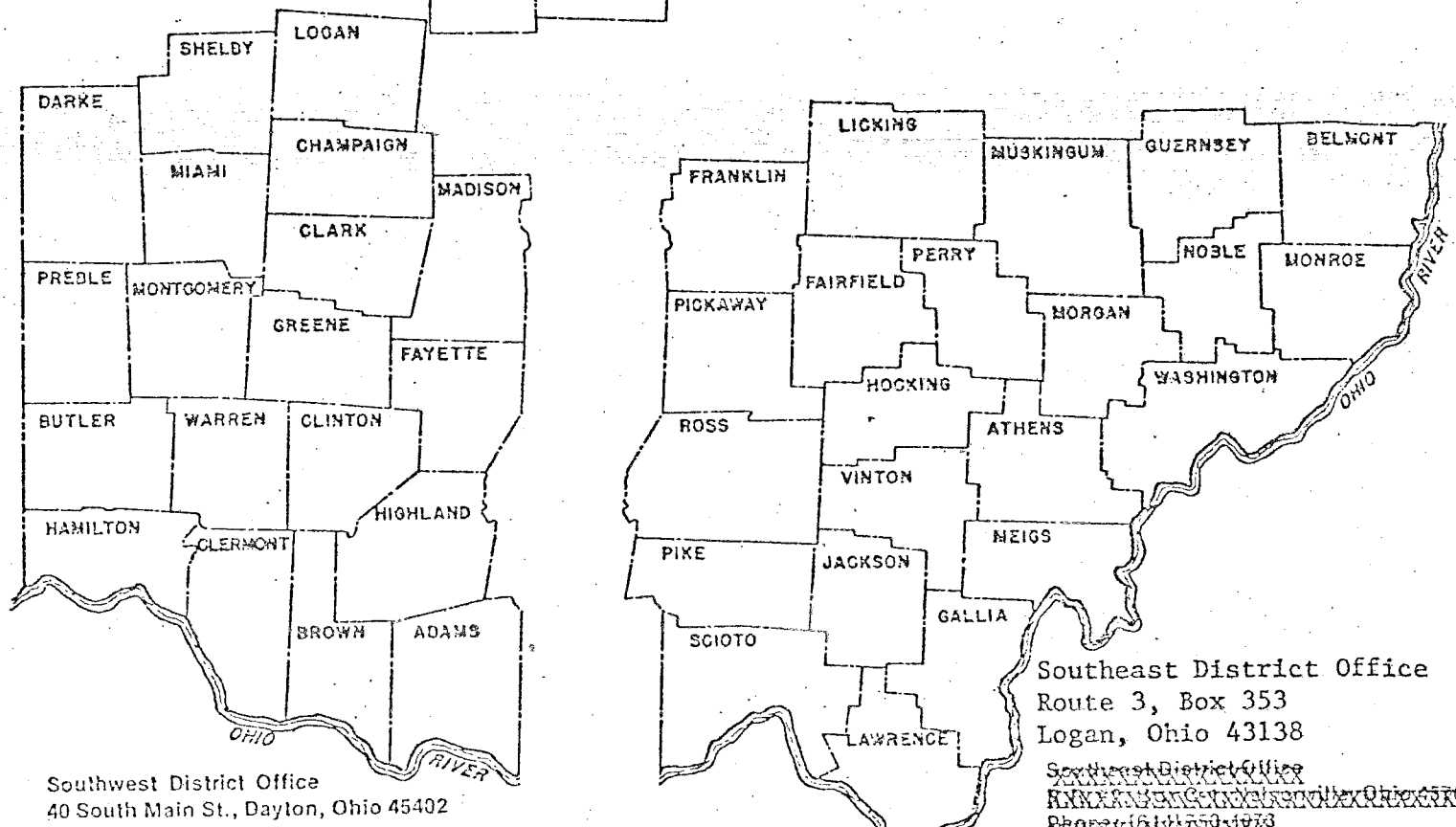
2.2.3

NORTHEAST DISTRICT OFFICE
2110 E. Aurora Road
Twinsburg, Ohio 44087
Phone (216) 425-9171

Northwest District Office
111W. Washington St., Bowling Green, Ohio 43402
Phone: [419] 352-8461

Northeast District Office
1991 Bailey Road, Cuyahoga Falls, Ohio 44221
Phone: (216) 929-2014




Southwest District Office
40 South Main St., Dayton, Ohio 45402
Phone: [513] 461-4670

Southeast District Office
Route 3, Box 353
Logan, Ohio 43138
Phone: (614) 385-8501

Five District Operation

After January, 1974, the Ohio EPA will reorganize its district operations to meet the requirements of a Governor's executive order on uniform districting of state agencies. The attached map indicates the new districts. For those Divisions with district offices, there will be five, rather than four, district operations.

Northwest District Office
111 W. Washington Street
Bowling Green, Ohio 43402
Phone: (419) 352-8461



OHIO EPA

Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Phone: (216) 425-9171

Southwest District Office
40 South Main Street
Dayton, Ohio 45402
Phone: (513) 461-4670

Southeast District Office
Route 3, Box 353
Logan, Ohio 43138
Phone: (614) 385-8501

Central District Office
Columbus, Ohio

## 2.3 Permit Processing

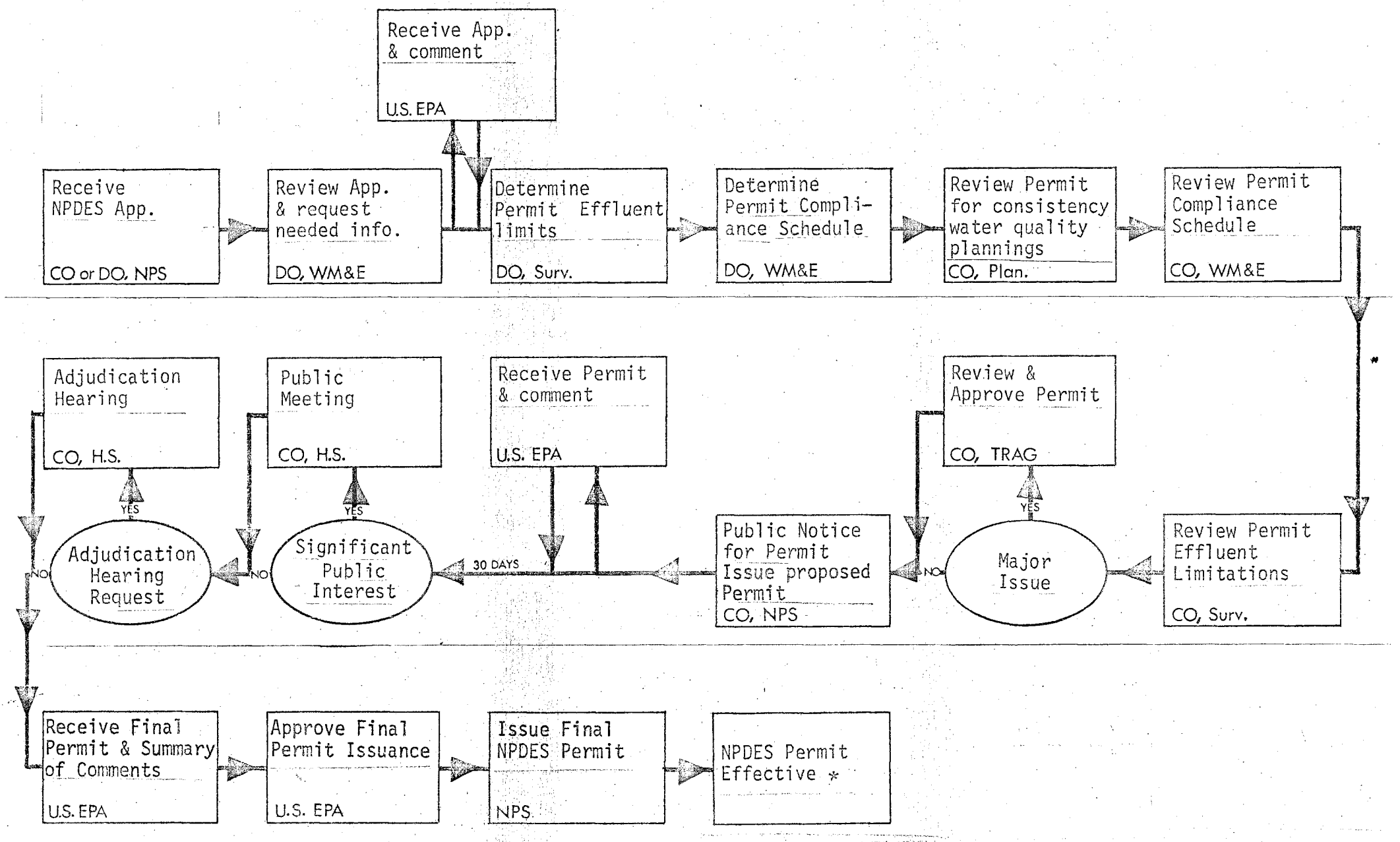
### 2.3.1 Permit Program Procedures

Procedures for processing permits call upon the skills of several different divisions. Each permit application is received by the district office representatives of the NPDES Permit Records Section of the Division of Litigation and NPDES Permit Records for logging into the permit monitoring system. In the district office, the Division of Surveillance is responsible for the effluent limits and the monitoring requirements. District office personnel in the Division of Waste Management and Engineering are responsible for determining application completeness, drafting the permit using Division of Surveillance input, determining compliance schedules and other special conditions. Central Office, Divisions of Surveillance and Waste Management and Engineering, reviews the draft permit for conformance with established policy and regulation. The Division of Planning reviews the permits for consistency with existing water quality plans. In cases involving a major source or a special problem, the permit will be forwarded to the Technical Regulatory Advisory Group for approval or resolution. When the permit has been completed, the Litigation and NPDES Permit Records Division is responsible for issuing the proposed permit and complying with public notice and public participation requirements. If the proposed permit is sent to an adjudicatory hearing, the Hearing Examiners section of the Office of Regulation and Enforcement will hear the case and make a recommendation to the Director. Based upon this recommendation and other considerations, the Director will approve issuance of a final NPDES permit by the Litigation and NPDES Permit Records Division.

When a permit is effective, the Division of Surveillance is responsible for monitoring the entity's compliance with the effluent limitations using a self-monitoring and field sampling program. The Division of Waste Management and Engineering is responsible for monitoring completion of construction schedules and proper operation and maintenance of waste treatment facilities. Providing the needed information for this compliance monitoring is the responsibility of the Division of Data and Systems. The Water Permit Information System developed by this Division will process the self-monitoring reports and compliance reports submitted by the permittee. Data received through these reports is compared with permit requirements and violations noted. In cases of violations, the Litigation Development section of the Division of Litigation and NPDES Permit Records, with the support of the Division of Surveillance and/or the Division of Waste Management and Engineering, is responsible for taking the appropriate action.

This abbreviated description gives the general outline for the attached flow chart of the NPDES permits.

# SIMPLIFIED NPDES PERMIT PROCEDURES




*Ohio EPA will send two copies of issued permit to U.S. EPA.

ABBREVIATIONS ON BACK

## Simplified NPDES Permit Procedures

### List of Abbreviations

| | |
|---|---|
| C.O. | Central Office |
| D.O. | District Office |
| WM&E | Division of Waste Management and Engineering |
| Surv. | Division of Surveillance |
| Plan. | Division of Planning |
| NPS | NPDES Permit Records Section, Division of Litigation and NPDES Permit Records |
| H.S. | Hearing Section, Division of Litigation and NPDES Permit Records |
| Director | Director of the Ohio EPA |
| TRAG | Technical Regulatory Advisory Group |
| U.S. EPA | Region V, U.S. EPA |
| EBR | Environmental Board of Review |

## 2.3.2 Priority System for Permit Issuance

### General

The Ohio EPA will establish an implementation schedule to process all wastewater discharge permits within the time period specified in Public Law 92-500. It is the Agency's intention that permits will be processed and issued for point source discharges to the surface waters of the state or to deep-disposal wells by December, 1974. The number of permits to be processed during the available time is approximately 2700. This will require a processing rate on the average of 200 permits per month.

### Basis of Priority for Issuance

The Ohio EPA proposes to give priority to the issuance of permits based upon the following priority groupings.

1. Major dischargers
2. Dischargers to water quality segments in priority river basins (Great Miami, Maumee, Scioto, and Cuyahoga) and Lake Erie
3. Dischargers to effluent limited segments in priority basins
4. Dischargers to water quality segments in non-priority basins
5. Dischargers to effluent limited segments in non-priority basins

Some flexibility in the order of permit processing will be necessary because of delays caused by the need for public hearings, need for clarification of application data and other unavoidable circumstances. The Agency will make every effort to adhere to the proposed priority system.

### Major Dischargers

The Ohio EPA and U.S. EPA have jointly prepared a "major industrial dischargers" list which will form the largest part of the first priority group.

The Ohio EPA will issue permits to approximately 127 major municipal dischargers by June, 1974. Scheduled for completion by June, 1974 are all major dischargers in priority basins on the "major dischargers list" developed by Ohio EPA and U.S. EPA. Also scheduled for completion by June are all municipalities which received federal funding in fiscal 1972 and 1973 and all municipalities high on the priority list for funding in fiscal 1974.

### Dischargers in Priority Basins

The Ohio EPA intends to complete Section 303(e) basin plans for the Maumee, Scioto, Great Miami and Cuyahoga basins by June, 1974. Permits for major dischargers in those basins will be drafted by that time according to load allocations assigned as a result of reductions found through the 303 planning to be needed to meet water quality standards. To the degree possible, permits will be issued to dischargers to water quality segments in the priority basins before permits are issued to dischargers to effluent limited segments.

Dischargers in Non-priority Basins

Permits for dischargers outside the priority basins will be processed in general after major dischargers and dischargers to the priority basins. The order of priority within this category will be (1) municipal and industrial dischargers to water quality segments, (2) municipal and industrial dischargers to effluent limited segments, and (3) semi-public dischargers.

Major Discharger Priority

Within the first priority groupings of major dischargers, the following priority for issuance will be adhered to within the limitation of data availability.

Basis of Priority for Issuance

Municipal Permits

I. Major dischargers to water quality segments in priority river basins (Great Miami, Maumee, Scioto and Cuyahoga) and Lake Erie from Rocky River to the Chagrin River, Ohio River, Cincinnati area.

Akron
Archbold
Bedford
Bedford Heights
Bellfontaine
Brecksville (Cuyahoga Co., S.D. #13)
Bryan
Cleveland Easterly
Cleveland Southerly
Cleveland Westerly
Chillicothe (Manor, Plyles Lane, Renick)
Circleville
Columbus Jackson Pike
Columbus Southerly
Cuyahoga Co., S.D. #6
Dayton
Delaware
Delphos
Englewood
Euclid
Fairborn
Fairfield
Findlay
Galion
Greenville
Grove City
Hamilton
Hamilton Co., MSD, Little Miami
Hamilton Co., MSD, Mill Creek
Hamilton Co., MSD, Muddy Creek
Jackson
Kent
Lima
MCD Franklin Area
Maple Heights
Marion
Miamisburg
Middletown
Montgomery Co., Moraine #1
Napoleon
Oxford
Perrysburg
Ravenna
Reynoldsburg
St. Mary's
Solon
Springfield
Summit Co., S.D. #15
Sylvania
Toledo (Barrington Woods & Bay View)
Troy (Miami & NE)
Twinsburg
Urbana
Van Wert
Vandalia
Washington Court House
West Carrollton
Willoughby Eastlake

II. Major dischargers to effluent limited segments in priority basins.

Defiance
Montpelier
Piqua
Sidney

III. Major dischargers to water quality segments in non-priority basins.

Alliance
Amherst
Ashland
Avon Lake

Barberton
Bellevue
Berea
Bowling Green
Brookpark
Bucyrus
Cambridge
Campbell
Canton
Celina
Conneaut
Coshocton
Elyria
Fostoria
Fremont
Girard
Green Co., Little Miami Plant
Hamilton Co., MSD, Sycamore Plant
Lake County S.D. #1 (Madison Plant)
Lake County Mentor S.D. (Formerly WMSD)
Lakewood
Lancaster
Lorain
Mt. Vernon
Mansfield
Massillon
Medina Co., S.D. #100 Brunswick
Medina Co., S.D. #500
(Formerly Medina)
Middleburg Heights
Montgomery Co. Beaver Creek #3
Montgomery Co. Sugar Creek Plant
Newark
Niles
North Olmsted
Norwalk
Orrville
Painesville
Port Clinton
Salem
Sandusky
Shelby
Struthers
Tiffin
Upper Sandusky
Wadsworth
Warren
Wilmington
Wooster
Xenia
Xenia, Ford Road
Youngstown

IV. Major dischargers to effluent limited segments in non-priority basins.

Athens
Belmont Co. Sew. Auth. #1
Dover
East Liverpool
Ironton
Lebanon
Marietta
New Philadelphia
Portsmouth
Steubenville
Urichsville
Zanesville

Industrial Permits

I. Major dischargers to water quality segments in priority river basins (Great Miami, Maumee, Scioto and Cuyahoga) and Lake Erie from Rocky River to the Chagrin River, Ohio River, Cincinnati area.

| | |
|---|---|
| Allied Chemical Corp. | OX2-2-000445 |
| Alloy & Chemicals | OX2-2-000017 |
| A.O. Smith | OYE-2-000694 |
| ARMCO Steel Corp. | OYE-2-000589 |
| ARMCO Steel Corp. | OYE-2-000590 |
| Ashland Oil Co. | OX5-2-710287 |
| B.F. Goodrich Co. | OYD-2-000403 |
| Campbell Soup Co. | OX5-2-710467 |
| Cincinnati Oil & Gas | |
| Beckjord Station | OYE-2-000540 |
| Miami Fort Station | OYE-2-000541 |
| West End Station | OYE-2-000542 |
| Container Corp. of America | OYD-2-000440 |
| Crown Zellerbach | OYD-2-000323 |
| Dayton Power & Light | |
| Hutching Station | OYE-2-000047 |
| Stewart Station | OYE-2-000131 |
| Tait Station | OYE-2-000115 |
| E.I. du Pont | OX2-2-000344 |
| E.I. du Pont | OYD-2-000567 |
| Firestone | OYD-2-000940 |
| General Electric | OYE-2-000705 |
| Goodyear | OX2-2-000113 |
| Gulf Oil Co. | OX5-2-710243 |
| Harshaw Chemical | OX2-2-000256 |
| Hayes Albion Corp. | OX5-2-710469 |
| Interlake Steel | OX5-2-710274 |
| Johns-Manville | OX5-2-710110 |
| Jones-Laughlin Steel | OX2-2-000303 |
| Libby-McNeil-Libby | OX5-2-735001 |
| Libby-Owens Ford | OX5-2-710039 |
| Mead Corp. | OYD-2-000200 |
| Mobil Oil Corp., Ind. Chem. Div. | OYE-2-000108 |
| Oxford Paper | OYE-2-000521 |
| PPG Industries, Inc. | OYD-2-000116 |
| Republic Steel | OX2-2-000328 |
| River Smelting & Refining | OX2-2-000037 |
| Sorg Paper | OYE-2-000443 |
| Standard Oil Co. | OX5-2-710274 |
| Sun Oil Co. | OX5-2-710234 |
| U.S. Plywood-Champion Paper Co. | OYE-2-000601 |
| U.S. Steel Corp.-Central Furnace | OX2-2-000607 |
| U.S. Steel Corp.-Cuyahoga Works | OX2-2-000609 |
| Vistron | OX5-2-710067 |

II. Major dischargers to effluent limited segments in priority river basins.

| | |
|---|---|
| GMC Foundry | OX5-2-710119 |

III. Major dischargers to water quality segments in non-priority basins.

| | |
|---|---|
| Brush Beryllium | OX5-2-710051 |
| Central Soya | OX2-2-000392 |
| Chase Bag | OX2-2-000143 |
| Cleveland Electric Illum. Co. | |
| Ashtabula | OX2-2-000355 |
| Avon Lake | OX2-2-000354 |
| Cleveland | OX2-2-000357 |
| Willoughby | OX2-2-000356 |
| Columbus-Southern Elec. Co. | |
| Conesville Station | OYD-2-000383 |
| Copperweld Steel | OYJ-2-000303 |
| Detrex Chemical, Inc. | OX2-2-000287 |
| Diamond Shamrock | OX2-2-000240 |
| Dover Chemical | OYD-2-000747 |
| Ford Motor Co. | OX2-2-000370 |
| General Electric Co. | |
| Mahoning Glass Co. | OYJ-2-000307 |
| Niles Glass Co. | OYJ-2-000308 |
| General Tire & Rubber Co. | OX2-3-000109 |
| Glycon Chemical | OX2-2-000104 |
| GMC, H.B. Division | OX2-2-000092 |
| Harshaw Chemical | OX2-2-000232 |
| IRC Fiber Corp. | OX2-2-000349 |
| New Jersey Zinc | OX2-2-000172 |
| Norfolk & Western R.R. | OX2-2-000442 |
| North American Rockwell | OYJ-2-000309 |
| Ohio Edison Co. | |
| Niles Plant | OYJ-2-000410 |
| Olin Corp. | OX2-2-000401 |
| Reactive Metals, Inc. | |
| Metal Reduction Plant | OX2-2-000156 |
| Sodium & Chlorine Plant | OX2-2-000157 |
| Republic Steel | |
| Niles Plant | OYJ-2-000315 |
| Warren Plant | OYJ-2-000316 |
| Youngstown Plant | OYJ-2-000317 |
| Republic Steel | OYD-2-000692 |
| Sherwin Williams | OX2-2-000205 |
| Stone Container | OYD-2-000431 |
| Toledo Edison | |
| Bayshore Station | OX5-2-710265 |
| Union Camp Corp. | OYD-2-000737 |
| U.S. Steel Corp. | OYJ-2-000622 |
| Vulcan Materials | OX2-3-000391 |
| Wheeling-Pittsburgh Steel | OYJ-2-000327 |

| | |
|---|---|
| Youngstown Sheet & Tube Co. | |
| Brier Hill Plant | OYJ-2-000320 |
| Campbell-Struthers Works | OYJ-2-000321 40 |

IV. Major dischargers to effluent limited non-priority basins.

| | |
|---|---|
| Allied Chemical | |
| Agricultural Div. | OYD-2-000863 1 |
| Semet Solvay Div., Coke Plant | OYD-2-000819 |
| Tar Plant | OYD-2-000816 |
| ARMCO Steel | OYD-2-000686 |
| Bechtel-McLaughlin | OX2-2-000267 |
| Dayton Malleable Iron Co. | OYD-2-000502 |
| Empire Detroit Steel | OYD-2-000510 |
| Gould Inc. Clevite Bearing Div. | OYD-2-000582 |
| Federal Paperboard Co. | OYD-2-000349 |
| National Steel Corp. | |
| Weirton Steel Div. | OYJ-2-000001 10 |
| Ohio Edison Power | |
| Burger General Station | OYD-2-000428 |
| Stratton | OYJ-2-000409 |
| Toronto | OYJ-2-000349 |
| Ohio Ferro Alloys | OYD-2-000471 |
| Ohio Power | |
| Cardinal | OYD-2-001089 |
| Muskingum | OYD-2-000545 |
| Philo | OYD-2-000516 |
| Tidd | OYD-2-001094 |
| Ohio Valley Electric Co. | |
| Kyger Creek Station | OYD-2-000371 |
| Penn Central | OYJ-2-001264 20 |
| Shell Chemical | OYD-2-000716 |
| Titanium Metals Corp. | OYJ-2-000090 |
| Toronto Paperboard Co. | OYJ-2-000587 |
| Union Carbide | |
| Chem/Plastics | OYD-2-000022 |
| Ferro Alloy Div. | OYD-2-000041 |
| Wheeling Pittsburgh Steel | OYD-2-000222 |
| Wheeling Pittsburgh Steel | OYD-2-000323 |
| Wheeling Pittsburgh Steel | OYD-2-000324 |
| Wheeling Pittsburgh Steel | OYD-2-000328 |

List of Categories and Sizes (numbers) of Point Sources Which Ohio Proposes to Issue Permits Under the NPDES Program

| Priority Groups and Discharger Categories | Estimated Number of Point Sources Required to File for NPDES Permit |
|---|---|
| I. Major dischargers | |
| industrial | 108 |
| municipal | 127 |
| II. Dischargers to water quality segments in priority basins | |
| industrial | 287 |
| municipal | 168 |
| semi-publics | 122 |
| III. Dischargers to effluent standard class segment in priority basins | |
| industrial | 115 |
| municipal | 28 |
| semi-publics | 46 |
| IV. Dischargers to water quality class segments outside priority basins | |
| industrial | 296 |
| municipal | 212 |
| semi-publics | 117 |
| V. Dischargers to effluent standard class segments outside priority basins | |
| industrial | 502 |
| municipal | 78 |
| semi-publics | 48 |
| TOTALS | 2254 |
| Special Classes of dischargers | |
| water treatment (est) | 300 |
| strip mines (est) | 200 |
| | 2754 |

### 2.3.3 Categories of Point Sources Not Required to Have NPDES Discharge Permits

Certain point source dischargers will not be required to apply for an NPDES discharge permit. The excluded categories of dischargers are defined in 40 CFR 124.11.

## 2.3.4 Public Notices and Participation Procedures

### Policy

It is the policy of this agency to provide interested and potentially interested parties with information regarding proposed actions of the Director and to encourage public participation in determination process of issuing or denying an NPDES Permit. In the application of this policy, requirements and procedures as set forth in Section 125.32 et. seq. of the Federal Water Pollution Control Act and in Ohio Environmental Protection Agency Regulation EP-40 will be followed. In addition to these legal requirements, the Public Interest Center of this Agency will endeavor to place news items regarding the matters being advertised in the local papers in the area concerned. These news items will be in addition to the Legal Notices and will be scheduled to be published a few days prior to the event being advertised. In this manner, even though an item was advertised in the Legal Notices 30 days prior to the event, the public will again have an opportunity to be advised of the event.

### Procedure

In implementing the above policy, Section 3745.07, Ohio Revised Code; Ohio Environmental Protection Agency Regulation EP-40, "Rules of Procedure"; and the requirements of the Federal Water Pollution Control Act will be followed.

Both Section 3745.07 and EP-40-07 require that receipt of an application be advertised in two manners. One is by advertising in a newspaper of general circulation in the county in which the source is located within ten days after receipt of the application. The second is by mailing within seven days of the receipt of the application notice by first class mail to those persons who subscrive on an annual basis for such notice. Applications are normally received in the District Offices. There they are logged in and the information necessary for advertising is sent by Teletype to the Data and Systems Division in Columbus. The Data and Systems Division, by use of a computer, generates the public notices for each county receiving any applications. A summation of the individual county listings constitutes the list sent to those persons who subscribe for it. Each Monday, Data and Systems delivers to the Hearing Clerk copies necessary for mailing to the advertising newspapers and to the subscribers. The actual mailing is done by the Hearing Clerk's Section.

As the application is processed in the District Office and a permit is drafted, a fact sheet and/or a public notice are generated. Because of the required content of a fact sheet, the District personnel can do this most easily. These documents become part of the permit package as it develops and progresses from the District to Columbus and through the various steps to arrive, ultimately, at the NPDES Permit Records Section.

The Permit Records Section will check to see that the public notice and fact sheet are present, complete and in compliance with regulations. If no objection has been received as a result of the initial advertisement of receipt of the application, a date for the public notice will be established. In order to provide for time to mail the public notice to a newspaper and have it published, this will normally be a date five days after the mailing of the notice to the paper. Legal holidays or requirement to publish in a weekly newspaper could cause a day or two increase in the five day figure but that will be an exception rather than a normal condition. On the same day the notice is mailed to the newspaper for publication, copies of the public notice, fact sheet and proposed permit will be mailed, as appropriate, to all interested Federal, State and local governmental agencies, the applicant, and all other parties who have been determined to be interested parties.

One of these addresses is the Agency's Public Interest Center (PIC). In this manner, the PIC is promptly made aware of the proposed action and can schedule releases to the news media at appropriate times.

When the 30-day period for public notice has expired, determination of whether or not significant public interest has been shown to warrant a public meeting will be determined by the Technical Regulatory Advisory Group. If no public meeting is to be held and no adjudication hearing has been requested, the permit could be issued.

The simplest, cleanest path has been described above. If an objection had been received as a result of the advertising upon initial receipt of the application, the objector would have received copies of the public notice and fact sheet. The applicant would have been notified of the objection raised. The need for an adjudication hearing is established by receipt of the objection (Section 3745.07). The actual date of hearing would be determined after consultation with the Chief Hearing Examiner.

## 2.3.5 Monitoring, Reporting and Recording Procedures

### Effluent Monitoring

The monitoring, recording and reporting requirements for NPDES permittees in Ohio are under the jurisdiction of the Division of Surveillance, Source Performance Section. These monitoring programs meet the requirements of the U.S. EPA as stated in 40 CFR 124.61 to 124.64.

The general requirements of the monitoring program will be listed as general conditions of the permit and will include the requirement:

(1) to install, use and maintain monitoring equipment when ordered;
(2) to measure the effluent flow and sample and analyze the constitutents;
(3) to record the details of the sampling and analyses and to retain these records for a minimum of three years; and
(4) to report monthly the effluent flows and constituent analyses indicated in the permit.

The system within Ohio EPA for the review of the monthly reports is based on the use of electronic data processing for the storage and initial screening. The monthly reports will be received in the district office, logged in, and checked for completeness. The two part copy will then be separated with the original being filed as a legal document. The copy will be given a quick screening by the technical staff and then sent to the Division of Data and Systems in Columbus for encoding. The encoded data will be thoroughly checked for errors and then screened against the effluent limits and sampling frequency established in the permit. Monitoring reports that show out-of-limits data or improper sampling frequency will be listed and sent to the district office for verification and follow-up.

The results of the screening program will be used to select those permittees who persist in non-compliance for field surveillance and possible enforcement action.

The data in the monthly report data bank will be used to calculate the effluent loadings for entry into the U.S. EPA General Point Source File (GPSF). These data will be supplied to U.S. EPA on tape in a format capable of direct entry into GPSF. When the details of the system are set and approved, permit holders can be notified that the single report to Ohio EPA will satisfy the self-monitoring requirements of the U.S. EPA.

The data in the monthly report data bank will also be used for statistical analysis to determine means, standard deviations, correlations between parameters, seasonal variations and time trends. The data can be sorted by many characteristics, e.g., industries by type, public facilities by discharge volume and type of treatment, and entities by river basin in order along a river. The latter makes the data readily available for basin studies under Section 303(e).

Compliance Monitoring

When a permittee's present discharge does not meet the legal requirements of state law, he will be required to construct facilities to bring him into compliance. As required in an NPDES permit, the permittee will be required to submit a number of reports indicating progress towards meeting the permit requirements. These reports will be received by the district office representative of the NPDES Permit Records Section. One copy of the report will be forwarded to the Division of Data and Systems for placing in the Water Permits Information System; the other copy will be forwarded to the Division of Waste Management and Engineering for review and determination of adequacy. If the report is inadequate or the Water Permits Information System printouts indicate reports have not been filed, district office personnel will be responsible for investigating the problem. If non-compliance persists, the case will be referred to the Litigation and NPDES Permit Records Division for possible legal action.

### 2.3.6 Outstanding State Permits

The Ohio EPA replaced the Ohio Water Pollution Control Board (WPCB) in October 1972. Ohio EPA has not issued any proposed permits since its creation except for the six NPDES permits issued jointly by Ohio EPA and Region V. All permits issued by the WPCB will have expired not later than November 15, 1973, unless an adjudication hearing was requested. For those entities which requested an adjudication hearing and received modified findings and orders as a result, all but 31 of the permits issued will expire in October 1973. Of the 31 remaining, 12 will expire by January 1974 and the other 19 by the end of December 1974. The Ohio EPA recognizes that these existing orders will not be sufficient for the purposes of the NPDES program. All dischargers into the waters of the State of Ohio which are currently under order of the Water Pollution Control Board will be required to file an application for an NPDES permit pursuant to state law and applicable federal laws. The Ohio EPA will be issuing permits with appropriate restrictions by December 1974 for all dischargers currently under order of the Water Pollution Control Board.

## 2.4 Manpower and Funding Support

The Ohio EPA has determined that 65.7 man years are sufficient to provide adequate support to the NPDES program. To supply this effort will involve 153 present staff and filling three vacancies in the Division of Data and Systems. Financial support for this program is derived from a total Agency budget of $12,347,946. State revenues account for $10,314,962 and federal program grants amount to $2,032,984.

Summary of Ohio EPA Staff, Time, Salaries, and Support Costs to Administer the NPDES Program

Staff Time and Salaries:

| Division | Man-Years | Cost |
|---|---|---|
| Waste Management & Engineering | 29.05 | $ 363,811 |
| Surveillance | 17.75 | 180,778 |
| Litigation/NPDES Permit Records | 9.50 | 98,339 |
| Planning | 2.70 | 26,885 |
| Data & Systems | 4.90 | 47,907 |
| Intergovernmental Administration | .30 | 3,282 |
| Office for Environmental Programs | 1.50 | 10,471 |
| Sub-Total | 65.70 | $ 731,473 |
| Fringe Benefits - 15% | | $ 109,720 |
| TOTAL | | $ 841,193 |

Administrative Support:

| | Cost |
|---|---|
| Travel | $ 57,000 |
| Motor Vehicle Expense | 23,000 |
| Supplies | 8,000 |
| Duplicating | 8,000 |
| Data Processing | 21,000 |
| Printing | 3,000 |
| Rent | 85,000 |
| Postage | 8,000 |
| Communications | 25,000 |
| Laboratory | 240,000 |
| Hearings and Advertising | 74,000 |
| Equipment | 25,000 |
| Other Administrative Support | 29,000 |
| Total | $ 606,000 |
| Grand Total | $1,447,194 |

Crucial to an effective program are trained personnel to carry out the various activities. In the following section, the personnel working with the permit program are divided by Civil Service classification. The qualifications necessary for a person to hold the various positions are detailed in Appendix 3.5.

Classification of Personnel Involved in NPDES

| Position Title | No. of Staff | Annual Salary | % Man Years in Permit Program |
|---|---|---|---|
| **Waste Management and Engineering - Central Office** | | | |
| P.H. Engr. 7 | 1 | $ 23,733 | .05 |
| P.H. Engr. 6 | 3 | 19,698 | .50 |
| P.H. Engr. 5 | 2 | 17,306 | .60 |
| P.H. Engr. 4 | 1 | 15,142 | .40 |
| P.H. Engr. 2 | 5 | 12,938 | 2.80 |
| Eng. Tech. 7 | 2 | 12,376 | .80 |
| Eng. Tech. 4 | 1 | 9,006 | .40 |
| Eng. Tech. 2 | 1 | 7,821 | .40 |
| Eng. Tech. 1 | 2 | 7,322 | .80 |
| Chemist 2 | 1 | 9,797 | .40 |
| Clerk-Typist 3 | 3 | 6,406 | 1.20 |
| | 21 | | 8.35 |
| **District Offices** | | | |
| P.H. Engr. 7 | 4 | 23,733 | .40 |
| P.H. Engr. 5 | 5 | 17,306 | 1.60 |
| P.H. Engr. 4 | 3 | 16,578 | 1.00 |
| P.H. Engr. 3 | 1 | 14,414 | .40 |
| P.H. Engr. 2 | 32 | 12,938 | 12.50 |
| P.H. Engr. 1 | 1 | 11,939 | .40 |
| Eng. Tech. 7 | 1 | 12,376 | .40 |
| Eng. Tech. 6 | 1 | 11,939 | .40 |
| Eng. Tech. 5 | 1 | 10,650 | .40 |
| Eng. Tech. 4 | 1 | 9,006 | .40 |
| Eng. Tech. 3 | 5 | 8,382 | 1.60 |
| Clerk 4 | 1 | 7,966 | .40 |
| Clerk-Typist 3 | 2 | 6,406 | .40 |
| Clerk-Steno 3 | 1 | 6,614 | .40 |
| | 59 | | 20.70 |
| Totals | 80 | | 29.05 |
| Total Cost | | | $ 363,811 |
| **Surveillance - Central Office** | | | |
| P.H. Engr. 6 | 1 | 19,698 | .40 |
| P.H. Engr. 5 | 1 | 17,306 | .20 |
| P.H. Engr. 2 | 1 | 12,938 | 1.00 |
| Eng. Tech. 7 | 2 | 12,376 | 2.00 |
| Clerk-Typist 3 | 2 | 6,406 | 1.00 |
| | 7 | | 4.60 |

District Office

| | | | | |
|---|---|---|---|---|
| P.H. Engr. 3 | 2 | 14,414 | 1.00 | |
| P.H. Engr. 2 | 6 | 12,938 | 3.95 | |
| Eng. Tech. 7 | 1 | 12,376 | 1.00 | |
| Eng. Tech. 6 | 1 | 11,939 | .70 | |
| Eng. Tech. 4 | 2 | 9,006 | 1.10 | |
| Eng. Tech. 3 | 2 | 8,382 | 1.20 | |
| Eng. Tech. 2 | 2 | 7,821 | .70 | |
| Eng. Aide 3 | 1 | 7,322 | .70 | |
| Chemist 2 | 1 | 9,797 | .40 | |
| Clerk-Typist 2 | 1 | 5,824 | .70 | |
| Clerk-Typist 1 | 2 | 5,325 | 1.70 | |
| | 21 | | 13.15 | |
| Totals | 28 | | 17.75 | |
| Total Cost | | | | $ 180,778 |

Data and Systems

| | | | | |
|---|---|---|---|---|
| Admin. Spec. 4 | 2 | 12,376 | 2.00 | |
| Admin. Spec. 3 | 1 | 10,650 | 1.00 | |
| EDP Data Clerk 2 | 4 | 5,990 | 1.90 | |
| | 7* | | 4.90 | |
| Totals | 7 | | 4.90 | |
| Total Cost | | | | $ 47,907 |

* Three positions are presently vacant

Intergovernmental Administration

| | | | | |
|---|---|---|---|---|
| Admin. Spec. 4 | 1 | 12,376 | .20 | |
| Admin. Spec. 1 | 1 | 8,070 | .10 | |
| | 2 | | .30 | |
| Totals | 2 | | .30 | |
| Total Cost | | | | $ 3,282 |

Office for Environmental Programs

| | | | | |
|---|---|---|---|---|
| P.H. Engr. 6 | 1 | 19,698 | .75 | |
| Clerk-Typist 3 | 1 | 6,406 | .75 | |
| Totals | 2 | | 1.50 | |
| Total Cost | | | | $ 10,471 |

Litigation and NPDES Permit Records

| | | | |
|---|---|---|---|
| Executive 6 | 2 | 16,578 | .95 |
| Atty. Exam. 5 | 2 | 15,850 | .50 |
| Atty. Exam. 4 | 1 | 13,915 | .20 |
| Atty. Exam. 2 | 2 | 11,066 | .20 |
| P.H. Engr. 6 | 1 | 19,698 | .30 |
| Admin. Spec. 4 | 2 | 12,376 | .90 |
| Admin. Spec. 2 | 4 | 9,006 | 1.05 |
| Admin. Spec. 1 | 3 | 8,070 | .60 |
| Clerk 5 | 1 | 7,821 | .75 |
| Clerk 4 | 1 | 7,966 | .30 |
| Clerk-Typist 3 | 6 | 6,406 | 2.90 |
| Clerk-Typist 2 | 1 | 5,824 | .75 |
| Secretary 1 | 1 | 6,822 | .10 |
| | 27 | | 9.50 |
| Totals | 27 | | 9.50 |

Total Cost $ 98,339

Planning

| | | | |
|---|---|---|---|
| Admin. Spec. 3 | 2 | 10,650 | .80 |
| Admin. Spec. 2 | 1 | 9,006 | .40 |
| Admin. Spec. 1 | 1 | 8,070 | .40 |
| P.H. Engr. 2 | 1 | 12,938 | .30 |
| Eng. Tech. 2 | 1 | 7,821 | .40 |
| Engr. in training | 1 | 10,650 | .40 |
| | 7 | | 2.70 |
| Totals | 7 | | 2.70 |

Total Cost $ 26,885

## 2.5 Forms Other Than Uniform National Forms for Use in NPDES to Be Used by Ohio EPA

The Ohio EPA does not intend to use any other form than those uniform national forms which are established by the Administrator of U.S. EPA for use in the NPDES program except a separate form for reporting monitoring information. These reports received from the dischargers pursuant to monitoring requirements will be interfaced with the General Point Source File (GPSF) and will be available to U.S. EPA.

The following page, 34a, is the Ohio EPA Monthly Report Form.

## 2.6 Environmental Board of Review Membership

The Environmental Board of Review (EBR) is a full-time administrative appeals board with power to vacate, modify, or approve actions of the Ohio Environmental Protection Agency. It has exclusive appellate jurisdiction over NPDES permits issued by the Ohio EPA. After action by the EBR, the Director of the Ohio EPA re-issues the NPDES permit to reflect the EBR decision.

By law each member of the EBR must have extensive experience in pollution control and abatement technology, ecology, public health, environmental law, economics of natural resource development, or related fields. At least one member must be an attorney. The Board members are:

| Member | Term |
|---|---|
| Stanley Weissman | 10/23/72 - 10/22/78 |
| Richard McCutchen | 10/23/72 - 10/22/76 |
| Earl F. Murphy | 10/23/72 - 10/22/74 |

## 2.7 Disposal of Pollutants by Subsurface Injection into Deep Disposal Wells

Disposal of pollutants by this method requires a permit from the Chief of the Division of Oil and Gas , with concurrance of the Director of the Ohio EPA, under the authority of Ohio Revised Code 1509.081, as well as an NPDES discharge permit from the Ohio EPA under the authority of Ohio Revised Code 6111.03 (J) and 6111.04. New and existing operations injecting pollutants into deep wells will be required to file for and operate under an NPDES discharge permit.

The Ohio EPA has established a policy regarding disposal of wastes by subsurface injection. A statement of this policy follows:

### Policy Statement on Disposal of Wastes by Subsurface Injection

#### Background

The disposal and storage of liquid wastes by subsurface injection are continuously being considered, especially by industries with wastes that are not conducive to conventional treatment. The effects of underground injection and the fate of injected materials are uncertain without extensive evaluation of many aspects of such systems. Improper injection of municipal or industrial wastes into certain earth strata could directly and indirectly result in serious pollution of water supplies or other public health and environmental hazards.

#### Policy

The Ohio Environmental Protection Agency is opposed to the disposal or storage of wastes by subsurface injection without strict controls and a clear demonstration that such wastes will not interfere with present or potential use of subsurface water supplies, contaminate interconnected surface waters, or otherwise damage the environment.

All proposals for subsurface injection of wastes shall be critically evaluated to determine that:

(1) Alternative measures have been explored and found less satisfactory in terms of environmental protection.
(2) Appropriate evaluations and pre-injection tests have been made to allow prediction of the fate of wastes to be injected as well as the effect of such operations upon the natural conditions in the subsurface.
(3) Such injection will not interfere with present or potential use of water resources nor result in other environmental hazards.
(4) All needed measures for pretreatment of wastes have been applied.
(5) The subsurface injection system has been designed and constructed using approved techniques, equipment, and design criteria.
(6) Provisions have been made for adequate and continuing monitoring of the injection operation and periodic reservoir

analysis with respect to effects of the injection on health and resource values.

(7) Appropriate provision will be made for plugging such wells at horizons below present or potential sources of water supply when their use for disposal is discontinued.

Where subsurface injection of wastes is permitted, it should be recognized that it will be continuously evaluated in the light of changing technology and be discontinued when alternatives enabling greater environmental protection become available.

APPENDIX

3.0 Appendix

3.1 Am. Sub. S.B. No. 397

3.2 Am. Sub. S.B. No. 80

3.3 Ohio Environmental Protection Agency - United States Environmental Protection Agency (Region V) NPDES Agreement

3.4 Ohio Environmental Protection Agency Regulations

| | |
|---|---|
| EP-1-01 through 07 | Water Quality Standards |
| EP-31-01 through 10 | Ohio NPDES Permit |
| EP-40-01 through 30 | Rules of Procedure |

3.5 Civil Service Requirements for Staff Members Designated to Administer the NPDES Permit

3.6 Other Applicable State Statutes and Administrative Rules Relating to Functions of the Ohio EPA

(Amended Substitute Senate Bill No. 80)

# AN ACT

To amend sections 6111.01, 6111.03, 6111.04, 6111.041, 6111.05, 6111.07, and 6111.99 and to enact sections 6111.031, 6111.042, and 6111.09 of the Revised Code to comply with the Federal Water Pollution Control Act Amendments of 1972, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 6111.01, 6111.03, 6111.04, 6111.041, 6111.05, 6111.07, and 6111.99 be amended, and sections 6111.031, 6111.042, and 6111.09 of the Revised Code be enacted to read as follows:

Sec. 6111.01. As used in sections 6111.01 to 6111.08 [~~, inclusive,~~] and sections 6111.31 to 6111.38 [~~, inclusive,~~] of the Revised Code:

(A) "Pollution" means the placing of [~~any noxious or deleterious substances~~] ANY SEWAGE, INDUSTRIAL WASTE, OR OTHER WASTES in any waters of the state [~~or affecting the properties of any waters of the state in a manner which renders such waters harmful or inimical to the public health, or to animal or aquatic life, or to the use of such waters for domestic water supply, or industrial or agricultural purposes, or for recreation~~].

(B) "Sewage" means any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals [~~which pollutes the waters of the state~~].

(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 [~~, which pollutes the waters of the state~~].

(D) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime [~~(except~~

~~hydrated or dehydrated lime)~~], sand, ashes, offal, night soil, oil, tar, coal dust, or silt, [~~and~~] other substances [~~which~~] THAT are not [~~included within the definitions of~~] sewage [~~and~~] OR industrial waste [~~set forth in this section, which pollute the waters of the state~~], AND ANY OTHER "POLLUTANTS" OR "TOXIC POLLUTANTS" AS DEFINED IN THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 886, 33 U.S.C.A. 1362, THAT ARE NOT SEWAGE OR INDUSTRIAL WASTE.

(E) "Sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting waterborne sewage, industrial waste, or other wastes to a point of disposal or treatment.

(F) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes, EXCEPT AS OTHERWISE DEFINED.

(G) "Disposal system" means a system for disposing of sewage, 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 all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.

(I) "Person" means the state, any municipal corporation, [~~notwithstanding section 6111.11 of the Revised Code,~~] political subdivision [~~, public or private corporation, individual, partnership, or other entity~~] OF THE STATE, PERSON AS DEFINED IN SECTION 1.59 of the REVISED CODE, OR INTERSTATE BODY CREATED BY COMPACT.

(J) [~~On and after November 1, 1967 "industrial~~] "INDUSTRIAL water pollution control facility" means any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating water pollution caused by industrial waste, or for 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 REGULATIONS ADOPTED UNDER SECTIONS 6111.041 AND 6111.042 OF THE



hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is the fact that immediate action is necessary to delegate to the Ohio Environmental Protection Agency legal authority to adopt and enforce programs enabling it to comply with the Federal Water Pollution Control Act Amendments of 1972. Therefore this act shall go into immediate effect.

A. G. Lancione
*Speaker of the House of Representatives.*

John W. Brown
*President of the Senate.*

Passed August 27, 1973

Approved Sept. 4, 1973

John J. Gilligan
*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston
*Director Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the 4th day of September, A. D. 1973.

Ted W. Brown
*Secretary of State.*

File No. 172. Effective Date September 4, 1973.

ISSUED BY the [~~board promulgated~~] DIRECTOR pursuant to such sections.

The attorney general, upon WRITTEN request of the director of environmental protection, shall bring an action for an injunction against any person violating or threatening to violate such sections, or violating or threatening to violate any order [~~of~~], REGULATION, OR CONDITION OF A PERMIT ISSUED BY the director [~~promulgated~~] pursuant to such sections. 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 shall knowingly submit false information or records OR FAIL TO SUBMIT INFORMATION OR RECORDS PERTAINING TO DISCHARGES required as a condition of a permit.

Sec. 6111.09. ANY PERSON WHO VIOLATES SECTION 6111.04, 6111.042, 6111.05, OR DIVISION (A) OF SECTION 6111.07 OF THE REVISED CODE SHALL PAY A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS, TO BE PAID INTO THE STATE TREASURY TO THE CREDIT OF THE GENERAL REVENUE FUND. THE ATTORNEY GENERAL, UPON WRITTEN REQUEST BY THE DIRECTOR OF ENVIRONMENTAL PROTECTION, SHALL COMMENCE AN ACTION UNDER THIS SECTION AGAINST ANY PERSON WHO VIOLATES SECTIONS 6111.04, 6111.042, 6111.05, OR DIVISION (A) OF SECTION 6111.07 OF THE REVISED CODE. ANY ACTION UNDER THIS SECTION IS A CIVIL ACTION, GOVERNED BY THE OHIO RULES OF CIVIL PROCEDURE AND OTHER RULES OF PRACTICE AND PROCEDURE APPLICABLE TO CIVIL ACTIONS.

Sec. 6111.99. (A) Whoever violates SECTION 6111.04, 6111.042, 6111.05, OR division (A) of section 6111.07 of the Revised Code shall be fined not more than [~~ten~~] TWENTY-FIVE thousand dollars or imprisoned not more than one year, or both.

(B) Whoever violates sections 6111.13 to 6111.15, 6111.45, or 6111.46 of the Revised Code, shall be fined not more than five hundred dollars.

(C) Whoever violates division (C) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand 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 such 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 one hundred dollars.

SECTION 2. That existing sections 6111.01, 6111.03, 6111.04, 6111.041, 6111.05, 6111.07, and 6111.99 of the Revised Code are



REVISED CODE OR COMPLIANCE WITH TERMS AND CONDITIONS OF PERMITS SET UNDER DIVISION (J) OF SECTION 6111.03 OF THE REVISED CODE.

Sec. 6111.03. The director of environmental protection [~~shall have power~~] MAY:

(A) [~~To develop~~] DEVELOP plans and programs for the prevention, control, and abatement of new or existing pollution of the waters of the state [~~, including, but not limited to, adopting, amending, and repealing standards of quality for the waters of the state~~];

(B) [~~To advise~~] ADVISE, consult, and co-operate 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 sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code. BEFORE ADOPTING, MODIFYING, OR REPEALING A STANDARD OR REGULATION PURSUANT TO DIVISION (G) OF SECTION 6111.03 OR SECTION 6111.041 OR 6111.042 OF THE REVISED CODE, THE DIRECTOR SHALL (1) MAIL NOTICE TO EACH STATE-WIDE ORGANIZATION THAT HE DETERMINES REPRESENTS PERSONS WHO WOULD BE AFFECTED BY THE PROPOSED STANDARD OR REGULATION, AMENDMENT THERETO, OR REPEAL THEREOF AT LEAST THIRTY-FIVE DAYS BEFORE ANY PUBLIC HEARING THEREON, (2) MAIL A COPY OF EACH PROPOSED STANDARD OR REGULATION, AMENDMENT THERETO, OR REPEAL THEREOF TO ANY PERSON WHO REQUESTS A COPY, WITHIN FIVE DAYS AFTER RECEIPT OF THE REQUEST THEREFOR, AND (3) CONSULT WITH APPROPRIATE STATE AND LOCAL GOVERNMENT AGENCIES OR THEIR REPRESENTATIVES, INCLUDING STATE-WIDE ORGANIZATIONS OF LOCAL GOVERNMENT OFFICIALS, INDUSTRIAL REPRESENTATIVES, AND OTHER INTERESTED PERSONS. ALTHOUGH THE DIRECTOR IS EXPECTED TO DILIGENTLY DISCHARGE THESE DUTIES, 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) [~~To administer~~] 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) [~~To administer~~] ADMINISTER state grants for the construction of sewage and waste collection and treatment works;

(E) [~~To encourage~~] ENCOURAGE, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution, and the causes, prevention, control, and abatement

thereof, as is advisable and necessary for the discharge of its duties under sections 6111.01 to 6111.08 of the Revised Code;

(F) [~~To collect~~] COLLECT and disseminate information relating to water pollution and prevention, control, and abatement thereof;

(G) [~~To adopt~~] ADOPT, modify, and repeal regulations IN ACCORDANCE WITH CHAPTER 119. OF THE REVISED CODE governing the procedure for hearings, filing of reports, the issuance of permits, the issuance of industrial water pollution control certificates, and all other matters relating to procedure;

(H) [~~To issue~~] ISSUE, modify, or revoke orders to prevent, control, or abate water pollution [~~, subject to section 6111.04 of the Revised Code,~~] (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 such connections or extensions would result in an increase in the polluting properties of the effluent from such system when discharged into any waters of the state; (4) REQUIRING COMPLIANCE WITH ANY STANDARD OR REGULATION ADOPTED UNDER SECTION 6111.041 OR 6111.042 OF THE REVISED CODE, OR TERM OR CONDITION OF A PERMIT. In the making of such orders, WHEREVER COMPLIANCE WITH A REGULATION ADOPTED UNDER SECTION 6111.042 OF THE REVISED CODE IS NOT INVOLVED, CONSISTENT WITH THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251, the director shall give consideration to, and base his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with such orders and to evidence relating to conditions calculated to result from compliance with such orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code;

(I) [~~To review~~] 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 sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code;

(J) [~~To issue~~] ISSUE, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state, and for the installation [~~,~~] OR modification [~~, or operation~~] of disposal systems or any parts thereof IN COMPLIANCE WITH ALL REQUIREMENTS OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251 AND MANDATORY REGULATIONS ADOPTED THEREUNDER, and set terms and conditions



SHALL BE AVAILABLE FOR PUBLIC INSPECTION, EXCEPT THAT:

(A) UPON A SHOWING SATISFACTORY TO THE DIRECTOR OF ENVIRONMENTAL PROTECTION BY ANY PERSON THAT SUCH 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 SUCH PERSON, THE DIRECTOR SHALL CONSIDER SUCH 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) SUCH RECORD, REPORT, OR INFORMATION MAY BE DISCLOSED TO OTHER OFFICERS, EMPLOYEES, OR AUTHORIZED REPRESENTATIVES OF THE STATE, ANOTHER STATE, OR OF THE UNITED STATES, WHEN NECESSARY TO SUSTAIN AN ACTION BROUGHT PURSUANT TO CHAPTER 6111. OF THE REVISED CODE OR DURING AN ADJUDICATION HEARING, OR WHEN OTHERWISE NECESSARY TO FULFILL ANY REQUIREMENT OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251.

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

Sec. 6111.07. (A) No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code, or violate any order [~~of~~], REGULATION, OR TERM OR CONDITION OF A PERMIT ISSUED BY the director of environmental protection [~~promulgated~~] pursuant to such sections. Each day [~~such~~] OF violation [~~continues after a conviction for a violation of such sections or order of the director and the final determination thereof~~] is a separate offense [~~, provided the court may grant a reasonable period of time for compliance~~].

Any person convicted of violating such sections may also be enjoined, as provided in division (B) of this section, from continuing such violation.

(B) The attorney general, upon the WRITTEN request of the director of environmental protection, shall prosecute any person who violates, or who fails to perform any duty imposed by, sections 6111.01 to 6111.08 of the Revised Code, or who violates any order [~~of~~], REGULATION, OR CONDITION OF A PERMIT

director. The director shall give consideration to any standards so established in the issuance, revocation, modification, or denial of permits.

Sec. 6111.042. IN ACCORDANCE WITH CHAPTER 119. OF THE REVISED CODE, THE DIRECTOR OF ENVIRONMENTAL PROTECTION SHALL ADOPT AND ENFORCE, AND MAY MODIFY AND REPEAL, REGULATIONS SETTING FORTH AND REQUIRING COMPLIANCE WITH NATIONAL EFFLUENT LIMITATIONS, NATIONAL STANDARDS OF PERFORMANCE FOR NEW SOURCES, AND NATIONAL TOXIC AND PRETREATMENT EFFLUENT STANDARDS, AS NECESSARY IN ORDER TO INSURE COMPLIANCE WITH THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 846, 33 U.S.C.A. 1311, 1316, AND 1317. NO PERSON SHALL VIOLATE ANY SUCH REGULATION, EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF A PERMIT ISSUED UNDER SECTION 6111.03 OF THE REVISED CODE.

Sec. 6111.05. The director of environmental protection may on his own initiative investigate or make inquiries [~~in any manner~~] into any alleged act of pollution or failure to comply with sections 6111.01 to 6111.08 of the Revised Code, or any order, REGULATION, THE TERMS AND CONDITIONS OF A PERMIT, or other determination pursuant thereto. However, upon written complaint by any person the director shall conduct such investigations and make such inquiries as are required.

The director or his duly authorized representative may enter at reasonable times upon any private or public property to inspect and investigate conditions relating to pollution of any waters of the state, INSPECT ANY MONITORING EQUIPMENT, AND SAMPLE ANY DISCHARGES, and [~~upon refusal of the person owning or controlling such property to permit such entrance, the director~~] may apply to the court of common pleas having jurisdiction [~~of such property~~] for a warrant permitting such entrance and inspection.

Any authorized representative of the director may AT REASONABLE TIMES examine any records or memorandums pertaining to the operation of disposal systems OR DISCHARGES BY "INDUSTRIAL USERS" INTO "PUBLICLY OWNED TREATMENT WORKS" AS DEFINED IN THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1292 AND 1362. The director may require the maintenance of records relating to the operation of SUCH disposal systems OR DISCHARGES. The director may make copies of such records [~~, but if such records pertain to a private disposal system, such copies may not be made available to the public without express permission of the owner, except that information on the amounts and contents of discharges shall be matters of public record~~]. ANY RECORDS, REPORTS, OR INFORMATION OBTAINED UNDER CHAPTER 6111. OF THE REVISED CODE



of permits, [~~in order to prevent, control, or abate water pollution~~] INCLUDING SCHEDULES OF COMPLIANCE, WHERE NECESSARY. THE TERMS AND CONDITIONS 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 SUCH ACT, AND ANY OTHER MANDATORY REQUIREMENTS OF SUCH ACT THAT ARE IMPOSED BY REGULATION OF THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. AN APPLICATION FOR A PERMIT OR RENEWAL THEREOF SHALL BE DENIED IF:

(1) THE SECRETARY OF THE ARMY DETERMINES IN WRITING THAT ANCHORAGE OR NAVIGATION WOULD BE SUBSTANTIALLY IMPAIRED THEREBY;

(2) THE DIRECTOR DETERMINES THAT THE PROPOSED DISCHARGE OR SOURCE WOULD CONFLICT WITH AN AREA WIDE WASTE TREATMENT MANAGEMENT PLAN ADOPTED IN ACCORDANCE WITH SECTION 208 OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 839, 33 U.S.C.A. 1288;

(3) 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 AMENDMENTS OF 1972," 86 STAT. 880, 33 U.S.C.A. 1342 (d); OR

(4) 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.

[~~In issuing, revoking, modifying, or denying permits~~] 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 AND 302 OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1311 AND 1312, AND SHALL give consideration to, and base his determination on, evidence relating to the technical feasibility and economic reasonableness of removing the polluting properties from such wastes and to evidence relating to conditions calculated to result from such action, and their relation to benefits to the people of the state and to accomplishment of the purposes of sections 6111.01 to 6111.08 of the Revised Code.

WHERE A DISCHARGE HAVING A THERMAL COMPONENT FROM A SOURCE THAT IS CONSTRUCTED OR MODI-

FIED 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 ASSURE 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 SUCH THERMAL COMPONENT WITH SEWAGE, INDUSTRIAL WASTE, OR OTHER WASTES, THE DIRECTOR SHALL NOT IMPOSE ANY MORE STRINGENT LIMITATION ON THE THERMAL COMPONENT OF SUCH DISCHARGE, AS A CONDITION OF A PERMIT OR RENEWAL THEREOF FOR SUCH 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.

The director shall specify in permits for the discharge of sewage, industrial waste, and other waste, the NET volume, NET WEIGHT, duration, frequency, and [~~strength~~], WHERE NECESSARY, CONCENTRATION of such sewage, industrial waste, and other wastes which may be discharged INTO THE WATERS OF THE STATE. The director shall specify in such permits that the permit is conditioned upon the right of his authorized representatives to enter upon the premises of the person to whom the permit has been issued for the purpose of determining compliance with sections 6111.01 to 6111.08 of the Revised Code, rules [~~and regulations~~] adopted thereunder, or the terms AND CONDITIONS of a permit, order, or other determination. The director shall issue or deny an application for a permit for a new discharge, [~~or~~] for the installation or modification of a disposal system, OR FOR RENEWAL OF A PERMIT, within one hundred [~~twenty~~] EIGHTY days of the date on which he receives a complete application with all plans, specifications, construction schedules, and other pertinent information required by the director. [~~Applications for renewals of permits shall be acted upon by the director within sixty days.~~] The director may condition [~~such~~] permits upon the installation of discharge or water quality monitoring equipment or devices and the filing of such periodic reports on the amounts and contents of discharges and the quality of receiving waters as the director prescribes. THE DIRECTOR SHALL CONDITION EACH PERMIT FOR A GOVERNMENT-OWNED DISPOSAL SYSTEM, OR ANY OTHER "PUBLICLY OWNED TREATMENT WORKS" AS DEFINED IN THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1292, UPON THE REPORTING OF NEW INTRODUCTIONS OF INDUSTRIAL WASTE OR OTHER WASTES AND SUBSTANTIAL



other wastes into a sewerage system maintained by the state or a political subdivision [~~,~~];

(F) SEPTIC TANKS OR ANY OTHER DISPOSAL SYSTEMS FOR THE DISPOSAL OR TREATMENT OF SEWAGE FROM SINGLE-FAMILY, TWO-FAMILY, OR THREE-FAMILY DWELLINGS IN COMPLIANCE WITH THE SANITARY CODE AND SECTION 1541.21 OR 3707.01 OF THE REVISED CODE. THIS DIVISION 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.

THE HOLDER OF A PERMIT ISSUED UNDER SECTION 402 (a) OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 880, 33 U.S.C.A. 1342, NEED NOT OBTAIN A PERMIT FOR A DISCHARGE AUTHORIZED BY SUCH PERMIT UNTIL ITS EXPIRATION DATE. THE DIRECTOR OF ENVIRONMENTAL PROTECTION SHALL ADMINISTER AND ENFORCE SUCH PERMITS WITHIN THIS STATE, AND MAY MODIFY THE TERMS AND CONDITIONS THEREOF IN ACCORDANCE WITH DIVISION (J) OF SECTION 6111.03 OF THE REVISED CODE.

Sec. 6111.041. 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 [~~, and may adopt effluent standards for discharges into such waters. The effluent standards shall be designed to achieve and maintain the water quality standards 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 [~~according to criteria for the protection of~~], 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 AMENDMENTS OF 1972," 86 STAT. 846, 33 U.S.C.A. 1313, 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.

[~~The provisions of this section supersede Chapter 119. of the Revised Code.~~]

Standards of quality for the waters of the state, or any amendment or repeal thereof, become effective upon adoption by the

WHICH APPLICATIONS MAY BE FILED TO OBTAIN PERMITS FOR EXISTING DISCHARGES THAT HAVE NOT BEEN AUTHORIZED BY PERMIT.

The director may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of permits.

This section does not apply to:

(A) Waters used in washing sand, gravel, other aggregates, or mineral products, when such washing and the ultimate disposal of the water used in such washing [~~is~~], INCLUDING ANY SEWAGE, INDUSTRIAL WASTE, OR OTHER WASTES CONTAINED IN SUCH WATERS, ARE entirely confined to the land under the control of the person engaged in the recovery and processing of such sand, gravel, other aggregates, or mineral products, AND DO NOT RESULT IN THE POLLUTION OF WATERS OF THE STATE;

(B) [~~The discharge of hydrated or dehydrated lime into the waters of the state in such quantities as are, in the opinion of the board, beneficial to such waters~~] WATER, GAS, OR OTHER MATERIAL INJECTED INTO A WELL TO FACILITATE THE PRODUCTION OF OIL OR GAS OR FOR DISPOSAL PURPOSES, 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. THIS DIVISION 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;

(C) APPLICATION OF ANY MATERIALS TO LAND FOR AGRICULTURAL PURPOSES OR RUNOFF OF SUCH MATERIALS FROM SUCH APPLICATION. THIS DIVISION 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;

[~~(C)~~] **(D)** The [~~excrementitious discharge~~] EXCREMENT of domestic and farm animals [~~, however this~~] DEFECATED ON LAND OR RUNOFF THEREFROM INTO ANY WATERS OF THE STATE. THIS division does not [~~permit the disposal into the waters of the state of excrementitious discharge and incident wastes resulting from the operation of facilities used in the mass commercial production of such animals when it results in the pollution of waters of the state~~] 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;

[~~(D)~~] **(E)** The discharge of sewage, industrial waste, or



CHANGES IN VOLUME OR CHARACTER THEREOF BEING INTRODUCED INTO SUCH SYSTEMS OR WORKS FROM "INDUSTRIAL USERS" AS DEFINED IN SECTION 502 OF SUCH ACT, AS NECESSARY TO COMPLY WITH SECTION 402(b)(8) OF SUCH ACT. In requiring monitoring devices and reports the director shall give consideration to technical feasibility and economic reasonableness, and allow reasonable time for compliance. A permit may be issued for a period not to exceed [~~three~~] FIVE years, and may be renewed upon application for renewal, and upon a finding by the director that the permit holder is making satisfactory progress toward the achievement of ALL applicable [~~discharge and water quality~~] standards AND HAS 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; OR CHANGES IN ANY CONDITION THAT REQUIRES EITHER A TEMPORARY OR PERMANENT REDUCTION OR ELIMINATION OF THE PERMITTED DISCHARGE. No application shall be denied or permit revoked or modified without a written order stating the findings upon which denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or permit holder by certified mail.

(K) Adopt, modify, and repeal regulations, in accordance with Chapter 119. of the Revised Code, prescribing a schedule of application and renewal fees to be paid by applicants for and holders of permits under division (J) of this section. Such schedule of fees shall be designed solely to defray the costs of processing, issuing, revoking, modifying, and denying permits. NO APPLICATION OR RENEWAL FEE MAY EXCEED TWO HUNDRED FIFTY DOLLARS. NO APPLICATION OR RENEWAL FEE MAY BE CHARGED THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE.

(L) [~~To institute~~] INSTITUTE or cause to be instituted in any court of competent jurisdiction, proceedings to compel compliance with sections 6111.01 to 6111.08 of the Revised Code, [~~or~~] with the orders of the director issued under such sections, OR TO INSURE COMPLIANCE WITH SECTIONS 204 (b), 307, AND 308 OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 835, 33 U.S.C.A. 1284 (b), 1317, AND 1318;

(M) [~~To issue~~] ISSUE, deny, revoke, or modify industrial water pollution control certificates;

(N) [~~To certify~~] CERTIFY to the government of the United States or any agency thereof that an industrial water pollution facility is in conformity with the state program or requirements for control of water pollution whenever such certification may be re-

quired for a taxpayer under the Internal Revenue Code of the United States, as amended [.] :

(O) 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 AMENDMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1292 AND 1362 TO 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 SUCH METHODS, AT SUCH LOCATIONS, AT SUCH INTERVALS, AND IN SUCH MANNER AS THE DIRECTOR DETERMINES, AND PROVIDE SUCH OTHER INFORMATION AS IS NECESSARY TO ASCERTAIN WHETHER OR NOT THERE IS COMPLIANCE WITH TOXIC AND PRETREATMENT EFFLUENT STANDARDS. IN ISSUING, MODIFYING, AND REVOKING SUCH ORDERS THE DIRECTOR SHALL GIVE CONSIDERATION TO TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS, AND ALLOW REASONABLE TIME FOR COMPLIANCE.

[~~To exercise~~] (P) EXERCISE all incidental powers necessary to carry out the purposes of sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code.

SECTIONS 6111.01 TO 6111.09 AND 6111.99 OF THE REVISED CODE AUTHORIZE THE STATE TO PARTICIPATE IN THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM IN ACCORDANCE WITH THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251. SUCH SECTIONS SHALL BE ADMINISTERED, CONSISTENT WITH THE LAWS OF THIS STATE AND FEDERAL LAW, IN THE SAME MANNER THAT THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251, ARE REQUIRED TO BE ADMINISTERED.

Sec. 6111.031. (A) THE DIRECTOR OF ENVIRONMENTAL PROTECTION 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 (b) (2) (A) OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 845, 33 U.S.C.A. 1311, 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.

Sec. 6111.04. No person shall cause pollution [~~as defined in division (A) of section 6111.01 of the Revised Code of any waters of the state,~~] or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state [. ~~Any~~], AND ANY such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending.

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, industrial waste, or other wastes in excess of the permissive discharges specified under such existing permit without first receiving a permit from the director to do so.

No person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state shall continue or cause the continuance of such discharge [~~after September 27, 1952~~], without first obtaining a permit therefor issued by the director [~~pursuant to rules and regulations to be prescribed by him~~]. THE DIRECTOR SHALL PRESCRIBE BY REGULATION A REASONABLE FILING PERIOD WITHIN

## 3.3 Ohio Environmental Protection Agency - United States Environmental Protection Agency (Region V) NPDES Agreement

# MEMORANDUM OF AGREEMENT
# BETWEEN THE
# OHIO ENVIRONMENTAL PROTECTION AGENCY
# AND
# REGION V, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304(h) (2) of the Federal Water Pollution Control Act Amendments of 1972 (referred herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit the Chief Administrative Officer of a State water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the 40 CFR 124 Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Chief Administrative Officer of the Ohio Environmental Protection Agency, referred to herein as the Director and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35(b), 124.35(c), 124.41(c). 124.44(d), 124.46, 124.47, 124.61(b), 124.62(c), 124.71(c), 124.72(b), 124.73(b)(2), and 124.80(d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1.

## I. SECTION 124.22 RECEIPT AND USE OF FEDERAL DATA

A. The two purposes of this part of the Agreement are: (1) to provide for the transfer of data bearing on NPDES permit and Refuse Act applications from the U.S. EPA to the Ohio EPA, and (2) to insure that any deficiencies in the transferred NPDES and Refuse Act applications will be corrected prior to the issuance of an NPDES permit.

B. Commencing immediately, the Regional Administrator will transmit to the Ohio EPA a list of all NPDES permit and Refuse Act applications received by the U.S. EPA. This list will include the name of each discharger, SIC Code, the application number, and will indicate those NPDES and Refuse Act permit applications which U.S. EPA has determined to be administratively complete.

C. After receipt of the list, the Ohio EPA will identify the priority order to be used by U.S. EPA to transmit application files to the Ohio EPA. The application file will include the NPDES and Refuse Act permit application and any other pertinent data collected by U.S. EPA. The application files will be transmitted to the NPDES Permit Records Section of the Ohio EPA according to the priority order identified, and U.S. EPA will retain one copy of each file transmitted to the Ohio EPA.

D. When an NPDES or Refuse Act application transmitted to the Ohio EPA has been identified as administratively incomplete, the Ohio EPA will request the necessary information from the applicant and correct the application. The Director, at his discretion, may also obtain additional information for those applications identified by U.S. EPA as administratively complete to update or evaluate and process the application.

E. The Ohio EPA NPDES Permit Records Section will transmit two (2) copies of completed NPDES applications (other than those determined by U.S. EPA to be complete under paragraph B. above) to the Regional Administrator, Attention: Permit Branch.

F. If the Regional Administrator determines that an NPDES or Refuse Act application is not complete, he will specifically identify the deficiencies by letter to the NPDES Permit Records Section, Ohio EPA. If no objection is received from the Regional Administrator within 20 days of the date of the postmark of the transmittal, the application shall be deemed to be complete and the Ohio EPA will act upon the permit application without further action by the Regional Administrator. If deficiencies are identified by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until all deficiencies are corrected in a revised NPDES application, the revised application is transmitted to the Regional Administrator, and 15 days from the date of the postmark of the transmittal elapse without objection by him.

G. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

## II. SECTION 124.23 TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

A. The procedure specified in this section (Section II) of this Memorandum of Agreement will apply to NPDES applications, forms and reporting forms received by the Director from dischargers after the receipt of permit authorization under Section 402(b) of the Federal Act.

B. When the Ohio EPA determines that NPDES forms received from the discharger are complete, two (2) copies of the forms with a cover letter indicating that the forms are complete will be transmitted by the Ohio EPA NPDES Permit Records Section to the Regional Administrator, Attention: Permit Branch. If the U.S. EPA concurs with the Director's findings of completeness, one (1) copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the National Data Bank and the other copy will be placed in the Regional NPDES Permit Branch file. The Ohio ePA may transmit forms directly into the National Data Bank subject to prior approval of procedures by the NPDES Permit Branch and Data Management Section. If the U.S. EPA determines that any NPDES application or reporting form received from the Ohio EPA is not complete, the deficiencies will be identified by letter to the NPDES Permit Records Section, Ohio EPA. The Ohio EPA will request the necessary information from the applicant or reporting entity and correct the application or reporting form. If no objection to an NPDES application is received from the Regional Administrator within 15 days of the date of the postmark of the transmittal of the application or within 40 days of the postmark of the transmittal of the reporting form, the application or reporting form shall be deemed to be complete. If deficiencies are identified in an NPDES application by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until a revised NPDES application is transmitted to the Regional Administrator and 15 days from the date of the postmark of the transmittal elapse without objection by him.

C. The Regional Administrator may waive his rights to receive copies of NPDES forms with respect to classes, types and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can discontinue sending the EPA copies of NPDES forms. In exercising his discretion in relation to the provisions of this paragraph, the Regional Administrator shall pay heed to Section 101(f) of PL 92-500.

D. Upon receiving an NPDES form from the Director, if the Regional Administrator identifies any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge and notifies the Director, the Director will require the applicant for the discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator.

E. When requested by the Regional Administrator, the Director will transmit copies of notices received by him from publicly owned treatment works pursuant to 40 CFR 124.45(d) and (e) within 20 days of the postmark of the request.

F. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of the applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

## III. 124.35(b) and (c) PUBLIC ACCESS TO INFORMATION

A. The Ohio EPA will protect any information (other than effluent data) contained in NPDES application forms or other documents as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of that person. If such information appears in NPDES applications or other documents that must be forwarded to the Regional Administrator under the terms of this Memorandum of Agreement, the information for which confidential treatment has been requested will be specifically identified by the Director when the information is transmitted. If the Regional Administrator finds it necessary to consider releasing such information to the public, he will request advice from the Office of General Counsel, requesting a determination of the validity of the claim of confidentiality. The Regional Administrator will simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel will determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of General Counsel within 30 days of the date of postmark of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he will so advise the Regional Administrator, the Director, and the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the date of the postmark of such notice, the Regional Administrator will communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator will then make available to the public, upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA will be conclusive unless reviewed in an appropriate district court of the United States.

B. Any information accorded confidential status, whether or not contained in an NPDES form, will be disclosed by the Director, upon written request, therefore, to the Regional Administrator, or his authorized representative, who will maintain the disclosed information as confidential.

## IV. 124.44(d) COMPLIANCE SCHEDULE REPORTS

On the last day of the months of February, May, August, and November, the Director will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances, as of 30 days prior to the date of such report, of failure or refusal of an NPDES permittee to comply with an initial, interim or final requirement or to notify the Director of compliance or non-compliance with each initial, interim or final requirement (as required pursuant to paragraph, 40 CFR 124.44(b)). The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:

(1) The name and address of each non-complying NPDES permittee;
(2) A short description of each instance of non-compliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facility, failure to notify the Director of compliance with an interim requirement to complete construction by June 30, etc.);
(3) A short description of any action or proposed action by the permittee or the Director to comply or enforce compliance with an interim or final requirement; and
(4) Any details which tend to explain or mitigate an instance of non-compliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency).

## V. SECTION 124.46 TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMITS

A. At the time the public notice required by 40 CFR 124.32 is issued, the Director will transmit one copy of the NPDES public notice, fact sheets, proposed NPDES permit, and a list of all persons receiving the public notice, fact sheets, and proposed NPDES permit, together with a description of any other procedure used to circulate the public notice, to the Regional Administrator, Attention: Permit Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants.

B. The Director will provide periods of public notice and, where appropriate, Public Meetings on proposed NPDES permits in accordance with the provisions of the Ohio EPA Rules of Procedure, which satisfy the Public Notice and Public Hearing requirements of the U.S. EPA Guidelines. If the Director has received a specific request that a Public Meeting be held on a proposed NPDES permit, he will notify the Regional Administrator of that fact and his decision whether to hold such a Public Meeting within 45 days of the date of public notice. If the Director decides not to hold such a Public Meeting, he will provide the Regional Administrator and all parties requesting the Public Meeting, within 45 days of the date of public notice, with a written explanation of why the Public Meeting was not held.

C. If a proposed NPDES permit issued with a public notice is modified as a result of the Public Notice or Public Meeting, a revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: Permit Branch, together with a copy of all statements received from the public notice, and where a Public Meeting is held, a summary of all objections. In lieu of a summary, the Director may provide a verbatim transcript of the entire Public Meeting. If no comment is received by the Director within 35 days of the date of the postmark of the transmittal of the revised permit, he will assume U.S. EPA has no objections to NPDES permit issuance.

D. If a proposed NPDES permit is not revised after a public notice or, if held, a public hearing, the Director will notify the Regional Administrator, Attention: Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and will include a copy of all written statments received from the public notice. If no comment is received by the Director within 20 days of the date of the postmark of this letter, he will assume U.S. EPA has no objection to NPDES permit issuance. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.

E. No NPDES permit will be issued by the Director until he receives a letter from the Regional Administrator or his designee approving the issuance of the NPDES permit under Section 402(b) of the Federal Act, or if no comment is received by the Director from U.S. EPA within the time provided in paragraphs C and D above. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.

F. If the Regional Administrator objects to a proposed NPDES permit he will notify the Director in writing within the time period or sooner as identified in pargraphs C or D above and specify the nature of the objection

and the terms and conditions required to eliminate his objection to the proposed permit. The response of the Director to these objections will be communicated in writing by the Director to the Regional Administrator, and no permit will be issued before written approval of a revised NPDES discharge permit is received by the Director from the Regional Administrator.

G. The Regional Administrator may waive his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can issue an NPDES permit without U.S. EPA approval.

H. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permits Branch, a list of permits to be issued. Before any permit is issued by the Director, he shall confirm that a copy of the permit has been received by the Regional Administrator.

## VI. 124.47 TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS

A. The Director will transmit to the Regional Administrator, Attention: Permit Branch, two (2) copies of every issued NPDES permit, together with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.

B. The Director will transmit the above information together with a copy of the Director's letter to the applicant forwarding the NPDES permit, at the same time the NPDES permit is issued.

## VII. 124.61(b) MONITORING

A. Permit conditions issued by the Ohio EPA for any discharge authorized by an NPDES permit which (1) is not a minor discharge as defined by 40 CFR 124, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307(a) of the Federal Act, will require monitoring by the permittee for at least the following:

i. Flow in gallons per day and
ii. All of the following pollutants:

a. Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
b. Pollutants which the Director finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;
c. Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring; and
d. Any pollutants in addition to the above which the Region Administrator requests, in writing, be monitored.

B. The Regional Administrator may make the request specified in A (2) and A (3) (ii) (d) above at any time before an NPDES permit is issued.

C. The Director will transmit to the Regional Administrator data submitted by NPDES permittees on self-monitoring reporting forms, either by (1) forwarding copies of the reporting forms to the Regional Administrator, Attention: Compliance Section, Enforcement Division, or (2) by direct entry into the General Point Source File data system.

D. The Director will transmit on the last day of the months of February, May, August, and November, to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances as of 30 days prior to the date of such report, of all violations of effluent limitations indicated by self-monitoring reports. At the time of transfer of permanent authority, the Director shall formulate and continually update a list of all other permittees for which effluent monitoring data will be forwarded monthly. The list, which may be a computer printout, will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:

(1) The name and address of each non-complying NPDES permittee;
(2) The effluent limitations exceeded;
(3) Any action or proposed action by the NPDES permittees or the Director to comply or enforce compliance with the effluent limitations; and
(4) Any details which tend to explain or mitigate an instance of non-compliance.

## VIII. 124.62(c) MONITORING RESULTS

During the period of a permit, upon request of the Regional Administrator, the Director shall notify and require the permittee to extend the normal three year retention of monitoring records under 40 CFR 124.62(c).

## IX. 124.71(c) RECEIPT AND FOLLOW-UP NOTIFICATIONS AND REQUESTS

If the Director determines that a condition of a permit of a publicly owned treatment works relating to a new introduction of pollutants or changes in the volume or character of pollutants introduced into such treatment works is violated, he will notify the Regional Administrator in writing and take appropriate steps to assure compliance, including where necessary, the restriction or prohibition of introduction of pollutants into treatment works under Section 402(h) of the Federal Act.

X. 124.72(b) MODIFICATION, SUSPENSION AND REVOCATION OF NPDES PERMITS

A. If an issued NPDES permit is subsequently revised, suspended, or modified, the Director shall notify the Regional Administrator of such revision or modification and provide the Regional Administrator up to 30 days from the date of the postmark of the notice in which to comment or object and make recommendations to the Director. The Regional Administrator shall respond no later than 30 days from the date of postmark of the notice and may request additional time (not to exceed a total of 40 days from the date of the postmark of the notice).

B. If the Director upon request of the permittee, decides to make a revision, suspension, or modification of the NPDES permit for good cause, such as strikes, floods and acts of God, he shall notify the Regional Administrator in writing and, if no written objection or request for additional time (not to exceed a total of 40 days from the date of the postmark of the notice) is received from the Regional Administrator within 30 days of the date of the postmark of the notice, he shall deem it approved. Any such revision, suspension or modification of a schedule of compliance shall be included in proper time on the list submitted under Paragraph V of this Agreement.

C. The Director will transmit to the Regional Administrator two (2) copies of any document modifying, suspending, or revoking an NPDES permit or schedule of compliance.

## XI. 124.73(b) (2) EMERGENCY NOTIFICATION

The Director or his authorized representative will notify the Regional Administrator by telephone as soon as he is notified of any actual or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants. The Director or his authorized representative will utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the District Offices or the Regional Offices, as the Director determines appropriate.

## XII. 124.80(d) CONTROL OF DISPOSAL OF POLLUTANTS INTO WELLS

The Regional Administrator will transmit to the Director any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Federal Act or in directives issued to the U.S. Environmental Protection Agency Regional Offices governing the disposal of pollutants into deep wells.

## XIII. OTHER ITEMS

A. Attached hereto is a list of all dischargers including major dischargers along with a schedule covering a six-month period for the processing of the permits for those dischargers. This schedule is the first part of a schedule aimed at issuing all permits to be issued in the State of Ohio by December 31, 1974. This schedule will be expanded by the Ohio EPA on a quarterly basis thereafter to schedule the remainder of the workload until all permits are issued. A copy of each quarterly schedule will be forwarded by the Ohio EPA to the Regional Administrator for his information.

B. This Memorandum of Agreement may be modified by the Director and the Regional Administrator following the public hearing to evaluate the State's Section 402(b) program submittal on the basis of the issues raised at the hearing. The hearing record will be left open for a period of five days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. Any revisions of the Agreement following the public hearing will be finalized, reduced to writing, and signed by the Director and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of U.S. EPA for review and approval. The Director and the Regional Administrator will make any such revised Agreement available to the public for inspection and copying.

C. All Agreements between the State of Ohio and the Regional Administrator are subject to review by the Administrator of U.S. EPA. If the Administrator of U.S. EPA determines that any provisions of such Agreements do not conform to the requirements of Section 402(b) of the Federal Act or to the requirements of the Section 304(h) (2) Guidelines, he will notify the Ohio EPA and the Regional Administrator of any deficiencies, and the Agreement will be renegotiated in light of these comments.

D. This Memorandum of Agreement will take effect upon signature of the Director and Regional Administrator and concurrence by the Administrator, U.S. EPA.

E. No later than 120 days from the effective date of this Agreement, the Regional Administrator shall consider whether to waive his rights to receive, comment upon, object to any class or category of NPDES permit or reporting form. The Regional Administrator shall promptly notify the Director in writing of his decision.

F. This Memorandum of Agreement shall remain in effect until modified or suspended.

Ohio Environmental Protection Agency

by

_____

Ira L. Whitman,
Director

_____

Date

United States
Environmental Protection Agency
Region V

by

_____

Francis T. Mayo,
Regional Administrator

_____

Date

Approved:

United States Environmental Protection Agency

_____

Administrator

_____

Date

Ohio Environmental Protection Agency

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| | December DECEMBER | | | | |
| Name | | | | | |
| Imperial Glass Corp. | | | 840 | | SE |
| Ferro Corp. | | | 414 | | SE |
| Shell Chemical Company | | | 716 | | SE |
| B. F. Goodrich | | | 277 | | SE |
| Gould, Inc. | | | 829 | | SE |
| American Aggregates Plt. 215 | | | 0413 | | SW |
| Brown-Bridge Mills | | | 0993 | | SW |
| Gregory Stone Co. | | | 0889 | | SW |
| Gulf Oil Co. | | | 0150 | | SW |
| Hamilton Gravel Co. | | | 0796 | | SW |
| Proctor & Gamble Co. | | | 0449 | | SW |
| Proctor & Gamble | | | 710702 | | NW |
| Ohio Electropolishing | | | - | | NW |
| Centrex Corp. | | | 710121 | | NW |
| Quaker Oats Co. | | | 487 | | NW |
| Campbell Soup | | | 710467 | | NW |
| Babcock & Wilcox | | | 503 | | NE |
| Firestone Tire & Rubber | | | 047 | | NE |
| Nye Rubber Co. | | | 946 | | NE |
| SKF Industries | | | 781 | | NE |
| Timken Research | | | 092 | | NE |

69
SEDO

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| December | December | | | | |
| Logan Glass Plnt.-GE | | | 391 | | SEDO |
| Marquette Cement Mfg. | | | 675 | | SEDO |
| American Aggregates | | | 000416 | | SWDO |
| American Aggregates | | | 000418 | | SWDO |
| Republic Steel | | | 387 | | NE |
| Republic Steel | | | 693 | | NE |

NPDES Permit Processing Schedule

December

December 1973

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Adena | Short Creek | Ohio River | OH 0021661 | Jefferson | NE |
| Amesville | Federal Creek | Hocking River | OH 0021253 | Athens | SE |
| Beallsville | Trib. to Sunfish Creek | Ohio River | OH 0020885 | Monroe | SE |
| Bellville | Clear Fork | Muskingum River | OH 0020256 | Richland | NW |
| Bloomville | HONey Creek | Sandusky River | Oh 0021032 | Seneca | NW |
| Brilliant | | Ohio River | OH 0021270 | Jefferson | NE |
| Carey | Spring Run | Sandusky River | OH 0020206 | Wyandot | NW |
| Carrollton | Indian Creek | Muskingum River | OH 0020931 | Carroll | NE |
| Clarington | | Ohio River | OH 0021636 | Monroe | SE |
| Columbiana | Mill Creek | Mahoning River | OH 0021776 | Columbiana | NE |
| Creston | Chippewa Creek | Muskingum River | OH 0020664 | Wayne | NE |
| Elmore | | Portage River | OH 002 1261 | Ottawa | NW |
| Geneva | Cowles Creek | Lake Erie | OH 0020109 | Ashtabula | NE |
| Genoa | Packer Creek | Lake Erie | OH 0021016 | Ottawa | NW |
| Green Springs | Green Creek | Lake Erie | OH 0022578 | Sandusky | NW |
| Greenwich | Vermillion River | Lake Erie | OH 0020486 | Huron | NW |
| Hartville | Swartz Ditch | Muskingum River | OH 0020923 | Stark | NE |
| Leetonia | Cherry Creek | Ohio river | OH 0021652 | Columbiana | NE |
| Lexington | Clear Fork, Mohican River | Muskingum River | OH 0020257 | Richland | NW |
| Lindsey | Muddy Creek | Lake Erie | OH 002 2489 | Sandusky | NW |
| Madison #1 | Arcola Creek | Lake Erie | OH 0023523 | Lake | NE |

NPDES Permit Processing Schedule

December 1973

December

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Madison #2 | Arcola Creek | Lake Erie | OH 0023515 | Lake | NE |
| Metamoras | Collins Run | Ohio River | OH 0022331 | Washington | SE |
| Mingo Junction | Cross Creek | Ohio River | OH 0026565 | Jefferson | NE |
| Monroeville | Huron River | Lake Erie | OH 0020095 | Huron | NW |
| Navarre | Tuscarawas River | Muskingum River | OH 0020036 | Stark | NE |
| New Boston | | Ohio River | OH 0020613 | Scioto | SE |
| Put-In-Bay | | Lake Erie | OH 0022322 | Ottawa | NW |
| Spencer | Tributary, E. Branch Black River | Lake Erie | OH 0022071 | Medina | NE |
| Stratton | | Ohio River | OH 0022225 | Jefferson | NE |
| Toronto | | Ohio River | OH 0020214 | Jefferson | NE |
| Waynesburg | Big Sandy Creek | Muskingum River | OH 0022101 | Stark | NE |
| Woodville | | Portage River | OH 0020571 | Sandusky | NW |

12

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| ANUARY | January | | | | |
| nterlake Inc. | | | 710274 | | NWDO |
| orfolk & Western | | | 710302 | | NWDO |
| ayes-Albion Corp. | | | 710122 | | NWDO |
| ertain-Teed Prod. | | | 155 | | NWDO |
| edusa Port. Cement | | | 710268 | | NWDO |
| tandard Oil Toledo | | | 710046 | | NWDO |
| anco Controls Div. | | | 203 | | NWDO |
| opperweld Steel Co. | | | 975975 | | NWDO |
| oledo Steel Tube | | | 710126 | | NWDO |
| oehring Co./HPM Div. | | | 870 | | NWDO |
| oehring Co./HPM Div. | | | 871 | | NWDO |
| oehring Co./HPM Div. | | | 872 | | NWDO |
| wens-Illinois | | | 710294 | | NWDO |
| llied Chem. Corp. | | | 710637 | | NWDO |
| wens-Illinois Dev. | | | 710307 | | NWDO |
| ederal Mogul Corp | | | 710271 | | NWDO |
| merican Ship Building | | | 710281 | | NWDO |
| tokley-Van Camp | | | 111 | | NWDO |
| hio Road Paving | | | 346 | | NWDO |
| . A. Wintzer & Son | | | 710063 | | NWDO |
| TE Sylvania | | | 710448 | | NWDO |
| oledo Edison W. Sta. | | | 710285 | | NWDO |

27

# INTER-OFFICE COMMUNICATION

TO Mr. Edward F. Armstrong DATE December 6, 1973

FROM: Shel Darity-WM&E SLD

SUBJECT: January Schedule of Water Treatment Plant Permits.

The following permits are scheduled for processing in January, 1974.

| District | Name | NPDES Appl. No. |
|---|---|---|
| NE | Applegrove Water Co. | OH 0030210 |
| NE | Avon Lake Utilities Dept. | OH 0030261 |
| NE | Beach City Water Plant | OH 0029181 |
| NE | Columbiana Water Plant | OH 0030881 |
| NE | East Liverpool Filtration Plt. | OH 003041 |
| NE | Garrettsville Water Works | OH 0029777 |
| NW | Archbold Water Treatment Plt. | OH 0029840 |
| NW | Arlington Municipal Water Works | OH 0030007 |
| NW | Attica Water Treatment Plant | OH 0030511 |
| NW | Bowling Green Water Trt. Plt. | OH 0030848 |
| NW | Bryan Water Trt. Plt. | OH 0030481 |
| NW | Village of Edgarton Water Supply | OH 0030562 |
| SE | Athens Water Treatment Plant | OH 0030139 |
| SE | Burr Oak State Water Supply (Athens) | OH 0030333 |
| SE | Village of Frankfort | OH 0029998 |
| SE | Village of Frazeysburg | OH 0029874 |
| SE | Hopedale Water Works | OH 0030678 |
| SW | Bethel Municipal Water Works | OH 0030571 |
| SW | Village of Bradford | OH 0030465 |
| SW | Cleves Water Works | OH 0029726 |
| SW | Coldwater Water Supply | OH 0030660 |
| SW | Fairfield Water Works | OH 0030729 |
| SW | Fort Loramie Water Works | OH 0020012 |
| C | Columbus Morse Rd. Water Plt. | OH 0030716 |
| C | Harbor Hills Service Co. | OH 0029734 |
| C | Hilliard Water Works | OH 0030597 |
| C | Johnstown Water Trt. Plt. | OH 0030473 |
| C | Nelson Rd. Plt. (Cols.) | OH 0030791 |
| C | Sunbury Water Plt. | OH 0030681 |

January

cc: P. Flanigan-WM&E
cc: J. Shea-WM&E
cc: D. Duke-Surveillance

Ohio Environmental Protection Agency

NPDES Permit Processing Schedule

JANUARY 1974

January

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Aberdeen | Ohio River | Ohio River | OH 0023825 | Brown | SW |
| Andover | Pymatuning River | Shenango River | OH 0023876 | Ashtabula | NE |
| Apple Creek | Apple Creek | Muskingum River | OH 0023892 | Wayne | NE |
| Attica | Honey Creek | Sandusky River | OH 0023957 | Seneca | NW |
| Barnesville | North Fork, Captina Creek | Ohio River | OH 0024015 | Belmont | SE |
| Beloit | Mahoning River | Mahoning River | OH 0024091 | Mahoning | NE |
| Bergholz | Yellow Creek | Ohio River | OH 0029173 | Jefferson | NE |
| Byesville | Wills Creek | Muskingum River | OH 0024287 | Guernsey | SE |
| Cadiz | Short Creek | Ohio River | OH 0024295 | Harrison | NE |
| Canfield | MEander Creek | Mahoning River | OH 0024341 | Mahoning | NE |
| Clay Center | Turtle Creek | Lake Erie | Oh 0029360 | Ottawa | NW |
| Clyde | Raccoon Creek | Lake Erie | OH 0024686 | Sandusky | NW |
| Coal Grove | Ohio River | Ohio River | OH 0029432 | Lawrence | SE |
| Coldwater | Coldwater Creek | Wabash River | OH 0024694 | Mercer | NW |
| Crooksville | Moxahala Creek | Muskingum River | OH 0028959 | Perry | SE |
| Cumberland | Buffalo Fork | Muskingum River | OH 0029416 | Guernsey | SE |
| Cygnet | Rocky Ford | Lake Erie | OH 0029327 | Wood | NW |

NPDES Permit Processing Schedule

January

January 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | Dietric Office |
|---|---|---|---|---|---|
| Dillonvale | Short Creek | Ohio River | OH 0024937 | Jefferson | NE |
| Dresden | Muskinghum River | Muskingum River | OH 0024953 | Muskingum | SE |
| Fredericktown | Kokosing River | Muskingum River | OH 0025283 | Knox | NW |
| Gambier | Kokosing River | Muskingum River | OH 0025321 | Knox | NW |
| Garrettsville | Eagle Creek | Mahoning River | OH 0025330 | Portage | NE |
| Gibsonburg | Nine Mile Creek | Lake Erie | OH 0029122 | Sandusky | NW |
| Harbor View | Lake Erie | Lake Erie | OH 0029483 | Lucas | NW |
| Heath | South Fork, Licking River | Muskingum River | OH 0025763 | Licking | SE |
| Hiram | Silver Creek | Mahoning River | OH 0025801 | Portage | NE |
| Holloway | Stillwater Creek | Muskingum River | OH 0029297 | Belmont | SE |
| Hubbard | Little Yankee Creek | Shenango River | OH 0025810 | Trumbull | NE |
| Jacksonville | Sunday Creek | Hocking River | OH 0029467 | Athens | SE |
| Jamestown | South Fork, Caesar Creek | Little Miami River | OH 0025879 | Greene | SW |
| Jefferson | Mill Creek | Lake Erie | OH 0025887 | Ashtabula | NE |
| Jeromesville | Jerome Fork | Muskingum River | OH 0020732 | Ashland | NE |
| Killbuck | Killbuck Creek | Muskingum River | OH 0025933 | Holmes | NE |
| Lore City | Leatherwood Creek | Muskingum River | OH 0021020 | Guernsey | SE |
| Loudonville | Black Fork | Muskingum River | OH 0020966 | Ashland | NE |
| Louisville | Nimishillen Creek | Muskingum River | OH 0026182 | Stark | NE |

19

January

NPDES Permit Processing Schedule

January 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | Dietric Office |
|---|---|---|---|---|---|
| Lowellville | Mahoning River | Mahoning River | OH 0026204 | Mahoning | NE |
| Lynchburg | Little Miami River | Little Miami River | OH 0022667 | Highland | SW |
| Lyons | Raisin River | Lake Erie | OH 0029408 | Fulton | NW |
| McComb | Algire Creek | Lake Erie | Oh 0026263 | Hancock | NW |
| McDonald | Mahoning River | Mahoning River | OH 0022586 | Trumbull | NE |
| Mt. Pleasant | Short Creek | Ohio river | OH 0029335 | Jefferson | NE |
| Newcomerstown | Tuscarawas | Muskingum River | OH 0026689 | Tuscarawas | NE |
| New Waterford | North Fork, Little Beaver Creek | Ohio river | OH 0026735 | Columbiana | NE |
| Ontario (to Mansfield) | Rocky Fork | Muskingum River | OH 0029301 | Richland | NW |
| Ontario | Rocky Fork | Muskingum River | OH 0029319 | Richland | NW |
| Pemberville | Portage River | Lake Erie | OH 0026972 | Wood | NW |
| Plymouth | West Branch, Huron River | Lake Erie | OH 0027065 | Richland/Huron | NW |
| Powhaten Pt. | Ohio River | Ohio River | OH 0027219 | Belmont | SE |

13

Ohio EPA Water Pollution Control Agency

NPDES Permit Processing Schedule

February

~~JANUARY~~ February 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Shawnee | Sunday Creek | Hocking River | OH 0029351 | Perry | SE |
| Shiloh | West Branch, Huron River | Lake Erie | OH 0027405 | Richland | NW |
| South Lebanon | Little Miami River | Little Miami River | OH 0027456 | Warren | SW |
| South Zanesville | Muskingum River | Muskingum River | OH 0027464 | Muskingum | SE |
| Stryker | Tiffin River | Maumee River | OH 0022497 | Williams | NW |
| Thornville | South Fork, Licking River | Muskingum River | OH 0027723 | Perry | SE |
| Tiro | Honey Creek | Sandusky River | OH 0029220 | Crawford | NW |
| Tuscarawas | Tuscarawas River | Muskingum River | OH 0027855 | Tuscarawas | NE |
| Washingtonville | Middle Fork, Little Beaver Creek | Ohio River | OH 0028011 | Columbiana | NE |
| Wellington | Wellington Creek | Black River, LE | OH 0028037 | Lorain | NE |
| Willard | Huron river | Lake Erie | OH 0028118 | Huron | NW |
| Wilmington | Todd Run | Little Miami River | OH 0028134 | Clinton | SW |
| Wilson | Sunfish Creek | Ohio River | OH 0029424 | Monroe | SE |
| Windham | Eagle Creek | Mahoning River | OH 0022501 | Portage | NE |
| Woodsfield | Standing Stone Run | Ohio River | OH 0028177 | Monroe | SE |
| Yorkville | Deep Run | Ohio River | OH 0022543 | Jefferson | NE |

Ohio Environmental Protection Agency

NPDES Permit Processing Schedule

~~December~~ 1973 - ~~June 1974~~ February

February

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Stockport | — | Muskingum R. | OH 002 0249 | Morgan | SE |
| New Richmond | — | Ohio R. | OH 002 1156 | Clermont | SW |
| Pomeroy | — | Ohio R. | OH 002 1725 | Meigs | SE |
| Nelsonville | — | Hocking R. | OH 002 0541 | Athens | SE |
| Williamsburg | East Fork | Little Miami | OH 002 1571 | Clermont | SW |
| Waynesville | — | " " | OH 002 0753 | Warren | " |
| South Charleston | Gilroy Ditch | " " | OH 002 0052 | Clark | " |
| Milford | East Fork | " " | OH 002 0451 | Clermont | " |
| Mason | Muddy Cr. | " " | OH 002 0494 | Warren | " |
| Loveland (2 WTP) | — | " " | OH 002 0419 | Hamilton Clermont Warren | " |
| Bethel | Town Branch | " " | OH 002 3588 | Clermont | " |
| Blanchester | | " " | OH 002 1733 | Clinton | " |
| Lebanon | Turtle Cr. | " " | OH 002 1059 | Warren | " |
| Cedarville | Massies Cr. | " " | OH 002 0010 | Greene | " |
| Rio Grande February | Indian Creek | Ohio River | OH 0027278 | Gallia | SE |
| St. Clairsville(North) | Town Run | Ohio River | OH 0027294 | Belmont | SE |
| St. Clairsville(south) | Aults Run | Ohio River | OH 0027308 | Belmont | SE |
| St. Martin | East Fork, Little Miami River | Little Miami River | OH 0022527 | Brown | SW |
| Scio | Conotton Creek | Muskingum River | OH 0029271 | Harrison | NE |
| Seville | Chippewa Creek | Muskingum River | OH 0027375 | Medina | NE |
| Shadyside | Ohio River | Ohio river | OH 002 7383 | Belmont | SE |

Ohio Environmental Protection Agency

NPDES Permit Processing Schedule

December 1973 - June 1974

February

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | February ~~JANUARY 1974~~-- | | | | |
| General Electric | | | 674 | | NE |
| Liquid Treatments, inc. | | | 050 | | NE |
| Massillon Steel | | | 296 | | NE |
| Norton Company | | | 731 | | NE |
| Orrville Bronze & Aluminum | | | 878 | | NE |
| White Engines, Inc. | | | 467 | | NE |
| Akron Brass Co. | | | 953 | | NE |
| B. B. Parent Farm | | | 347 | | NE |
| Belden Brick #5 | | | 947 | | NE |
| Carnation Co. | | | 572 | | NE |
| Culligan Water | | | 941 | | NE |
| Diamonite Prod. Mfg. | | | 903 | | NE |
| Gerstenslager Co. | | | 989 | | NE |
| Holmes Limestone Div. | | | 473 | | NE |
| Philway Prod. | | | 739 | | NE |
| Scio Pottery Co. | | | 517 | | NE |
| Union Carbide Corp. | | | 041 | | NE |
| IRC | | | 349 | | NE |
| Kaiser Refractories | | | 384 | | NE |

16

NPDES Permit Processing Schedule

December 1973 - June 1974

February

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| February | | | | | |
| Rudolph Foods | | | 710061 | | NWDO |
| L.O.F. Rossford | | | 710041 | | NWDO |
| Norfolk & Western | | | 710283 | | NWDO |
| Empire-Det. Steel/Cyclop | | | 682 | | NWDO |
| Western Ohio Stone/P. 1 | | | | | NWDO |
| Western Ohio Stone P. 2 | | | | | NWDO |
| Marion Power Shovel | | | 775775 | | NWDO |
| Eaton Corp./Frig. Div. | | | 034 | | NWDO |
| Pet Inc. | | | 710123 | | NWDO |
| Owens-Illinois Levis Dev. | | | 710295 | | NWDO |
| Defiance Fertilizer | | | 735010 | | NWDO |
| Stokley Van Camp | | | | | NWDO |
| Cont.Can Co. Fibre Drv. | | | 710458 | | NWDO |
| GE/Hermetic Motor | | | 586 | | NWDO |
| United Aircraft Prod. | | | 720010 | | NWDO |
| Beatrice Foods Co. | | | 710242 | | NWDO |
| Pet Inc. Gr. Pr. | | | | | NWDO |
| Avco New Idea | | | 132 | | NWDO |
| GMC-Chev. Motor | | | 710117 | | NWDO |
| Std. Oil Co. | | | 710303 | | NWDO |
| Arco Pipeline | | | 710293 | | NWDO |
| Derwacter S & G | | | 792 | | NWDO |

February

December 1973 – June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| February continued | | | | | |
| Dayton Malleable Iron | | | 000523 | | SWDO |
| Frigidaire Division, GMC | | | 000238 | | SWDO |
| Frigidaire Division GMC | | | 000239 | | SWDO |
| Hobart Brothers | | | 000657 | | SWDO |
| Corning Glass Company | | | 000631 | | SWDO |
| U. S. Plywood-Champion | | | 000601 | | SWDO |
| Nicolet Industries | | | 000697 | | SWDO |
| West Carrollton Parchment | | | | | SWDO |
| Beatrice Foods | | | 000242 | | SWDO |
| Republic Steel | February | | 696 | | NE |
| Yoder Brothers, Inc. | | | 395 | | NE |
| Yoder Brothers, Inc. | | | 396 | | NE |
| Valley Mold Iron | | | 544 | | NE |
| | | | | | NE |
| Portex | | | 418 | | NE |
| Belden Brick Plt. 8 | | | 954 | | NE |
| Clay Craft Co. | | | 795 | | NE |
| Cons'ld Gas Supply | | | 211 | | NE |
| E. Ohio Limestone | | | 291 | | NE |
| Evans Brick & Pipe | | | 495 | | NE |
| Fanner Mfg. Co. | | | 079 | | NE |

February

| | | | | | |
|---|---|---|---|---|---|
| American Aggregates | | | 000419 | | SWDO |
| Chicago Vitreous | | | 000687 | | SWDO |
| Dayton Steel Foundry | | | 000587 | | SWDO |
| Inland Division, GMC | | | 000247 | | SWDO |
| W. B. Marvin Manufacturing | | | 000598 | | SWDO |
| Northwood Stone | | | 000867 | | SWDO |
| AMF Electrosystems | | | 000522 | | SWDO |
| Dayton Manufacturing | | | | | SWDO |
| Standard Register | | | 000706 | | SWDO |
| Standard Register | | | 000716 | | SWDO |
| E. I. DuPont | | | 000626 | | SWDO |
| B. F. Goodrich | | | 000134 | | SWDO |
| Copeland Refrigeration | | | 000493 | | SWDO |
| Dayton Tire and Rubber | | | 000095 | | SWDO |
| TRW, Globe Industries | | | 000045 | | SWDO |
| TRW, Globe Industries | | | 000046 | | |

16

NPDES Permit Processing Schedule

December 1973 - June 1974

February

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| February, Continued | | | | | |
| Columbia Gas of Ohio | | | 334 | | SEDO |
| Ohio Power Co. | | | 516 | | SEDO |
| Ohio Valley Elec./Kgyer. | | | 371 | | SEDO |
| Tri-State Mat. Corp. | | | 499 | | SEDO |
| Ohio Valley Pav. Corp. | | | 937 | | SEDO |
| Brockway Glass Co. | | | 671 | | SEDO |
| Belden Brick Co. | | | 974 | | SEDO |
| AMETEK/March Electric | | | 934 | | SEDO |
| Columbus & South. Elec. | | | 384 | | SEDO |

February

| | | | | | |
|---|---|---|---|---|---|
| Interlake Inc. February | | | 798 | | SEDO |
| Union Slag Corporation | | | 472 | | SEDO |
| Union Slag Corporation | | | 256 | | SEDO |
| Armco Steel Corporation | | | 686 | | SEDO |
| Grief Brothers Corp. | | | 98 | | SEDO |
| Norfolk & Western R.R. | | | 360 | | SEDO |
| Columbia Gas.Tran.Corp. | | | 494 | | SEDO |
| Central Silica Co. | | | 416 | | SEDO |
| Hull Pottery Company | | | 380 | | SEDO |
| Olin Corporation | | | 76 | | SEDO |
| Sun Oil Co. | | | 839 | | SEDO |
| Wheeling-Pitts. Steel | | | 322 | | SEDO |
| Robinson Ransbottom Pt. | | | 469 | | SEDO |
| Richards & Sons Inc. | | | 181 | | SEDO |
| Nelson-McCoy Pot Co. | | | 136 | | SEDO |
| Ludowich-Celadon Co. | | | 219 | | SEDO |
| Union Carbide/Ferro | | | 41 | | SEDO |

17

NPDES Permit Processing Schedule

December 1973 - June 1974

March

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| March Cont'd | | | | | |
| Marble Cliff Quarries | | | 293 | | SEDO |
| Mead Paper Corp. | | | 2000 | | SEDO |
| Morrow Gravel | | | 1106 | | SEDO |
| PPG Ind. | | | 116 | | SEDO |
| Scioto Coca-Cola Bottl. | | | 939 | | SEDO |
| Sun Oil Co./Cols. Term. | | | 838 | | SEDO |
| Texaco Inc. | | | 840 | | SEDO |
| Union Carbide/Linde Div. | | | 986 | | SEDO |
| Union 76/Eastern Reg. | | | 782 | | SEDO |
| U. S. Gypsum/AP Green | | | | | |
| Cedar Heights Clay | | | 012 | | SEDO |
| C. & S. O. Electric | | | 385 | | SEDO |
| 41 | | | | | |
| | March | | | | |
| TRW | | | 177 | | NE |
| Universal Cyclops | | | 126 | | NE |
| Union Malleable | | | 084 | | NE |
| 15 | | | | | |

NPDES Permit Processing Schedule

December 1973 - June 1974

March

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| March contd | | | | | |
| Celanese Plast. | | | 897 | | SEDO |
| Goodyear Aero./Com/Pl. | | | 343 | | SEDO |
| Jackson Pike S & G | | | 423 | | SEDO |
| Sharon Silica Co. | | | 171 | | SEDO |
| Standard Oil/Wil.Term. | | | 591 | | SEDO |
| Standard Oil/Co. Airport | | | 592 | | SEDO |
| Taylor Stone | | | 252 | | SEDO |
| American Zinc Co. | | | 415 | | SEDO |
| Armstrong Furnace Co. | | | 344 | | SEDO |
| Batelle Memorial Ins. | | | 399 | | SEDO |
| Buckeye Steel Cast. | | | 642 | | SEDO |
| Claycraft Co. | | | 796 | | SEDO |
| Columbus Bitum. Conc. | | | | | SEDO |
| Columbus Forge & Iron | | | 724 | | SEDO |
| Cons. Biomed. Lab. | | | 329 | | SEDO |
| Crane Plastics Inc. | | | 655 | | SEDO |
| E. I. DuPont | | | 567 | | SEDO |
| IPM Corp. ) Cols. Plnt. | | | 907 | | SEDO |
| Marble Cliff Quarries | | | 294 | | SEDO |

OHIO ENVI... Mental Protection Agency

NPDES Permit Processing Schedule

December 1973 - June 1974

March

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | March ~~JANUARY 1974~~ | | | | |
| Dairy Pak | | | 210 | | NE |
| Darling & Co. | | | 400 | | NE |
| Eagle Picher Ind. | | | 906 | | NE |
| Eaton Corp. | | | 333 | | NE |
| Eaton Corp | | | 548 | | NE |
| Eclat Rubber | | | 767 | | NE |
| Eclat Rubber | | | 602 | | NE |
| E.I. duPont | | | 334 | | NE |
| Elco Corp. | | | 332 | | NE |
| Ferro Corp. | | | 121 | | NE |
| Firestone | | | 960 | | NE |
| Firestone | | | 292 | | NE |
| Flintkote | | | 352 | | NE |
| Flintkote Co. | | | 579 | | NE |
| General Electric | | | 403 | | NE |
| General Electric | | | 426 | | NE |
| General Electric | | | 638 | | NE |
| General Electric | | | 086 | | NE |
| General Tire & Rubber | | | 071 | | NE |

Ohio Environmental Protection Agency

NPDES Permit Processing Schedule

December 1973 - June 1974

March

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name March | March ~~February~~ ~~JANUARY 1974~~ | | | | |
| B. F. Goodrich | | | 403 | | NE |
| B. F. Goodrich | | | 053 | | NE |
| Black & Decker | | | 289 | | NE |
| Bradley Metal | | | 385 | | NE |
| C & O RR | | | 035 | | NE |
| C & O RR | | | 034 | | NE |
| Chrysler Corp.(Twinsburg) | | | | | NE |
| Cleveland Electric Ill. | | | 358 | | NE |
| Continental Oil | | | 320 | | NE |
| Cormax Metal | | | 559 | | NE |
| Cuyahoga Smelting | | | 473 | | NE |
| Ford Motor | | | 371 | | NE |
| Ford Motor | | | 372 | | NE |
| Goodyear Aerospace | | | 310 | | NE |
| Lamson & Sessions | | | 551 | | NE |
| Sand Pit Prod. | | | 608 | | NE |
| Standard Oil | | | 081 | | NE |
| Crambe Enterprises | | | 635 | | NE |
| Cuyahoga Meat Co. | | | 539 | | NE |

Ohio EPA - Water Pollution Control Agency

NPDES Permit Processing Schedule

December 1973 - June 1974

March

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| March Name | ~~February~~ JANUARY 1974 | March | | | |
| U.S. Ceramic Tile | | | 427 | | NE |
| Weatherhead Co. | | | 215 | | NE |
| Whitacre Greer | | | 128 | | NE |
| Whitacre Greer | | | 129 | | NE |
| Be-Kan, INc. | | | 139 | | NE |
| Bendix-Westinghouse | | | 380 | | NE |
| C & O RR | | | 033 | | NE |
| Columbia Gas | | | 181 | | NE |
| Columbia Gas | | | 182 | | NE |
| National Screw & Mfg. | | | 421 | | NE |
| A. C. Williams | | | 580 | | NE |
| A. C. Williams | | | 581 | | NE |
| A. C. Williams | | | 537 | | NE |
| A. C. Williams | | | 538 | | NE |
| Akron Packing | | | 533 | | NE |
| Allied Chem. Corp. | | | 445, | | NE |
| Alloys & Chemicals | | | 022 | | NE |
| Ametek/Lamb | | | 425 | | NE |
| Asso. Japanning | | | 257 | | NE |

OHIO ENV... (illegible)

NPDES Permit Processing Schedule

December 1973 - June 1974

March

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| March Total | | | | | |
| Hamilton Mun., Power | | | 000817 | | SWDO |
| International Harvester | | | 000684 | | SWDO |
| Metallurgical Surv. | | | 000873 | | SWDO |
| Monsanto Research | | | 000496 | | SWDO |
| Mound Laboratory | | | 000538 | | SWDO |
| Ohio Edison | | | 000422 | | SWDO |
| Ohio Edison | | | 000423 | | SWDO |
| Piqua Mun. Power | | | 000838 | | SWDO |
| Sherwin-Williams | | | 000742 | | SWDO |
| Std. Molding | | | 000526 | | SWDO |
| Standard Oil: Monroe | | | 000720 | | SWDO |
| Standard Oil: Vandalia | | | 000081 | | SWDO |
| Aeronca | | | 000082 | | SWDO |
| ARMCO Steel | | | 000589 | | SWDO |
| ITE Imperial | | | 000221 | | SWDO |
| ITE Imperial | | | 000222 | | SWDO |
| International Harvester | | | 000580 | | SWDO |
| Mobil Chemical | | | 000108 | | SWDO |

15

March

NPDES Permit Processing Schedule

December 1973 – June 1974

| Month/Entity March Entry | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| NCR | | | 000020 | | SWDO |
| Pillsbury Corporation | | | 000191 | | SWDO |
| Chrysler Corporation | | | 000097 | | SWDO |
| Chrysler Corporation | | | 000098 | | SWDO |
| A. O. Smith Corporation | | | 000694 | | SWDO |
| Price Brothers | | | 000962 | | SWDO |
| Ross Aluminum | | | 000951 | | SWDO |
| Richardson Electroplating | | | 000711 | | SWDO |
| Montgomery Co.-Incinerator | | | 000909 | | SWDO |
| Armco Steel | | | 000590 | | SWDO |
| Armco Steel | | | 000591 | | SWDO |
| Howard Paper Company | | | 000258 | | SWDO |
| Howard Paper Company | | | 000259 | | SWDO |
| Howard Paper Company | | | 000451 | | SWDO |
| Square"D" | | | 000026 | | SWDO |
| Crystal Tissue | | | 000272 | | SWDO |
| Harding-Jones Paper | | | 000075 | | SWDO |
| Kelsey-Hayes | | | 000091 | | SWDO |
| Berstrom Paper | | | 000194 | | SWDO |

19

5

March

NPDES Permit Processing Schedule

December 1973 - June 1974

March Continued

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Wrenn Paper | | | 000122 | | SWDO |
| Stolle Corporation | | | 000524 | | SWDO |
| Mosler Safe Company | | | 000027 | | SWDO |
| Mosler Safe Company | | | 000028 | | SWDO |
| Sorg Paper Company | | | 000443 | | SWDO |

5

NPDES Permit Processing Schedule

December 1973 - June 1974

March

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | March-1974 | | | | |
| Vistron | | | 067 | | NW |
| Inland Chem. Cor. | | | 272 | | NW |
| Uniroyal | | | 263 | | NW |
| Stokley-Van Camp | | | 229 | | NW |
| Sandusky Crush Stone | | | 552 | | NW |
| Scott Paper Co | | | 130 | | NW |
| Remington Arms Co. | | | 456 | | NW |
| Hooker Chemical & Plastics | | | 669 | | NW |
| Gen. Portland Cement | | | 241 | | NW |
| Maumee Stone | | | 735 | | NW |
| Sun Oil (Marine Term) | | | 234 | | NW |
| Colum. Gas Trans/WVR | | | 492 | | NW |
| Claycraft Co. | | | 491 | | NW |
| Lima Register Co. | | | 664 | | NW |
| Ohio Lime | | | 050 | | NW |
| Indeptdt Plast. Prod. | | | 279 | | NW |
| Standard Tube Co. | | | 732 | | NW |
| RCA Corp. | | | 127 | | NW |
| Standard Oil | | | 052 | | NW |
| Mansfield Lahm Airp | | | 783 | | NW |
| Ford Motor Co/Lima | | | 470 | | NW |
| Buckeye Sugars | | | 463 | | NW |
| GMC-Chevrolet Division | | | 095 | | NE |
| Goodyear Aerospace | | | 342 | | NE |
| Goodyear | | | 343 | | NE |
| Goodyear Aerospace | | | 570 | | NE |
| Goodyear Tire & Rubber | | | 113 | | NE |
| Diary Pak | | | 215 | | NE |

28

| | | | | | |
|---|---|---|---|---|---|
| Gould Inc. | March | | 581 | | SEDO |
| Ohio Power/Musk. River | | | 525 | | SEDO |
| Resinoid Eng. Cor. | | | 482 | | SEDO |
| Koppers Co. | | | 336 | | SEDO |
| Sperry Rand Corp. | | | 727 | | SEDO |
| Stewart Broth. Excav. | | | 898 | | SEDO |
| U. S. Gyps./AP Green | | | 980 | | SEDO |
| American Agg. Corp. | | | 584 | | SEDO |
| American Agg. Corp. | | | 586 | | SEDO |
| American Agg. Corp. | | | 587 | | SEDO |

| | | | | | |
|---|---|---|---|---|---|
| March | | | | | |
| C & O, B & O | | | 000058 | | SWDO |
| Dayton Power and Light | | | 000113 | | SWDO |
| Dayton Power and Light | | | 000114 | | SWDO |
| Dayton Power and Light | | | 000115 | | SWDO |
| Dayton Power and Light | | | 000116 | | SWDO |
| Dayton Power and Light | | | 000117 | | SWDO |
| Premium Rubber Manufacturing | | | 000288 | | SWDO |
| Delco Products, GMC | | | 000244 | | SWDO |
| Inland Division, GMC | | | 000246 | | SWDO |
| Gra-Iron Foundry | | | 000874 | | SWDO |

20

April

| | | | | | |
|---|---|---|---|---|---|
| Hamilton Kent | April | | 262 | | NE |
| International Salt | | | 112 | | NE |
| Jones & Laughlin | | | 303 | | NE |
| Kewanee Oil | | | 256 | | NE |
| Lester, Ind. | | | 065 | | NE |
| Lincoln Electric | | | 525 | | NE |
| M & M Sand & Gravel | | | 464 | | NE |
| Marquette Metal | | | 600 | | NE |
| Norton Company | | | 518 | | NE |
| Norton Company | | | 519 | | NE |
| Norton Company | | | 578 | | NE |
| Ohio Edison | | | 076 | | NE |

OHIO ENVI... PROTECTION Agency

NPDES Permit Processing Schedule

December 1973 - June 1974

April

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| April | | | | | |
| June Cont Oil Co. | | | 710059 | Allen | |
| Atech Chemical Coatings | | | 720327 | Lucas | |
| Celotex Corp | | | | Ottawa | |
| Borg Warn Cor/Plum | | | 647 | Richland | |
| EX-Cell-O Corp | | | | Allen | |
| Crown Controls Corp | | | 710806 | Auglaize | |
| Landmark-Sims Fert | | | 421 | Morrow | |
| Std Oil Co | | | 710068 | Allen | |
| Shellar Globe Cor | | | 710601 | Allen | |
| Corrugated Box Plant | | | 431 | Richland | |
| Tri County Limestone | | | 801 | Hardin | |
| Walter & Sons | | | 844 | Auglaize | |
| Michigan Stone | | | 710726 | Lucas | |
| Natl Lime & Stone | | | 393 | Crawford | |
| Dinner Bell Foods | | | 710603 | Fulton | |
| Dinner Bell Foods | | | | Defiance | |
| Colorado Mfg Corp | | | 710466 | Williams | |
| Hardin Quarry | | | 710794 | Hardin | |
| AMETEK/Westchester | | | | Auglaize | |
| Webster MC | | | 576 | Seneca | |
| Toledo Stone & Glass | | | 710716 | Lucas | |
| Swift Edible Co. | | | 710588 | Seneca | |

April

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| April | | | | | |
| ~~May~~ Teledyne CAE | | | 710264 | Lucas | |
| Ashland Oil | | | 710302 | Lucas | |
| Chrysler Corp. | | | 710056 | Wood | |
| Mansfield Graphics | | | 011 | Richland | |
| Midland Ross Corp. | | | | Lucas | |
| Maumee Stone | | | 710733 | Wood | |
| J. M. Hamilton Sons | | | 032 | Marion | |
| Lake Erie Can | | | | Erie | |
| Goodyear Tire & Rub | | | | Auglaize | |
| Natl Lime & Stone | | | 710281 | Auglaize | |
| Jeep Corp. | | | 710129 | Lucas | |
| CPC Internl | | | 711138 | Lucas | |
| Shell Oil Co. | | | 710237 | Lucas | |
| U.S. Gypsum | | | 710260 | Ottawa | |
| Natl Lime & Stone | | | 710304 | Allen | |
| Kellstone | | | | Erie | |
| Am Asphalt Prod | | | 710819 | Lucas | |
| Seneca Wire & Mfg | | | 710266 | Seneca | |
| Nabisco Inc. | | | 710776 | Lucas | |
| Natl Gypsum | | | 710636 | Sandusky | |
| Bluffton Stone | | | 710730 | Allen | |
| Pioneer Rubber | | | | Huron | |

April

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | APRIL -1974 | | | | |
| Toledo Ed/Acme Station | | | 284 | | NW |
| Toledo Ed/Bayshore | | | 265 | | NW |
| Am Malleable Cast | | | 561 | | NW |
| Penn Central RR | | | | | NW |
| Mansfield Tire & Rubber | | | 524 | | NW |
| Ohio Brass | | | 324 | | NW |
| Col Gas Trans/PVNA | | | 492 | | NW |
| Great Lakes Carbon Cor. | | | 331 | | NW |
| Defiance Milk Prod. | | | 278 | | NW |
| E. I. dupont de nemors | | | 053 | | NW |
| Standard Lime & Refrac. | | | 118 | | NW |
| Maumee Stone | | | 734 | | NW |
| Rockford Stone | | | 613 | | NW |
| John W. Karch Stone | | | 256 | | NW |
| American Cyanamid Co. | | | 514 | | NW |
| Shell Oil | | | 761 | | NW |
| North American Rockwell | | | 723 | | NW |
| Minster Machine | | | 299 | | NW |
| Nicholson Concrete | | | 465 | | NW |
| National Lime Stone | | | 547 | | NW |
| Boich Lime & Coal | | | | | |
| National Std/Rawls Div. | | | 639 | | NW |

April

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | April ~~JANUARY-1974~~ | | | | |
| Akron Standard | | | 900 | | NE |
| Master Anodizer | | | 506 | | NE |
| Ward-Riddle Co. | | | 1017 | | NE |
| Borg-Warner | | | 590 | | NE |
| Target Stamped Prod. | | | 084 | | NE |
| Union Carbide | | | 009 | | NE |
| Manf. Plant Wright Tool | | | 923 | | NE |
| Oster Sand & Gravel, Inc. | | | 498 | | NE |
| Republic Steel | | | 695 | | NE |

10

April

NPDES Permit Processing Schedule
December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | April ~~JANUARY~~ - 1974 | | | | |
| Norfolk & Western RR | | | 562 | | NE |
| N. American Rock. | | | 342 | | NE |
| N. American Rock. | | | 341 | | NE |
| H. K. Porter | | | 185 | | NE |
| H. K. Porter | | | 433 | | NE |
| H. K. Porter | | | 435 | | NE |
| Ohio Brass Co. | | | 325 | | NE |
| Ohio Match Co. | | | 201 | | NE |
| Standard All/Trans. | | | 1102 | | NE |
| Standard International | | | 401 | | NE |
| Standard Oil Corp. | | | 306 | | NE |
| Sterling China | | | 925 | | NE |
| Sterling Foundry | | | 108 | | NE |
| Sun Oil | | | 712 | | NE |
| United Eng. & Foundry | | | 550 | | NE |
| Warner & Swasey | | | 108 | | NE |

9

April

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | April ~~JANUARY~~ - 1974 | | | | |
| Cleveland Electric Ill. | | | 357 | | NE |
| Columbus & Southern Ohio El. | | | 383 | | NE |
| Cons. Nat. Gas Ser. | | | 045 | | NE |
| Crane Co. | | | 056 | | NE |
| Cuyahoga Molded Plastics | | | 449 | | NE |
| E. Sparta Works Plt. | | | 1033 | | NE |
| Emerson Electric | | | 441 | | NE |
| EP Ind. | | | 900 | | NE |
| Fairfield Brick Co. | | | 368 | | NE |
| Federal Paper Board Co. | | | 349 | | NE |
| Fred J. Dando | | | 761 | | NE |
| General Amer. Trans. | | | 403 | | NE |
| General Tire & Rubber | | | 505 | | NE |
| Glen-Gery Corp. | | | 265 | | NE |
| Hall China | | | 358 | | NE |
| Harrold Tool | | | 064 | | NE |
| Harbinson-Walker/Dres. | | | 535 | | NE |
| Kinsman | | | 071 | | NE |
| Metropol. Ind. | | | 1221 | | NE |

April

OHIO EPA - NORTHEAST DISTRICT Office

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | April ~~JANUARY~~ - 1974 | | | | |
| Standard Oil #2 | | | 058 | | NE |
| Standard Oil | | | 080 | | NE |
| Standard Oil | | | 274 | | NE |
| Standard Slag | | | 601 | | NE |
| Tecumseh Corr. | | | 307 | | NE |
| Texaco | | | 470 | | NE |
| Warner & Swasey | | | | | NE |
| S. K. Wellman | | | 017 | | NE |
| White Trucks | | | | | NE |
| Zirconium Corp. | | | | | NE |
| Abex Cor./Am. Brakebl. | | | 023 | | NE |
| Adjusta-Post Mfg. | | | 991 | | NE |
| Alliance Mfg. Co. | | | 1015 | | NE |
| Airco Welding Prod. | | | 258 | | NE |
| Allied Oil Co./Whisk. | | | 433 | | NE |
| Barium & Chem. | | | 588 | | NE |
| Cleveland Electric Ill. | | | 355 | | NE |
| Cleveland Electric Ill. | | | 354 | | NE |
| Cleveland Electric Ill. | | | 356 | | NE |

OHIO ENVIRONMENTAL PROTECTION AGENCY

NPDES Permit Processing Schedule

December 1973 - June 1974

| Month/Entity | Receiving Stream | Sub-basin | Application Number | County | District Office |
|---|---|---|---|---|---|
| Name | April ~~JANUARY~~ - 1974 | | | | |
| Ohio Edison | | | 075 | | NE |
| Pacific Coast Co. | | | 302 | | NE |
| Parr, Inc. | | | 134 | | NE |
| Pharmaseal Tall. | | | 616 | | NE |
| RCA | | | 568 | | NE |
| Republic Steel | | | 327 | | NE |
| Republic Steel | | | 328 | | NE |
| Republic Steel | | | 388 | | NE |
| River Smelting | | | 037 | | NE |
| Shell Oil Co. | | | 016 | | NE |
| Sherwin Williams Co. | | | 154 | | NE |
| Standard Oil | | | 080 | | NE |
| Standard Oil | | | 280 | | NE |
| General Electric | | | 403 | | NE |
| General Tire & Rubber | | | 505 | | NE |
| Gould, Inc. | | | 581 | | NE |
| Hospitality Motor | | | | | NE |
| Medical Mfg. | | | 312 | | NE |
| Paramount Distillers | | | | | NE |

## 3.4 Ohio Environmental Protection Agency Regulations

| | |
|---|---|
| EP-1-01 through 10 | Water Quality Standards |
| EP-31-01 through 09 | Ohio NPDES Permit |
| EP-40-01 through 30 | Rules of Procedure |

Ohio EPA

REGULATION EP-1

# WATER QUALITY STANDARDS

## INTRODUCTORY NOTE

This document contains the revised Water Quality Standards of the State of Ohio, effective July 27, 1973. The standards were adopted by the Director of the Ohio Environmental Protection Agency as authorized in Section 6111.041 of the Ohio Revised Code, after public hearing and an extensive period of review and comment by governmental, industrial, environmental and public spokesmen. The standards are based upon scientific and technical knowledge accumulated by the Ohio Environmental Protection Agency and the United States Environmental Protection Agency as to the quality of waters of the State of Ohio required to sustain the following beneficial uses: municipal, agricultural and industrial water supplies, well balanced aquatic life habitat, and recreational activities.

At the time of the adoption of these Water Quality Standards, the principal means of regulating sources of water pollution are defined in the amendments to the Federal Water Pollution Control Act, P.L. 92-500, adopted by Congress on October 18, 1972. This act sets forth a national program for water pollution control permits, (Section 402), known as the "National Pollutant Discharge Elimination System" or NPDES. Ohio's revised Water Quality Standards are consistent with the requirements of the Federal Amendments, as described in Section 303 of the Act. The relationship between Ohio's revised Water Quality Standards and the NPDES permit program is a complex one. The Standards serve as the objectives to be ultimately attained for water quality of the waters of the state. In the enforcement process, the Standards serve as a basis for calculating appropriate effluent limitations which are then incorporated into the NPDES permit conditions for those sources of water pollution where the applications of minimum effluent standards will not result in the attainment of the Water Quality Standards. In any area where the application of Federally defined "best available control technology economically achievable" by all dischargers will not result in meeting the adopted Water Quality Standards, the Standards may be waived.

Determination of effluent limitations required for NPDES

permits will be made by the Ohio Environmental Protection Agency and the U.S. Environmental Protection Agency for all point sources of water pollution prior to December 31, 1974. Ohio is currently in the process of applying for "permanent" authorization from the Administrator of the U.S. Environmental Protection Agency for issuing NPDES permits, under authority provided by the Ohio General Assembly in Section 6111.03 of the Ohio Revised Code. The interrelationship between the revised Water Quality Standards and the Ohio NPDES permit program for water pollution control will be more fully elaborated in a forthcoming set of regulations of the Ohio Environmental Protection Agency entitled EP-31. Ohio NPDES Discharge Permit Regulations.

Questions about these Standards, and the Ohio Environmental Protection Agency water pollution control program are welcomed and should be addressed to the Division of Surveillance at the nearest Ohio EPA district office:

Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

Ohio EPA
Northwest District Office
111 West Washington Street
Bowling Green, Ohio 43402

Ohio EPA
Southeast District Office
R.R. 2, Box C-1
Nelsonville, Ohio 45764

Ohio EPA
Southwest District Office
40 South Main Street
Dayton, Ohio 45402

Ira L. Whitman, Director
Ohio Environmental Protection Agency
July 27, 1973

# EP-1. WATER QUALITY STANDARDS

## EP-1-01 Classification of Waters of the State.

(A) Except as specified in subsection (B) below, all surface waters of the state are hereby classified as appropriate for warm water fisheries, for primary contact recreation, for processing by conventional treatment into public, industrial, and agricultural water supplies, and for such other uses as are identified for specific uses in subsequent sections of this Chapter, EP-1, of the Regulations of the Ohio EPA.

(B) The water quality standards set forth in this Chapter, EP-1, of the Regulations of the Ohio EPA, shall not apply.

(1) Whenever the flow falls below the annual minimum 7 day average flow that has a recurrence period of once in ten years taking into account hydraulically altered flow regimes, calculated by the methods described in H. C. Riggs, Techniques of Water-Resources Investigation of the United States Geological Survey, Chapter B 1, Low-Flow Investigations (Washington, D. C., 1972); or

(2) Where a portion of a watercourse is determined to be a low-flow stream. The term "low-flow stream" means that portion of a watercourse where:

(a) the total upstream drainage area is less than five square miles, and

(b) less than 50% of the flow would be present if there were no point source wastewater discharges for 15% of any two consecutive year period during the ten years preceding July 1, 1974.

Discharges to low-flow streams as described by this subsection, EP-1-01 (B)(2), commenced on or before July 1, 1974, will be required to either meet water quality standards or be treated by "the best available control technology economically achievable" as defined by the Administrator of the United States Environmental

Protection Agency under the Federal Water Pollution Control Act Amendments of 1972, whichever is less stringent: and water discharge permits for such discharges will contain effluent levels that would be reached by such treatment. The standards set forth in this Chapter, EP-1, of the Regulations of the Ohio EPA, shall apply to low-flow streams for discharges commenced after July 1, 1974. Such discharges shall not interfere with the attainment or maintenance of the water quality standards set forth in this Chapter.

Existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06 are rescinded.

(Adopted July 27, 1973;
Effective July 27, 1973)

EP-1-02 General Standard. Except as sections EP-1-01 (A) through (B) and sections EP-1-03 through EP-1-07 of these regulations establish different standards, the water quality standards of the state shall be as follows:

(A) Within 500 yards of any public water supply intake,

(1) dissolved solids may exceed one, but not both, of the following:

(a) 500 mg/l as a monthly average nor exceed 750 mg/l at any time, or

(b) 150 mg/l of dissolved solids attributable to human activities; and

(2) phenols (storet number 32730) shall not exceed 1.0 ug/l; and

(3) nitrate (N) (storet number 00620) shall not exceed 8 mg/l; and

(4) dissolved iron (storet number 01046) shall not exceed 300 µg/l; and

(5) chromium (hexavalent)(storet number 01032) shall not exceed 10 µg/l; and

(6) cyanide (storet number 00720) shall not exceed .001 mg/l.

(B) Within 500 yards of any water supply intake, dissolved solids may exceed one, but not both, of the following:

(1) 500 mg/l as a monthly average nor exceed 750 mg/l at any time, or

(2) 150 mg/l of dissolved solids attributable to human activities; and

(C) Dissolved oxygen shall not be less than a daily average of 5.0 mg/l nor less than 4.0 mg/l at any time.

(D) pH shall not be less than 6.0 and shall not be more than 9.0 at any time except that it may be less than 6.0 or more than 9.0 if there is no contribution of acidic or alkaline pollution attribution to human activities.

(E) Fecal coliform content (either MPN or MF count) shall not exceed 200 per 100 ml as a 30 day geometric mean based on not less than five samples during any 30 day period nor exceed 400 per 100 ml in more than ten percent of all samples during a 30 day period.

(F) Dissolved solids may exceed one, but not both of the following:

(1) 1500 mg/l

(2) 150 mg/l attributable to human activities.

(G) Lake water temperature shall not exceed by more than three degrees fahrenheit (1.7 degrees centigrade) the water temperature which would occur if there were no temperature change of such waters attributable to human activities, and stream water temperature shall not exceed by more than five degrees fahrenheit (2.8 degrees centigrade) the water temperature which would occur if there were no temperature change of such waters attributable to human activities. Notwithstanding the foregoing standard, at no time shall water temperature exceed the maximum temperatures indicated in the following table:

MAXIMUM TEMPERATURE IN DEGREES CENTIGRADE & FAHRENHEIT DURING MONTH

| Water | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| All Waters Except Ohio River | C° 10.0 | 10.0 | 15.6 | 21.1 | 26.7 | 32.2 | 32.2 | 32.2 | 32.2 | 25.6 | 21.1 | 13.9 |
| | F° 50 | 50 | 60 | 70 | 80 | 90 | 90 | 90 | 90 | 78 | 70 | 57 |
| Main Stream Ohio River | C° 10.0 | 10.0 | 15.6 | 21.1 | 26.7 | 30.6 | 31.7 | 31.7 | 30.6 | 25.6 | 21.1 | 13.9 |
| | F° 50 | 50 | 60 | 70 | 80 | 87 | 89 | 89 | 87 | 78 | 70 | 57 |

(H) The threshold-odor number attributable to human activities shall not exceed 24 at 40 degrees centigrade tested as described in "Standard Methods for the Examination of Water and Wastewater," 13th Edition, 1971, published by the American Public Health Association, the American Water Works Association, and Water Pollution Control Federation.

(I) Gross beta activity shall not exceed 100 picocuries per liter, nor shall activity from strontium 90 exceed 10 picocuries per liter, nor shall activity from alpha emitters exceed 3 picocuries per liter.

(J) The following chemical pollutants shall not exceed the following specified concentrations at any time:

| Storet Number | Constituent* | Concentration mg/l | Concentration ug/l |
|---|---|---|---|
| 00610 | Ammonia | 1.5 | - |
| 01002 | Arsenic | - | 50. |
| 01007 | Barium | - | 800. |
| 01027 | Cadmium | - | 5. |
| 00940 | Chloride | 250. | - |
| 01034 | Chromium | - | 300. |
| 01032 | Chromium (hexavalent) | - | 50. |
| 01042 | Copper | - | 500. |
| 00722 | Cyanide (free) | 0.005 | - |
| 00720 | Cyanide | 0.2 | - |
| 00951 | Fluoride | 1.3 | - |
| 38260 | Foaming Agents (MBAS) | 0.5 | - |
| 01046 | Iron (dissolved) | - | 1000. |
| 01051 | Lead | - | 40. |
| 01054 | Manganese (dissolved) | - | 1000. |
| 71900 | Mercury | - | .5 |
| 00550 | Oil & Grease (hexane soluble) | 5. | - |
| 32730 | Phenols | - | 100. |
| 01147 | Selenium | - | 5. |
| 01077 | Silver | - | 1. |
| 01092 | Zinc | - | 1000. |

* Total unless otherwise indicated.

(K) Pollutants or combinations of pollutants shall not exceed at any time one-tenth of the 96 hour median tolerance limit for any indigenous aquatic species as determined by static or dynamic bioassays in accordance with standard methods described in "Standard Methods for the Examination of Water and Wastewater," 13th Edition, 1971, published by the American Public Health Association, the American Water Works Association, and Water Pollution Control Federation.

(L) All waters of the state shall be free from substances attributable to human activities which result in sludge deposits, floating materials, color, turbidity, or other conditions in such degree as to create a nuisance.

Existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06 are rescinded.

(Adopted July 27, 1973;
Effective July 27, 1973)

EP-1-03 Mixing Zones.

(A) The waters adjacent to a point of discharge of wastewater within the area described in subsection (B) shall be recognized as a "mixing zone." The water quality standards set forth in subsection (C) shall apply to all waters within mixing zones and such waters shall be exempt from all other water quality standards.

(B) The area within a mixing zone shall be as follows:

(1) Except as paragraphs (B) (2) or (B) (3) provide different limits, no mixing zone shall:

(a) constitute more than one half of the width of the receiving watercourse nor constitute more than one-third of the area of any cross-section of the receiving watercourse,

(b) extend downstream at any time a distance more than five times the width of the receiving watercourse at the point of discharge,

(c) exceed twenty-three acres of horizontal area of the Ohio River or twelve acres of horizontal area of any other receiving watercourse,

(d) include spawning or nursery areas of any indigenous aquatic species,

(e) interdict the migratory routes of any indigenous aquatic species.

(f) include a drinking water supply intake, or

(2) For watercourses classified as cold water fisheries streams in Section EP-1-04, no mixing zone shall:

(a) constitute more than one-third of the width of the receiving watercourse nor constitute more than one fifth of the area of any cross-section of the receiving watercourse,

(b) extend downstream at any time a distance more than five times the width of the receiving watercourse at the point of discharge,

(c) exceed three acres of horizontal area of the receiving watercourse,

(d) include spawning or nursery areas of any indigenous aquatic species,

(e) interdict the migratory routes of any aquatic species,

(f) include a drinking water supply intake.

(3) No mixing zone in an inland lake shall:

(a) extend in any direction more than 300 feet from the point of discharge,

(b) include hypolimnetic waters,

(c) include spawning or nursery areas of any indigenous aquatic species,

(d) include a drinking water supply intake.

(C) The following water quality standards shall apply in mixing zones:

(1) Except as paragraphs (C) (2) or (C) (3) of this section establish different water quality standards within a mixing zone, the water quality standards shall be as follows:

(a) pollutants or combinations of pollutants shall not exceed at any time the 96 hour median tolerance limit for any indigenous aquatic species as determined by static or dynamic bioassays in accordance with standard methods described in "Standard Methods for the Examination of Water and Wastewater," 13th Edition, 1971, published by the American Public Health Association, the American Water Works Association, and Water Pollution Control Federation.

(b) water temperature shall not exceed the temperature of the receiving watercourse upstream of the mixing zone by more than 15 degrees fahrenheit (8.3 degrees centigrade) during the months of May, June, July, August, September, and October or by more than 23 degrees fahrenheit (12.8 degrees centigrade) during the months of November, December, January, February, March, and April.

(2) For all waters within mixing zones in watercourses classified as cold water fisheries streams in EP-1-04, the water quality standards shall be as follows:

(a) pollutants or combinations of pollutants shall not exceed one-tenth of the 96 hour median tolerance limit for any indigenous aquatic species as determined by static or dynamic bioassays in accordance with standard methods described in "Standard Methods for the Examination of Water and Wastewater," 13th Edition, 1971, published by the American Public Health Association, the American Water Works Association, and Water Pollution Control Federation.

(b) water temperatures shall not exceed the temperature of the receiving watercourse upstream of the mixing zone by more than 5 degrees fahrenheit (2.8 degrees centigrade) during the months of May, June, July, August, September, and October or by more than 23 degrees fahrenheit (12.8 degrees centigrade) during the months of November, December, January, February, March and April.

(3) For all waters within mixing zones in inland lakes, the water quality standards shall be as follows:

(a) pollutants or combinations of pollutants shall not exceed the 96 hour median tolerance limit for any indigenous aquatic species as determined by static or dynamic bioassays in accordance with standard methods described in "Standard Methods for the Examination of Water and Wastewater," 13th Edition, 1971,

published by the American Public Health Association, the American Water Works Association, and Water Pollution Control Federation.

(b) water temperature at any depth shall not exceed natural water temperatures outside the mixing zone by more than 15 degrees fahrenheit (8.3 degrees centigrade) during the months of May, June, July, August, September, and October or by more than 23 degrees fahrenheit (12.8 degrees centigrade) during the months of November, December, January, February, March and April.

Existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06 are rescinded.

(Adopted July 27, 1973;
Effective July 27, 1973)

EP-1-04 Cold Water Fisheries

(A) The water quality standards in watercourses classified as cold water fisheries streams in subsection (B) shall be the water quality standards in Section EP-1-02 except that, to the extent that the following paragraphs establish different standards, the latter standards shall apply.

(1) Dissolved oxygen shall not be less than six milligrams per liter. In spawning areas dissolved oxygen shall not be less than seven milligrams per liter.

(2) pH shall not be less than 6.5 and shall not be more than 9.0.

(3) There shall be no variation of water temperature attributable to human activities.

(B) The following watercourses are hereby classified as cold water fisheries streams (the county designations are for the purpose of identifying the general location of the stream only, and do not limit the classification to a portion of the stream):

(1) Mad River and its tributaries upstream or Urbana.

(2) Beaver Creek upstream of the confluence with Green Creek (Seneca County).

(3) Cold Creek upstream of the confluence with Sandusky Bay (Erie County).

(4) Pine Run upstream of the confluence with Mohican River (Ashland County).

(5) Turkey Creek upstream of the confluence with Lake Erie (Ashtabula County).

(6) Conneaut Creek upstream of the confluence with Lake Erie (Ashtabula County).

(7) East Branch of Chagrin River upstream of the confluence with Chagrin River (Geauga County).

(8) Apple Creek upstream of the confluence with Spring Run (Wayne County).

(9) North Fork upstream of the confluence with Little Beaver Creek (Columbiana County).

(10) Little Pickerel Creek upstream of the confluence with Sandusky Bay (Sandusky County).

(11) Cross Creek upstream of the confluence with Ohio River (Jefferson County).

Existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06 are rescinded.

(Adopted July 27, 1973;
Effective July 27, 1973)

EP-1-05 Lake Erie. The water quality criteria adopted by the Water Pollution Control Board on April 11, 1967, for Lake Erie and the interstate waters thereof shall be the water quality standards for the waters to which they apply.

Existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06 are rescinded.

(Adopted July 27, 1973;
Effective July 27, 1973)

EP-1-06 Mahoning River Basin. The Water Quality Standards for the Mahoning River and its tributaries in Ohio adopted by the Ohio Water Pollution Control Board on July 11, 1972, shall be the water quality standards for those watercourses and inland lakes to which they apply.

Existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06 are rescinded.

(Adopted July 27, 1973;
Effective July 27, 1973)

EP-1-07 Non-Degradation of High Quality Waters. It is the policy of the Ohio EPA that waters whose existing quality is better than these standards as of July 1, 1973, will be maintained at their existing high quality, pursuant to the Ohio water pollution control statutes, so as not to interfere with or become injurious to any assigned uses made of, or presently possible, in such waters. This will require that any industrial, public or private project or development that would constitute a new source of wastewater discharge or an increased wastewater discharge to high quality waters as part of the initial project design, to provide the most effective waste treatment available under existing technology, as provided in the Regulations of the Ohio EPA governing installation of new sources of wastewater discharge.

Existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06 are rescinded.

(Adopted July 27, 1973;
Effective July 27, 1973)

WATER POLLUTION CONTROL BOARD
DEPARTMENT OF HEALTH
COLUMBUS, OHIO

# WATER QUALITY CRITERIA ADOPTED BY THE BOARD APRIL 11, 1967, FOR LAKE ERIE AND THE INTERSTATE WATERS THEREOF

The Ohio Water Pollution Control Board hereby adopts the following water quality criteria for Lake Erie and the interstate waters thereof which may affect the State of Michigan, the Commonwealth of Pennsylvania, the State of New York, and the Province of Ontario of the Dominion of Canada.

## Water Quality - Conditions and Criteria

All Waters. All the waters considered herein shall meet the following conditions at all times:

(1) They shall be free from substances attributable to municipal, industrial, or other discharges that will settle to form putrescent or otherwise objectionable sludge deposits;

(2) They shall be free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges in amounts sufficient to be unsightly or deleterious;

(3) They shall be free from materials attributable to municipal, industrial, or other discharges producing color, odor, or other conditions in such degree as to create a nuisance; and,

(4) They shall be free from substances attributable to municipal, industrial, or other discharges in concentrations or combinations which are toxic or harmful to human, animal, plant, or aquatic life.

Lake Erie Water Quality Criteria for Various Uses are: (1) the Stream-Water Quality Criteria for Various Uses adopted by the Ohio Water Pollution Control Board on June 14, 1966, copy attached, which shall apply as a minimum to all Lake Erie waters in Ohio, and (2) the existing lake water quality which shall apply where better than the criteria for streams adopted by the Board. The existing lake water quality shall be as reported by the Federal Water Pollution Control Administration in the chapter on Water Quality in report "Program for Water Pollution Control - Lake Erie - 1967."

Lake Erie outside the established harbors at Lorain, Cleveland, and Ashtabula shall meet the Lake Erie water quality criteria for all uses.

The Lorain, Cleveland, and Ashtabula harbor waters in Lake Erie shall meet the Lake Erie water quality criteria for industrial water supply and aquatic life (A).

WATER POLLUTION CONTROL BOARD
OHIO DEPARTMENT OF HEALTH
COLUMBUS, OHIO

# RESOLUTION ADOPTED BY BOARD JUNE 14, 1966 REGARDING CRITERIA OF STREAM-WATER QUALITY FOR VARIOUS USES

WHEREAS, The Ohio Water Pollution Control Board, on December 14, 1965, did submit a resolution of intent, in accordance with the Federal Water Quality Act of 1965, that the State of Ohio will, after public hearings, prior to June 30, 1967, adopt such criteria and plans for implementation for interstate waters or portions thereof within the State; and

WHEREAS, Section 6111.03, of the Ohio Revised Code, provides, in part, as follows:

"The water pollution control board shall have power:

(A) To develop programs for the prevention, control and abatement of new or existing pollution of the waters of the state; . . . " and

WHEREAS, Primary indicators of stream-water quality are needed as guides for appraising the suitability of interstate surface waters in Ohio for various uses;

THEREFORE BE IT RESOLVED, That the following stream-water quality criteria and minimum requirements adopted by the Ohio River Valley Water Sanitation Commission, on May 12, 1966, be hereby adopted by the Ohio Water Pollution Control Board, with the understanding that the criteria may be supplemented or adjusted as circumstances dictate:

## MINIMUM CONDITIONS APPLICABLE TO ALL WATERS AT ALL PLACES AND AT ALL TIMES

1. Free from substances attributable to municipal, industrial or other discharges that will settle to form putrescent or otherwise objectionable sludge deposits;

2. Free from floating debris, oil, scum and other floating materials attributable to municipal, industrial or other discharges in amounts sufficient to be unsightly or deleterious;

3. Free from materials attributable to municipal, industrial, or other discharges producing color, odor or other conditions in such degree as to create a nuisance;

4. Free from substances attributable to municipal, industrial or other discharges in concentrations or combinations which are toxic or harmful to human, animal or aquatic life.

## STREAM-WATER QUALITY CRITERIA

### For Public Water Supply

The following criteria are for evaluation of stream-water quality at the point at which water is withdrawn for treatment and distribution as a potable supply:

1. Bacteria: Coliform group not to exceed 5,000 per 100 ml as a monthly average value (either MPN or MF count); nor exceed this number in more than 20 percent of the samples examined during any month; nor exceed 20,000 per 100 ml in more than five percent of such samples.

2. Threshold-odor Number: Not to exceed 24 (at 60° C.) as a daily average.

3. Dissolved solids: Not to exceed 500 mg/l as a monthly average value, nor exceed 750 mg/l at any time. (For Ohio River water, values of specific conductance of 800 and 1,200 micromhos/cm (at 25°C.) may be considered equivalent to dissolved-solids concentrations of 500 and 750 mg/l.)

4. Chemical Constituents: Not to exceed the following specified concentrations at any time:

| Constituent | Concentration (mg/l) |
|---|---|
| Arsenic | 0.05 |
| Barium | 1.0 |
| Cadmium | 0.01 |
| Chromium (hexavalent) | 0.05 |
| Cyanide | 0.2 |
| Fluoride | 2.0 |
| Lead | 0.05 |
| Selenium | 0.01 |
| Silver | 0.05 |

5. Radioactive substances: Gross beta activity (in the known absence of Strontium-90 and alpha emitters) not to exceed 1,000 micro-microcuries per liter at any time.

### For Industrial Water Supply

The following criteria are applicable to stream water at the point at which the water is withdrawn for use (either with or without treatment) for industrial cooling and processing:

1. Dissolved oxygen: Not less than 2.0 mg/l as a daily-average value, nor less than 1.0 mg/l at any time.

2. pH: Not less than 5.0 nor greater than 9.0 at any time.

3. Temperature: Not to exceed 95°F. at any time.

4. Dissolved solids: Not to exceed 750 mg/l as a monthly average value, nor exceed 1,000 mg/l at any time. (For the Ohio River water, values of specific conductance of 1,200 and 1,600 micromhos/cm (at 25°C.) may be considered equivalent to dissolved-solids concentrations of 750 and 1,000 mg/l.)

For Aquatic Life

(A)* The following criteria are for evaluation of conditions for the maintenance of a well balanced warm-water fish population at any point in the stream except for areas immediately adjacent to outfalls. In such areas cognizance will be given to opportunities for the admixture of effluents with stream water:

1. Dissolved oxygen: Not less than 5.0 mg/l during at least 16 hours of any 24-hour period, nor less than 3.0 mg/l at any time.

2. pH: No values below 5.0 nor above 9.0, and daily average (or median) values preferably between 6.5 and 8.5.

3. Temperature: Not to exceed 93°F. at any time during the months of May through November, and not to exceed 73°F. at any time during the months of December through April.

4. Toxic substances: Not to exceed one-tenth of the 48-hour median tolerance limit, except that other limiting concentrations may be used in specific cases when justified on the basis of available evidence and approved by the appropriate regulatory agency.

For Recreation

The following criterion is for evaluation of conditions at any point in waters designed to be used for recreational purposes, including such water-contact activities as swimming and water skiing:

Bacteria: Coliform group not to exceed 1,000 per 100 ml as a monthly average value (either MPN or MF count); nor exceed this number in more than 20 percent of the samples examined during any month; nor exceed 2,400 per 100 ml (MPN or MF count) on any day.

BE IT FURTHER RESOLVED, That the stream-water quality criteria for aquatic life be supplemented with the following and with the understanding that the criteria may be supplemented or adjusted as circumstances dictate:

(B) The following criteria are for evaluation of conditions for the maintenance of biological growth and for permitting the passage of fish through the water, at any point in the stream, except for areas immediately adjacent to outfalls. In such areas cognizance will be given to opportunities for the admixture of effluents with stream water:

*(A) added

1. Dissolved oxygen: Not less than 2.0 mg/l as a daily-average value, nor less than 1.0 mg/l at any time.

2. pH: Not less than 5.0 nor greater than 9.0 at any time.

3. Temperature: Not to exceed 95°F. at any time.

4. Toxic substances: Not to exceed one-tenth of the 48-hour median tolerance limit, except that other limiting concentrations may be used in specific cases when justified on the basis of available evidence and approved by the appropriate regulatory agency.

WATER POLLUTION CONTROL BOARD
DEPARTMENT OF HEALTH
COLUMBUS, OHIO

# WATER QUALITY STANDARDS ADOPTED BY THE BOARD JULY 11, 1972, FOR THE MAHONING RIVER AND ITS TRIBUTARIES IN OHIO.

The Ohio Water Pollution Control Board hereby adopts water quality standards for the interestate waters of the Mahoning River and its tributaries in Ohio.

## MINIMUM CONDITIONS APPLICABLE TO ALL WATERS AT ALL PLACES AND AT ALL TIMES

1. Free from substances attributable to municipal, industrial or other discharges, or agricultural practices that will settle to form putrescent or otherwise objectionable sludge deposits.

2. Free from floating debris, oil, scum and other floating materials attributable to municipal, industrial or other discharges, or agricultural practices in amounts sufficient to be unsightly or deleterious.

3. Free from materials attributable to municipal, industrial or other discharges, or agricultural practices producing color, odor or other conditions in such degree as to create a nuisance.

4. Free from substances attributable to municipal, industrial or other discharges, or agricultural practices in concentrations or combinations which are toxic or harmful to human, animal, plant or aquatic life.

## PROTECTION OF HIGH QUALITY WATERS

Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at their existing high quality, pursuant to the Ohio water pollution control statutes, so as not to interfere with or become injurious to any assigned uses made of, or presently possible, in such waters. This will require that any industrial, public or private project or development which would constitute a new source of pollution or an increased source of pollution to high quality waters will be required, as part of the initial project design, to provide the most effective waste treatment available under existing technology. The Ohio Water Pollution Control Board will cooperate with other agencies of the state, agencies of other states, interstate agencies and the Federal Government in the enforcement of this policy.

## MIXING ZONES

Mixing zones shall be determined on a case by case basis with the requirement that each mixing zone shall be limited to the greatest practical extent and where possible not to overlap another one. In addition a reasonable zone of passage will be preserved for the movement of fish and other aquaticbiota.

## WATER QUALITY DESIGN FLOW

Where applicable for the determination of treatment requirements the water quality design flow shall be the minimum seven consecutive day average that is exceeded in 90 percent of the years. On the lower main stem of the Mahoning River the regulated flow shown below shall be used for the determination of treatment requirements.

### REGULATED STREAM FLOWS IN THE MAIN STEM OF THE MAHONING RIVER

| River Reach | Winter cfs | Summer cfs |
|---|---|---|
| 1. Eagle Creek to Mosquito Creek | 145 | 315 |
| 2. Mosquito Creek to Meander Creek | 200 | 415 |
| 3. Meander Creek to Youngstown wastewater treatment plant | 225 | 480 |
| 4. Youngstown wastewater treatment plan to Ohio-Pennsylvania stateline | 290 | 515 |

## STREAM-QUALITY CRITERIA

### FOR PUBLIC WATER SUPPLY

Waters designated as a source of public water supply will be of such quality that Federal-Drinking Water Standards for finished water can be met by conventional treatment which includes coagulation, filtration and disinfection.

The following criteria are applicable to stream waters used as a potable supply:

1. Bacteria: Coliform group not to exceed 5,000 per 100 ml as a monthly average value (either MPN or MF count); nor exceed this number in more than 20 percent of the samples examined during any month; nor exceed 20,000 per 100 ml in more than five percent of such samples.

2. Threshold-odor number: Not to exceed 24 (at 60 deg. C.) as a daily average.

3. Dissolved solids: Not to exceed 500 mg/l as a monthly average value, nor exceed 750 mg/l at any time.

4. Radioactivity: Gross beta activity not to exceed 1,000 picocuries per liter (pCi/l), nor shall activity from dissolved strontium 90 exceed 10 pCi/l, nor shall activity from dissolved alpha emitters exceed 3 pCi/l.

5. Chemical constituents: Not to exceed the following specified concentrations at any time.

| Constituent | Concentration (mg/l) |
|---|---|
| Arsenic | 0.05 |
| Barium | 1.0 |
| Cadmium | 0.005 |
| Chromium (hexavalent) | 0.05 |
| Cyanide | 0.025 |
| Fluoride | 1.0 |
| Lead | 0.05 |
| Selenium | 0.005 |
| Silver | 0.05 |
| Mercury | 0.005 |

FOR INDUSTRIAL WATER SUPPLY

The following criteria are applicable to stream waters for use (either with or without treatment) for industrial cooling and processing:

Dissolved solids: Not to exceed 500 mg/l as a monthly average value nor exceed 750 mg/l at any time.

FOR AQUATIC LIFE (WARM WATER FISHERY)

The following criteria are for evaluation of conditions for the maintenance of a well-balanced, warm-water fish population. They are applicable at any point in the stream except for the minimum area necessary for the admixture of waste effluents with stream water:

1. Dissolved oxygen: Not less than an average of 5.0 mg/l per calendar day and not less than 4.0 mg/l at any time.

2. pH:

   A. No values below 6.0 nor above 8.5.

   B. Daily fluctuations which exceed the range of pH 6.0 to pH 8.5 and are correlated with photosynthetic activity may be tolerated.

3. Temperature:

   A. No abnormal temperature changes that may affect aquatic life unless caused by natural conditions.

   B. For the main stem of the Mahoning River (Warren to Lowellville Dam) water temperatures shall not exceed natural levels (as measured by the water quality monitor station at Leavittsburg) by 5° F. during April through November and 10° December through March.

   C. For all waters except the main stem of the Mahoning River (Warren to Lowellville Dam) the maximum temperature shall not exceed natural temperatures by more than 5° F. provided that at no time shall they exceed those indicated in the following table.

| Maximum Temperature in Deg. F. During Month | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan. | Feb. | March | April | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. |
| 50 | 50 | 60 | 70 | 80 | 90 | 90 | 90 | 90 | 78 | 70 | 57 |

4. Toxic substances: Not to exceed one-tenth of the 96-hour median tolerance limit, except that other limiting concentrations may be used in specific cases when justified on the basis of available evidence and approved by the appropriate regulatory agency.

FOR RECREATION

The following criterion is for evaluation of conditions for waters designated to be used for recreational purposes:

PRIMARY CONTACT - (SWIMMING AND WATER-SKIING)

Bacteria: The fecal coliform content (either MPN or MF count) not to exceed 200 per 100 ML as a monthly geometric mean based on not less than five samples per month; nor exceed 400 per 100 ML in more than ten percent of all samples taken during a month.

SECONDARY CONTACT - (BOATING, FISHING AND WADING)

Bacteria: The fecal coliform content (either MPN or MF count) not to exceed 1,000 per 100 ML as a monthly geometric mean based on not less than five samples per month; nor exceed 2,000 per 100 ML in more than ten percent of all samples taken during a month.

FOR AGRICULTURAL USE AND STOCK WATERING

The following criteria are applicable for the evaluation of stream quality at places where water is withdrawn for agricultural use or stock water purposes:

1. Free from substances attributable to municipal, industrial or other discharges, or agricultural practices that will settle to form putrescent or otherwise objectionable sludge deposits.

2. Free from floating debris, oil, scum and other floating materials attributable to municipal, industrial or other discharges, or agricultural practices in amounts sufficient to be unsightly or deleterious.

3. Free from materials attributable to municipal, industrial or other discharges, or agricultural practices producing color, odor or other conditions in such degree as to create a nuisance.

4. Free from substances attributable to municipal, industrial or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to human, animal, plant or aquatic life.

## STREAM WATER USES

The stream water uses for the waters of the Mahoning River basin are to be as follows:

1. Mahoning River upstream of Warren and all tributaries

    a. Primary contact recreation
    b. Public water supply
    c. Well-balanced warm water fishery
    d. Industrial water supply
    e. Agriculture use and stock watering

2. Mahoning River main stem Warren to Lowellville Dam

    a. Secondary contact recreation
    b. Well-balanced warm water fishery
    c. Industrial water supply
    d. Agriculture use and stock watering

3. Mahoning River (main stem) Lowellville Dam to Ohio-Pennsylvania stateline

    a. Primary contact recreation
    b. Public water supply
    c. Well-balanced warm water fishery
    d. Industrial water supply
    e. Agriculture use and stock watering

Before
THE ENVIRONMENTAL PROTECTION AGENCY
of
THE STATE OF OHIO

In the matter of )
The adoption of regulations )
EP-1-01 through EP-1-07, )
inclusive, in final form, and the )
rescission of the existing Water )
Quality Standards except to the )
extent preserved by EP-1-05 and )
EP-1-06 )

FINDING AND ORDER

The Director of Environmental Protection, having considered the adoption of proposed regulations EP-1-01 through EP-1-07, inclusive, in final form, and the rescission of existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06, finds:

1. That due notice of public hearing, pursuant to the Administrative Procedure Act, was given, that a public hearing was held on March 26, 1973, and that all persons were afforded an opportunity to be heard; and

2. That upon due consideration, and upon the basis of statements made at the public hearing, the adoption of regulations EP-1-01 through EP-1-07, inclusive, in final form, and the rescission of existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06, are reasonable, within the purview of authority provided by law, and are consistent with public notice.

It is therefore

ORDERED, That said proposed regulations EP-1-01 through EP-1-07, inclusive, in final form, be adopted and that said existing Water Quality Standards except to the extent preserved by EP-1-05 and EP-1-06, be rescinded.

It is further

ORDERED, That the effective date of the new regulations and the rescission of the existing regulations contained in the proposal shall be July 27, 1973.

Issued at Columbus, Ohio

this 27th day of July, 1973

Ira L. Whitman
Director of Environmental Protection

EP-31-01 Definitions.

(A) "Act" means Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.A. Chapter 26, Supplement.

(B) "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(C) "Applicable Water Quality Standards" means all water quality standards which apply under Chapter EP-1 of Ohio EPA Regulations and under Federal Regulations to the waters of the State.

(D) "Applicable Effluent Standards and Limitations" means all State and Federal effluent standards, and limitations to which a discharge is subject under the Act, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(E) "Applicant" means any person who files for an Ohio NPDES permit.

(F) "Application" means the form used to apply for an Ohio NPDES permit.

(G) "Director" means the Director of the Ohio Environmental Protection Agency.

(H) "Discharge" means discharge of any pollutant or pollutants from a discharge point.

(I) "Discharge of a pollutant or pollutants" means any addition of any pollutant to waters of the state from a discharge point.

(J) "Point Source" means any discernible, confined and discrete conveyance, including but not limited to any

pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(K) "NPDES" means National Pollutant Discharge Elimination System.

(L) "Ohio EPA" means the Ohio Environmental Protection Agency or its Director, as the context or other law or regulations may require.

(M) "Ohio NPDES Permit" means a permit issued by the State of Ohio for a discharge which is either in compliance with authorized discharge levels or which includes a schedule which will bring the point source into compliance with authorized discharge levels.

(N) "Pollutant" means sewage, industrial waste or other waste as defined by Section 6111.01 (B) through (D) of the Ohio Revised Code.

(O) "Person" means the state, any municipal corporation, political subdivision of the state, person as defined in Section 1.59 of the Ohio Revised Code, or interstate body created by compact.

(P) "Refuse Act Permit Application" means an application for a discharge permit filed under the 1899 Refuse Act.

(Q) "Regional Administrator" means the Administrator of U.S. Environmental Protection Agency, Region V.

(R) "Schedule of Compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with standards and regulations adopted under Section 6111.041 and 6111.042 of the Ohio Revised Code or compliance with terms and conditions of permits set under division (J) of Section 6111.03 of the Ohio Revised Code.

(S) "Wastewater treatment facility" means treatment works as defined by Section 6111.01 (F) of the Ohio Revised Code that convey or may convey effluents that will be discharged into the waters of the state.

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

EP-31-02 Ohio NPDES Permit Required.

(A) No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this Chapter, EP-31. Any person who holds an NPDES permit issued under Section 402 (a) of the Act is not required to obtain an Ohio NPDES permit until its expiration date. The Director shall administer and enforce permits issued under Section 402 (a) of the Act within this state, and may modify the terms and conditions thereof, in accordance with Section 6111.03 (J) of the Ohio Revised Code.

(B) Each point source shall come under the Ohio NPDES permit system. The Director may issue a single permit covering more than one point source, but authorized discharge levels, monitoring requirements, and other appropriate requirements shall be specified for each point source.

(C) No Ohio NPDES permit shall be required for any discharge exempted from the NPDES permit system by regulations adopted or subsequently amended by the Administrator, including 40 C.F.R. 124.11.

EP-31-03 Permit Applications.

(A) Applications for Ohio NPDES permits shall be filed only on forms approved by the Ohio EPA and shall contain such information as the Ohio EPA deems necessary.

(B) Any person proposing to commence the discharge of pollutants shall file an application at least 180 days prior to commencement of the discharge. Any person who has filed a complete Refuse Act application in timely fashion and whose application has not been denied is not required to apply for a permit under these regulations unless the discharge described in the application for a Refuse Act permit has substantially changed in nature, volume, or frequency. If, however, the discharge described in the Refuse Act permit application has substantially changed in nature, volume, or frequency, the applicant shall complete, sign and submit the appropriate NPDES application form.

(C) Any application that on its face fails to provide the Ohio EPA with requested information needed for ascertaining compliance with the applicable provisions of this Chapter, EP-31, may be considered defective. The Ohio EPA may either request additional information or return the application to the applicant without further processing. An indication of the deficiency shall accompany the application returned.

(D) An application submitted to the Director pursuant to this Chapter shall be signed as follows:

(1) In the case of a corporation, by a principal executive officer of at least the level of

Vice President, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application originates.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal, state, or other public facility, by either the principal executive officer, the ranking elected official or other duly authorized employee.

EP-31-04 Issuance of Ohio NPDES Permits.

(A) Criteria for issuing Ohio NPDES Permits.

(1) If on the basis of all information available to the Ohio EPA, the Director determines that:

(a) The authorized discharge levels specified in subsection (B) of this section are not being exceeded by the applicant; and

(b) Adequate provisions for monitoring to obtain required pollutant discharge information have been made;and

(c) If required by the Ohio EPA, performance tests, conducted at the applicant's expense after the application was filed and in accordance with methods prescribed by the Ohio EPA, demonstrate that the discharge is in compliance with the authorized discharge levels,

the Director shall issue an Ohio NPDES permit for the discharge.

(2) The Director shall deny an application for a permit or renewal thereof if

(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 area-wide waste treatment management plan adopted in accordance with Section 208 of the Act;

(c) the Administrator objects in writing to the issuance or renewal of the permit in accordance with Section 402 (d) of the 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 State.

(3) Schedule of Compliance.

If the Director determines the requirements of paragraph (A)(1) cannot be met, he may grant the point source an Ohio NPDES Permit with a satisfactory schedule of compliance, which shall become a condition of the permit.

(a) A satisfactory schedule of compliance shall include the following elements:

(i) an enforceable schedule of steps, no two of which shall be separated by more than 9 months, to be taken by the applicant that will bring the discharge into compliance with authorized discharge levels at the earliest possible date but no later than those dates necessary to achieve the objectives set forth in the Act; and

(ii) such additional steps as the Director shall specify, including interim measures, to eliminate any danger or serious threat of danger to human health and to minimize any deleterious effect on the environment. Such measures may include interim treatment techniques, reduced levels of operations, or the imposition of a connection ban.

(b) No later than fourteen (14) days following each interim date and the final date of compliance the permittee shall provide the Director with written notice of the permittee's compliance or noncompliance with interim or

final requirements.

(4) Possession of an Ohio NPDES Permit shall not relieve any person of the responsibility to comply with the authorized discharge levels specified in the permit or other provisions of applicable law.

(5) If a point source is constructed or should have been constructed pursuant to a Permit to Install under Chapter EP-30 of Ohio EPA Regulations and does not meet authorized discharge levels, the point source may be granted an Ohio NPDES Permit with a satisfactory schedule of compliance which shall become a condition of the permit. Such a permit must require the discharge to come into compliance with authorized discharge levels at the earliest possible date but no later than one year from the date of issuance. If such a discharge is not in compliance with authorized discharge levels at that time, the discharge shall be terminated until it comes into compliance.

(B) Authorized Discharge Levels.

(1) Final Limitations.

(a) Except as provided by paragraph (3), for each point source from which pollutants are discharged, the Director shall determine and specify in the permit the maximum levels of pollutants that may be discharged to insure compliance with

(i) applicable water quality standards, and

(ii) applicable effluent limitations, which shall be the national effluent limitations and guidelines adopted by the Administrator pursuant to Sections 301 and 302 of the Act, and national standards of performance for new sources pursuant to Section

306 of the Act, and national toxic and pretreatment effluent limitations pursuant to Section 307 of the Act, and

(iii) standards which prohibit significant degradation of the waters of the state, if the point source was installed or should have been installed pursuant to a Permit to Install under Chapter EP-30 of the Ohio EPA Regulations, and

(iv) any more stringent requirements necessary to comply with a plan for area-wide waste treatment management, approved pursuant to Section 208 (b) of the Act, and

(v) any more stringent limitations required to comply with any other State or Federal law or regulation, including 40 C.F.R. Section 124.42.

(b) Prior to promulgation of regulations by the Administrator setting forth effluent standards and limitations, or standards of performance pursuant to the Act, the Director may impose standards, limitations, or conditions, in an Ohio NPDES permit necessary to insure compliance with Chapter 6111 of the Ohio Revised Code and the Act.

(2) Interim Limitations. Except as provided in paragraph (3) the Director may establish the maximum levels of pollutants which may be discharged during the period of the compliance program.

(3) Present Discharge Levels. The Director may fix the maximum levels of pollutants specified in an Ohio NPDES permit as either Final Limitations or Interim Limitations at the levels indicated by the applicant as its

current maximum levels of discharge, even where limitations to such discharge levels is not essential to avoid violation of either applicable water quality standards or effluent standards.

(4) Characterization of Discharge Levels. Authorized levels of pollutants that may be discharged shall be stated to the extent possible given the nature of the pollutant in terms of the volume, weight in pounds per day (except for those pollutants not expressible by weight), duration, frequency, and where appropriate, concentration of each pollutant discharge. The Director shall specify average and maximum daily quantitative limitations.

(C) Time for Issuance.

The Director shall issue or deny an application for a permit for a new discharge for the installation or modification of a disposal system, or for renewal of a permit, within 180 days of the date on which he receives a complete application with all plans, specifications, construction schedules, and other pertinent information required by the Director.

(D) Renewal of Permits.

(1) The Director shall notify the permittee that any permittee who wishes to continue to discharge after the expiration date of his Ohio NPDES permit must file for reissuance of the permit at least 180 days prior to its expiration. Except as provided by paragraph (2), Ohio NPDES permits shall be renewed in accordance with the provisions for issuance of permits under this Chapter EP-31, of the Ohio EPA Regulations.

(2) A permit shall not be renewed unless the Director determines that the permittee is making satisfactory progress toward the achievement of all applicable limitations and has complied with the terms and conditions

of the existing permit.

(3) Any point source the construction of which is commenced after the date of enactment of the Act and which is so constructed to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a 10 year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purpose of Section 167 or 169 (or both) of the Internal Revenue Code of 1954 whichever period ends first.

EP-31-05 General Permit Conditions.

(A) Each Ohio NPDES permit shall contain the following requirements:

(1) That all discharges authorized under the NPDES permit shall be consistent with the terms and conditions of the permit. The discharge of any pollutants more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit; and

(2) That facility expansions, production increases, or process modification which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the Director of notice of such new or increased discharge of pollutants; and

(3) That the permittee shall submit to the Ohio EPA monthly reports containing such information as shall be specified by the Director; and

(4) That the permittee shall submit an annual report containing such information as shall be specified by the Director; and

(5) That the permittee shall report in such manner as shall be specified by the Director, any discharge of pollutants in violation of permit terms and conditions; and

(6) That the point source is equipped with instrumentation to monitor and record data and other information about the operation of the point source, if required by the Director. Reports of monitoring results obtained by the permittee shall be submitted annually (or on such a more frequent schedule as is required in the permit) to the Ohio EPA. Monitoring and recording of monitoring results shall be conducted in accordance with regulations adopted or subsequently amended by the Administrator, including 40 C.F.R. Sections 124.61 and 126.62.

(7) That the permittee shall allow the Director or his authorized representative to enter upon the permittee's premises. The authorized representative shall have access to any records required to be kept under the terms of the permit and may copy any such records. The Director or his authorized representative shall have access to any monitoring equipment or wastewater treatment facilities operated by the permittee for the purpose of inspecting such equipment or method required in the permit and shall have access to point sources for the purpose of sampling the discharge; and

(8) That the permittee shall maintain in good working order and operate at optimum levels in accordance with good engineering practices any wastewater treatment facilities or control systems installed to achieve compliance with the terms and conditions of the permit regardless of the quality of the effluent; and

(9) That the permittee shall provide adequately trained and qualified personnel as required by Chapter HE-37 of the Ohio EPA Regulations to operate such wastewater treatment facilities; and

(10) That the permittee for a government-owned disposal system, or any other "publicly owned treatment works" as defined in the Act shall

(a) report new introductions of industrial waste or other wastes and substantial changes in volume or character thereof being introduced into such systems or works from "industrial users" as defined in Section 502 of the Act; and

(b) report any new introduction of pollutants into such

treatment works from a source which would be a new source as defined in Section 306 of the Act if such source were discharging pollutants;

(c) require any industrial user of such treatment works to comply with the requirements of Sections 204(b), 307 and 308 of the Act. The permitee shall require that each industrial user subject to the requirements of Section 307 of the Act submit periodic notice that demonstrates what progress has been made toward full compliance with the requirements of Section 307 of the Act. Such notice shall be forwarded to the Director at intervals not to exceed nine months. Such report or notice shall include information on the quality and quantity of wastes introduced into treatment works or systems and anticipated impact of such change in the quantity or quality of effluent to be discharged.

(11) That the permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to:

(a) violation of any terms or conditions of the permit;

(b) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

(c) a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(12) That if a toxic effluent standard or prohibition (including a schedule of compliance) is established under Section 307 (a) of the Act for a toxic pollutant which is present in the permittee's discharge

and such standard or prohibition (including a schedule of compliance) is more stringent than any limitation upon such pollutant in the NPDES permit, the Director shall modify the permit in accordance with the toxic effluent standard and so notify the permittee.

(B) The Director may include in an Ohio NPDES permit any other terms or conditions he finds reasonable and appropriate for the prevention and abatment of pollution.

EP-31-06 Modification of Permits at the Request of the Permittee.

(A) Applications for modifications of permits at the request of the permittee shall be made only on forms approved by the Ohio EPA and shall contain such information that the Ohio EPA deems necessary.

(B) Such application shall contain

(1) a specific description of the relevant provisions of the existing permit,

(2) the precise changes requested,

(3) the reasons for the changes requested, and

(4) an explanation demonstrating that the permit as modified will comply with applicable State and Federal statutes and regulations.

(C) A modification at the request of a permittee shall not be approved unless the Director determines

(1) that the permit as modified will comply with all applicable State and Federal statutes and regulations, and

(2) that

(a) the permit would have been issued with the provisions contained in the proposed modifications if all information presently available had been available at that time, or

(b) valid cause for such revision exists over which the permittee had little or no control, or

(c) a good faith modification in the nature of the operation was made.

(3) That the Regional Administrator does not object in writing to such modification within 30 days following receipt of notice from the Director.

EP-31-07 Applicability of Rules of Procedure.

Ohio NPDES permit applications shall be acted upon and challenged in accordance with provisions of the Rules of Procedure Chapter EP-40, of the Ohio EPA Regulations.

EP-31-08 Transfer of Permits.

(A) An Ohio NPDES permit is transferable. The Ohio EPA must be notified in writing sixty (60) days prior to any proposed transfer of an Ohio NPDES permit. The transferee must inform the Ohio EPA that it will assume the responsibilities of the original permittee transferor.

(B) At any time during the sixty (60) day period between notification of the proposed transfer and the effective date of the transfer, the Director may prevent the transfer if he concludes that such transfer will jeopardize compliance with the terms and conditions of the permit. The Director shall notify both the original permittee transferor and the transferee in writing of his decision.

EP-31-09 Termination of Permits.

Each Ohio NPDES permit shall expire as of the date indicated on the permit. No permit shall be issued which will run for a period of more than five (5) years.

EP-31-10 Revocation of Permits.

(A) The Director may revoke a permit at any time if he determines that any applicable laws, rules, regulations or permit terms or conditions have been violated.

(B) The permittee shall be notified of the proposed revocation and reasons for such proposed revocation. The Director shall afford a prompt hearing to any permittee whose permit he proposes to revoke and who requests such a hearing, in accordance with the provisions of the Rules of Procedure, Chapter EP-40 of the Ohio EPA Regulations.

APPENDIX

40 C.F.R. Section 124.11

EXCLUSIONS

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel: Provided, that this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is operating in a capacity other than a vessel such as when a vessel is being used as a storage facility or a cannery;

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources;

(c) Approved aquaculture projects;

(d) Dredged or fill material discharged into navigable waters;

(e) Additions of sewage, industrial wastes or other materials into publicly owned treatment works. (This exclusion applies only to the actual addition of materials into the publicly owned treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the dis-

charges of pollutants to navigable waters are actually eliminated. It also should be noted that in all appropriate cases, pretreatment standards promulgated by the Administrator pursuant to section 307 (b) of the Act must be complied with.);

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency, the Director or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303 (e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(g) Any discharge of any pollutant when such discharge conforms with the national contingency plan for removal of oil and hazardous substances, published pursuant to subsection 311 (c) (2) of the Act.

(h) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and run-off from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such

facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds;

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the

number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tail-water, tile drainage, surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if:

(i) There is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial and;

(ii) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

OhioEPA

REGULATIONS EP-40-01
THROUGH EP-40-30

# RULES OF PROCEDURE

ADOPTED
JUNE 18, 1973
EFFECTIVE
JULY 5, 1973

Before
THE ENVIRONMENTAL PROTECTION AGENCY
OF
THE STATE OF OHIO

FILED
'73 JUN 21 PM 3:49
SECRETARY OF STATE
PER

In the matter of )
The adoption of proposed )
regulations EP-40-01 through )
EP-40-30, inclusive, in final )
form, and the rescission of )
HEwp-5-01 through HEwp-5-17, )
inclusive )

FINDING AND ORDER

The Director of Environmental Protection, having considered, in compliance with the Administrative Procedure Act, the adoption of proposed regulations EP-40-01 through EP-40-30, inclusive, in final form, and the rescission of regulations HEwp-5-01 through HEwp-5-17, inclusive, finds:

1. That due notice of public hearing, pursuant to the Administrative Procedure Act, was given, that the hearing was held on March 26, 1973 and that all persons were afforded an opportunity to be heard; and

2. That upon due consideration, and upon the basis of the statements made at the public hearing and in written comments submitted in relation to this matter, the adoption of regulations EP-40-01 through EP-40-30, inclusive, in final form, and the rescission of regulations HEwp-5-01 through HEwp-5-17, inclusive, is reasonable, within the purview of authority provided by law, and is consistent with public notice.

It is therefore

ORDERED, That said proposed regulations EP-40-01 through EP-40-30, inclusive, in final form, be adopted, and that said regulations HEwp-5-01 through HEwp-5-17, inclusive, be rescinded.

It is further

ORDERED, That the effective date of the new regulations and the rescission of the existing regulations contained in the proposal shall be July 5, 1973.

It is further

ORDERED, That three copies of the Finding and Order and three certified copies of the new regulations, in final form, be filed with the Secretary of State as required by law.

Ira L. Whitman

Ira L. Whitman, Ph.D
Director of Environmental Protection

Issued at Columbus, Ohio

This 18th day of JUNE 1973.

FILED

'73 JUN 21 PM 3:49

SECRETARY OF STATE

PER

STATE OF OHIO
THE ENVIRONMENTAL PROTECTION AGENCY

CERTIFICATION

I, Ira L. Whitman, Director of Environmental Protection, State of Ohio, do hereby certify that the attached is an exact copy of regulations EP-40-01 through EP-40-30, inclusive, in final form, adopted by Order of June 18th, 1973, to become effective July 5th, 1973.

Ira L. Whitman

Ira L. Whitman, Ph.D.
Director of Environmental Protection

Sworn to and subscribed in my presence by Ira L. Whitman, this 18th day of June, 1973.

Mary K. Deverse

Notary Public

MARY K. DEVERSE
NOTARY PUBLIC, FRANKLIN COUNTY, OHIO
MY COMMISSION EXPIRES SEPT. 23, 1979

FILED
'73 JUN 21 P 3:51
SECRETARY OF STATE
PER

STATE OF OHIO

ENVIRONMENTAL PROTECTION AGENCY

PROCEDURAL RULES

EP-40-01 APPLICABILITY

(A) These Rules shall govern procedure for all adjudication hearings, public meetings, and other proceedings relating to adjudicatory acts conducted by the Ohio Environmental Protection Agency or by its duly authorized hearing examiners pursuant to Chapters 119, 3704, 3745, 6111, and Sections 1505.07, 1509.081, 3707.42, 3734.02, 6101.13, 6101.39, 6103.17, 6112.02, 6117.34, 6117.46, and 6119.35, Ohio Revised Code, or any other statute requiring an adjudication hearing before the Agency.

(B) These Rules shall be effective 10 days after enactment and shall govern all procedural questions in new or pending proceedings arising thereafter.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-02 CONSTRUCTION OF RULES AND REGULATIONS

**These Rules and regulations shall be construed liberally to accomplish the purposes of the Chapters and Sections of the Ohio Revised Code within the jurisdiction of the Agency, and to afford maximum procedural fairness consistent with just, speedy, and inexpensive resolution of controversies.**

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-03 DEFINITIONS

As used herein:

(A) "Act" shall mean any statute administered by the Ohio Environmental Protection Agency.

(B) "Action" shall mean the issuance, modification, or revocation of any lawful order, other than an emergency order; the issuance, denial, renewal, modification, or revocation of a license, permit, lease, variance, or certificate; or the approval or disapproval of plans and specifications pursuant to law or regulation thereunder.

(C) "Adjudication hearing" shall mean an adversary proceeding at which are determined rights, duties, privileges, benefits or legal relationships of a specified person.

(D) "Agency" shall mean the Ohio Environmental Protection Agency.

(E) "Director" shall mean the Director of Environmental Protection of Ohio.

(F) "Fact sheet" shall mean the statement of facts provided for in EP-40-06(A), relative to an application for issuance or renewal of a permit under Section 6111.03(J), Ohio Revised Code.

(G) "Final action" shall mean the decision on any adjudicatory matter when all administrative remedies have been exhausted, or waived by failure timely to pursue such remedies.

(H) "Hearing examiner" shall include the Director when he personally conducts a hearing or performs any other act which hearing examiners are authorized to perform.

(I) "Initiation of hearing proceedings" shall mean the occurrence of that event which requires that an adjudication hearing be held, including but not limited to, a request for a hearing pursuant to Section 3745.07, Ohio Revised Code, service of a verified complaint upon an alleged violator pursuant to Section 3745.08, Ohio Revised Code, and notice of a hearing pursuant to Section 6111.32, Ohio Revised Code.

(J) "Party" shall mean (1) the State or Agency and the applicant or respondent; (2) any person who requests an adjudication hearing pursuant to EP-40-13(A); or (3) any person who intervenes pursuant to Rule EP-40-15.

(K) "Permit", "license", "certificate", or "variance" shall include any provisions, terms, conditions, specifications, requirements, or limitations with which the permittee or licensee must comply, or which affect exercise of the permit or license, whether such provision, terms, conditions, specifications, requirements, or limitations are set forth fully on the permit or license document, appended thereto, or incorporated by reference. All requirements of statute or regulations applicable to the permittee or licensee shall be conditions of such permit, license or variance although not set forth on the permit, license, or variance or appended thereto or incorporated by reference.

(L) "Person" shall mean the State of Ohio, the federal government or agency thereof, any other state or agency thereof, any interstate agency, any municipal corporation, political subdivision, public or private corporation, individual, partnership, or other entity.

(M) "Public meeting" shall mean a non-adversary public hearing, where any person may present written or oral testimony, evidence, opinions and arguments for the record for consideration by the Director in acting upon applications for the issuance or renewal of a permit or variance, and shall include public hearings held pursuant to Section 3704.03(H) of the Ohio Revised Code.

(N) "Verified complaint" shall mean a complaint, the allegations of which are sworn to by the complainant before a notary public.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-04 HEARING CLERK

(A) The duties of the Hearing Clerk shall be performed by the employee, designated by the Agency as Hearing Clerk, together with such assistants as he may require to accomplish his duties. The Hearing Clerk shall:

(1) Immediately upon initiation of hearing proceedings, open a hearing file and assign a docket number to the proceedings.

(2) Be the custodian of all hearing files for the Agency.

(3) Upon initiation of hearing proceedings, include in the hearing file copies of the proposed action, all notices, the fact sheet where one is required, and all written comments and recommendations received by the Agency.

(4) During the pendency of the proceedings carefully preserve in the hearing file all papers delivered to him for that purpose and all written comments and recommendations pertaining to the proceedings received by the Agency, recording on all such papers the date of receipt thereof.

(5) Permit any person to make a copy of any papers in the hearing file or other files of the Agency in his possession except where such matters are privileged.

(6) Effect all notices pertaining to Agency public meetings and adjudication hearings required by statute, rule, or regulation.

(7) Prepare and certify the record or documents in the hearing file in any instance where certification by the Agency or Director is required by law.

(8) Perform such other duties as are assigned to him by the Director.

(B) The acceptance of papers or documents for filing or the commission of any other act by the Hearing Clerk shall not be construed as an admission by the Agency of the validity or proper filing of such paper or of compliance with any procedural requirements imposed by statute or regulation.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-05 PROPOSED ACTION

(A) Except as provided in Section EP-40-05(D), in all actions of the Agency, the Director shall prepare and give notice to the parties of a proposed action without an adjudication hearing. The proposed action shall be in the same form as, and include all elements of, a final action and where issuance of permits is proposed, shall include a proposed permit. Any person may file comments or request an adjudication hearing as provided by these Rules. The Director may hold a public meeting on an application for a permit or variance or renewal thereof prior to the issuance of a proposed action.

(B) If no adjudication hearing is held, or if no public meeting is held subsequent to the issuance of a proposed action, the Director, after consideration of all written comments submitted within thirty days of public notice of the proposed action, or such longer period specified in the public notice, shall: (1) issue the proposed action as his final action; (2) permit the proposed action to become final if the proposed action provides that the proposed action will become final unless withdrawn by the Director prior to the expiration of a specified period of time; or (3) withdraw the proposed action and issue a revised proposed action. A revised proposed action shall be treated in all respects as a proposed action except that the Agency need not hold further public meetings.

(C) The Director may withdraw a proposed action at any time before the proposed action becomes final.

(D) Notwithstanding the provisions of EP-40-05(A) above, the Director may issue a final action without a hearing where the rules of the Agency or the statutes pertaining to the Agency specifically give a right to appeal to the Environmental Board of Review and also give the appellant a right to a hearing de novo on such appeal, and where no statutory provision or regulation prohibits such action from being effective before persons permitted by statute or regulation to participate in an adjudication hearing have been afforded an opportunity for a hearing.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-06 FACT SHEETS

(A) Before the Director issues a proposed action on any application for issuance or renewal of a permit pursuant to Section 6111.03(J), Ohio Revised Code, for a discharge which has a total volume of more than 500,000 gallons on any day, the Agency shall prepare a fact sheet which shall include:

(1) A sketch or detailed description of the location of the discharge described in the application;

(2) A quantitative description of the discharge described in the application which includes at least the following:

(a) The rate, quantity, and character of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day.

(b) For thermal discharges, the average summer and winter temperatures in degrees Fahrenheit; and

(c) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under applicable water quality or effluent standards.

(3) The proposed action of the Director including the terms, specifications, conditions, and limitations of any permit proposed to be issued;

(4) Description of the uses for which the receiving waters have been classified, if any, and identification of the applicable water quality and effluent standards;

(5) Description of the procedures for the formulation of final determinations including:

(a) The period, not to be less than thirty days, in which the public may comment upon the proposed action;

(b) Procedures for requesting a public meeting or adjudication hearing and the nature and procedure of such meetings and hearings; and

(c) Any other procedures by which the public may participate in the formulation of the final determinations.

(6) Instruction to persons desiring to be included on the mailing list provided for in subsection (B).

(B) The Agency shall maintain a mailing list of persons or groups requesting fact sheets prepared for any specified application for issuance or renewal of a permit under Section 6111.03(J) and persons or groups requesting to receive notice of further proceedings relating to such application, copies of additional fact sheets prepared, or other information relating to such application. The Agency, and after commencement of hearing proceedings the Hearing Clerk, shall add any person or group to any such list upon receipt from such person or group of a request for inclusion thereon specifying the application or proceedings about which notices, additional fact sheets, or other information is desired.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-07 NOTICES

(A) The Agency shall give public notice of all applications for issuance, modification, or renewal of permits, licenses, variances, and of proposed actions, actions, verified complaints, public meetings and adjudication hearings. Such notice shall be:

(1) Published once in a newspaper having general circulation in the county in which the source or facility is located. This notice may be summary in form specifying the source or facility involved, the owner, the type of action proposed if any, and the address of the Agency from which further information, including the full notice, may be obtained.

(2) Mailed, on or before the date of publication, by first class mail to all persons on the current mailing list of subscribers maintained by the Director pursuant to Section 3745.07, Ohio Revised Code. This notice may be summary in form specifying the source or facility involved, the owner, the type of action proposed, and the address of the Agency from which further information, including the full notice, may be obtained.

(3) Mailed on or before the date of publication to any person who has requested notice concerning the source or facility or the owner thereof, or who has requested a copy of the application, the proposed action or the fact sheet.

(4) In the case of any proposed action for issuance or renewal of a permit under Section 6111.03(J), Ohio Revised Code, mailed on or before the date of publication to any state, interstate, federal, or local governmental agency having jurisdiction over waters which may be affected by the Agency's action.

(B) For purposes of determining the time of notice, public notice is complete upon publication as required in subparagraph (A) (1) above.

(C) After receipt by the Agency of a completed application for issuance, modification, or renewal of a permit, license, certificate, or variance or filing of a verified complaint under Section 3745.08, notice thereof shall be mailed within one week and published within ten days. In all cases, notice of hearings and public meetings shall be given at least thirty days prior to the date of hearing or meeting. Notices of proposed actions shall be given at least thirty days before such proposed action becomes final.

(D) Notice shall be given by certified mail to all parties and objectors under Section 3745.07 of the time, place, and hearing examiner for hearings; and by first class mail for any other proceedings.

(E) Notice of a proposed action shall be given to the person applying for issuance, modification, or renewal of a permit, license, certificate, or variance, or the person who will be subject to the proposed orders by certified mail, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. Such notice shall inform the affected person of his right to, and opportunity for, an adjudication hearing. Such notice shall be complete upon receipt of or upon refusal to accept the certified mail notice.

(F) Failure to give notice as required by EP-40-07 will invalidate any action of the Director only if such failure to give notice is raised by (1) the applicant or respondent, or (2) any person permitted by statute or regulation to participate as a party in a proceeding before the Director.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-08 CONTENTS OF PUBLIC NOTICES

(A) Public notices of proposed actions for issuance, or renewal of permits under Section 6111.03(J), Ohio Revised Code, shall include:

(1) The name of the Agency and the address and telephone number of the facilities where Agency files and records pertaining to the application are located and may be inspected and copied, and instructions for persons desiring to obtain additional information or a copy of any fact sheet prepared or of the proposed permit; and instructions to persons desiring to be included on the mailing list provided for in EP-40-06(B).

(2) The name and address of the applicant.

(3) A brief description of the applicant's activities or operations which result in the discharge described in the application.

(4) The location of the source or operation including the waterway to which each discharge is made, and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge.

(5) A statement of the Director's proposed action to issue or deny the permit for the discharge described in the application.

(6) A statement:

(a) that the proposed action of the Director shall become final on the effective date specified in the proposed action unless (1) an adjudication hearing is requested or (2) the Director revises or withdraws the proposed action after consideration of the record of a public meeting or written comments, or upon disapproval by the Administrator of the United States Environmental Protection Agency;

(b) that any person may submit a written statement within thirty days as to why the Director should revise the proposed action;

(c) that if significant public interest is shown a public meeting may be held on motion of the Director prior to issuance of any final action; and

(d) that following final action by the Director any party has rights of appeal to the Environmental Board of Review.

(B) Public notices of all public meetings and adjudication hearings relating to applications for issuance, modification or renewal of permits under Section 6111.03(J), Ohio Revised Code, shall include:

(1) The name of the Agency and the address and telephone number of the facilities where Agency files and records pertaining to the application are located and may be inspected and copied, and instructions for persons desiring to obtain additional information or a copy of any fact sheet prepared or of the proposed permit; and instructions to persons desiring to be included on the mailing list provided for in EP-40-06(B).

(2) The name and address of the applicant.

(3) The location of the source or operation including the waterway to which each discharge is made and a short description of the location of each discharge on the waterway including whether such discharge is a new or an existing discharge;

(4) The identification number and date of issuance of the notice of the proposed action of the Director issued pursuant to EP-40-08(A).

(5) The date, time, and location of the public meeting or hearing.

(6) A concise statement of the issues raised by the party requesting the public meeting or adjudication hearing.

(7) A statement that evidence may be presented by the applicant, the state, and other parties, and that following presentation of such evidence other interested persons may present testimony of facts or statements of opinion, and that if they wish to present testimony at an adjudication hearing such testimony will be subject to the right of cross-examination by parties to the proceeding.

(8) A statement that the purpose of the public meeting or hearing is to obtain additional evidence and that statements concerning the issues raised by the party requesting the hearing are invited.

(C) Public notice of verified complaints filed pursuant to Section 3745.08, Ohio Revised Code, or complaints filed pursuant to Section 6111.32, Ohio Revised Code, shall include to the extent known to the Agency:

(1) The name of the agency and the address and telephone number of the facilities where further information may be obtained and agency files and records pertaining to the proceedings may be inspected and copied.

(2) The name and address of the party filing the complaint.

(3) The name and address of the person against whom the complaint was filed.

(4) A short description of the location of the source or operation, including for discharges to waters of the State, the waterway to which the discharge is made.

(5) A brief description of the activities or operations of the party against whom the complaint was filed as they pertain to the controversy.

(6) A statement that any person within thirty days may submit a written statement to the Director concerning the facts or opinions relating to the matter raised in the complaint.

(7) A statement that any person may request notice concerning further actions pursuant to the complaint, including the outcome of the proceedings.

(D) All other public notices from the Agency shall include to the extent known to the Agency:

(1) The name of the agency and the address and telephone number where further information may be obtained and agency files and records pertaining to the proceedings may be inspected and copied.

(2) The name and address of the person responsible for the source.

(3) The location of the source, including for discharges to waters of the State the waterway to which the discharge is made.

(4) A statement that any person within thirty days may submit a written statement to the Director concerning facts or opinions relating to the action or proposed action.

(5) A statement that any person may request notice concerning further actions or proceedings.

(E) Where multiple notices for several actions are mailed or published together with duplicate information, any information which is required by this Rule to be contained in more than one such notice need not be repeated in each notice but may be contained in a separate document mailed or published with and referred to in each notice to which it applies.

(F) Notwithstanding any other provision in this section, notice of a proposed action to modify any action of the Director shall include a statement of the proposed modification together with references to the action proposed to be modified and identification numbers of earlier notices or fact sheets relating to such action, and no additional information need be included in the notice of proposed action to modify.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-09 NOTICE OF WATER PERMIT APPLICATIONS

TO GOVERNMENT AGENCIES

(A) The notice required by EP-40-07(A)(4) to be given to state and governmental agencies shall include:

(1) The information required in EP-40-08 for public notices, and may include a copy of such public notice.

(2) A statement that such state or agency may submit written recommendations to the Director, and to the Regional Administrator of the United States Environmental Protection Agency, which the Director may incorporate into the permit if issued and that if the recommendation of the state or agency is not incorporated in the final action of the Director, a written explanation of his reasons for not accepting the recommendation will be provided that state or agency and the Regional Administrator of the United States Environmental Protection Agency.

(3) A copy of the fact sheet and a statement that a copy of the application for a permit or of the proposed permit including all ancillary papers will be provided upon request.

(B) The notice required by EP-40-07(A)(4) shall also be given, when applicable, to:

(1) Any agency responsible for an "Areawide Waste Treatment Management Plan" pursuant to Section 208(b) of the Federal Water Pollution Control Act Amendments of 1972.

(2) Any agency responsible for the preparation of a plan pursuant to an approved continuous planning process under Section 303(e) of the Federal Water Pollution Control Act Amendments of 1972.

(3) Public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-10 COORDINATION OF WATER POLLUTION CONTROL ACT PERMIT PROGRAM WITH AGENCIES OF THE UNITED STATES

(A) (1) Upon the Director's issuing a proposed action on an application to issue or renew a permit under Section 6111.03(J), Ohio Revised Code, the Agency shall transmit by certified mail a copy of the permit to the Regional Administrator of the United States Environmental Protection Agency, unless by written agreement the Regional Administrator has waived his right to receive, review, object to or comment upon such proposed permit. If within 90 days, the Regional Administrator in writing objects to the issuance of such permit as being outside the requirements of the Federal Water Pollution Control Act, the Director shall withdraw the permit and give notice of a revised proposed action. The Director may withdraw a permit and give notice of a revised proposed action after consideration of written comments or recommendations of the Regional Administrator at any time before the date upon which the proposed action will become final.

(2) Immediately following final issuance, modification, or renewal of a permit under Section 6111.03(J), Ohio Revised Code, the Agency shall transmit by first class mail a copy thereof, to the Regional Administrator.

(B) At the time of issuance of public notice of an application for issuance, modification, or renewal of a permit pursuant to Section 6111.03(J), Ohio Revised Code, for a discharge which has or will have a total volume of more than 500,000 gallons on any day, the Agency shall transmit a copy of the fact sheet to the District Engineer of the United States Army Corps of Engineers, for the District in which the discharge is located unless by written agreement such District Engineer has waived his right to receive a fact sheet for such discharge.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-11 FILING OF PAPERS

(A) An original and two copies of all papers shall be filed with the Hearing Clerk, and copies shall be served upon all parties. If a party is represented by an attorney, service shall be made upon the attorney.

(B) All items except copies of documents filed in the proceedings shall be on eight and one-half by eleven inch paper and shall be entitled "Before the Ohio Environmental Protection Agency" and shall be styled with the name of the applicant or respondent, as the case may be (e.g., "In the Matter of _____ _____, Applicant" or In the Matter of _____, Respondent"), and shall set forth the docket number of the case except where no docket number has been assigned.

(C) All papers shall be deemed filed upon receipt by the Hearing Clerk.

(D) In computing any period of time prescribed for filing and serving a document, the day upon which the document or notice of the action to be contested or answered was received, or the day of any other event after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

(E) Any request for an extension of time must be filed within the time allowed for the filing or serving of the document with the Agency.

(F) Papers filed with the Hearing Clerk shall not be considered by the Hearing Examiner unless proof of service is endorsed thereon. The proof of service shall state the date and manner of service and shall be signed by the party filing such paper or his attorney.

(G) All papers filed by a party shall be typewritten and shall have typed or printed thereon the name, address, and telephone number of the party or his attorney if he has one. If a party is represented by a firm of attorneys, a particular attorney within the firm having primary responsibility for the case shall be indicated on such paper. All papers filed shall be signed by the party or his counsel.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-12 PUBLIC MEETING

(A) Within thirty days of notice of the Director's proposed action to issue or renew a permit, any person may request or petition for a public meeting for presentation of evidence, statements, or opinions.

(B) If the Director determines that there is significant public interest in a proposed action or where required to do so by statute or regulation, the Director shall hold a public meeting in the county where the source or facility affected is located, or in a contiguous county, at which meeting interested persons may submit written or oral statements and present evidence concerning the proposed action. If an adjudication hearing is held on the same proposed action, the Director may hold such meeting and hearing so that one proceeding will commence immediately following the close of the other, or hold such meeting and hearing on separate occasions. In the consideration of an application for issuance or renewal of a permit or variance, the Director may hold a public meeting prior to issuance of a proposed action.

(C) In any public meeting, the Director may appoint a Hearing Examiner to conduct such meeting. On the date and at the time and place specified in the notice, the public meeting shall be held, at which any person (1) may appear and be heard in person or by his attorney, or both; (2) may present his position, arguments, or contentions orally or in writing; and (3) may, in the discretion of the Director or Hearing Examiner, question or examine persons who appear to present positions, arguments, or contentions at such meeting.

(D) Comments received or evidence or statements presented at a public meeting held pursuant to this Rule shall be considered by the Director, who shall issue a proposed action, or, if the public meeting was held subsequent to the issuance of a proposed action, may withdraw the proposed action or issue a revised proposed action. A revised proposed action shall be treated in all respects as a proposed action under these Rules, except that the Agency need not hold further public meetings.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-13 REQUESTS FOR ADJUDICATION

HEARINGS AND OBJECTIONS

(A) An adjudication hearing shall be held in accordance with these Rules (1) upon receipt of a request for a hearing from the applicant within thirty days of notice of the proposed action, or (2) upon receipt of an objection by any person pursuant to Section 3745.07, Ohio Revised Code.

(B) All requests for adjudication hearings shall be in writing. Proposed actions together with requests for adjudication hearings shall constitute the pleadings for hearings held pursuant to these rules. All requests for adjudication hearings shall state the questions to be considered at the requested hearing, enumerating the specific findings, orders, or actions of the Agency objected to, and shall state reasons why such provisions of the proposed action are contested. Failure to comply with this subsection shall constitute a default. If a party desires to request that an adjudication hearing be held at a specific time or place, such request shall be included in the hearing request.

(C) When an adjudication hearing is duly requested, or when an objection requesting a hearing is duly made pursuant to Section 3745.07, Ohio Revised Code, the proposed action shall not be considered an action of the Director, but a proposal upon which evidence is to be heard.

(D) The person filing an objection requesting an adjudication hearing pursuant to Section 3745.07, Ohio Revised Code, shall be a party to the hearing and the Agency may participate in the hearing actively or refrain from active participation permitting the other parties to prosecute the proceedings.

(E) If the opportunity for an adjudication hearing is not availed of within the requisite time period, all persons entitled to request a hearing shall be deemed to have waived all rights to a hearing and all rights to contest the Director's action, and they shall be deemed to have consented to the proposed action which shall become final and as valid as if a hearing had been held at which sufficient reliable, probative, and substantial evidence had been presented in support thereof.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-14 AUTHORITY AND DUTIES OF HEARING EXAMINERS

(A) Adjudication hearings shall be conducted before a Hearing Examiner except where the Director determines to hear the case.

(B) Immediately upon receiving notice of initiation of the hearing proceedings from the Hearing Clerk, the Chief Hearing Examiner shall assign a Hearing Examiner to the case.

(C) The Hearing Examiner shall conduct hearings in such a manner as to prevent unnecessary delay, maintain order, and ensure the development of a clear and adequate record.

(D) The authority of the Hearing Examiner shall include, but not be limited to, authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas to require the attendance of witnesses at hearings and depositions;

(3) Compel all parties to state their positions in writing with respect to the controversy;

(4) Examine witnesses and direct witnesses to testify;

(5) Make rulings on the admissibility of evidence;

(6) Make rulings on procedural motions, whether such motions are oral or written;

(7) Hold conferences to discuss settlement or for the simplification of issues pursuant to EP-40-19;

(8) Request the parties or their attorneys to file suggested findings, orders, conclusions of law and briefs before or following the hearing and within such time limits as he may determine;

(9) Request any party or counsel to prepare entries, findings, or orders;

(10) Take such other action as may be necessary to accomplish the purposes of subsection (C).

(E) The Hearing Examiner shall have such other powers, duties, and authority as are granted by statute or rules.

(F) The Hearing Examiner shall include in his recommendations to the Director a short statement of his reasons for each ruling on all written motions. All rulings on evidence and motions shall be subject to review by the Director.

(G) The Director or his authorized representative shall schedule adjudication hearings. In scheduling hearings consideration shall be given to:

(1) Providing adequate time for all parties to prepare for the hearing;

(2) Any request by a party relating to the time and location of the hearing;

(3) The advisability of combining adjudication hearings and public meetings.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-15 INTERVENTION

(A) Any person may file a motion for leave to intervene in an adjudication hearing conducted under these Rules. A motion must set forth the grounds for the proposed intervention and the position and interest of the movant in the proceedings. A motion shall be accompanied by a pleading setting forth the matter for which intervention is sought. Movant shall serve a copy of the motion and pleading upon the parties as provided in Rule EP-40-17.

(B) A motion for leave to intervene in a hearing must ordinarily be filed prior to the commencement of the first prehearing conference, or, if no prehearing conference is held, fifteen (15) days prior to commencement of the hearing. Any motion filed after that time must contain, in addition to the information set forth in subsection (A) of this Rule, a statement of good cause for the failure to timely file the motion and shall be granted only upon a finding (1) that extraordinary circumstances justify the granting of the motion; or (2) that the intervenor shall be bound by agreements, arrangements, and other matters previously made in the proceeding.

(C) Leave to intervene will be freely granted. The factors to be considered by the Hearing Examiner in granting leave to intervene shall include, where relevant: (1) the nature and extent of the movant's interest in the subject matter of the hearing and the degree to which the disposition of the hearing may as a practical matter impair or impede his ability to protect that interest; (2) the adequacy of the representation of movant's interest by existing parties; (3) the relationship of movant's interest to the subject matter of the hearing; (4) the avoidance of multiplicity of suits; (5) whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties; (6) the contribution the movant may make to the just determination of the issues.

(D) In any hearing in which intervention is granted under this Rule, the Hearing Examiner, in the interest of just and expeditious adjudication, may impose reasonable conditions or restrictions on the extent of the intervenor's participation in the proceedings.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-16 (RESERVED)

EP-40-17 MOTIONS

(A) All applications to the Hearing Examiner concerning procedural relief, including determinations of jurisdiction, shall be by motion which, unless made before the Hearing Examiner with a hearing stenographer in attendance, shall be made in writing. A written motion shall state with particularity the relief or order sought and shall be accompanied by a memorandum setting forth the grounds therefor.

(B) Within ten days after service of a motion, or such other time as fixed by the Hearing Examiner, any party may file and serve an answer to a motion. A movant may reply to an answer only with the permission of the Hearing Examiner. Procedural motions shall not cause delay of a hearing without a finding by the Hearing Examiner that good cause for such delay exists.

(C) Before deciding a written motion, the Hearing Examiner shall consider all memoranda filed. He shall file his written decision, including the procedural order issued, with the Hearing Clerk and shall serve copies on all parties. His ruling on all oral motions shall be included in the transcript except that he may elect to take the motion under advisement and issue a written ruling later.

(D) All decisions on procedural motions shall be subject to review by the Director upon review of the report of the Hearing Examiner.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-18 CONTINUANCES

**A hearing may be continued or postponed by the Hearing Examiner or the Director upon his own motion, or upon written motion of any party for good cause shown. Before granting any continuance consideration shall be given to harm to the public welfare or the environment which may result from delay in the proceedings.**

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-19 PREHEARING CONFERENCES

(A) Upon written notice by the Hearing Examiner to all parties, the parties or their attorneys may be directed to appear at a specified time and place for a conference, presided over by the Hearing Examiner, prior to or during the course of the hearing, to consider such matters as the Hearing Examiner shall direct; including, but not limited to:

(1) The settlement of the controversy;

(2) The simplification of the issues;

(3) The disclosure of names, identities and location of witnesses together with a brief statement of what is proposed to be established by the testimony of each;

(4) The limitation of the number of and the exchange of reports of expert witnesses expected to be called by either party;

(5) Obtaining

(a) admissions of fact;

(b) stipulations as to the admissibility into evidence of documents and other exhibits to avoid unnecessary proof;

(6) The exchange of documentary evidence to be submitted at the hearing.

(B) The Hearing Examiner may require the parties to prepare prehearing briefs prior to or subsequent to the prehearing conference covering such matters as he may specify.

(C) The proceedings at a prehearing conference shall be off-the-record, except that the Hearing Examiner may prepare, or order prepared, a prehearing conference report encompassing the agreements reached and decisions made at the prehearing conference, including any admissions, stipulations, or proposals agreed to. All offers of settlement, proposals of adjustment, and proposed stipulations not agreed to shall be privileged, shall not constitute admissions, and shall not be admissible in evidence against the person making the offer or proposal.

(D) If at a prehearing conference or at any other time prior to the termination of the hearing the parties agree to a settlement, the Hearing Examiner may recommend in writing to the Director that the settlement terms be adopted as a final order; or the parties may prepare a suggested consent order, signed by the parties other than the Agency, which may be submitted along with the file to the Director for adoption after consideration of all materials in the file.

(E) The parties may meet together at such other times as they shall mutually agree for purposes of accomplishing any of the objects listed in (A) and (D) above.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-20 DISCOVERY; AVAILABILITY OF AGENCY FILES

(A) Any party may serve interrogatories upon another party and take the deposition of witnesses within or without the State in the same manner as is prescribed in the Civil Rules and may require the production of such books, records, and papers as it desires and for that purpose may obtain from the Hearing Examiner a subpoena or a subpoena duces tecum, as in criminal cases.

(B) The files, books, and records of the Agency, other than communications with the Attorney General, materials or information obtained or prepared for use in pending hearing proceedings, materials or information not available for public inspection pursuant to regulation, and materials or information privileged pursuant to statutory provisions relating to trade secrets, shall be made available by the Agency during regular business hours for review and copying by any person, whether or not hearing proceedings are pending. The Agency shall provide facilities for the inspection of all Agency files and a machine or device for the copying of papers and documents for which it may charge a fee commensurate with the cost to the Agency of providing such equipment. A record of the location of all files in use by State employees and removed from such facility for that purpose shall be maintained and any such State employee shall permit any person to see such file upon request.

(C) No subpoena duces tecum shall be issued to compel production of the files, books, and records of the Agency for purposes of an adjudication hearing unless the Hearing Examiner finds that a person has been refused access to said records.

(D) No adjudication hearing shall be continued to a date more than sixty days after initiation of the hearing proceedings for the purpose of allowing a party to take depositions unless the Hearing Examiner finds in writing that the party requesting the continuance diligently pursued discovery but was unable to complete the taking of depositions by the unusual complexity of the case.

(E) Parties shall cooperate in conducting discovery procedures with a view to accomplish full and complete disclosure of all relevant facts. Informal consultation among parties concerning depositions shall be attempted before filing of formal motions to compel discovery.

(F) When the Hearing Examiner finds that some other form of discovery provided for in the Civil Rules is desirable for just, prompt and efficient administration of the hearing, he may authorize additional discovery, subject to such conditions, including time limitations, as are in the public interest.

(G) All costs of service, mileage, witness fees and other costs of discovery shall be borne by the party requesting such discovery. Witness and mileage fees shall be the same as paid by the Common Pleas Courts of Ohio in criminal cases.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-21 ADJUDICATION HEARING PROCEDURES

(A) The Hearing Examiner shall admit all relevant and material evidence, except evidence that is unduly repetitious, even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value. In all hearings the testimony of witnesses shall be taken orally, except as provided by these rules or by the Hearing Examiner. Parties shall have the right to cross-examine a witness who appears at the hearing.

(B) If a party objects to the admission or rejection of any evidence, he shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the Hearing Examiner, with the consent of all parties, orders that such argument not be transcribed. The ruling of the Hearing Examiner on any objection shall be a part of the transcript. An automatic exception to that ruling will follow.

(C) A copy of each documentary exhibit filed with the Hearing Examiner shall be furnished to each other party. A true copy of an exhibit may, in the discretion of the Hearing Examiner, be substituted for the original.

(D) Whenever evidence is deemed inadmissible, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of a document or exhibit, it shall be inserted in the record in total. In the event the Director decides that the Hearing Examiner's ruling in excluding the evidence was erroneous, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the Director may evaluate the evidence and proceed to a final decision.

(E) Official notice may be taken of such matters as are within the expertise of the Hearing Examiners, provided, however, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(F) Any person other than a party or a witness presented by a party may present oral or written arguments or opinions for the record. Oral or written arguments or opinions shall not be considered as evidence of the factual assertions made therein. Such persons may present evidence by testifying as witnesses or presenting other witnesses under oath; the parties may cross-examine all such witnesses. Such persons shall not examine or cross-examine witnesses other than their own, shall not be permitted to subpoena witnesses, and shall call no witnesses who request not to testify.

(G) Parties or other persons may file proposed findings and orders, conclusions of law, or briefs for consideration by the Hearing Examiner within fourteen days following completion of the hearing or such other period of time as the Hearing Examiner may set.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-22 DIRECTOR NOT TO BE A WITNESS

**The Director, the Assistant Director, and the Deputy Directors of the Agency, because of their duties in deciding, or aiding the Director in deciding, adjudicatory matters, shall not be competent witnesses nor subject to deposition in any adjudication hearing before the Agency. Evidence from other persons relating to the mental processes of these persons deciding adjudicatory matters shall not be admissible.**

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-23 BURDEN OF PROOF -- EVIDENCE

(A) (1) The burden of proof at all hearings with respect to applications, permits, licenses, variances, and certificates shall be upon the applicant.

(2) The burden of proof at all hearings with respect to affirmative State action shall be upon the State.

(3) Notwithstanding anything to the contrary in (A)(1) or (A)(2) above, there shall be a legal presumption in favor of facts asserted by a party that can be disproved by evidence available to and under the control of an opposing party. In order to rebut this presumption, the party having control of such evidence must show that the nonexistence of the presumed fact is more likely than the existence of such fact.

(B) (1) All reports filed by a party with the Agency in compliance with requirements of statutes, regulations, or permits shall be admissible without further authentication if the custodian of such reports certifies its identity in writing. Any party may prove by a preponderance of the evidence that such reports are not genuine.

(2) All reports of samples taken by staff members of the Agency and tested in facilities of the State shall be admissible if all persons who had custody of such samples have endorsed a record showing a chain of custody and the persons who had custody of such sample need not testify. Mailing of samples shall not be considered a break in the chain of custody. Any party may prove by a preponderance of the evidence that such report does not pertain to the sample purportedly tested.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-24 REPORT OF HEARING EXAMINER

OR PRESIDING OFFICER

(A) Within forty-five days following receipt of the transcript of an adjudication hearing and upon due consideration of the competent evidence admitted at the hearing, the oral arguments, and the briefs, if any, the Hearing Examiner shall submit to the Director by filing with the Hearing Clerk a written report setting forth findings of fact, conclusions of law, and recommendations of the action to be taken by the Director.

A copy of the written report and recommendations of the Hearing Examiner shall be mailed to all parties or their attorneys by certified mail within five days after the submission of such report to the Director. Any party or interested person shall have the right to submit to the Director, within ten days of receipt of such copy of such written report and recommendations, a written statement of objections to such written report and recommendations, which written statement of objections shall be considered by the Director before approving, modifying, or disapproving such recommendations. All such submissions to the Director shall be filed with the Hearing Clerk.

(B) Within fifteen days after the conclusion of a public meeting, the presiding officer shall prepare, and submit to the Director, a brief summary of the evidence, testimony, and opinions presented.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-25 RECORD

(A) A record of all proceedings shall be maintained at the expense of the Agency. Such record shall include a stenographic record of all testimony, oral statements and oral arguments, all rulings on the admissibility thereof, and all proffers of evidence ruled inadmissible after timely objection. The record shall also include all exhibits, documents, papers, requests, objections, comments, written statements, correspondence and briefs filed by parties to the proceedings or presented by persons interested in the proceedings, a copy of the proposed action, copies of all public notices pertaining to the proceedings, the fact sheet where the Agency is required to prepare one, and the report and recommendations of the Hearing Examiner.

(B) The record shall be the exclusive basis for decision by the Director. The Director, upon his own motion or motion of a party, may permit the introduction of further documentary evidence, and after granting opportunity to the opposing party for preparation, may take additional testimony or remand the matter to the Hearing Examiner for the taking of additional testimony. In deciding whether to permit the taking of additional testimony the Director shall give consideration to harm to the public welfare or the environment which may result from delay in the hearing proceedings.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-26 FINAL ACTION

(A) Not less than ten days after service of the written report of the Hearing Examiner upon the parties, the Director shall take final action based on the record, including such additional evidence as he shall order admitted, by issuing a written decision.

(B) The written decision of the Director may adopt the report of the Hearing Examiner, or parts thereof. When the decision of the Director disapproves or modifies the recommendations of the Hearing Examiner in whole or in part, the Director's written decision shall include:

(1) The reasons for rejecting the recommendations of the Hearing Examiner.

(2) Findings of fact and conclusions of law together with the reasons therefor with respect to all matters where the Director does not adopt the recommendations of the Hearing Examiner.

(C) The decision of the Director shall be entered on the Journal and into the record of the hearing and certified copy thereof together with a statement of the time and method by which an appeal may be perfected shall be served within five days of the Director's action upon the parties by certified mail, return receipt requested. Copies of the decision or order shall be served on all attorneys of record in the proceedings by ordinary mail.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-27. AGENCY JOURNAL

**The Agency shall maintain a Journal or Journals in which all final actions taken by the Director shall be entered.**

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-28 REGISTERS OF CURRENT AND PAST ACTIONS

(A) The Agency shall maintain a register, indexed according to the name of the permit holder, applicant or respondent and by the County in which the source or facility is located, of all pending applications for permits, leases, licenses, variances, certificates, and for approval of plans and specifications, of all hearing proceedings pending, and of all other proposed actions not yet finalized, which register shall state the docket number, the dates on which such matter was filed, the hearing date and other relevant dates, and shall identify the files containing materials pertaining to the proceedings.

(B) The Agency shall maintain a register of all adjudicatory actions of the Agency indexed as required by (A) above, stating the date for the permit or orders where applicable, the hearing docket number if one was assigned, and identifying Agency files containing pertinent information.

(C) The registers maintained pursuant to (A) and (B) above shall be conveniently located, available to the public during reasonable hours, and shall be maintained in compliance with the provisions of EP-40-30(B).

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-29 EMERGENCY ORDERS

(A) When the Director has determined that an emergency exists and has ordered that action be taken as is necessary to meet the emergency pursuant to Section 6111.06(C), Ohio Revised Code, any person to whom such order is directed may request a hearing. Notwithstanding that a hearing has been requested, emergency orders shall be effective immediately. Immediately upon receipt of such application the Director or Chief Hearing Examiner shall forthwith appoint a Hearing Examiner who shall convene a hearing within forty-eight hours to consider the issues raised by the hearing request. To obtain necessary evidence, the hearing examiner may continue the hearing, but shall reconvene the hearing as soon as possible and not later than twenty days after the hearing request unless the issues become moot. The Director shall give priority to consideration of the hearing examiner's report and shall not await written objections of the parties before issuing his decision. To the extent that other sections of this Chapter conflict with this section or would cause delay in an emergency hearing, they shall not be applicable to proceedings under this section.

(B) Proceedings pursuant to the declaration of an air pollution emergency under Section 3704.032, Ohio Revised Code, shall not be subject to these procedural rules.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-30 RULES OF ETHICS

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and persons involved in proceedings pending before the Agency, the following rules of ethics shall be observed after the initiation of hearing proceedings:

(A) No party shall submit any ex parte, off-the-record communication to the Director, or to the Agency staff, or to the Hearing Examiner, about any matter in issue in an adjudicatory proceeding; and the Director, the Agency staff participating in the proceeding, and the Hearing Examiner shall not request or entertain any such ex parte, off-the-record communication.

(B) All communications prohibited by EP-40-30(A) above, shall be reported immediately to the Hearing Examiner who shall place the communication or a memorandum thereof in public files associated with the case, but separate from the record material upon which the Agency will rely in reaching a decision. The Hearing Examiner shall take such additional action as he deems advisable which may include recommending entry of a default on the part of the party guilty of the malfeasance.

(C) The Director and members of the Agency staff shall not offer opinions about any matter in issue in an adjudicatory proceeding to any other party thereto or such party's attorneys, at any time after hearing proceedings have been initiated.

(D) A Hearing Examiner shall at any time disqualify himself if for any reason he may not be able to preside in a fair and impartial manner and render an impartial report to the Director, or if he receives or has during the previous two years, received ten percent or more of his gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends (except that income from the State or from diversified investments where he does not know the identity of the primary sources of income shall not be included as contributing toward such percentage), from the applicant or respondent, or any subsidiary or owner thereof. To disqualify himself, a Hearing Examiner shall file an affidavit stating the reason for disqualification.

(E) In the exercise of adjudicatory functions, Hearing Examiners shall behave in the manner prescribed for judges generally in the Canons of Judicial Ethics of the Supreme Court of Ohio which Canons are hereby expressly incorporated by reference.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

## 3.5 Civil Service Requirements for Staff Members Designated to Administer the NPDES Permit

1801
ADMINISTRATIVE SPECIALIST I

NATURE OF WORK IN THIS CLASS

This is beginning level specialized administrative work in a staff capacity.

An employee in this class functions as an analyst in the operational, budgetary, research, machine data processing, or other specialized staff planning field in a state department. Assignments encompass relatively minor problems or phases of larger studies. Considerable detailed supervision is received.

ILLUSTRATIVE EXAMPLES OF WORK

Collects and analyzes information in a specialized field; prepares estimates and reports based on information obtained.

Participates in analysis of existing operations, systems, budget requests, or equipment, in order to make recommendations leading to reduced operating costs, improved services and greater general efficiency.

Provides technical information and advice to aid administrators in making decisions concerning operational planning.

May serve as administrative assistant to the department head.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of the prinicples and practices of public or business administration.

Knowledge of current developments and studies in the field of specialty.

Ability to apply analytical thinking to an area of operational planning.

Ability to write clear and incisive interpretations of research analyses.

Ability to establish and maintain effective relationships with fellow employees and the public.

QUALIFICATIONS

Three years of training at an accredited college or university; or three years of experience in an administrative, planning, office management, or research capacity; or other equivalent combination of the above training and experience.

NOTE: Applicants with one year of experience in addition to the minimum required may be appointed at step 2.

Applicants with two years of experience in addition to the minimum required may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1802
ADMINISTRATIVE SPECIALIST II

NATURE OF WORK IN THIS CLASS

This is specialized administrative work in a staff capacity.

An employee in this class functions as an analyst in the operational, budgetary, research, machine data processing, or other specialized staff planning field in a state department. Independent work of fairly broad scope is performed in programs of moderate size. Supervision may be exercised over clerical or other employees.

ILLUSTRATIVE EXAMPLES OF WORK

Collects and analyzes information in a specialized field; prepares estimates and reports based on information obtained.

Analyzes existing operations, systems, budget requests, or equipment, in order to make recommendations leading to reduced operating costs, improved services and greater efficiency.

Provides technical information and advice to aid administrators in making decisions concerning operational planning.

Reviews reports submitted by local analysts.

Develops electronic data processing systems of moderate complexity and supervises others in work of this type.

May serve as administrative assistant to the department head.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of the prinicples and practices of public or business administration.

Knowledge of current developments and studies in the field of specialty.

Knowledge of the theory and operation of electronic data processing equipment.

Knowledge of mathematical and statistical techniques.

Ability to write clear and incisive interpretations of research analyses.

QUALIFICATIONS

Graduation from an accredited college or university with a major in Business Administration or a related field; or graduation with a major in a non-related field plus one year of experience in an administrative,

planning, office management, or research capacity; or four years of the above experience; or other equivalent combination of the above training and experience.

NOTE: Applicants with one year of experience in addition to the minimum required may be appointed at step 2.

Applicants with two years of experience in addition to the minimum required may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1803
ADMINISTRATIVE SPECIALIST III

NATURE OF WORK IN THIS CLASS

This is responsible specialized administrative work in a staff capacity.

An employee in this class has primary responsibility for the planning, development and direction of the study of problems in the operational, budgetary, research, machine data processing, or other specialized staff planning field in a state department. Work is performed under general administrative direction. Supervision may be exercised over clerical and technical personnel.

ILLUSTRATIVE EXAMPLES OF WORK

Plans and develops extensive studies in a specialized field, describing and analyzing problems in the area.

Supervises the collection of statistical and other data related to an actual or possible program.

Works with administrators or other specialists in determining feasibility of proposed methods for handling specific operational problems.

Develops complex electronic data processing systems and supervises others in work of this type.

May serve as administrative assistant to the department head.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Considerable knowledge of the prinicples and problems of public or business administration.

Considerable knowledge of the current developments and studies in the field of specialty.

Considerable knowledge of the theory and operation of electronic data processing equipment.

Knowledge of mathematical and statistical techniques.

Ability to apply analytical thinking and sound judgment to an area of operational planning.

QUALIFICATIONS

Graduation from an accredited college or university with a major in Business Administration or a related field plus two years of experience in an administrative, planning, office management, or research capacity; or graduation with a major in a non-related field plus three years of the above experience; or six years of the above experience; or other equivalent combination of the above training and experience.

(A Master's degree in a related field is equivalent to two years of experience; in a non-related field, to one year. A related Doctorate is equivalent to two more years; a non-related Doctorate to one more year.)

NOTE: Applicants with one year of experience in addition to the minimum required may be appointed at step 2.

Applicants with two years of experience in addition to the minimum required may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1804

# ADMINISTRATIVE SPECIALIST IV

## NATURE OF WORK IN THIS CLASS

This is highly responsible specialized administrative work in a staff capacity.

An employee in this class has primary responsibility for the planning, development and direction of a program of specialized staff planning, such as Public Finance Research Analysis in a state department. Work is performed with a high degree of independence, under general supervision of a departmental administrator. Supervision may be exercised over clerical and technical personnel.

## ILLUSTRATIVE EXAMPLES OF WORK

Assists departmental administrator in planning research programs.

Plans and develops extensive studies in a specialized field, describing and analyzing problems in the area.

Supervises the collection of statistical and other data related to an actual or possible program.

Works with administrators or other specialists in determining feasibility of proposed methods for handling specific operational problems.

May serve as administrative assistant to the director.

Performs related work as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Considerable knowledge of governmental organization and public administration.

Considerable knowledge of the current developments and studies in the field of specialty.

Knowledge of mathematical and statistical techniques.

Ability to apply analytical thinking and sound judgment to an area of operational planning.

## QUALIFICATIONS

Graduation from an accredited college or university with a major in Business Administration or a related field plus four years of experience in a specialized administrative, planning, office management, or research capacity; or graduation with a major in a non-related field plus five years of the above experience; or eight years of the above experience; or other equivalent combination of the above training and experience.

(A Master's degree in a related field is equivalent to two years of experience; in a non-related field, to one year. A related Doctorate is equivalent to two more years; a non-related Doctorate to one more year.)

NOTE: Applicants with one year of experience in addition to the minimum required may be appointed at step 2.

Applicants with two years of experience in addition to the minimum required may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

2102
ATTORNEY EXAMINER I

NATURE OF WORK IN THIS CLASS

This is beginning level professional legal work.

An employee in this class advises department officials on legal questions, interprets laws and regulations and reviews legislation for its possible effects on the agency concerned. Decisions in complex matters are referred to an administrative superior.

ILLUSTRATIVE EXAMPLES OF WORK

Reviews claims made to a department, bureau, or commission to determine facts and apply legal interpretation to such facts so that the compensability status of the claim may be determined; prepares reports of findings and recommendations.

Advises departmental officials on legal matters, giving informal legal opinions.

Investigates reported violations of law.

Prepares or reviews legal documents, including contracts, leases, and mortgages.

Review legislation for possible effect on the agency.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of the application of legal principles to individual cases or problems.

Knowledge of federal, state, and local laws and regulations pertaining to the work of the agency.

Ability to understand and interpret constitutional provisions, statutes, administrative regulations, and precedents.

Ability to analyze facts and arrive at a logical interpretation.

Ability to set forth findings and decisions in written form.

Ability to prepare legal documents and records.

QUALIFICATIONS

Graduation from an accredited law school. Must be admitted to the practice of law by the Supreme Court of Ohio.

2103
ATTORNEY EXAMINER II

NATURE OF WORK IN THIS CLASS

This is professional legal work of an examining nature and/or other legal work involving the usual agency functions.

An employee in this class examines claims against a public agency, advises department officials on legal questions, and participates in the preparation of cases for hearing. Decisions on routine legal matters are made without professional review, but decisions in more complex matters are normally reviewed by a higher authority. General supervision is received from attorneys of higher grade or from administrative officials.

ILLUSTRATIVE EXAMPLES OF WORK

Reviews claims made to a department, bureau, or commission to determine facts and apply legal interpretation to such facts so that the compensability status of the claim may be determined; prepares reports of findings and recommendations.

Advises departmental officials on legal matters, gives informal legal opinions.

Investigates reported violations of law.

Prepares or reviews legal documents, including contracts, leases, and mortgages.

Performs related duties as required.

ESSENTIAL KNOWLELGES, ABILITIES AND SKILLS

Knowledge of the application of legal principles to individual cases or problems.

Knowledge of federal, state, and local laws and regulations pertaining to the work of the agency.

Ability to understand and interpret constitutional provisions, statutes, administrative regulations, and precedents.

Ability to analyze facts and arrive at a logical interpretation.

Ability to set forth findings and decisions in written form.

Ability to prepare legal documents and records.

QUALIFICATIONS

Graduation from an accredited school of law and six months of experience in the practice of law. Must be admitted to the practice of law by the Supreme Court of Ohio.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

2104
ATTORNEY EXAMINER III

NATURE OF WORK IN THIS CLASS

This is responsible professional legal work of an advisory and/or examining nature.

An employee in this class reviews documents, briefs, and forms for conformity with legal procedures; or assists in hearing work; or advises departmental officials in legal matters. Independent decisions are frequently made on matters of law, but general supervision is received from an attorney of higher grade or from an administrative official, through review of work for general adequacy and adherence to policies.

ILLUSTRATIVE EXAMPLES OF WORK

Reviews claims, briefs, and other legal documents relating to the regular activity of a department, commission, or board.

Serves as advisor to administrators on legal matters; gives informal legal opinions.

Participates in the preparation of cases for hearing before a commission or board of review and prepares related reports of findings and recommendations.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Thorough knowledge of the application of legal principles to individual cases or problems.

Thorough knowledge of the federal, state, and local laws and regulations pertaining to the work of the agency.

Some knowledge of court procedures and rules of evidence.

Ability to understand and interpret constitutional provisions, statutes, administrative regulations, and precedents.

Ability to analyze facts and precedents and to present opinions based thereon in clear and logical form.

QUALIFICATIONS

Graduation from an accredited school of law plus one year of experience in the practice of law. Must be admitted to the practice of law by the Supreme Court of Ohio.

2105
ATTORNEY EXAMINER IV

NATURE OF WORK IN THIS CLASS

This is highly responsible professional legal work involving hearings for claims and/or of an advisory nature.

An employee in this class serves on administrative tribunals conducting hearings or other legal work for an agency of government; or supervises a staff of attorneys performing responsible function. Work is subject to review by an administrative superior for conformance with policy and for general effectiveness.

ILLUSTRATIVE EXAMPLES OF WORK

Prepares and conducts hearings of a difficult and complex nature for a department, bureau, commission, or board.

Supervises a group of Attorney Examiners of lower grade.

Serves as advisor to administrators on legal matters; gives informal legal opinions.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Extensive knowledge of the application of legal principles to individual cases or problems.

Extensive knowledge of federal, state, and local laws and regulations involving the admininstration of programs of the particular agency involved.

Thorough knowledge of legal documents, court procedures, and rules of evidence.

Ability to understand and interpret constitutional provisions, statutes, administrative regulations, and precedents.

Ability to formulate work procedures and direct and review the work of a professional and sub-professional legal staff.

QUALIFICATIONS

Graduation from an accredited school of law plus two years of experience in the practice of law.

In Department of Taxation applicant must be graduate from an Accredited school of law and have some courses in accounting.

Must be admitted to the practice of law by the Supreme Court of Ohio.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

2106
ATTORNEY EXAMINER V

NATURE OF WORK IN THIS CLASS

This is highly responsible legal work involving extensive administrative and/or supervisory duties.

An employee in this class exercises considerable independent judgment in the handling of difficult and complex hearings, advising administrative officers concerning legal questions in an agency having numerous legal questions and handling legal work assigned or planning and supervising the work of a staff of attorney examiners of lower grade. Work is performed under only general administrative supervision.

ILLUSTRATIVE EXAMPLES OF WORK

Directs a group of attorneys engaged in conducting hearings and may personally handle the more complex cases.

Reviews cases after hearings and renders a final decision.

Confers with administrative officials on legal aspects of matters of policy and performs all legal work assigned.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Extensive knowledge of the application of legal principles to individual cases or problems.

Extensive knowledge of federal, state, and local laws and regulations pertaining to the work of the agency.

Extensive knowledge of legal documents, court procedures, and rules of evidence.

Ability to understand and interpret constitutional provisions, statutes, administrative regulations, and precedents.

Ability to formulate work procedures and direct and review the work of a large professional and sub-professional legal staff.

QUALIFICATIONS

Graduation from an accredited school of law plus three years of experience in the practice of law.

In the Department of Taxation applicant must be graduate from an accredited school of law and have some courses in accounting plus two years of experience in the practice of law.

Must be admitted to the practice of law by the Supreme Court of Ohio.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

4331
CHEMIST I

NATURE OF WORK IN THIS CLASS

This is routine scientific work in the field of chemistry involving the chemical analyses of a variety of substances and materials. Work may involve the supervision of laboratory employees.

An employee in this class makes chemical analyses on such items as various highway and building construction and maintenance materials, alcoholic beverages, food, feeds, fertilizers, water, etc., and may make investigations and analyses of conditions affecting the health of employees engaged in industrial work. General direction and supervision is usually received from chemists in a higher grade or other administrative superior.

ILLUSTRATIVE EXAMPLES OF WORK

Performs standardized quantitative and qualitative analyses of organic and inorganic materials.

Plans and outlines normal work activities and some special projects.

Instructs and supervises laboratory technologists, technicians and/or assistants in the analysis of various materials, products, or substances.

Reviews results of analyses and returns the problems for additional work if data are unsatisfactory.

Reviews scientific literature and conducts experiments for determining new testing methods.

Prepares and tests standard reagents, compounds, and solutions.

Makes reports and specific recommendations on the basis of the analyses conducted in the laboratory, prepares charts and graphs, and keeps required records.

Requisitions new laboratory equipment and supplies and handles correspondence as required.

May act as expert witness in court cases in connection with the enforcement of laws and regulations.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of the principles and practices of analytical chemistry particularly as related to the assigned field of specialization.

Knowledge of biochemistry and physics.

Ability to supervise the work of testing and sampling a variety of materials, products, and substances.

Ability to do original research work and to devise new methods of testing.

Ability to present scientific information clearly and in an understandable manner when acting as witness in court.

Ability to prepare technical reports.

Skill in the performance of standard analyses and in the use of laboratory equipment.

QUALIFICATIONS

Graduation from an accredited college or university with major course work in chemistry and a broad general background in the basic sciences; or high school graduation plus three years of responsible experience in chemistry; or other equivalent training and/or experience.

An applicant with a bachelor's degree in chemistry from an accredited college or university plus six months of post graduate experience in chemistry may be appointed at step two (2).

An applicant with a bachelor's degree in chemistry from an accredited college or university plus one year of post graduate experience in chemistry may be appointed at step three (3).

he class specification which appears above is intended to be sufficient merely to identify the class nd be illustrative of the kinds of duties that may be assigned to positions allocated to the class and hould not be interpreted to describe all of the duties performance of which may be required of employees olding a position assigned to this class.

4332
CHEMIST II

## NATURE OF WORK IN THIS CLASS

This is responsible, scientific work in the field of chemistry.

An employee in this class may serve as the head of a section in a large laboratory, or as head of a small laboratory, or personally conducts difficult chemical tests. The employee may be responsible for the work of chemists of lower grade or other laboratory workers. Work is performed under general direction of laboratory or medical personnel of higher grade.

## ILLUSTRATIVE EXAMPLES OF WORK

Performs difficult qualitative and quantitative analyses of a broad variety of organic and inorganic materials.

Assigns and supervises the activities of a group of chemists or other workers engaged in performing chemical analyses.

Instructs subordinates in the procedures to be used in making chemical analyses.

Operates and interprets the results of absorption spectrophotometers and instructs subordinates in the operation of such instruments.

Review scientific literature and directs investigation and development of new testing methods.

Directs the work of field personnel, analyzes their reports, and makes field inspection, conferring with manufacturers and plant operators on methods for improving their products.

Confers with superior and with heads of other departments for purpose of coordinating work of chemistry laboratory with that of other divisions.

Prepares reports and keeps records as required.

Performs related duties as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Extensive knowledge of the principles and practices of analytical chemistry or chemical engineering.

Extensive knowledge of modern chemical laboratory methods, procedures, material, and equipment.

Knowledge of biochemistry and physics.

Ability to direct and supervise the work of a staff of chemists in a laboratory or of employees performing related work in the field.

Ability to do original research work, to direct development of new methods of testing, and to prepare scientific reports.

Ability to develop and maintain cooperative relationships with subordinates, other departments, manufacturers, and plant operators.

Skill in the performance of non-routine chemical analyses and in the use of laboratory equipment.

QUALIFICATIONS

Graduation from an accredited college or university with major course work in chemistry and a broad general background in the basic sciences plus eighteen months of post graduate experience in chemistry: or master's degree in chemistry from an accredited college or university plus three months of post graduate experience in chemistry; or high school graduation and five years of responsible experience in chemistry; or other equivalent training and/or experience.

An applicant with a bachelor's degree in chemistry from an accredited college or university plus two years of post graduate experience in chemistry, or a master's degree in chemistry from an accredited college or university plus six months of post bachelor's experience in chemistry may be appointed at step two (2).

An applicant with a bachelor's degree in chemistry from an accredited college or university plus two and one-half years of post bachelor's experience in chemistry, or a master's degree in chemistry from an accredited college or university plus one year of post bachelor's experience in chemistry may be appointed at step three (3).

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1021
CLERK STENOGRAPHER I

## NATURE OF WORK IN THIS CLASS

This is routine stenographic and clerical work in taking and transcribing dictation and in performing related general office duties.

An employee in this class is primarily responsible for taking accurate notes from dictation and transcribing them in typed form, although the amount of time spent on this portion of the work may vary widely among positions in this class. Routine clerical duties are performed under supervision and work is normally reviewed for compliance with instructions and standards of performance.

## ILLUSTRATIVE EXAMPLES OF WORK

Takes and transcribes dictation and types correspondence dealing with non-technical subjects. Composes and types correspondence of a routine nature according to previously established procedures.

Cuts stencils and types articles, reports, forms, tabulations, bulletins and manuals from copy or from rough draft, and proofreads for accuracy.

Performs routine clerical or record keeping work and assists in the preparation of annual statistical reports by tabulating elementary statistical data according to specified procedures.

Stamps, sorts, and distributes mail; prepares packages, printed matter, and other materials for mailing.

Acts as receptionist and answers inquiries requiring some knowledge of procedures of the department.

Files reports, records, correspondence, and other material according to simple classifications which are clearly indicated.

Types or fills in leases, financial statements or reports, vouchers, journal sheets, audits, requisitions, or payrolls from clearly indicated sources making simple arithmetical checks for accuracy.

Performs related work as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of business English, spelling, and arithmetic.

Knowledge of the care and operation of a typewriter.

Ability to take and transcribe oral dictation accurately and to type copy at a normal working rate of speed.

Ability to understand and follow simple written and oral instructions.

Ability to make elementary arithmetic computations rapidly and accurately.

Ability to learn simple repetitive clerical tasks within a reasonable length of time.

Ability to maintain harmonious working relationships with other employees and the general public.

QUALIFICATIONS

No experience required, but the applicant must be able to type and take dictation.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1022
CLERK STENOGRAPHER II

NATURE OF WORK IN THIS CLASS

This is advanced stenographic and clerical work which includes taking and transcribing dictation, and involves occasionally complex work methods and problems.

An employee in this class performs fairly complex stenographic and clerical work requiring knowledge of varied terminology peculiar to type of work being performed. General instructions are received from a superior when procedures are changed or new tasks undertaken. Work is subject to periodic review by superiors. Limited supervision may be exercised over a small group of clerical workers performing routine stenographic, typing or clerical tasks.

ILLUSTRATIVE EXAMPLES OF WORK

Takes and transcribes dictation and types correspondence, articles, reports, manuals, and minutes on general or technical subjects.

Processes forms and vouchers for office supplies, equipment, repairs, and expense accounts.

Maintains simple accounting, financial, and cost records where no technical bookkeeping knowledge is required; prepares or checks payrolls, vouchers, requisitions, purchase orders and maintains personnel records.

Composes correspondence dealing with routine and occasionally complex subject matter; meets the public, and answers questions dealing with well-established departmental procedures.

Makes up special reports, forms, and summaries at the request of supervisor, frequently checking against a variety of records in order to secure complete and accurate information.

Receives, checks for completeness, and files applications for licenses and employment, tax returns, and other standard forms and gives information of a moderately technical nature, either orally or in writing, requiring some knowledge of departmental policies and procedures.

Keeps dockets of hearings and occasionally takes verbatim dictation of formal hearings where dictation may be used later as legal evidence.

Supervises a small group of employees performing routine typing, stenographic, and related clerical duties.

Performs related work as required.

Revised 8/15/72

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Thorough knowledge of business English, spelling and commercial arithmetic.

Knowledge of modern office appliances and equipment.

Knowledge of modern office practices and procedures.

Ability to take and transcribe dictation of a moderately technical nature and to type from plain or rough draft copy at a working rate of speed.

Ability to assign, supervise, and review the work of a small group of subordinates performing routine stenographic and clerical duties.

Ability to keep complex clerical records and to prepare accurate reports and summaries from simple accounting or statistical material.

Ability to make minor decisions in accordance with laws and regulations and to apply these to work problems.

Ability to understand and follow relatively complex written and oral instructions.

Ability to make involved arithmetical calculations rapidly and accurately.

Ability to maintain harmonious working relationships with other employees and the general public.

QUALIFICATIONS

One year of clerical experience which included some stenographic work; or completion of one academic year of business shcool; or completion of one year of college training, provided that the applicant has typing and shorthand skills.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1023
CLERK STENOGRAPHER III

NATURE OF WORK IN THIS CLASS

This is responsible stenographic secretarial work or stenographic work of a supervisory or technical nature.

An employee in this class performs a variety of responsible and complex tasks requiring independent judgment and involving frequent decisions in accordance with departmental policies and practices.

Employee prepares technical correspondence and relieves superior of other operating details by transmitting administrative decisions and assembling information on problems under consideration. Directions are received in the form of suggestions or general outline. Supervision may be exercised over a group of clerical or stenographic workers.

ILLUSTRATIVE EXAMPLES OF WORK

Takes and transcribes dictation, composes non-routine letters, and types material dealing with technical subject matter; proofreads correspondence and reports, making minor corrections and referring major discrepancies to superior.

Supervises a moderately-sized clerical staff performing stenographic duties, preparing payrolls, assembling diverse reports relating to departmental or divisional operation, requisitioning supplies, and indexing and filing office records.

Approves bills for payment, checks expense accounts, notarizes documents, and keeps a small set of departmental fiscal records.

Meets individuals and general public, gives out information pertaining to departmental procedures and established policy, makes appointments, transmits administrative decisions, and refers questions to appropriate personnel in the absence of superior.

Gathers material from a variety of designated sources for articles or speeches and assembles material for consideration of superior.

Opens, sorts, and reads incoming correspondence, answering routine and non-routine letters as authorized by the supervisor; proofreads and signs outgoing letters which do not require attention of supervisor.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Extensive knowledge of business English, spelling, and commercial arithmetic.

Thorough knowledge of modern office practices, procedures, and methods.

Thorough knowledge of modern office equipment and its application to complex work problems.

Some knowledge of the principles and practices of bookkeeping.

Ability to take and transcribe dictation of a complex and technical nature and to type from rough draft or plain copy at a working rate of speed.

Ability to keep involved or complex clerical records and to prepare accurate reports from statistical or accounting information pertaining to operational problems.

Ability to make minor decisions in accordance with laws, rules, and regulations to apply departmental policies to daily work problems; and to conduct correspondence on routine and non-routine matters, following general instructions and without review.

Ability to organize, lay out, assign, and review the work of a moderately-sized group of employees engaged in routine or involved stenographic or general clerical duties.

Ability to understand and follow complex oral and written directions.

Ability to maintain harmonious working relationships with other employees and the general public.

QUALIFICATIONS

Two years of clerical experience which included some stenographic work. Completion of one academic year of business school or one year of college may be substituted for one year of the required experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1011
CLERK TYPIST I

## NATURE OF WORK IN THIS CLASS

This is simple and routine clerical work requiring full time or part time typing.

An employee in this class performs routine typing and clerical duties requiring little independent judgement. Typing duties involve non-technical material, forms, cards, inter-office memos and rough drafts. Clerical tasks are of a routine nature which may be learned after a very brief period of in-service training. Employee is given detailed instructions at beginning of work and on subsequent new assignments. Work is normally reviewed upon completion and periodically checked for conformance with instructions and standards of performance.

## ILLUSTRATIVE EXAMPLES OF WORK

Types rough drafts, forms, cards, letters and other non-technical material from copy, draft, or dictating machine; proofreads copy, checking for typing errors.

Performs simple arithmetic computations following specific and clear-cut instructions.

Files reports, records, correspondence and other material according to simple, clearly indicated classifications, searches files for specific information.

Answers telephone calls, receives general public, answers inquiries and gives out routine information.

Posts routine data; receives and distributes mail; prepares material for mailing.

May operate graphotype or other office appliances requiring skills.

Performs related work as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Some knowledge of the operation and care of a typewriter.

Some knowledge of modern office practices and procedures.

Some knowledge of business English, spelling and arithmetic.

Ability to type accurately at a working rate of speed.

Ability to make simple arithmetic computations rapidly and accurately.

Ability to understand and follow simple oral and written instructions.

Ability to learn simple, repetitive clerical tasks in a reasonable length of time and turn out a satisfactory volume of work.

Ability to maintain harmonious working relationships with other employees and the public.

QUALIFICATIONS

No experience required, but applicant must be able to type.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1012
CLERK TYPIST II

NATURE OF WORK IN THIS CLASS

This is advanced clerical work involving varied and occasionally complex work methods and related typing duties.

An employee in this class performs a variety of fairly complex clerical tasks requiring knowledge of involved and varied procedures and ability to type with speed and accuracy. Supervision may be exercised over a small group of subordinate clerical employees performing routine clerical and typing work. Work problems involving departures from standard procedures are reviewed with a superior for final decision. General instructions are received from superior when procedures are changed or new duties assigned.

ILLUSTRATIVE EXAMPLES OF WORK

Sets up and types a wide variety of complex tables, reports, indices, and other material of a technical nature from copy, rough drafts, and detailed instructions; composes and types correspondence dealing with routine and occasionally complex subject matter.

Posts standardized fiscal data to ledgers according to well-defined classifications; checks subsidiary records against central controls in balancing process not requiring a technical knowledge of bookkeeping.

Meets public, takes applications for determination of eligibility for unemployment compensation, work registrations and applications for unemployment compensation benefits and/or other claims. Determines eligibility on regular claims and refers difficult irregularities to a superior.

Orders, receives, and checks incoming office supplies and equipment against requisitions, dispenses material, and keeps perpetual inventory records as part of a stores operation.

Prepares and types payrolls and maintains related personnel records.

Checks statistical reports, tables, and records and audits papers for accuracy and completeness of computations and data presented; performs elementary mathematical calculations following fairly complex procedures.

May supervise a small group of employees engaged in routine clerical and typing duties.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of modern office practices, procedures, and equipment.

Knowledge of business English, spelling, and arithmetic.

Ability to type technical material at a working rate of speed.

Ability to maintain moderately complex clerical records and to prepare reports from such records.

Ability to understand and follow relatively complex oral and written instructions.

Ability to make involved arithmetic calculations rapidly and accurately.

Ability to make minor decisions in accordance with laws and regulations and to apply these to work problems.

Ability to assign, supervise, and review the work of a small group of subordinates performing routine typing and clerical duties.

Ability to maintain harmonious relationships with other employees and the public.

QUALIFICATIONS

One year of clerical experience which included some typing; or completion of one academic year of business school; or completion of one year of college training provided that the applicant has typing skills.

Applicant for the Clerk Typist I (1011) with a score of eighty or above will qualify for appointment to this class.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1013
CLERK TYPIST III

NATURE OF WORK IN THIS CLASS

This is difficult supervisory clerical work or independent clerical work of comparable difficulty requiring highly skilled typing ability.

An employee in this class performs a variety of complex clerical tasks requiring independent judgment and action and makes frequent decisions in accordance with departmental policies and practices. Employee prepares technical correspondence and assembles information pertaining to problems under consideration by administrative superior.

ILLUSTRATIVE EXAMPLES OF WORK

Plans, assigns, and reviews the work of a moderately sized group of subordinates performing a variety of clerical and typing tasks such as filing, duplicating, operating addressograph and graphotype, answering queries of the public, typing simple reports and form letters, and compiling numerical data from field reports.

Maintains and supervises the maintenance of a variety of clerical records such as those concerned with payroll, personnel, supplies and materials, expenditures, and general unit activities.

Composes or types correspondence involving the limited interpretation of departmental rules necessary to the performance of fairly complex functions.

Compiles data for annual reports and special studies using prescribed sources; prepares complex work sheets and tables and makes involved mathematical computations of the material assembled.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES, AND SKILLS

Thorough knowledge of modern office practices, procedures, and equipment and of business English, spelling, and arithmetic.

Knowledge of the principles of office management, supervision, and standard record maintenance procedures.

Some knowledge of the principles and practices of bookkeeping.

Ability to set up and type complex statements and reports required in the operations of a governmental unit.

Ability to organize, lay out, assign, and review the work of a moderately sized group of employees engaged in routine or involved clerical and typing duties.

Ability to understand and follow complex written or oral instructions of a general nature.

Ability to make minor decisions in accordance with laws, rules, and regulations; to apply departmental policies to daily work problems; and to conduct correspondence on routine and non-routine matters following general instructions and without review.

Ability to maintain harmonious work relationships with other employees and the public.

QUALIFICATIONS

Two years of clerical experience which includes some typing. Completion of one academic year of business school or college may be substituted for one year of the required experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1051
CLERK I

## NATURE OF WORK IN THIS CLASS

This is clerical work of a routine and generally repetitive nature.

An employee in this class performs under close supervision clerical work requiring very little specific knowledge or training.

## ILLUSTRATIVE EXAMPLES OF WORK

Sorts or assembles items into a limited number of breakdowns.

Counts and records count of designated items.

Uses a rubber or mechanical stamp in stamping designated items.

Records in long hand from and to a limited number of designated sources.

Arranges items in alphabetical, numerical or chronological sequence.

Files or withdraws items in alphabetical, numerical, chronological files, folders, etc.

Checks or verifies data such as numerical listing by direct comparison with original sources and pointing out discrepancies.

Answers telephone calls; receives general public; answers inquiries and gives out routine information.

Serves as messenger on established schedules or on special assignments.

Performs related work as assigned.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Some knowledge of modern office practices, procedures and equipment.

Some knowledge of spelling, punctuation and grammar.

Ability to learn processes applicable to type of clerical duties performed.

Ability to follow instructions in performance of clerical assignments.

Ability to maintain harmonious working relationship with other employees and the general public.

QUALIFICATIONS

No experience required.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1052
CLERK II

## NATURE OF WORK IN THIS CLASS

This is advanced clerical work of a varied nature that may include elementary mathematical computations.

An employee in this class performs assigned duties requiring limited knowledge or training and may include the limited exercise of independent judgement and/or limited supervision of a small group of lower grade clerks.

## ILLUSTRATIVE EXAMPLES OF WORK

Records in long hand from and to several designated sources; filing or withdrawing item in a subject or coded file; arranging items in subject or numerical code order.

Checks or verifies data, such as numerical listing by direct comparison with original sources and corrects discrepancies or narrative text by marking corrections to be made, such as typographical errors, incorrect spelling, punctuation and capitalization.

Answers telephone or meets visitors, calling others to telephone or taking messages for return calls, or answering personal or telephone inquiries of agency matters where the information is obtained from records or files covering a limited subject matter; opening, time stamping, sorting and routing, items on regular established schedules or special messenger assignments.

Performs related work as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of modern office practices, procedures and equipment.

Knowledge of spelling, punctuation and grammar.

Ability to understand and follow oral and written instructions.

Ability to maintain harmonious working relationship with other employees and the general public.

Ability to maintain and keep records of daily work problems.

## QUALIFICATIONS

One year of clerical experience, or completion of one year of college or business school.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1053
CLERK III

## NATURE OF WORK IN THIS CLASS

This is difficult supervisory clerical work or independent clerical work of comparable difficulty in a public agency or institution.

An employee in this class performs assigned clerical work requiring training and knowledge of specialized subject matter and the frequent exercise of independent judgment. Employee may supervise a group of workers of lower grade and is given general supervision by an administrative superior or other employee of higher grade.

## ILLUSTRATIVE EXAMPLES OF WORK

Plans, assigns, and reviews the work of a moderate sized group of employees engaged in a variety of clerical tasks such as filing, duplicating, mocrofilming, compiling data for reports, special studies and other purposes.

Compiles data for annual reports, special studies, and other purposes using prescribed sources; prepares complex work sheets and tables and makes involved mathematical computations on the material assembled.

Codes, indexes or classifies material for filing by subject or other system of moderate complexity where a knowledge of the records and operations of the various offices is required.

Supervises or checks, examines, and reviews the receiving and filing of applications and other standard forms; notes discrepancies or errors and initiates corrective action.

Performs related work as may be required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

General knowledge of modern office practices, procedures, and equipment.

General knowledge of English, spelling and grammar.

General knowledge of the principles of standard record maintenance procedures.

Ability to understand and follow complex oral and written directions.

Ability to supervise and maintain harmonious working relationships.

## QUALIFICATIONS

Two years of clerical experience, one academic year of college or business school may be substituted for one year of the required experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

Revised 8/16/72

1054
CLERK IV

## NATURE OF WORK IN THIS CLASS

This is independent clerical work of a highly responsible and difficult nature, or supervision of a moderately large group of employees engaged in clerical work.

An employee in this class performs responsible clerical work requiring training, experience and a working knowledge of subject matter related to the work of the agency. Employee may supervise a moderate size group of employees performing a variety of clerical tasks of some difficulty.

## ILLUSTRATIVE EXAMPLES OF WORK

Plans, assigns and reviews the work of a moderately large clerical unit engaged in a variety of clerical tasks such as central filing, records processing and examining, and typing.

Conducts correspondence with general public adjusting complaints or supplying technical information to explain department methods and procedures; interprets regulations according to agency standards and applies rules to individual cases.

Examines investigation assignments to field personnel for completeness and to avoid duplication; checks field reports for compliance with original instructions and may take action to correct errors.

Performs related duties as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Considerable knowledge of modern office practices, procedures, and equipment as well as principles of office management, supervision and standards, and records management.

Ability to plan, assign, and coordinate the work of a moderately large clerical staff performing a variety of clerical operations.

Ability to instruct and train employees effectively.

Ability to develop, lay out and install involved procedures from general instructions.

Ability to maintain harmonious working relationships with other employees and the general public.

1054

QUALIFICATIONS

Three years of clerical experience. Business school or college training may be substituted for the required experience on a year for year basis up to a maximum of two years.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1141
EDP DATA CLERK I

NATURE OF WORK IN THIS CLASS

This is routine and repetitive coding of data as input to a computer or checking of output from a computer.

Under close supervision an employee in this class performs the routine arrangement of data, the substitution of simple number or letter codes to represent specific situations for entry into computer records, and checks the accuracy of output.

ILLUSTRATIVE EXAMPLES OF WORK

Receives and logs in documents, counts and enters totals on computer sheet.

Refers to code sheets and substitutes numeric or alphabetic code to represent simple data.

Makes simple arithmetic checks, using adding machine.

Assembles documents into batches of a predetermined size or content.

Rubber stamps indentifying data on documents or batch sheets.

Files documents after processing.

Assembles computer printed reports into sets and prepares for mailing.

Performs related duties as assigned.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Some knowledge of modern office procedures, practices and equipment.

Ability to follow instructions in performance of duties.

Basic arithmetic, spelling, punctuation and grammar.

Ability to get along with people.

QUALIFICATIONS

No experience required.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1142
EDP DATA CLERK II

NATURE OF WORK IN THIS CLASS

This is advanced editing and coding of data as input to a computer or checking of output from a computer.

An employee in this class performs assigned duties requiring limited knowledge or training and may include the limited exercise of independent judgement or limited supervision of a small group of lower grade data clerks.

ILLUSTRATIVE EXAMPLES OF WORK

Reviews data sheets or questionnaires for completeness and conformity to pre-established format.

Refers to code sheets and substitutes alphabetic or numeric codes to represent simple data.

Checks mathematical accuracy of data on reports, forms, or other documents in accordance with established procedures.

Establishes batch control totals of documents to facilitate checking of data entry and computing results in a predetermined manner.

Checks computed reports for reasonableness of data, for cross-footing, for arrangement and for general appearance.

Check computer summaries against batch control totals to insure against loss of data in accordance with established procedures.

Performs related duties as assigned.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of modern office procedures, practices and equipment.

Knowledge of arithmetic, spelling, punctuation and grammar.

Knowledge of data processing coding, editing and checking procedures and practices.

Knowledge of data processing organization and capabilities.

Ability to follow oral or written instructions.

Ability to maintain harmonious working relationships with other employees and with the general public.

QUALIFICATIONS

One year of experience involving the editing or coding of data for computer processing. Successful completion of one year of college may be substituted for the year of experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

6221

# ENGINEERING AIDE I

## NATURE OF WORK IN THIS CLASS

This is simple non-technical work in connection with engineering and may be performed in the field, office, or laboratory.

An employee in this class uses simple engineering methods and equipment in performing routine sub-professional work. Work is performed under continous direct supervision with little leeway allowed for independent action or judgment.

## ILLUSTRATIVE EXAMPLES OF WORK

Receives and numbers specimens sent to laboratory for tests; checks on laboratory supplies and mails supplies and containers to fieldman; cleans materials and laboratory equipment and sets up simple apparatus.

On survey work, clears lines for survey party; sets and marks stakes; holds chain or tape on surveys, relocations and construction work; acts as flagman or rodman.

Checks materials and makes count of equipment coming on or leaving a job; acts as flagman on highway construction or repair projects.

Performs related duties as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Ability to withstand continuous field work of an active nature requiring physical stamina and good eyesight and hearing.

Some knowledge of mathematics.

Ability to understand and follow oral or written instructions and to write legibly and neatly and keep simple records.

## QUALIFICATIONS

Six months of experience of a nature which would give knowledge of work performed.

High school graduation may be substituted for the required experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6222

ENGINEERING AIDE II

NATURE OF WORK IN THIS CLASS

This is routine technical and semi-skilled work in connection with engineering and may be performed in the field, office, or laboratory.

An employee in this class performs technical duties which follow definitely prescribed methods and procedures but involve the application of engineering skills and techniques. Employee may be assigned to such work in the field of surveying, materials testing, construction inspection, and similar sub-professional work. Assignments are received with detailed instructions and work is subject to continuing supervision.

ILLUSTRATIVE EXAMPLES OF WORK

Makes moisture and gradation tests on concrete; takes batch weights on paving; takes care measurements and checks loading and unloading of bituminous material.

Acts as the regularly assigned transit or level man in a survey party.

Does simple mapping, keeps job accounts and collects statistics of a simple routine nature.

Reduces notes and plots and checks center lines and cross sections; uses the planimeter and makes the less difficult technical computations.

Makes soil tests and determines placement of embankments.

Makes routine field inspections, tests, and reports on construction materials both in the field and in the laboratory.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of fundamental mathematics and trigonometry and ability to apply them in making simple engineering computations.

Some knowledge of soils, bituminous and portland cement, concrete and other construction materials.

Some knowledge of highway specifications.

Ability to make routine field and laboratory tests.

Ability to work out of doors under varied climatic conditions necessitating sound physical condition and good eyesight and hearing.

Skill in using the engineer's transit and level.

Revised 11-9-70

6222

QUALIFICATIONS

One year of experience in sub-professional engineering or technical work in area applied for; or completion of one semester or two quarters of college or technical school training or completion of the Department of Highways training school.

High school graduation may be substituted for six months of the required experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6223
ENGINEERING AIDE III

NATURE OF WORK IN THIS CLASS

This is difficult technical work in connection with engineering and may be performed in the field, office, or laboratory.

An employee in this class performs the more difficult technical assignments in making surveys, in making and checking engineering computations, in inspecting construction work or in conducting laboratory or field tests. Supervision is in some cases exercised over engineering aides of lower grade. Assignments are given orally or in writing and are general in nature affording some opportunity for the use of independent judgment. Work may be checked in progress by others of the same class but the final check is by a superior.

ILLUSTRATIVE EXAMPLES OF WORK

Maintains records, charts, and statistical information of a technical engineering nature, analyzing data as it comes in from the field.

Makes shop inspections of the fabrication, manufacture, or treatment of construction materials.

Prepares construction material samples and conducts such routine tests in the physical laboratory as quantity, tensile strength elongation, compression, wear, soundness, gradation and absorption.

Operates engineers' transit and level and occasionally acts as party chief in field surveys and construction lay out.

Occasionally assists a superior in investigational surveys and research work, by performing simple technical tasks.

Acts as inspector on less difficult construction projects or on a portion of a major project.

Checks the work of engineering aides of lower grade.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of simple engineering principles and practices of engineering mathematics, including trigonometry.

Knowledge of highway specifications, regulations, and tests relating to the construction of small highway projects.

Ability to perform moderately difficult technical computations, estimates, and tests and to compile simple engineering data and statistics.

Revised 11-9-70

Ability to withstand outside work necessitating sound physical condition and good eyesight and hearing.

Skill in the use of engineering instruments and equipment.

QUALIFICATIONS

Two years of experience in sub-professional engineering or technical work in the special area for which applied; or completion of the Department of Highways training school and one year of experience; or other equivalent combination of training and experience.

High school graduation may be substituted for six months of the required experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6224

# ENGINEERING AIDE IV

## NATURE OF WORK IN THIS CLASS

This is advanced technical and sub-professional work in connection with engineering and may be performed in the field, office, or laboratory.

An employee of this class performs difficult technical assignments in connection with the planning, design and construction of highways, testing of materials and traffic operations, and other phases of engineering work. Work entails the application of sub-professional engineering skill and knowledge and includes the review of plans, detail drawings, maps and reports, the making and checking of engineering computations, making surveys, conducting and analyzing laboratory and field tests of materials and foundations, inspecting materials and construction, and other related assignments. General supervision is received on sub-professional work, close supervision is given to professional level trainee work, final check and approval is made by the engineer in charge of the operation. Supervision is frequently exercised over Engineering Aides of lower grade, skilled and unskilled laboratory helpers and clerical employees.

## ILLUSTRATIVE EXAMPLES OF WORK

Samples and makes difficult physical and/or chemical tests of construction and maintenance materials.

Participates in engineering research and may supervise field or laboratory units engaged in such work.

Performs important work involving engineering data; checks project proposals and estimates from plans and investigates permit requests.

Performs related duties as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of modern methods and techniques of the construction of public works.

Ability to make mathematical computations and assist in the design of engineering projects.

Ability to assist in difficult engineering projects in the field and office.

Ability take local charge of minor engineering assignments and to obtain adherence to plans and specifications.

Ability to make estimates and to compile engineering data and statistics.

Skill in the use of engineering instruments and equipment.

6224

QUALIFICATIONS

Successful completion of three years of full time training at an accredited college or university or technical school with major or minor course work in engineering or a physical science; or high school graduation and three years of experience in sub-professional engineering or technical work in the special area for which applied; or completion of the Department of Highways training school and three years of experience or other equivalent combination of training and sub-profcssional engineering experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

6231
ENGINEERING TECHNICIAN I

NATURE OF WORK IN THIS CLASS

This is routine technical and semi-skilled work in connection with any branch of engineering and may be performed in the field, office, or laboratory.

An employee in this class performs technical duties which follow definitely prescribed methods and procedures but nonetheless involve some application of engineering skills and techniques. Employee may be assigned to such work in the field of surveying, drafting, materials testing, construction inspection, traffic and road inventory surveys, and similar sub-professional work. Assignments are received with detailed instructions and work is subject to continuing supervision. Work is performed under the general supervision of a Registered Professional Engineer.

ILLUSTRATIVE EXAMPLES OF WORK

Under the direction and general supervision of a Registered Professional Engineer who assumes final responsibility for the completed engineering work:

Acts as the regularly assigned transit or level man in a survey party.

Does simple mapping; plots and checks center lines and cross sections; uses the planimeter; or makes the less difficult technical computations.

Traces and does other routine drafting.

Makes moisture and gradation tests on concrete; takes batch weights on paving; takes car measurements and checks loading and unloading of bituminous material.

Makes soil tests.

Makes routine inspections and routine tests and prepares report of findings on construction materials in the field and in the laboratory. Participates in a crew using clineometer, odometer, and directional gyroscopic compass in making traffic, parking, or related studies.

Acts as inspector of the simpler types of construction or maintenance projects.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of fundamental mathematics and ability to make simple engineering computations.

Some knowledge of soils, bituminous and portland cement, concrete and other construction materials.

Some knowledge of specifications.

Ability to assist in preparation and tracing drawings of simple surveys and plans.

Ability to make routine field and laboratory tests.

Ability to work out of doors under varied climatic conditions necessitating sound physical condition and good eyesight and hearing.

QUALIFICATIONS

Two years of experience in sub-professional engineering work or technical work relating to engineering.

High school graduation may be substituted for six months of the required experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6232

ENGINEERING TECHNICIAN II

NATURE OF WORK IN THIS CLASS

This is technical work in connection with any branch of engineering and may be performed in the field, office, or laboratory.

An employee in this class performs technical assignments in making surveys, in preparing drawings, in making and checking computations, in inspecting construction work, in conducting laboratory or field tests, and in making traffic and road inventory studies. Assignments are given orally or in writing and are general in nature affording some opportunity for the use of independent judgment. Work may be checked in progress by others of the same class but the final check is by a superior. Work is performed under the general supervision of a Registered Professional Engineer.

ILLUSTRATIVE EXAMPLES OF WORK

Under the direction and general supervision of a Registered Professional Engineer who assumes final responsibility for the completed engineering work:

Reduces notes, plots, computes quantities and performs work on construction plans.

Lays out special details for such projects as intersections, drainage, paving, grade eliminations, erosion control and public utility facilities.

Plots, checks, revises, traces, and makes necessary computations for maps.

Maintains records, charts, and statistical information of a technical engineering nature, analyzing data as it comes in from the field.

Participates in traffic, parking, and related studies.

Participates in making shop inspections of the fabrication, manufacture, or treatment of construction materials.

Prepares construction material samples and conducts physical or chemical tests in the laboratory.

Operates engineers' transit and level and assists party chief in field surveys and construction lay out.

Assists a superior in investigational surveys and research work, by performing simple technical tasks.

Acts as inspector on less difficult construction projects or on a portion of a major project.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of simple engineering principles and practices and of engineering matehematics.

Knowledge of specifications, regulations, and tests relating to construction.

Ability to perform moderately difficult technical computations, estimates, and tests and to compile simple engineering data and statistics.

Ability to withstand outsideork necessitating sound physical condition and good eyesight and hearing.

Skill in the use of engineering instrumetns and equipment and in making engineering drawings and plans.

QUALIFICATIONS

High school graduation and two years of experience in sub-professional engineering or technical work; or successful completion of two years of full time training at a technical school or college; or other equivalent combination of training and experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

6233

# ENGINEERING TECHNICIAN III

## NATURE OF WORK IN THIS CLASS

This is advanced technical and sub-professional work in connection with any branch of engineering and may be performed in the field, office, or laboratory.

An employee of this class performs technical assignments in connection with the planning, design, construction, and maintenance of highways, structures, and buildings; testing of materials and traffic operations and other phases of engineering work. Work entails the application of sub-professional engineering skill and knowledge and includes preparation of plans, detail drawings, maps, and reports, the making and checking of engineering computations, making surveys, conducting and analyzing laboratory and field tests of materials and foundations, inspecting materials and construction, and other related assignments. Work is performed under the general supervision of a Registered Professional Engineer.

## ILLUSTRATIVE EXAMPLES OF WORK

Under the direction and general supervision of a Registered Professional Engineer who assumes final responsibility for the completed engineering work:

Acts as chief of party on location and construction surveys.

Acts as assistant squad leader of a group of draftsmen doing responsible mapping and drafting work.

Samples and makes physical or chemical tests of construction and maintenance materials.

Participates in engineering research.

Performs technical work in bridge and road design and cartographic drawing.

Performs important clerical and statistical work involving engineering data and investigates permit requests.

Performs related duties as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Some knowledge of the principles and practices of sub-professional engineering.

Ability to assist in moderately difficult engineering projects in the field and office.

Ability to estimate quantities and to compile engineering data and statistics.

Skill in the use of engineering instruments and equipment and in making engineering drawings and plans.

QUALIFICATIONS

Graduation from an accredited college or university with course work related to the area assigned; or high school graduation and four years of experience in sub-professional engineering or technical work; or two years technical school and two years of experience; or other equivalent combination of experience and training.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6234
ENGINEERING TECHNICIAN IV

NATURE OF WORK IN THIS CLASS

This is moderately complex technical work which may involve some supervisory duties or comparably difficult individual performance of specialized work. Work is performed in connection with the state highway program or other public works and includes preliminary investigation, planning of construction and maintenance projects, materials-testing, traffic operations, and/or research.

An employee in this class may be in responsible charge of and supervise the work of a small group of technical, skilled and unskilled workers (on a minor project); or the employee may individually plan projects or perform a somewhat specialized phase of technical work (investigation or research in the field, office or laboratory). Assignments are specific, but detailed instructions are given only with new types of work or unfamiliar projects. Employee must apply technical knowledge and has some opportunity for the use of independent judgement in laying out work and making minor technical decisions. The required guidance and supervision is received from a Registered Professional Engineer, who periodically inspects work in progress and checks finished projects for completeness and acceptability.

ILLUSTRATIVE EXAMPLES OF WORK

Under the direction and general supervision of a Registered Professional Engineer who assumes final responsibility for the completed engineering work:

Serves as project technician on a construction or maintenance project of minor size and complexity.

May serve as squad leader in planning small highway projects. Prepares the drawings for minor structures.

Supervises inspection of construction on average-sized projects or portions of very complex projects.

Makes physical and chemical tests of construction and maintenance materials or may supervize small field or laboratory units engaged in making these tests.

Performs investigational and research work.

Reviews the composition of portland cement concrete and bituminous concrete mixes to required conformance with specifications.

Acts as chief of survey party in the more difficult assignments when independent action is necessary and supervision from area supervisor is not needed.

Prepares drawings and specifications for replacement of mechanical equipment, repair of buildings, installation of water lines, sewers, electrical work, and items pertaining to maintenance of buildings and equipment.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Some knowledge of modern methods and techniques of the construction and maintenance of public works.

Ability to make involved computations, to lay out highway projects and to prepare plans.

Ability to assist in conducting research work and the preparation of technical reports.

Ability to make tests of construction materials in field and laboratory.

Ability to inspect the work of contractors on construction projects and to obtain adherence to plans and specifications.

Ability to supervise the work of subordinates.

Skill in the use of engineering instruments and equipment.

QUALIFICATIONS

Graduation from an accredited college or university with course work related to the field assigned and one year of experience in sub-professional engineering work; or high school graduation and five years of experience in sub-professional engineering or technical work; or two years technical school and three years of experience; or other equivalent combination of experience and training.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6235
ENGINEERING TECHNICIAN V

NATURE OF WORK IN THIS CLASS

This is complex technical work which may involve some responsible supervisory duties or comparably difficult individual performance of specialized work. Work is performed in connection with the state highway program or other public works and includes preliminary investigation, planning of construction and maintenance projects, materials testing, traffic operations and/or research.

An employee in this class may be in responsible charge of and supervises the work of a group of technical, skilled and unskilled workers; or the employee may individually prepare plans for projects; or performs a specialized phase of technical work (investigation or research in the field, office or laboratory). Assignments are specific, but detailed instructions are given only with new types of work or unfamiliar projects. Employee must apply technical knowledge; and has opportunity for the use of independent judgment in laying out work and making technical decisions. The required guidance and supervision is received from a Registered Professional Engineer who periodically inspects work in progress and checks finished projects for completeness and acceptability.

ILLUSTRATIVE EXAMPLES OF WORK

Under the direction and general supervision of a Registered Professional Engineer who assumes final responsibility for the complete engineering work:

Serves as project technician on a construction or maintenance project of average size and complexity.

May serve as squad leader in planning and detailing complex highway projects.

Prepares drawings for minor structures.

Supervises inspection of large projects.

Makes physical and chemical tests of construction and maintenance materials and may supervise field or laboratory units engaged in making these tests. Performs investigational and research work.

Reviews the composition of portland cement concrete and bituminous concrete mixes to require conformance with specifications.

Supervises all survey party chiefs in a division or comparable area.

Revised 3-31-71

Prepares drawings and specifications for replacement of mechanical equipment, repair of buildings, installation of water lines, sewers, electrical work, and items pertaining to maintenance of buildings and equipment.

Acts as a consultant to maintenance and operating crews at institutions.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of the principles and practices of engineering procedures.

Some knowledge of modern methods and techniques of the construction and maintenance of public works.

Ability to make involved computations and to make project plans in accord with departmental requirements.

Ability to perform research work and to assemble technical data for reports.

Ability to make moderately complex tests of construction materials in field and laboratory.

Ability to inspect the work of contractors on construction projects and to obtain adherence to plans and specifications.

Ability to supervise the work of other technicians.

Skill in the use of engineering instruments and equipment.

QUALIFICATIONS

Graduation from an accredited college or university with course work related to the field assigned and two years of experience in engineering work; or high school graduation and six years of experience in sub-professional engineering or technical work; or two years technical school and four years experience; or other equivalent combination of training and experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

6236
ENGINEERING TECHNICIAN VI

NATURE OF WORK IN THIS CLASS

This is complex technical work involving administrative or supervisory duties or comparably difficult individual performance of responsible specialized work. Work is performed in connection with the state highway program or other public works and includes preliminary investigation, planning of construction and maintenance projects, materials-testing, traffic operations, and/or research.

An employee in this class may exercise immediate supervision over a group of technicians of lower grade and other workers (e.g. as squad leader on planning projects or as project technician on a major construction project); or may individually prepare drawings for projects of average difficulty; or act as technical advisor on some details of a specialized phase of the highway program (e.g. photogrammetry or statistical reporting). Assignments are usually specific in scope, but are given without detailed instructions as to do work methods. Employee must apply technical knowledge and has opportunity for the use of independent judgment in planning and laying out work and in making technical decisions of moderate difficulty. General professional supervision and guidance is received from a Registered Professional Engineer who reviews projects for acceptable organizations and progress and conformity with policy and regulations.

ILLUSTRATIVE EXAMPLES OF WORK

Under the direction and general supervision of a Registered Professional Engineer or Architect who assumes final responsibility for the completed engineering work:

Serves as a leader of a group of technicians in planning projects of major importance.

Acts as project technician in charge of all technical details on major construction projects.

Conducts difficult investigations and surveys, performs technical tests and research, and prepares reports of findings.

Assists in the design of buildings and structures.

Acts as technical advisor or performs highly specialized technical assignments.

Serves as assistant head of a specialized staff section engaged in the over-all collection and analysis of information.

Reviews the composition of all project materials to require conformance with specifications.

Resolves questions of an engineering nature between the contractor and the state and advises to keep all personnel abreast of policies and procedures.

Prepares drawings and specifications for replacement of mechanical equipment, repair of buildings, installation of water lines, sewers, electrical work, and items pertaining to maintenance of buildings and equipment.

Acts as a consultant to maintenance and operating crews at institutions.

Prepares estimates for all types of construction and maintenance projects; prepares reports on operating costs of equipment.

Performs related duties as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of the principles and techniques of engineering procedures.

Knowledge of modern methods and techniques of the construction and maintenance of public works.

Ability to plan, supervise, and review the work of other technicians.

Ability to perform technical tests and research work and to make suggestions on engineering problems to the supervisory engineer.

Skill in the preparation of plans for highways, streets, and structures and in making complete plans and specifications in accord with established principles.

QUALIFICATIONS

Graduation from an accredited college or university with course work related to the field assigned and three years of experience in engineering work; or high school graduation and seven years of experience in sub-professional engineering or technical work; or two years technical school and five years of sub-professional engineering experience; or other equivalent combination of training and experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6237
ENGINEERING TECHNICIAN VII

NATURE OF WORK IN THIS CLASS

This is complex technical work involving highly responsible administrative or supervisory duties or comparably difficult individual performance of important specialized technical work. Work is performed in connection with the state highway program or other public works, and includes preliminary investigation, planning of construction and maintenance projects, materials-testing, traffic operations, and/or research.

An employee in this class may exercise general technical supervision over a large group of technicians of lower grade and other employees engaged in a specialized function or project or the employee may individually provide specialized information and prepare drawings for work of advanced technical difficulty and of importance to the over-all program of the organization. Functions or projects are assigned with policy instruction. Employee must apply thorough technical knowledge; and has opportunity for some executive control and for making technical decisions on ordinary engineering problems. The Registered Professional Engineer in charge correlates technical and engineering decisions from subordinates in making final decision. Administrative supervision is recieved from a Registered Professional Engineer who reviews work for results and for conformity with established policies.

ILLUSTRATIVE EXAMPLES OF WORK

Under the directions and general supervision of a Registered Professional Engineer who assumes final responsibility for the completed engineering work:

Prepares plans for moderately difficult structures.

Serves as head of a technical section performing specialized phases of the department's work.

Serves as technical advisor on projects or subjects of a highly specialized nature.

Performs planning, construction, maintenance and administrative work of advanced technical difficulty and responsibility in such capacities as may be determined by the requirements of the program.

Reviews the composition of all project materials on complex projects to require conformance with specification.

Prepares estimates for all types of construction and maintenance projects; prepares reports on operating costs of equipment.

Performs related duties as required.

6237

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Thorough knowledge of the principles and techniques of engineering procedures.

Thorough knowledge of modern methods and techniques as applied to the planning, construction, and maintenance of highways and other public works.

Ability to direct the work of other technicians, mechanics, equipment operators, and construction and maintenance workers.

Ability to supervise the making of complete plans and specifications to conform with highway standards.

Ability to develop and maintain cooperative relationships with sub-ordinates and their sections.

Ability to perform difficult technical tests and research or with sub-ordinates and their sections.

Ability to perform difficult technical tests and research or other work of a highly specialized nature.

QUALIFICATIONS

Graduation from an accredited college or university with course work more related to engineering and four years of experience in engineering work; or high school graduation and eight years of experience in sub-professional engineering or technical work; or two years technical school and six years of experience in sub-professional engineering; or other equivalent combination of training and experience.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

NATURE OF WORK IN THIS CLASS

This is highly responsible administrative work at the policy formulating level, in the administration of a departmental program.

ILLUSTRATIVE EXAMPLES OF WORK

Plans, directs and coordinates the program of a division in a state department, subject to the direct instructions of the director of the department.

Plans, directs and coordinates the program of an auxiliary service unit within a central state department, subject to the direct instructions of the director of the department, such auxiliary services being those rendered to and for two or more other state departments and having binding effects upon them.

Performs analysis, as assigned, of the policy objectives of a state program; recommends changes in program emphasis to the governor or to the chief executive officer of the affected state program.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Extensive knowledge of the subject matter of the division or unit concerned.

Extensive knowledge of modern principles of business and public administration.

Ability to establish and maintain effective working relationships with employees, public officials, and the general public.

Extensive knowledge and skill with respect to the performance or organized administrative research and analysis.

Ability to influence others to recognize and act upon defects in policy, organization, and administrative technique.

QUALIFICATIONS

Graduation from an accredited college or university and seven years of responsible experience in a business organization or in the public service, three years of which must have been in responsible administrative or supervisory work involving general management problems; or ten years of responsible experience in a business organization or in the public service, three years of which must have been in responsible administrative or supervisory work involving general management problems; or other equivalent combination of training and experience.

NOTE: Applicants with one year of experience in addition to the minimum required may be appointed at step 2.

Applicants with two years of experience in addition to the minimum required may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6551
Public Health Engineer I

NATURE OF WORK IN THIS CLASS

This is routine sub-professional engineering work in the field of public health.

An employee in this class works on engineering activities of very limited scope under close supervision with little latitude for independent action.

ILLUSTRATIVE EXAMPLES OF WORK

Performs special assignments of elementary difficulty relating to assigned phase of public health engineering.

Reviews plans and specifications of environmental health and engineering structures, systems, operations and establishments in the field of assignment.

Participates in field inspections of medical facilities, water treatment plants, solid waste disposal sites, or other facilities in area of assignment.

Prepares for more important assignments by observation, study, on-the-job training, review of reports, and increased participation in assignments of increasing difficulty and responsibility.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

General knowledge of the fundamental technologies and sciences underlying the practice of environmental engineering such as physics, chemistry, and biology.

Ability to make, read, and interpret engineering drawings and specifications pertaining to the work of the speciality.

Ability to present ideas clearly in writing and orally.

Ability to deal with the public tactfully.

QUALIFICATIONS

Graduation from an accredited college or university with a major in sanitary, civil, or chemical engineering; or other major in the field of public health engineering appropriate to the position.

New 9/17/69

NOTE:

An applicant with one year of experience, following graduation, in the field of public health engineering involved in the position may be appointed at step 2.

An applicant with two years of experience, following graduation, in the field of public health engineering involved in the position may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6552

Public Health Engineer II

NATURE OF WORK IN THIS CLASS

This is sub-professional engineering work in the field of public health.

An employee in this class works on engineering activities of limited scope and may involve supervision of engineering aides and technicians. Work is performed under the general supervision of higher grade engineer.

ILLUSTRATIVE EXAMPLES OF WORK

Inspects environmental health facilities such as sewage treatment plants, public buildings, hospitals, or other facilities for compliance with engineering standards.

Write reports on engineering inspections, reviews facility development, and under supervision writes letters and makes appropriate recommendations.

Reviews engineering plans of facilities in area of assignment such as, air pollution abatement equipment, water treatment plants, hospitals, solid waste disposal sites, or public buildings.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Some knowledge of the application of engineering principles to public health engineering areas such as air pollution, water supply, radiological health, solid waste management, etc.

Ability to apply engineering principles and to work effectively in the solution of environmental engineering problems.

Ability to follow complex instructions.

Ability to deal with the public tactfully.

Ability to supervise technicians and aides.

QUALIFICATIONS

Graduation from an accredited college or university with a major in sanitary, civil, or chemical engineering; or other major in the field of public health engineering appropriate to the position. Registered as an Engineer-in-Training with the Ohio State Board of Registration for Professional Engineers and Surveyors.

NOTE:

An applicant with one year of experience, following graduation, in the field of public health engineering involved in the position may be appointed at step 2.

New 9/17/69

An applicant with two years of experience, following graduation, in the field of public health engineering involved in the position may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6553
Public Health Engineer III

NATURE OF WORK IN THIS CLASS

This is professional engineering work of ordinary difficulty in field of public health.

An employee in this class works under supervision in one or more public health engineering activities of a limited scope.

ILLUSTRATIVE EXAMPLES OF WORK

Inspects municipal water and sewage treatment plants and reports on efficiency of treatment.

Gives basic engineering advice to operators of solid waste disposal sites, water and waste water treatment plants, or operations of other facilities affecting environmental health.

Investigates and makes reports and recommendations in such environmental engineering areas as air pollution, industrial hygiene, medical facility construction, radiation, etc.

Confers with local and industry officials and the general public relative to engineering problems in his area of specialization.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

A good knowledge of the application of engineering principles to environmental engineering areas such as industrial hygiene, solid waste management, sewage and industrial wastes, etc.

Knowledge of public health law and regulations.

A good knowledge of public health practices applicable in environmental engineering.

Ability to supervise technicians and act as a work leader for lower grade public health engineers.

Ability to deal tactfully with public and industry officials, and with the public.

QUALIFICATIONS

Graduation from an accredited college or university with a major in sanitary, civil, or chemical engineering; or other major in the field of public health engineering appropriate to the position. No previous experience required other than that necessary to obtain a professional engineer's license.

New 9/17/69

Possession at the time of appointment of a license as a professional engineer as issued by the Ohio State Board of Registration for Professional Engineers and Surveyors.

NOTE:

An applicant with one year of experience, following licensure, in the field of public health engineering involved in the position may be appointed at step 2.

An applicant with two years of experience, following licensure, in the field of public health engineering involved in the position may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

6554
Public Health Engineer IV

## NATURE OF WORK IN THIS CLASS

This is professional engineering work of an advanced nature in the field of public health.

An employee in this class works under general supervision in one or more public health engineering activities of a wide scope.

## ILLUSTRATIVE EXAMPLES OF WORK

Acts as technical consultant and advisor to field engineers engaged in air pollution studies.

Investigates and writes reports and recommendations on water pollution problems, refuse disposal and other sanitary engineering problems.

Assists in the development and presentation of information to be used as evidence in legal action.

Investigates and writes reports on occurrences of occupational diseases in industry and prescribes proper industrial hygiene corrective measures for prevention.

Supervises technicians or clerical personnel in environmental engineering activities.

Performs related work as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Extensive knowledge of the application of engineering principles to environmental engineering areas such as air pollution, general environmental engineering, institutional hygiene, radiological health, etc.

A good knowledge of public health laws, regulations, principles, and practices applicable in environmental engineering programs.

Ability to interpret and present complex ideas both orally and in writing.

Ability to deal tactfully with the general public and with public and industry officials.

Ability to supervise others and act as a work leader for lower grade engineers.

## QUALIFICATIONS

Graduation from an accredited college or university with a major in sanitary, civil, or chemical engineering; or other major in the field of public health engineering appropriate to the position.

One year of experience following licensure in the field of public health engineering involved in the position.

Possession at the time of appointment of a license as a professional engineer as issued by the Ohio State Board of Registration for Professional Engineers and Surveyors.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6555
Public Health Engineer V

NATURE OF WORK IN THIS CLASS

This is professional engineering work of an involved and specialized nature or first level supervisory work in one of the fields of public health engineering.

An employee in this class works under limited supervision and his work receives only a general review.

ILLUSTRATIVE EXAMPLES OF WORK

Acts as Assistant Principal District Sanitary Engineer or Assistant Engineer-in-Charge of an Engineering Section; supervises the activities of engineers and technicians in the absence of his superior.

Reviews plans for proposed water supply and sewage treatment plants, solid waste disposal sites, swimming pools, trailer parks, hospitals or other facilities requiring the approval of the Health Department; writes recommendations pertaining to compliance with standards.

Assists in the preparation, for the Water Pollution Control Board, recommendations with regard to the issuance and renewal of permit applications for wastewater disposal for all political entities and other classified plants.

Engages in enforcement, inspection and consultative activities as they relate to the control of wastes involved in mineral recovery operations.

Studies health hazards associated with a particular manufacturing process or chemical common to a group of industries for the purpose of determining the relationship of the process or chemical to health.

Assists in the review and evaluation of plans, specifications and supportive documents submitted with applications for tax exemptions on air pollution control equipment.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

A very good knowledge of public health laws, regulations, principles and practices applicable in environmental engineering programs.

Considerable knowledge of the application of engineering principles to environmental engineering areas such as solid waste management, water supply, industrial hygiene, air pollution, institutional hygiene, etc.

Knowledge of administrative and supervisory principles and practices.

Ability to supervise the work of lower grade public health engineers.

Ability to present and interpret complex ideas orally and in writing.

Ability to demonstrate a high degree of skill in the application of engineering principles to environmental engineering programs.

QUALIFICATIONS

Graduation from an accredited college or university with a major in sanitary, civil, or chemical engineering; or other major in the field of public health engineering appropriate to the position. Three years of experience following licensure in the field of public health engineering involved in the position.

Possession at the time of appointment of a license as a professional engineer as issued by the Ohio State Board of Registration for Professional Engineers and Surveyors.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

6556
Public Health Engineer VI

## NATURE OF WORK IN THIS CLASS

This is professional engineering work of a supervisory nature.

An employee in this class works under general direction supervising a moderate sized public health engineering program that is state-wide in scope, or in line supervision of engineers working in several programs covering a large area of the state.

## ILLUSTRATIVE EXAMPLES OF WORK

Supervises engineers and technicians in enforcement, inspection, and consultative activities as they relate to water supply, sewage disposal, water pollution and solid waste disposal in an assigned district of the state.

Responsible for the administration of a sanitary engineering section in the Health Department such as Water Supply Plans, Water Supply Operations, Municipal Sewage Plans, or some comparably sized program state-wide in scope.

Acts as the assistant to the supervisor of a large sanitary engineering program which encompasses several smaller state-wide programs.

Supervises engineers and technicians engaged in evaluation, enforcement, inspection, and consultative activities in a state-wide air quality standards program.

Performs related work as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Considerable knowledge of the application of engineering principles to environmental engineering areas such as air pollution, solid waste management, radiological health, water supply, etc.

Considerable knowledge of public health laws, regulations, principles, and practices applicable in environmental engineering programs.

Considerable knowledge of administrative and supervisory principles and practices.

Ability to plan and direct a state-wide public health engineering program.

Ability to work effectively with other leaders in government, education and industry.

QUALIFICATIONS

Graduation from an accredited college or university with a major in sanitary, civil, or chemical engineering; or other major in the field of public health engineering appropriate to the position. Five years of experience following licensure in the field of public health engineering involved in the position including two years in a responsible administrative or supervisory capacity.

Possession at the time of appointment of a license as a professional engineer as issued by the Ohio State Board of Registration for Professional Engineers and Surveyors.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

OHIO DEPARTMENT OF STATE PERSONNEL

6557
Public Health Engineer VII

NATURE OF WORK IN THIS CLASS

This is high level administrative work in public health engineering programs.

An employee in this class administers a large state-wide public health engineering program of a very wide scope under general direction.

ILLUSTRATIVE EXAMPLES OF WORK

Develops and administers a major engineering program such as air pollution control, water supply, or sewage and industrial wastes.

Directs educational and regulatory activities in the area of program assignment.

Assists local political subdivisions, regional, and interstate agencies in the furtherance of environmental pollution abatement through consultation, directing cooperative studies, code formulation, and other technical and administrative means.

Plans and directs investigations into major sources of environmental pollution.

Represents the Department of Health in meetings and conferences in the area of program assignment.

Performs related work as required.

ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Considerable knowledge of departmental programs and objectives in public health engineering programs.

A good knowledge of the legislative process at the community and state level.

Thorough knowledge of the application of engineering principles to environmental engineering areas such as sewage and industrial waste, water supply and treatment, air pollution, etc.

Thorough knowledge of administrative and supervisory techniques and principles.

Ability to direct a large state-wide public health engineering program.

Ability to coordinate a complex engineering program with other public health programs at the state and community levels.

High degree of ability to present and interpret complex technical ideas and programs orally and in writing.

Ability to deal effectively with government, community, and industry leaders.

QUALIFICATIONS

Graduation from an accredited college or university with a major in sanitary, civil, or chemical engineering; or other major in the field of public health engineering appropriate to the position. Seven years of experience following licensure in the field of public health engineering involved in the position including three years in a responsible administrative or supervisory capacity.

Possession at the time of appointment of a license as a professional engineer as issued by the Ohio State Board of Registration for Professional Engineers and Surveyors.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1031
SECRETARY I

## NATURE OF WORK IN THIS CLASS

This is secretarial work of a responsible nature requiring independent judgment and stenographic competence.

An employee in this class performs the duties of a secretary to the head of a moderate sized agency or to the superintendent of an institution or to the chief of a major bureau within a large department.

The employee must be capable of evaluating and coping with difficult and complex situations, exercising calm restraint and initiative, following standard departmental procedures, and knowing when it is necessary to deviate therefrom.

This position may require the supervision of employees engaged in predominately clerical activities.

## ILLUSTRATIVE EXAMPLES OF WORK

Performs the duties of a secretary to a top executive or administrative officer; takes and transcribes dictation; meets individuals and the general public; communicates departmental decisions and policy; carries out administrative duties as assigned; and refers inquiries to proper officials.

Determines whether a problem requires the attention of the superior and if so, assembles all necessary material required to clearly outline the situation; arranges routine and special meetings and contacts those persons who are to be present.

Reviews correspondence for which a thorough knowledge of departmental rules and procedure is necessary; corrects errors or discrepancies; handles routine questions in the standard manner; insures that incoming and outgoing mail is promptly received and sent.

Performs related duties as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Thorough knowledge of modern office practices, procedures, and methods.

Thorough knowledge of business English, spelling, and commercial arithmetic.

Thorough knowledge of departmental rules, regulations, functions, procedures, organization, and applicable statutory law; ability to make minor decisions in accordance therewith.

Ability to apply policies and laws to everyday work situations and to conduct correspondence on routine and non-routine matters.

1031

Ability to plan, lay out, assign, direct and review work of others and to maintain harmonious relationships with staff, subordinates, and the general public.

Ability to understand and carry out effectively, complex oral and/or written instructions and to speak and answer questions in a clear, concise manner.

QUALIFICATIONS

Three years of clerical experience which includes some stenographic work. Completion of one academic year of business school or a year of college may be substituted for one year of the required experience.

Note: Applicants with one year of secretarial experience in addition to the minimum required may be appointed at step 2.

Applicants with two years of secretarial experience in addition to the minimum required may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

1032
SECRETARY II

## NATURE OF WORK IN THIS CLASS

This is secretarial work of a highly responsible nature requiring stenographic and some administrative ability.

An employee in this class performs difficult duties requiring the use of dictation in shorthand or with a stenotype machine. The employee must be capable of analysing situations to determine if standard departmental policy is to be followed or whether this matter should be brought to the attention of a superior.

An employee in this class performs the duties of a secretary to the head of a medium to large department or to the chief of a division in a large department.

This position may require the supervision of employees engaged in predominately clerical activities.

## ILLUSTRATIVE EXAMPLES OF WORK

Performs the duties of a secretary to a top executive or administrative officer; takes and transcribes dictation; transmits administrative decisions and refers questions to appropriate personnel; and carries out administrative duties as assigned.

Determines whether a problem requires the attention of the superior and if so, assembles all necessary material required to clearly outline the situation; arranges routine and special meetings and contacts those persons who are to be present.

Reviews correspondence and reports with a wide variety of subject matter where a knowledge of division or department is required; notes errors or discrepancies; initiates corrective action and follow up.

Performs related duties as required.

## ESSENTIAL KNOWLEDGES, ABILITIES AND SKILLS

Thorough knowledge of business English and modern office practice and procedures.

Thorough knowledge of spelling and commercial arithmetic.

Thorough knowledge of departmental rules, regulations, functions, procedures, organization, and applicable statutory law: ability to make minor decisions in accordance therewith.

Ability to apply policies and laws to everyday work situations and to conduct correspondence on routine and non-routine matters.

Ability to plan, lay out, assign, direct and review work of others and to maintain harmonious relationships with staff, subordinates and the general public.

Ability to understand and carry out effectively, complex oral and/or written instructions and to speak and answer questions in a clear, concise manner.

QUALIFICATIONS

Four (4) years secretarial experience. An academic year of business school or a year of college may be substituted for one year of the required experience.

Note: Applicants with one year of secretarial experience in addition to the minimum required may be appointed at step 2.

Applicants with two years of secretarial experience in addition to the minimum required may be appointed at step 3.

The class specification which appears above is intended to be sufficient merely to identify the class and be illustrative of the kinds of duties that may be assigned to positions allocated to the class and should not be interpreted to describe all of the duties performance of which may be required of employees holding a position assigned to this class.

## 3.6 Other Applicable State Statutes and Administrative Rules Relating to Functions of the Ohio EPA

# CHAPTER 1509

# OIL AND GAS


1509.01 Definitions
1509.02 Division of oil and gas
1509.03 Rules and regulations; enforcement
1509.04 Duties of oil and gas well inspector; prosecution of violations
1509.05 Permit for drilling, reopening or plugging back a well
1509.051 Liquid disposal permit
1509.06 Application for permit
1509.07 Bond required for permit
1509.071 Procedure on failure to comply with plugging requirements
1509.08 Drilling well, etc., in coal bearing township; drilling, etc., near mining operation
1509.081 Approval of application for liquid disposal permit; suspension or cancellation; appeal
1509.09 Location of well; procedure for change
1509.10 Log of drilling to be filed with division of oil and gas; contents
1509.11 Statement of production
1509.12 Defective casing or tubing; plugging unproductive wells, abandoned wells, exception
1509.13 Permit for plugging and abandoning well; contents of application
1509.14 Report of abandonment of well
1509.15 Method of plugging abandoned wells
1509.16 Plugging and abandonment of well passing through potable water stratum
1509.17 Well shall be encased; withdrawal of casing
1509.18 Procedure when well penetrates excavation of mine
1509.19 Plugging and abandonment of well passing through coal or mineral veins
1509.20 Waste of oil or gas to be prevented
1509.21 Permit to conduct secondary recovery operations
1509.22 Contamination of surface or underground water prohibited
1509.23 Rules and regulations as to safety practices
1509.24 Rules and regulations as to minimum acreage and minimum distance requirements
1509.25 Procedure for adoption of special order for drilling unit requirements
1509.26 Pooling of tracts to form a drilling unit
1509.27 Application for mandatory pooling order
1509.28 Unit operation of a pool
1509.29 Exception tract
1509.35 Oil and gas board of review
1509.36 Appeals to board of review
1509.37 Appeal to common pleas court of Franklin county
1509.38 Technical advisory council
1509.39 Municipal regulations
1509.40 Construction as to limitation of production
1509.41 Anti-trust provision
1509.99 Penalties


## 1509.01 Definitions.

As used in sections 1509.01 to 1509.99, inclusive, of the Revised Code:

(A) "Well" means any borehole, whether drilled or bored, within the state, for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters, sewage, and any liquid used in or resulting from any process or industry, manufacture, trade, business, or agriculture.

(B) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include hydrocarbons that were originally in a gaseous phase in the reservoir.

(C) "Gas" means all natural gas and all other fluid hydrocarbons not defined above as oil, including condensate.

(D) "Condensate" means liquid hydrocarbons that were originally in the gaseous phase in the reservoir.

(E) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both, but does not include a gas storage reservoir. Each zone of a geological structure that is completely separated from any other zone in the same structure may contain a separate pool.

(F) "Field" means the general area underlaid by one or more pools.

(G) "Drilling unit" means the minimum acreage on which one well may be drilled, but does not apply to a well for injecting gas into or removing gas from a gas storage reservoir.

(H) "Waste" includes:

(1) Physical waste, as such term is generally understood in the oil and gas industry;

(2) Inefficient, excessive, or improper use, or the unnecessary dissipation of, reservoir energy;

(3) Inefficient storing of oil or gas;

(4) Locating, drilling, equipping, operating, or producing an oil or gas well in a manner that reduces or tends to reduce the quantity of oil or gas ultimately recoverable under prudent and proper operations from the pool into which it is drilled, or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

(5) Other underground or surface waste in the production or storage of oil, gas, or condensate, however caused.

(I) "Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under his tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

(J) "Tract" means a single, individually taxed parcel of land appearing on the tax list.

(K) "Owner," unless referring to a mine, means the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

(L) "Royalty interest" means the fee holder's interest in the production from a well, usually one-eighth of the gross production.

(M) "Discovery well" means the first well capable of producing oil or gas in commercial quantities from a pool.

(N) "Prepared clay" means a clay which is plastic and is thoroughly saturated with fresh water to a weight and consistency great enough to settle through salt water in the well in which it is to be used, except as otherwise approved by the chief of the division of oil and gas.

(O) "Rock sediment" means the combined cutting and residue from drilling sedimentary rocks and formation.

(P) "Excavations and workings," "mine," and "pillar" have the meaning set forth in section 4151.01 of the Revised Code.

(Q) "Coal bearing township" means a township designated as such by the chief of the division of mines under section 4151.11 of the Revised Code.

(R) "Gas storage reservoir" means a continuous area of a subterranean porous sand or rock stratum or strata into which gas is or may be injected for the purpose of storing it therein and removing it therefrom, and includes a gas storage reservoir as defined in division (A) of section 4161.01 of the Revised Code. (132 v S 226. Eff. 6-26-67. 131 v H 234)

## 1509.02 Division of oil and gas.

There is hereby created in the department of natural resources the division of oil and gas, which shall be

administered by the chief of the division of oil and gas.

The chief shall not hold any other public office, nor shall he be engaged in any occupation or business which might interfere with or be inconsistent with his duties as chief.

All moneys collected by the chief pursuant to the provisions of sections 1509.06 and 1509.13 of the Revised Code shall be deposited by him with the treasurer of state to the credit of the general revenue fund. (132 v H 310. Eff. 12-1-67. 131 v H 234)

1509.03 Rules and regulations; enforcement.

The chief of the division of oil and gas shall make, adopt, repeal, rescind, and amend, in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code, rules and regulations for the administration, implementation, and enforcement of Chapter 1509. of the Revised Code.

Any orders authorized or notices required to be made by the chief pursuant to Chapter 1509. of the Revised Code shall be made in compliance with the provisions of sections 119.01 to 119.13, inclusive, of the Revised Code, except that personal service may be used in lieu of service by mail. Every order authorized in Chapter 1509. of the Revised Code and described as such shall be considered an adjudication order for purposes of sections 119.01 to 119.13, inclusive, of the Revised Code.

Where notice to the owners is required by Chapter 1509. of the Revised Code such notice shall be given as prescribed by a regulation adopted by the chief to govern the giving of notices. Such regulation shall provide for notice by publication except in those cases where other types of notice are necessary in order to meet the requirements of the law.

The chief or any inspector designated by him may at any time go upon lands, public or private, for the purpose of administration or enforcement of Chapter 1509. of the Revised Code, or the rules, regulations, or orders made thereunder. No person shall prevent or hinder the chief or an inspector in the performance of his duties. (132 v H 310. Eff. 12-1-67. 131 v H 234)

Annotations from former RC 4159.031

A permit fee required for the drilling of oil and gas cannot exceed an amount reasonably necessary to defray the cost of issuing the permit and of exercising proper police regulation, and such fees may be used for these purposes only. 1964 OAG 1178.

In determining whether 10 acres has been obtained under a single lease for a unitized lease, the area in a city or village street may be included in arriving at the total acreage where the street either abuts the other lands or where the other lands are on both sides of the street, and in such case it is not necessary that the city or village join in said lease. 1964 OAG 1178.

The rules and regulations of the chief of the division of mines constitute general laws within the meaning of Ohio Constitution, Art XVIII, § 3. 1964 OAG 1178.

Under comprehensive zoning regulations drilling for oil and gas may be prohibited in certain areas, if reasonably necessary for the protection of public health, safety and general welfare. 1964 OAG 1178.

Counties and townships may control the drilling for gas and oil and the production of gas and oil through comprehensive zoning regulations so long as such zoning regulations do not conflict with state statutes on the subject or with administrative rules or regulations. 1964 OAG 1178.

Municipal corporations may enact local police regulations for the regulation of drilling for gas and oil and the production of gas and oil so long as such regulations do not conflict with general laws. 1964 OAG 1178.

1509.04 Duties of oil and gas well inspector; prosecution of violations.

The oil and gas well inspectors shall, under the supervision of the chief of the division of oil and gas, enforce the provisions of Chapter 1509. of the Revised Code and the rules, regulations, and orders issued pursuant thereto.

The chief may apply to the court of common pleas in the county in which any of the provisions of Chapter 1509. of the Revised Code or any rules, regulations, or orders issued pursuant to Chapter 1509. of the Revised Code are being violated for a temporary or permanent injunction restraining any person from such violation. (131 v H 234. Eff. 10-15-65)

1509.05 Permit for drilling, reopening or plugging back a well.

No person shall drill a new well, drill an existing well any deeper, reopen a well, or plug back a well to a source of supply different from the existing pool, without having a permit to do so issued by the chief of the division of oil and gas, and until the original permit or a photostatic copy thereof is posted or displayed in a conspicuous and easily accessible place at the well site. The permit or a photostatic copy thereof shall be continuously displayed in such manner at all times during the work authorized by the permit.

Such permit shall be issued by the chief in accordance with the provisions of Chapter 1509. of the Revised Code. The chief may by rule establish a period of time from date of issue during which permits will be valid. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

1509.051 Liquid disposal permit.

No person shall use a well for the injection of sewage or any liquid used in or resulting from any process of industry, manufacture, trade, business, or agriculture, without having a liquid disposal permit issued by the chief of the division of oil and gas, and the original permit or a true copy thereof displayed in a conspicuous and easily accessible place at the well site.

A permit to drill a new well, drill an existing well deeper, or to reopen a well, is a liquid disposal permit if the permit was issued in satisfaction of the requirements of section 1509.081 of the Revised Code, or if a permit authorizing such use has been issued under section 1509.21 of the Revised Code, or if such use is approved by the chief under section 1509.22 of the Revised Code. (132 v S 226. Eff. 6-26-67)

Penalty, 1509.99

1509.06 Application for permit.

An application for a permit to drill a new well, drill an existing well deeper, reopen a well, plug back a well to a different source of supply, or use a well for injection of a liquid for which a permit is required by section 1509.051 of the Revised Code, shall be filed with the chief of the division of oil and gas upon such form as the chief prescribes and shall contain the following information:

(A) The name and address of the owner;

(B) 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.

(C) The names and addresses of all persons holding the royalty interest in the tract upon which the well is to be drilled or within a proposed drilling unit;

(D) The location of the tract or drilling unit on which the well is to be drilled identified by section or lot number, city, village, township, and county;

(E) Designation of well by name and number;

(F) The geological formation to be tested or used and the proposed total depth of the well;

(G) The type of drilling equipment to be used;

(H) The name and address of the corporate surety and the identifying number of the bond;

(I) The plan for disposal of water and other waste substances resulting, obtained, or produced in connection with exploration, drilling, or production of oil or gas.

(J) If the well is for the injection of a liquid, identity of the geological formation to be used as the injection medium and the composition of the liquid to be injected.

Each such application 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 such well and containing such other data as may be prescribed by the chief. If the well is or is to be located within the excavations and workings of a mine the map shall also include the location of such mine, the name of the mine, and the name of the person operating the mine.

Each application to drill or reopen a well, except a well drilled or reopened for purposes of section 1509.22 of the Revised Code, shall also be accompanied by a fee of thirty-five dollars for a well two thousand feet or more in depth, or twenty dollars for a well less than two thousand feet in depth or for a well for injecting gas into or removing gas from an underground gas storage reservoir. If for any reason the permit is denied, such fee shall be returned to the applicant. (132 v S 226. Eff. 6-26-67. 131 v H 234)

Penalty, 1509.99

Annotations from former RC 4159.04

A permit fee required for the drilling of oil and gas cannot exceed an amount reasonably necessary to defray the cost of issuing the permit and of exercising proper police regulation, and such fees may be used for these purposes only. 1964 OAG 1178.

1509.07 Bond required for permit.

An owner before being issued a permit under section 1509.05 of the Revised Code shall execute and file with the division of oil and gas a surety bond conditioned on compliance with the plugging requirements of section 1509.12 and the permit provisions of section 1509.13 of the Revised Code and all rules, regulations, and orders of the chief of the division of oil and gas relating thereto, in an amount set by rule of the chief.

In lieu of such bond, the chief may accept proof of financial responsibility consisting of a sworn financial statement showing a net financial worth within this state equal to twice the amount of the bond for which it substitutes and, as may be required by the chief, a list of producing properties of the owner within this state or such other evidence showing ability and intent to comply with the law and regulations concerning plugging as may be required by regulation of the chief. The chief may at any time require updating of the documents filed and shall, upon determining that an owner for whom the chief has accepted proof of financial responsibility in lieu of bond cannot demonstrate financial responsibility, order that the owner execute and file a bond as required by this section for the wells specified in the order within ten days of receipt of the order. If the order is not complied with, all wells of the owner which are specified in the order and for which no bond is filed, shall be plugged. No owner shall fail or refuse to plug such a well. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

The surety bond provided for in this section shall be executed by a surety company authorized to do business in this state.

The chief shall not approve any bond until it is personally signed and acknowledged by both principal and surety, or as to either by his attorney in fact, with a certified copy of the power of attorney attached thereto. The chief shall not approve such bond unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact a fidelity and surety business in this state.

All bonds shall be given in a form to be prescribed by the chief and shall run to the state as obligee.

This section does not apply to a well for injecting gas into or removing gas from an underground gas storage reservoir.

(1969 H 1. Eff. 3-18-69. 132 v H 310; 131 v H 234)

Penalty, 1509.99

1509.071 Procedure on failure to comply with plugging requirements.

When the chief of the division of oil and gas finds that an owner has failed to comply with the plugging requirements of section 1509.12 or the permit provisions of section 1509.13 of the Revised Code or the rules, regulations, and orders relating thereto he shall make a finding of such fact and declare any surety bond filed to insure compliance with such sections, rules, and regulations forfeited in the amount set by rule of the chief. The chief shall thereupon certify the total forfeiture to the attorney general who shall proceed to collect the amount thereof.

In lieu of total forfeiture, the surety, at its option, may cause the well to be properly plugged and abandoned or pay to the treasurer of state the cost thereof.

All moneys collected on account of forfeitures of bonds as provided in this section shall be held by the treasurer of state in a fund hereby created and designated as the "oil and gas well plugging fund." Such fund shall be expended by the chief to plug wells for which such bonds have been forfeited.

Expenditures from the oil and gas well plugging fund shall be made only for the purpose of plugging wells and pursuant to contracts entered into by the chief with persons who agree to furnish all of the materials, equipment, work, and labor as specified and provided in such contract.

(1969 H 1. Eff. 3-18-69. 132 v H 310)

[§ 1509.08.1] § 1509.081 Issuance, suspension, or revocation of liquid disposal permit; appeal.

Upon receipt of an application for a permit to drill a new well, drill an existing well deeper, reopen a well, or use a well for injection of a liquid for which a permit is required by section 1509.051 [1509.05.1] of the Revised Code, other than one which comes within the requirements of section 1509.21 or 1509.22 of the Revised Code, the chief of the division of oil and gas shall determine whether the proposed injection would present an unreasonable risk that waste or contamination of oil or gas in the earth will occur. If he determines such risk to exist, he shall make an order rejecting the application. If he determines such risk not to exist, he shall transmit copies of the application and the map required by section 1509.06 of the Revised Code to the director of environmental protection, the chief of the division of geological survey ~~,~~ and, if so required by section 1509.08 of the Revised Code, to the chief of the division of mines.

The chief of the division of geological survey shall approve the application unless he determines that the proposed injection would present an unreasonable risk of loss or damage to valuable mineral resources.

~~,~~

The director of environmental protection shall approve the application if he determines that the proposed injection will not cause pollution as defined in division (A) of section 6111.01 of the Revised Code.

Upon approval by the director of environmental protection, the chief of the division of geological survey, and by the chief of the division of mines if required by section 1509.08 of the Revised Code, the chief of the division of oil and gas shall issue a liquid disposal permit with such conditions as may be necessary to protect health, safety, or the conservation of natural resources, including all conditions appended by the director of environmental protection.

If the chief is unable to obtain the required approvals, he shall issue an order denying the application. In an appeal from such an order where the application was denied because of lack of approval by an agency or agencies other than the division of oil and gas, the appeal shall be taken under section 119.12 of the Revised Code as if the order had been made by the agency whose approval is lacking.

The chief of the division of oil and gas may adopt rules and regulations for the administration and implementation of this section as may be necessary to protect health, safety, or the conservation of natural resources.

The chief may order that a liquid disposal permit be suspended and that operations cease if he determines that the well is being operated in violation of law, regulation, order, or condition of the permit. Upon service of a copy of the order upon the permit holder, his agent, or assignee, the permit and operations thereunder shall be immediately suspended 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 chief may, after hearing, revoke the permit.

The chief may order that a liquid disposal permit be suspended and that operations cease if he has reasonable cause to believe that the permit would not have been issued if 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, his agent, or assignee, the permit and operations thereunder shall be immediately suspended without prior hearing, but a permit may not be suspended for such reason without prior hearing unless immediate suspension is necessary to prevent waste or contamination of oil or gas, pollution as defined in division (A) of section 6111.01 of the Revised Code, damage to valuable mineral resources, or danger to human life or health. If [,] after hearing [,] the chief 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, he shall revoke the permit.

A revocation of permit shall not prejudice the right of the holder to obtain another permit. When a permit has been revoked, the permit holder or other person responsible therefor shall immediately plug the well.

In an appeal from an order of suspension or revocation where the order was made because of objection of an agency or agencies named in this section other than the division of oil or gas, the appeal shall be taken under section 119.12 of the Revised Code as if the order had been made by the agency upon whose objection the order was based.

HISTORY: 132 v S 225 (Eff 6-26-67); 133 v H 1 (Eff 3-18-69); 134 v S 307. Eff 10-23-72.

Style deviations in this section were corrected by HB 1 (133 v —). No change in the meaning of the law was intended; see RC § 1.29.

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, he shall revoke the permit.

A revocation of permit shall not prejudice the right of the holder to obtain another permit. When a permit has been revoked, the permit holder or other person responsible therefor shall immediately plug the well.

In an appeal from an order of suspension or revocation where the order was made because of objection of an agency or agencies named in this section other than the division of oil or gas, the appeal shall be taken under section 119.12 of the Revised Code as if the order had been made by the agency upon whose objection the order was based.

(1969 H 1. Eff. 3-18-69. 132 v S 226)

Penalty, 1509.99

1509.09 Location of well; procedure for change.

A well may be drilled under a permit only at the location designated on the map required in section 1509.06 of the Revised Code. The location of a well may be changed after the issuance of a permit only with the approval of the chief of the division of oil and gas and, if the well is located in a coal bearing township, with the approval of the chief of the division of mines the same as required in section 1509.03 of the Revised Code for the application for a permit to drill a well. If a permittee requests a change of location he shall return the original permit and file an amended map indicating the proposed new location.

Drilling shall not be commenced at a new location until the original permit bearing a notation of approval by the chief is posted at the well site. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

1509.10 Log of drilling to be filed with division of oil and gas; contents.

Any person drilling within the state shall, within thirty days after the completion of the well, file with the division of oil and gas an accurate log designating:

(A) The purpose for which the well was drilled;

(B) The character, depth, and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations;

(C) The length in feet of the various sizes of casing and tubing used in drilling the well, the amount removed after completion, the type and setting depth of each packer, and all other data relating to mudding in the annular space behind such casing or tubing, indicating completion as a dry, gas, oil, combination oil and gas, brine, or artificial brine well;

(D) The elevation above mean sea level of the point from which the depth measurements were made, stating also the height of the point above ground level at the well.

The log shall be submitted in duplicate. The first copy shall be retained as a permanent record in the files of the division, and the second copy shall be transmitted by the chief of the division of oil and gas to the division of geological survey.

Any electric log, or radioactivity log, or other geophysical log, if made in connection with the well shall be filed with the division and the chief shall transmit such logs to the division of geological survey. Such logs may be retained by the owner for a period of not more than six months, or such additional time as may be granted by the chief in writing, after the completion of the well substantially to the depth shown in the application required by section 1509.06 of the Revised Code.

Upon request in writing by the chief of the division of geological survey prior to the beginning of drilling of the well, the person drilling the well shall make available a complete set of cuttings accurately identified as to depth.

The form of the log required by this section shall be one which has been approved by the chief of the division of oil and gas and the chief of the division of geological survey. The filing of a log as required by this section fulfills the requirement of filing a log with the chief of the division of geological survey in section 1505.04 of the Revised Code. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

1509.11 Statement of production.

The owner of any well producing or capable of producing oil or gas shall file with the chief of the division of oil and gas, on or before the first of March, a statement of production for the last preceding calendar year in such form as the chief may prescribe. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

1509.12 Defective casing or tubing; plugging unproductive wells, abandoned wells, exception.

No owner of any well shall permit defective casing or tubing in such well to leak fluids or gas which may cause damage to other permeable strata. Upon notice from the chief of the division of oil and gas, such owner shall immediately repair such tubing or casing or plug and abandon such well.

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, but no well shall be required to be plugged under this section which is being used to produce oil or gas for domestic purposes, or which is being lawfully used for a purpose other than production of oil or gas. When the chief finds that a well should be plugged, he shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

Where the plugging method, as outlined in sections 1509.01 to 1509.19, inclusive, of the Revised Code, cannot be applied or if applied would be ineffective in carrying out the protection which the law is meant to give, the oil and gas well inspector or, if the well is located in a coal bearing township, the gas storage well inspector may designate the method of plugging to be used. The abandonment report shall show the manner in which the well was plugged.

In case of oil or gas wells abandoned prior to September 1, 1951, the board of county commissioners of the county in which such wells are located may submit to the electors of the county the question of establishing a special fund, by special levy, bond issue, or out of current funds, which shall be approved by a majority of the electors voting upon such question for the purpose of plugging such wells. The fund shall be administered by the board and the plugging of oil and gas wells shall be under the supervision of the chief of the division of oil and gas, and the board shall let contracts for such purpose, provided that such fund shall not be used for the purpose of plugging oil or gas wells which were abandoned subsequent to September 1, 1951.

(1969 H 1. Eff. 3-18-69. 132 v H 310; 131 v H 234)

Penalty, 1509.99

1509.13 Permit for plugging and abandoning well; contents of application.

No person shall plug and abandon a well without having a permit to do so issued by the chief of the division of oil and gas. Such permit shall be issued by the chief

in accordance with the provisions of Chapter 1509. of the Revised Code, and upon application by the owner for a permit to plug and abandon as many days in advance as will be necessary for an oil and gas well inspector, or, if the well is located in a coal bearing township, the gas storage well inspector or a deputy mine inspector to be present at such plugging. Such application shall be filed with the chief of the division of oil and gas upon such form as the chief prescribes and shall contain the following information:

(A) The name and address of the owner;

(B) 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.

(C) The location of the well identified by section or lot number, city, village, township, and county;

(D) Designation of well by name and number;

(E) The total depth of the well to be plugged;

(F) The date and amount of last production from the well;

(G) Such other data as the chief may require.

If oil or gas has been produced from the well, the application shall be accompanied by a fee of twenty dollars. If a new dry well has been drilled in accordance with law, the application may be filed with and the permit issued by an oil and gas well inspector, or, if the well is located in a coal bearing township, the gas storage well inspector or a deputy mine inspector so that such well can be plugged and abandoned without undue delay. No well located outside a coal bearing township shall be plugged and abandoned without an oil and gas well inspector present unless permission has been granted by the chief of the division of oil and gas, and no well located within a coal bearing township shall be plugged and abandoned without the gas storage well inspector or a deputy mine inspector present unless permission has been granted by the chief of the division of mines. The owner of the well shall give written notice at the same time to the owner of the land upon which the well is located, the owners or agents of adjoining land, adjoining well owners or agents, and if such well penetrates or passes within one hundred feet of the excavations and workings of a mine to the owner or lessee of such mine, of his intention to abandon the well, and of the time when he will be prepared to commence plugging the same.

This section does not apply to a well plugged or abandoned in compliance with section 4161.05 of the Revised Code. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

### 1509.14 Report of abandonment of well.

Any person who abandons a well, when written permission has been granted by the chief of the division of oil and gas or the chief of the division of mines to abandon and plug such well without an inspector being present to supervise the plugging, shall make a written report of such abandonment to the chief who granted such permission. The report shall include the following:

(A) The date of abandonment;

(B) The name of the owner or operator of such well at the time of abandonment and his post-office address;

(C) The location of such well as to township and county and the name of the owner of the surface upon which such well is drilled, with the address thereof;

(D) The date of the permit to drill;

(E) The date when drilled;

(F) Whether such well has been mapped;

(G) The depth of the well;

(H) The depth of the top of the formation to which the well was drilled;

(I) The depth of each seam of coal drilled through;

(J) A detailed report as to how such well was plugged, giving in particular the manner in which the coal and various formations were plugged, and the date of the plugging of such well, including therein the names of those who witnessed the plugging of the well.

Such report shall be signed by the owner or operator agent thereof who abandons and plugs such well and verified by the oath of the party so signing. For the purposes of this section the oil and gas well inspectors, gas storage well inspectors, or deputy mine inspectors may take acknowledgments and administer oaths to the parties signing such report. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

### 1509.15 Method of plugging abandoned wells.

When any well is to be abandoned, it must first be plugged by filling the hole with rock sediment or properly prepared clay to a point above the oil or gas sand or rock formation. There shall then be placed or driven on top of the sediment or clay one or more seasoned wooden plugs or a lead plug as the case may require and such plug or plugs shall be placed or driven in such a manner that the same shall be at the top of the oil, gas, or rock formation, and will prevent the escape of gas or oil and will prevent water or destructive matter entering the oil or gas, sand or rock formation. Such hole shall be filled at least one hundred feet above such plug or plugs or filled to the lowest casing seat with rock sediment or clay and such material used for such filling shall be properly prepared. After the first string of casing has been withdrawn from such well, a wooden plug or iron ball of sufficient size shall be placed upon the casing seat and at least fifty feet of rock sediment or properly prepared clay placed upon such wooden plug or iron ball.

Wells shall be plugged and abandoned in accordance with sections 1509.01 to 1509.19, inclusive, of the Revised Code, and any additional rules and regulations deemed necessary by the chief of the division of oil and gas to obtain proper protection of all formations of economic value.

In the abandonment and plugging of wells located in congested areas, where the plugging method, as outlined in such sections, cannot be applied or, if applied, would be ineffective in carrying out the protection which the law is meant to give, the chief may designate the method of plugging to be used. He may also require the installation of casing and vent pipe to provide additional safety to the surrounding area. The abandonment report shall show the manner in which the well was plugged. (132 v H 1. Eff. 2-21-67. 131 v H 234)

Penalty, 1509.99

### 1509.16 Plugging and abandonment of well passing through potable water stratum.

If any well has passed through a stratum bearing potable water, it shall, when it is abandoned, be plugged by bridging the hole a minimum of fifty feet below all potable water stratum and filling it to the surface with properly prepared clay or rock sediment. Where there are two or more fresh water strata, a bridge shall be set below the lowest fresh water stratum, and filling shall be continued to a point as specified in this section. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

### 1509.17 Well shall be encased; withdrawal of casing.

Any person who drills a well shall, before drilling into the principal or major producing formation therein, encase such well with good and sufficient wrought iron or steel casing so as to exclude all surface, fresh, or salt water from any part of such well penetrating the oil or gas bearing sand or rock or fresh water strata. The method of placing such casing shall be approved by the

chief of the division of oil and gas, and shall be in accord with the most approved method used in the operation of such type of well. The chief may, in lieu of the casing method outlined in this section, accept adequate mudding methods with prepared clay in the annular space behind such casing in sufficient quantities to shut off all gas or oil and which will exclude all surface, fresh, or salt water from any part of such well penetrating the oil, gas, or mineral bearing formation, or fresh water strata.

Written approval from the chief is required in each case. In the operation of a gas well, it is permissible, with the written consent of the chief, to withdraw all casing in such well, leaving only the tubing and the packer therein, provided that such well is filled with prepared clay from the top of such packer to the surface, as each succeeding string of casing in such well is withdrawn. When the well penetrates the excavations of a mine, the casing shall remain intact as provided in section 1509.18 of the Revised Code and be plugged and abandoned in accordance with section 1509.19 of the Revised Code.

When a well is to be abandoned which has been completely filled with prepared clay around the tubing from the top of the packer to the surface, it shall be optional to use the following methods:

(A) The hole shall be filled through the tubing from the bottom to the ground surface with prepared clay, and such tubing shall remain intact and all fluid shall be removed from the hole before filling is begun.

(B) The tubing shall be parted immediately above the packer and then filled to the surface with prepared clay through the tubing as it is withdrawn from the well. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

**1509.18 Procedure when well penetrates excavation of mine.**

Any person who drills a well within the limits of a mining operation shall give consideration for the safety of the men working in such mine, and, if possible, shall locate such well so as to penetrate a pillar.

If a well is to be drilled within the limits of a mining operation which may penetrate the excavation of a mine, the hole shall be reduced approximately fifteen feet above the roof of the mine. If roof conditions at the mine warrant, the hole shall be reduced in the rock formation immediately above such mine, and a string of casing placed upon the shoulder so as to shut off all water, then drilling shall be continued to a point approximately thirty feet below the floor of the mine and another string of casing set. Both strings of casing shall be approximately the same diameter as the diameter of the hole.

If no water is encountered between the bottom of the drive pipe and the approximate casing shoulder above the roof of such mine, in lieu of the casing method outlined above, it is permissible to use the following casing method: the hole shall be drilled thirty feet below the floor of the mine and a string of casing shall be extended from the surface to a point thirty feet below the floor of the mine with a packer of sufficient size attached to such string of casing. Such packer shall be placed so that it will be below all water and will be located in the rock formation immediately above such mine and shall prevent water or destructive matter from entering therein. Then the annular space above such packer between the casing and well wall shall be filled with prepared clay a minimum distance of fifty feet.

If a well is drilled within the limits of a mining operation and does not penetrate the excavations of a mine, the hole shall be reduced thirty feet below the coal or mineral which is being mined and a string of casing placed at this point. The annular space behind such casing shall be filled with neat cement from the casing seat to a point not less than fifty feet above such seam of coal or mineral which is being mined. The packer method, outlined in this section, is also permissible in this type of well.

It is permissible to attach a release coupling or a right and left nipple to the string of casing that extends through the mine, but such release coupling or right and left nipple shall be placed in such a manner that it is above the packer or at least twenty feet above the coal or mineral that is being mined.

In wells penetrating the excavation of a mine, the casing shall be enclosed, if possible, with a column extending from the floor to the roof of such mine, built of brick or other suitable material, subject to the approval of the chief of the division of mines. If the chief of the division of mines finds the method prescribed in this section unsafe, inadequate, or not suitable, he shall require such method to be altered in such manner that it will be safe. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

**1509.19 Plugging and abandonment of well passing through coal or mineral veins.**

If any well has passed through a vein or seam of coal or mineral, it shall, when it is abandoned, be plugged by driving a seasoned wooden plug to a point fifty feet below the lowest seam of coal or mineral, and filling the hole with properly prepared clay or rock sediment to a point at least twenty feet above this seam of coal or mineral at which point another wooden plug shall be placed and the hole filled for a distance of thirty feet with properly prepared clay or rock sediment. If there is more than one seam of coal or mineral, the next seam above must be plugged off in like manner. When any well which has been drilled is to be abandoned and has passed through the excavations of any mine, the person owning such well shall leave the casing in it from a point thirty feet below the floor of such mine to a point at least fifteen feet above the roof of such mine or to the rock above the seam if roof conditions at such mine warrant the extension thereto. A seasoned wooden plug shall be driven to a point at least one hundred feet below the floor of such mine and the hole above such plug, together with the casing left in, which extends through the mine, shall be filled with properly prepared concrete; then a seasoned wooden plug shall be driven on top of such casing, and the hole filled with properly prepared concrete for a distance of not less than twenty feet. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

**1509.20 Waste of oil or gas to be prevented.**

All owners, lessees, or their agents, drilling for or producing crude oil or natural gas, shall use every reasonable precaution in accordance with the most approved methods of operation to stop and prevent waste of oil or gas, or both. Any well productive of natural gas in quantity sufficient to justify utilization shall be utilized or shut in within ten days after completion.

The owner of any well producing both oil and gas may burn such gas in flares when the gas is lawfully produced and there is no economic market at the well for the escaping gas. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

**1509.21 Permit to conduct secondary recovery operations.**

The owner of a tract may apply to the chief of the division of oil and gas for a permit to conduct secondary or additional recovery operations using any method approved by the chief. Such permit shall be in addition to any permit required by section 1509.05 of the Revised Code. Secondary recovery operations shall be con-

ducted in accordance with such rules, regulations, or orders of the chief as are necessary for protection of the public health and safety or conservation of natural resources. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

1509.22 Contamination of surface or underground water prohibited.

Contamination of surface or underground water by substances resulting, obtained, or produced in connection with exploration, drilling, or producing of oil or gas is prohibited, and the chief of the division of oil and gas shall adopt such rules and regulations relating thereto as may be necessary for protection of the public health and safety or conservation of natural resources. All water produced from a well shall be injected into an underground formation approved by the chief, or disposed of by an alternative method or methods approved by the chief. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

1509.23 Rules and regulations as to safety practices.

Rules and regulations of the chief of the division of oil and gas may include rules and regulations specifying safety practices to be followed in the drilling of wells and production of oil and gas, including specification of devices, distances, and methods of operation to safeguard against hazards to life, limb, and property. (131 v H 234. Eff. 10-15-65)

1509.24 Rules and regulations as to minimum acreage and minimum distance requirements.

The chief of the division of oil and gas, with the approval of the technical advisory council on oil and gas created in section 1509.38 of the Revised Code, may establish, amend, modify, or rescind rules and regulations relative to minimum acreage requirements for drilling units, and minimum distances from which a new well may be drilled or an existing well deepened, plugged back, or reopened to a source of supply different from the existing pool from boundaries of tracts, drilling units, other wells, and from streets, roads, highways, railroad tracks, and buildings for the purpose of conserving oil and gas reserves and the safety of persons. Rules and regulations made pursuant to this section and special orders made under section 1509.25 of the Revised Code shall apply only to new wells to be drilled or existing wells to be deepened, plugged back, or reopened to a source of supply different from the existing pool for the purpose of extracting oil or gas in their natural state. (132 v H 310. Eff. 12-1-67. 131 v H 234)

1509.25 Procedure for adoption of special order for drilling unit requirements.

The chief of the division of oil and gas, upon his own motion or upon application of an owner, may hold a hearing to consider the need or desirability of adopting a special order for drilling unit requirements in a particular pool different from those established under section 1509.24 of the Revised Code. The chief shall notify every owner of land within the area proposed to be included within the order, of the date, time, and place of the hearing and the nature of the order being considered at least thirty days prior to the date of hearing. Each application for such an order shall be accompanied by such information as the chief may request. If the chief finds that the pool can be defined with reasonable certainty, that the pool is in the initial state of development, and that the establishment of such different requirements for drilling a well on a tract or drilling unit in such pool is reasonably necessary to protect correlative rights or to provide effective development, use or conservation of oil and gas, the chief, with the written approval of the technical advisory council on oil and gas created in section 1509.38 of the Revised Code, shall make a special order designating the area covered by the order, and specifying the acreage requirements for drilling a well on a tract or drilling unit in such area, which acreage requirements shall be uniform for the entire pool. The order shall specify minimum distances from the boundary of the tract or drilling unit for the drilling of wells and minimum distances from other wells and allow exceptions for wells drilled or drilling in a particular pool at the time of the filing of the application. The chief may exempt the discovery well from minimum acreage and distance requirements in the order. After the date of the notice for a hearing called to make such order, no additional well shall be commenced in the pool for a period of sixty days or until an order has been made pursuant to the application, whichever is earlier. The chief, upon his own motion or upon application of an owner, after hearing and with the approval of the technical advisory council on oil and gas may include additional lands determined to be underlaid by a particular pool or to exclude lands determined not to be underlaid by a particular pool, and may modify the spacing and acreage requirements of the order.

Nothing in this section shall permit the chief to establish drilling units in a pool by requiring the use of a survey grid coordinate system with fixed or established unit boundaries. (131 v H 234. Eff. 10-15-65)

1509.26 Pooling of tracts to form a drilling unit.

The owners of adjoining tracts may agree to pool such tracts to form a drilling unit which conforms to the minimum acreage and distance requirements of the division of oil and gas under section 1509.24 or 1509.25 of the Revised Code. Such agreement shall be in writing, a copy of which shall be submitted to the division of oil and gas with the application for permit required by section 1509.05 of the Revised Code. Parties to the agreement shall designate one of their number as the applicant for such permit. (131 v H 234. Eff. 10-15-65)

"Selected Problems in Voluntary Pooling: A Suggested Rationale" by John L. Ashworth. 26 OSLJ 420 (1965).

1509.27 Application for mandatory pooling order.

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner has been unable to form a drilling unit under agreement provided in section 1509.26 of the Revised Code, on a just and equitable basis, the owner of such tract may make application to the division of oil and gas for a mandatory pooling order.

Such application shall include such data and information as shall be reasonably required by the chief of the division of oil and gas and shall be accompanied by an application for permit as required by section 1509.05 of the Revised Code. The chief shall notify all owners of land within the area proposed to be included within the order of the filing of such application and of their right to a hearing if requested. After the hearing or after the expiration of thirty days from the date notice of application was mailed to such owners, the chief, if satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights or to provide effective development, use, or conservation of oil and gas, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, which shall:

(A) Designate the boundaries of the drilling unit within which the well shall be drilled;

(B) Designate the proposed drilling site;

(C) Describe each separately owned tract or part

thereof pooled by the order;

(D) Allocate on a surface acreage basis a pro rata portion of the production to the owner of each tract;

(E) Specify the basis upon which each owner shall share all reasonable costs and expenses of drilling and producing;

(F) Designate the person to whom the permit shall be issued.

If an owner does not elect to participate in the risk and cost of the drilling and operation, or operation, of a well, he may elect to be a nonparticipating owner in the drilling and operation, or operation, of the well, on a limited or carried basis upon terms and conditions determined by the chief to be just and reasonable. If one or more of the participating owners bear the costs of drilling, equipping, or operating a well for the benefit of a nonparticipating owner, as provided for in the pooling order, then such participating owner or owners shall be entitled to the share of production from the drilling unit accruing to the interest of such nonparticipating owner, exclusive of the royalty interest if the fee holder has leased his land to others, otherwise, one-eighth of his share of the production, until there has been received the share of costs charged to such nonparticipating owner plus such additional percentage of said share of costs as the chief shall determine. The total amount receivable hereunder shall in no event exceed double the share of costs charged to such nonparticipating owner.

If there is a dispute as to costs of drilling, equipping, or operating a well, the chief shall determine such costs.

In instances where a well is completed prior to the pooling of interests in a drilling unit under this section, the sharing of production and adjustment of the original costs of drilling, equipping, and completing the well shall be from the effective date of the mandatory pooling order.

From and after the date of a pooling order, all operation, including the commencement of drilling or the operating of or production from a well upon any tract or portion of the drilling unit, shall be deemed for all purposes the conduct of such operations upon and production from any lease or contract for lands any portion of which is included in the drilling unit. (132 v H 310, Eff. 12-1-67. 132 v H 1; 131 v H 234)

1509.28 Unit operation of a pool.

(A) The chief of the division of oil and gas, upon his own motion or upon application by the owners of sixty-five percent of the land area overlying the pool, shall hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof. An application by owners shall be accompanied by such information as the chief may request.

The chief shall make an order providing for the unit operation of a pool or part thereof if he finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the unitized area, termed the unit area;

(2) A statement of the nature of the operations contemplated;

(3) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the chief shall determine the value, from the evidence introduced at the hearing, of each separately owned tract in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the value of each tract so determined bears to the value of all tracts in the unit area.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(5) A provision providing how the expenses of unit operations, including capital investment, shall be determined and charged to the separately owned tracts and how said expenses shall be paid;

(6) A provision, if necessary, for carrying or otherwise financing any person who is unable to meet his financial obligations in connection with the unit, allowing a reasonable interest charge for such service;

(7) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of such person;

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate;

(9) Such additional provisions as are found to be appropriate for carrying on the unit operations, and for the protection or adjustment of correlative rights.

(B) No order of the chief providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the chief has been approved in writing by those owners who, under the chief's order, will be required to pay at least sixty-five percent of the costs of the unit operation, and also by the royalty or, with respect to unleased acreage, fee owners of sixty-five percent of the acreage to be included in the unit. If the plan for unit operations has not been so approved by owners and royalty owners at the time the order providing for unit operations is made, the chief shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the owners and royalty owners, or either, owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of force and shall be revoked by the chief.

An order providing for unit operations may be amended by an order made by the chief, in the same manner and subject to the same conditions as an original order providing for unit operations, provided:

(1) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners shall not be required.

(2) No such order of amendment shall change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning interest in such tract.

The chief, by an order, may provide for the unit operation of a pool or a part thereof that embraces a unit area established by a previous order of the chief. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

Oil and gas allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from such tract, and all operations, including, but not limited to, the commencement, drilling, opera-

tion of or production from a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations and production from any lease or contract for lands any portion of which is included in the unit area. The operations conducted pursuant to the order of the chief shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the chief.

Oil and gas allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

No order of the chief or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired for the account of the owners within the unit area shall be the property of such owners in the proportion that the expenses of unit operations are charged. (132 v H 310. Eff. 12-1-67. 131 v H 234)

Penalty, 1509.99

1509.29 Exception tract.

Upon application by an owner of a tract for which a drilling permit may not be issued, and a showing by him that he is unable to enter a voluntary pooling agreement and that he would be unable to participate under a mandatory pooling order, the chief of the division of oil and gas shall issue a permit and order establishing the tract as an exception tract if the chief finds that such owner would otherwise be precluded from producing oil or gas from his tract because of minimum acreage or distance requirements. The order shall set a percentage of the maximum daily potential production at which the well may be produced. The percentage shall be the same as the percentage that the number of acres in the tract bears to the number of acres in the minimum acreage requirement which has been established under section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, but if the well drilled on such tract is located nearer to the boundary of the tract than the required minimum distance, the percentage may not exceed the percentage determined by dividing the distance from the well to the boundary by the minimum distance requirement. Within ten days after completion of the well, the maximum daily potential production of the well shall be determined by such drill stem, open flow, or other tests as may be required by the chief. The chief shall require such tests, at least once every three months, as are necessary to determine the maximum daily potential production at that time. (131 v H 234. Eff. 10-15-65)

Penalty, 1509.99

1509.35 Oil and gas board of review.

There is hereby created an oil and gas board of review consisting of five members appointed by the governor for terms of five years, except that the terms of the first five members of said board shall be for one, two, three, four, and five years, respectively, as designated by the governor at the time of the appointment, except that any vacancy in the office of any member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment, or affiliations, can be classed as a representative of a major petroleum company. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment, or affiliations, can be classed as a representative of the public. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as a representative of independent petroleum operators. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one learned and experienced in oil and gas law. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one learned and experienced in geology. Not more than three members shall be members of the same political party.

Three members constitute a quorum and no action of the board is valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings.

Each member shall be paid an amount fixed pursuant to section 143.09 of the Revised Code per diem when actually engaged in the performance of his work as a member and when engaged in travel necessary in connection with such work. In addition to such compensation each member shall be reimbursed for all traveling, hotel, and other expenses necessarily incurred in the performance of his work as a member.

The board shall select from among its members a chairman, a vice-chairman, and a secretary. Such officers shall serve for terms of one year.

The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance.

The board shall, in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code, adopt rules and regulations to govern its procedure. (132 v H 93. Eff. 5-17-67. 132 v H 1; 131 v H 234)

1509.36 Appeals to board of review.

Any person claiming to be aggrieved or adversely affected by an order by the chief of the division of oil and gas may appeal to the oil and gas board of review for an order vacating or modifying such order.

The person so appealing to the board shall be known as appellant and the chief shall be known as appellee. Appellant and appellee shall be deemed to be parties to the appeal.

Such appeal shall be in writing and shall set forth the order complained of and the grounds upon which the appeal is based. Such appeal shall be filed with the board within thirty days after the date upon which appellant received notice by registered mail of the making of the order complained of. Notice of the filing of such appeal shall be filed with the chief within three days after the appeal is filed with the board.

Upon the filing of such appeal the board shall promptly fix the time and place at which the hearing on the appeal will be held, and shall give the appellant and the chief at least ten days' written notice thereof by mail. The board may postpone or continue any hearing upon its own motion or upon application of appellant or of the chief.

The filing of an appeal provided for in this section does not automatically suspend or stay execution of the order appealed from, but upon application by the appellant the board may suspend or stay such execution pending determination of the appeal upon such terms as it deems proper.

Either party to the appeal or any interested person who, pursuant to board rules and regulations has been

granted permission to appear, may submit such evidence as the board deems admissible.

For the purpose of conducting a hearing on an appeal, the board may require the attendance of witnesses and the production of books, records, and papers, and it may, and at the request of any party it shall, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records, or papers, directed to the sheriff of the counties where such witnesses are found, which subpoenas shall be served and returned in the same manner as subpoenas in criminal cases are served and returned. The fees and mileage of sheriffs and witnesses shall be the same as those allowed by the court of common pleas in criminal cases. Such fees and mileage expenses incurred at the request of appellant shall be paid in advance by the appellant, and the remainder of such expenses shall be paid out of funds appropriated for the expenses of the division of oil and gas.

In case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the court of common pleas of the county in which such disobedience, neglect or refusal occurs, or any judge thereof, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Witnesses at such hearings shall testify under oath, and any member of the board may administer oaths or affirmations to persons who so testify.

At the request of any party to the appeal, a stenographic record of the testimony and other evidence submitted shall be taken by an official court shorthand reporter at the expense of the party making the request therefor. Such record shall include all of the testimony and other evidence and the rulings on the admissibility thereof presented at the hearing. The board shall pass upon the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the board thereon, and if the board refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

If upon completion of the hearing the board finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the board finds that such order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order which it finds the chief should have made. Every order made by the board shall contain a written finding by the board of the facts upon which the order is based.

Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by registered mail.

The order of the board is final unless vacated by the court of common pleas of Franklin county in an appeal as provided for in section 1509.37 of the Revised Code. Sections 1509.01 to 1509.37, inclusive, of the Revised Code, providing for appeals relating to orders by the chief or by the board, or relating to regulations adopted and promulgated by the chief, do not constitute the exclusive procedure which any person who deems his rights to be unlawfully affected by such sections or any official action taken thereunder must pursue in order to protect and preserve such rights, nor do such sections constitute procedure which such person must pursue before he may lawfully appeal to the courts to protect and preserve such rights. (132 v H 310. Eff. 12-1-67. 131 v H 234)

1509.37 Appeal to common pleas court of Franklin county.

Any party adversely affected by an order of the oil and gas board of review may appeal to the court of common pleas of Franklin county. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law or questions of law and fact. A copy of such notice shall also be filed by appellant with the court and shall be mailed or otherwise delivered to appellee. Such notices shall be filed and mailed or otherwise delivered within thirty days after the date upon which appellant received notice from the board by registered mail of the making of the order appealed from. No appeal bond shall be required to make either an appeal on questions of law or an appeal on questions of law and fact effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of such order and fix its terms.

Within fifteen days after receipt of the notice of appeal the board shall prepare and file in the court the complete record of proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which has been submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. Appellant shall provide security for costs satisfactory to the court. Upon demand by a party the board shall furnish at the cost of the party requesting the same a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section either party may apply to the court to have the case docketed, and the court shall order such record filed.

In the hearing of the appeal the court is confined to the record as certified to it by the board. The court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the board. The court shall conduct a hearing on such appeal and shall give preference to such hearing over all other civil cases irrespective of the position of the proceedings on the calendar of the court. The hearing in the court shall proceed as in the trial of a civil action and the court shall determine the rights of the parties in accordance with the laws applicable to such action. At such hearing counsel may be heard on oral argument, briefs may be submitted, and evidence introduced if the court has granted a request for the presentation of additional evidence.

If the court finds that the order of the board appealed from was lawful and reasonable, it shall affirm such order. If the court finds that such order was unreasonable or unlawful, it shall vacate such order and make the order which it finds the board should have made. The judgment of the court is final unless reversed, vacated, or modified on appeal. (131 v H 234. Eff. 10-15-65)

1509.38 Technical advisory council.

There is hereby created in the division of oil and gas a technical advisory council on oil and gas which shall consist of seven members to be appointed by the governor with the advice and consent of the senate. Three members shall be independent oil or gas producers, operators, or their representatives, operating and producing primarily in Ohio, three members shall be oil or gas producers, operators, or their representatives having substantial oil and gas producing operations in Ohio

and at least one other state, and one member shall represent the public. All members must be residents of Ohio, and all members except the member representing the public must have at least five years of practical or technical experience in oil or gas drilling and production. Not more than one member may represent any one company, producer, or operator.

The members first appointed shall have terms expiring on the first Monday of February, two to expire in each of the years 1967 and 1968, and three in the year 1969. Annually, as the term of a member expires, the governor shall appoint a member to serve for a term of three years, beginning on the first Monday of February. A vacancy in the office of a member shall be filled by the governor, with the advice and consent of the senate, for the remainder of the unexpired term.

The council shall select from among its members a chairman, a vice-chairman, and a secretary. All members are entitled to their actual and necessary expenses incurred in the performance of their duties as such members, payable from the appropriations for the division.

The governor may remove any member for inefficiency, neglect of duty, or malfeasance in office.

The council shall hold at least one regular meeting in each quarter of a calendar year, and shall keep a record of its proceedings. Special meetings may be called by the chairman, and shall be called by him upon receipt of a written request therefor signed by two or more members of the council. A written notice of the time and place of each meeting shall be sent to each member of the council. Four members constitute a quorum, and no action of the council is valid unless four members concur.

The council shall, when requested by the chief of the division of oil and gas, consult with and advise the chief and perform such other duties as may be lawfully delegated to it by the chief. The council shall have the right to participate in hearings held by the chief pursuant to Chapter 1509. of the Revised Code, and shall have powers of approval as provided in sections 1509.24 and 1509.25 of the Revised Code. (131 v H 234. Eff. 10-15-65)

1509.39 Municipal regulations.

The sections of Chapter 1509. of the Revised Code or rules and regulations promulgated pursuant to any section of Chapter 1509. of the Revised Code shall not be construed to prevent a municipal corporation from enacting and enforcing municipal ordinances regulating health and safety standards for the drilling and exploration for oil and gas, provided that such municipal regulations are not less restrictive than the rules promulgated by the division of oil and gas or provided for by statute. (131 v H 234. Eff. 10-15-65)

1509.40 Construction as to limitation of production.

Except as provided in section 1509.29 of the Revised Code, no authority granted in Chapter 1509. of the Revised Code shall be construed as authorizing a limitation of production of oil or gas for any reason whatsoever. (131 v H 234. Eff. 10-15-65)

1509.41 Anti-trust provision.

No combination of persons or interests authorized by any provisions of Chapter 1509. of the Revised Code shall be construed to be a trust, monopoly, or other combination in restraint of trade prohibited by law. (131 v H 234. Eff. 10-15-65)

1509.99 Penalties.

Whoever violates sections 1509.01 to 1509.29, inclusive, of the Revised Code, or any rules, regulations, or orders issued pursuant to these sections, shall be fined not less than one hundred nor more than five hundred dollars for a first offense; for each subsequent offense such person shall be fined not less than two hundred nor more than one thousand dollars. (131 v H 234. Eff. 10-15-65)

# CHAPTER 1511

# DIVISION OF LANDS AND SOIL

1511.01 Duties of division of lands and soil.
1511.02 Study and report on natural resources.

## 1511.01. Duties of division of lands and soil.

The division of lands and soil shall:

(A) Cooperate with all agencies engaged in soil conservation work in Ohio;

(B) Furnish aid and equipment to the soil and water conservation districts upon such terms as are mutually agreeable to said districts and the department of natural resources;

(C) Consider policies and programs affecting state lands in the custody of the Ohio state archaeological and historical society, the division of forestry and reclamation, the agricultural research and development center, the division of wildlife, the department of public works, the department of public welfare, the department of highways, and the division of parks and recreation;

(D) Make recommendations to the department of natural resources on all matters concerning soil conservation and proper land use;

(E) In connection with new or relocated projects involving highways, underground cables, pipelines, railroads, and other improvements affecting the water management of lands:

(1) Provide engineering service as is mutually agreeable to the Ohio soil and water conservation commission and the department of natural resources to aid in the design and installation of soil and water management facilities on rural lands adjacent to such projects;

(2) Maintain close liaison between owners of such lands, local soil and water conservation districts, and authorities responsible for such projects;

(3) Recommend plans for such projects in cooperation with the department of highways or with any other interested agency which is engaged in soil or water conservation projects in the state, in order to permit continuing agricultural use of lands adjacent to these projects;

(4) Recommend measures to retard erosion and conserve soil and water through installation of water impoundment or water infiltration facilities;

(5) Cooperate with other agencies and subdivisions of the state to protect the agricultural status of rural lands adjacent to such projects.

(1969 S 160. Eff. 11-6-69. 1969 H 1; 127 v 415)

1511.01 former GC 375-11.

OJur 2d: 10, Conservation § 9

## 1511.02 (375-12). Study and report on natural resources.

The division of lands and soil may assemble information through the medium of any state department or

# CHAPTER 119: ADMINISTRATIVE PROCEDURE

Section

119.01 Definitions.
119.02 Compliance; validity of rules.
119.03 Procedure for adoption, amendment, or rescission of rules.
119.04 Rules effective; standards; duties of secretary of state.
119.05 Rules compiled for distribution.
119.06 Adjudication order of agency valid and effective; hearings; periodic registration of licenses.
[119.06.1] 119.061 Agency with rule-making power may suspend license; limitation on power to limit advertising right.
119.07 Notice of hearing; contents; notice of order of suspension of license; publication of notice; effect of failure to give notice.
119.08 Date, time, and place of adjudication hearing.
119.09 Adjudication hearing.
[119.09.1] 119.091 [Effect of failure of agency to hold adjudication hearing before expiration of license.]
119.10 Counsel to represent agency.
119.11 Appeal from orders affecting rules; procedure; transcript; hearing; order.
119.12 Appeal by party adversely affected; notice; record; hearing; judgment.
[119.12.1] 119.121 Expiration of license involved in an appeal; procedure.
119.13 Representation of parties.

## § 119.01 Definitions.

As used in sections 119.01 to 119.13, inclusive, of the Revised Code:

(A) "Agency" means, except as limited by this division, any official, board, or commission having authority to promulgate rules or make adjudications in the bureau of unemployment compensation, the civil service commission, the department of industrial relations, the department of liquor control, the department of taxation, the industrial commission, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to sections 119.01 to 119.13, inclusive, of the Revised Code, and the licensing functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses. Sections 119.01 to 119.13, inclusive, of the Revised Code do not apply to the public utilities commission, nor do they apply to actions of the superintendent of banks, the superintendent of building and loan associations, and the superintendent of insurance in the taking possession of, and rehabilitation or liquidation of, the business and property of banks, building and loan associations, insurance companies, associations, reciprocal fraternal benefit societies, and bond investment companies, nor to any action that may be taken by the superintendent of banks under sections 1125.10, 1113.02, and 1113.05 of the Revised Code. Sections 119.01 to 119.13, inclusive, of the Revised Code do not apply to actions of the industrial commission under sections 4123.01 to 4123.94, inclusive, of the Revised Code. Sections 119.01 to 119.13, inclusive, of the Revised Code do not apply to actions of the bureau of unemployment compensation except those relating to the adoption, amendment, or rescission of rules, and those relating to the issuance, suspension, revocation, or cancellation of licenses.

(B) "License" means any license, permit, certificate, commission, or charter issued by any agency.

(C) "Rule" means any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, but it does not include regulations concerning internal management of the agency which do not affect private rights.

(D) "Adjudication" means the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature.

(E) "Hearing" means a public hearing by any agency in compliance with procedural safeguards afforded by sections 119.01 to 119.13, inclusive, of the Revised Code.

(F) "Person" means a person, firm, corporation, association, or partnership.

(G) "Party" means the person whose interests are the subject of an adjudication by an agency.

(H) "Appeal" means the procedure by which a person aggrieved by a finding, decision, order, or adjudication of any agency, invokes the jurisdiction of a court.

HISTORY: GC § 154-62; 120 v 358; 121 v 578, § 1; 132 v S 97, § 1. Eff 1-1-68.

Cross-References to Related Sections

Notice: The provisions of the administrative procedure act apply to the following:

Accountants, procedure for revocation or suspension of certificates, RC § 4701.16

Agriculture—
- Agriculture liming materials, analytical tolerances, RC § 905.59
- Animal diseases, control, RC § 941.03
- Fertilizer control, enforcement of regulations, RC § 905.44
- Registration, revocation, RC § 905.45
- Fruits and vegetables, sale of, RC § 925.54
- Meat inspection and licensing, RC §§ 918.04, 918.08
- Registration or licensing, RC § 905.12

Agriculture—*Concluded*
Seed and grain coloration, RC §§ 907.43, 907.44
Seed inoculants, RC §§ 907.33, 907.34
Air pollution control board, RC § 3704.04
Airport operation, appeal from action of department of commerce, RC §§ 4561.11, 4561.12
Animals—
Cattle, purebred, promoted by director of agriculture, RC § 901.42
Diseases, control, RC § 941.03
Banking board, powers, RC § 1127.04
Barber examiners, board of, RC § 4709.21
Building standards—
Boilers inspection, powers of board relating to, RC § 4104.02
Issuance of orders for enforcement, RC § 3781.03.1
Adjudication hearing by board of building appeals, RC § 3781.19
Proceedings of board, RC § 3781.10.1
Charitable trusts, RC § 109.27
Cities, appropriations actions by, RC § 719.31
Civil defense, RC § 5915.31
Civil rights commission, RC § 4112.05
Cold storage warehouses, notice and hearing on refusal or revocation of license, RC § 915.23
County commissioners, appropriation of moneys for health programs, RC § 340.07
Declaratory judgments, construction or validity of instruments, RC § 2721.03
Dental care corporations, non-profit, RC § 1740.19
Department of education, RC § 3301.13
Dog training grounds, RC § 1533.19.1
Driver's license restriction, proceedings, RC § 4507.08
Driver training schools, RC § 4508.02
Eggs, regulations, RC § 925.02
Employment agencies, RC § 4143.01
Health—
Adulteration and misbranding of foods or drugs, RC § 3715.72
Food service operations, regulations, RC § 3732.02
Milk regulations, RC § 3707.37.2
Phenylketonuria, regulations for detection, RC § 3701.50.1
Public health council, rules, RC § 3716.03
Health care corporations, license revocation, RC § 1738.12
Highways—
Director of, duties, RC § 5516.05
Load limits, RC § 5577.05
Rest areas, use and control, RC § 5515.07
Insurance—
Public insurance adjusters, license, RC § 3951.07
Regulations for directors, officers, shareholders, RC § 3901.31
Surplus life insurance, affidavit, RC § 3905.33
Title, appeal from agent's license revocation, RC § 3953.23
Unfair practice, hearing by superintendent, RC § 3901.22
Landscape architect examiners, RC § 4703.44
Medicine, illegal practice of, injunction proceedings, RC § 4731.34.1
Motor vehicle—
Bus taxation and reciprocity agreement, exemptions, RC § 4503.81
Standards adopted for specific type vehicles, RC § 4513.18.1
Nursing education, RC § 4723.01 et seq.
License revocation, RC § 4723.28
Nursing homes, license revocation, RC §§ 3721.03, 3721.07
Ohio real estate commission, RC § 4735.10
Ohio water commission, RC § 1525.02
Oil and gas—
Board of review, RC § 1509.35
Chief of division, RC § 1509.03
Parks and recreation division, RC § 1541.03
Pharmacy, board of, RC § 4729.66
Poisons, regulation and licensing, RC §§ 921.13, 921.14
Public buildings—construction of, "adjudication hearing" for failure to approve plans provided by this section, RC § 3791.04
Radiation, protection from public health council, regulations, RC §§ 3701.91, 3701.92
Violator, proceedings against, RC § 3701.97
Regents, board of, RC § 1713.03
Certificate revocation, RC § 1713.04
Sales tax, cigarettes, RC § 5743.04
School buses, safety regulations, RC § 4511.76
School teachers' disability benefits, RC § 3307.42
School teachers, standards for courses of study, RC § 3319.23
Securities, division of, RC § 1321.54
State board of education—
Classifying high schools, RC § 3301.16
Federal property, rules for disposal, RC § 3301.47
State highway patrol inspection standards, RC § 4513.02
State personnel, classifications, RC § 143.09
State racing commission, regulations, RC § 3769.03
Superintendent of banks, powers, RC § 1125.06
Superintendent of insurance, rule-making power subject to provisions of this chapter, RC § 3901.04.1
Technical institutes, board of regents rules, RC § 3357.19
Trade name registration, RC § 1329.10
Trailer parks, RC § 3733.02
Veterinarian, revocation of approval to inspect livestock, RC § 943.13
Veterinary medical board, RC § 4741.02
Waste disposal, solid, regulations, RC § 3734.02
Appeal from license revocation, RC § 3734.09
Water and sewer rotary commission, RC § 1525.12
Watercraft, division of, RC § 1547.52
Water, dam and levee construction, permit for, RC § 1521.06
Weighing and measuring, commercial regulations, RC §§ 901.10, 901.10.1
Wildlife, chief of division of, RC §§ 1531.06, 1531.08

See RC § 111.15 which refers to this section.

Research Aids

Page
Admin. Law & Proc. § 1 et seq

O-Jur2d
Admin. Law §§ 60-62

Law Review

The scope of review under recent amendments to the Ohio administrative procedure act. (Editorial note.) 23 CinLRev 307.

Right of appeal by administrative authority from adverse judicial rulings. Ervin H. Pollack and Harriet S. Martin. 14 OSLJ 408.

The effect of the Ohio administrative procedure act on procedure before the board of liquor control. Isadore Topper. 13 OSLJ 451.

A comparative analysis of the federal and Ohio administrative procedure acts. 24 CinLRev 365.

Administrative procedure. Survey of Ohio law—1954. 6 WestRLRev 201.

A proposed "administrative court" for Ohio. Carl H. Fulda. 22 OSLJ 734.

## CASE NOTES AND OAG

INDEX

Appeal, 3, 7, 8, 10, 11, 14, 21, 22, 24
Generally, 23
Hearings, 2, 5, 12
Particular agencies—
  Architects, examiners of, 16
  Board of education, 3, 12, 15, 19
  Civil rights commission, 18
  Civil service commission, 8-11, 14, 19
  Liquor control, 1, 2, 5, 24
  Housing, 23
  Personnel board, 20-22
  Public health council, 17
  Public utilities commission, 4, 6
Quorum of members, 13

1. Both the board of liquor control and the department of liquor control are agencies as defined in GC § 154-62 (RC § 119.01): Detelich v. Department of Liquor Control, 62 OLA 195, 107 NE(2d) 415 (App).

2. The board of liquor control, being an "agency" as defined in GC § 154-62 (RC § 119.01), may, in the reasonable exercise of its discretion, determine the date, time and place of each adjudication hearing required under either the administrative procedure act, GC § 154-62 (RC § 119.01) et seq, or the Ohio liquor control act, GC § 6064-1 (RC § 4301.01) et seq: 1953 OAG No.2422.

3. The administrative procedure act (RC § 119.01 [GC § 154-62] et seq) did not confer upon the director of education and the high school board the right to appeal from a judgment of the court of common pleas rendered on appeal from an order of the department of education: In re Millcreek Local Dist. High School, 160 OS 234, 52 OO 91, 115 NE(2d) 840.

4. The administrative procedure act, GC § 154-61 (RC § 119.01) et seq, sets up a formal procedure for rule-making, but by this section, the public utilities commission is specially excepted from the provisions of the act: Craun Transp., Inc. v. Public Util. Comm., 162 OS 9, 53 OO 451, 120 NE(2d) 436.

5. The fact that a receiver of a liquor permit holder did not receive notice of the hearing before the board of liquor control, at which hearing such permit was revoked, does not invalidate such order where the record shows that the receiver was represented by attorney at the time of the hearing and thus submitted himself to the jurisdiction of the board, made no objection at the hearing to the jurisdiction of the board and in fact entered a plea of guilty: Meyer v. Board of Liquor Control, 69 OLA 407, 119 NE(2d) 156 (CP).

6. The administrative procedure act, by this section, specifically exempts the public utilities commission from the provisions of the act, and the commission has no authority to promulgate a rule under such act: Akron &c. R. Co. v. Public Util. Comm., 165 OS 316, 59 OO 411, 135 NE(2d) 400.

7. The court of appeals under RC § 119.12, relating to appeals under the administrative procedure act, may review and determine the correctness of a judgment of the court of common pleas, ordering the reinstatement of a police officer, and decide from the entire record whether the order of the municipal civil service commission, affirming an order of removal of the municipal safety director, is "supported by any reliable, probative and substantial evidence": Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

8. "Civil service commission" as used in this section, includes both state and municipal civil service commission, thus a municipal civil service commission has the right to appeal from an adverse ruling of the court of common pleas involving the removal from duty of a police officer: Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

9. The definition of "agency" in this section, includes "civil service commission": Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

10. A municipal safety director does not have the legal authority to prosecute an appeal to the court of appeals from a decision of the court of common pleas reversing an order of the municipal civil service commission on a question involving the removal from duty of a police officer, since his interest is not affected, nor is he an aggrieved party: Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

11. The "civil service commission" is designated by this section as one of the agencies which may take an appeal from the judgment of the court of common pleas under authority of RC § 119.12: Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

12. It is the responsibility of the state board of education in the first instance to determine whether a particular school district, or the board of education of such district, "has not conformed with the law" so as to require the withholding of state funds from such district. In making such determination the state board of education should observe the requirements of the administrative procedure act, RC § 119.01 et seq, as to notice, hearing, summoning of witnesses, presentation of evidence, degree of proof, and procedural matters generally: 1956 OAG No.6810.

13. Where authority has been conferred upon an administrative board of four members such board, in the absence of a statute to the contrary, may act in a particular meeting, through a majority of the membership, provided (1) a quorum consisting of a majority of the membership is present, and (2) all members had notice and opportunity to be present; but such a board in such case is without authority to act through a mere majority of such quorum: 1957 OAG No.639.

14. The civil service commission is an "agency" as defined by this section and its orders are appealable to the court of common pleas under authority of RC § 119.12: State ex rel Oliver v. State Civil Service Comm., 168 OS 445, 7 OO(2d) 275, 155 NE(2d) 897.

15. Under RC § 3301.16 the state board of education in reaching a determination of the qualification of a school for the granting of a high school charter, is governed by RC § 119.01 et seq: 1959 OAG No. 345.

16. The state board of examiners of architects of the state of Ohio is a board subject to the provisions of RC Chapter 119, commonly referred to as the administrative procedure act: State ex rel Burchard v. State Board of Examiners, 82 OLA 117, 163 NE (2d) 391 (App).

17. The public health council is an "agency" within the meaning of the administrative procedure act, with authority to adopt rules and regulations for nursing homes: Ohio State Federation of Nursing Homes v. Public Health Council, 172 OS 227, 15 OO(2d) 375, 174 NE(2d) 251.

18. The amendments made by 129 v 1694 (1697), effective October 24, 1961, to RC § 4112.05(G) and (I), making certain procedure of the Ohio civil rights commission subject to the administrative procedure act, RC § 119.01 et seq, have the effect of making said chapter applicable to procedures of the com-

mission only as they relate to the manner in which final orders of the commission are issued and served on respondents and to modification or reconsideration of final orders of the commission: 1961 OAG No.2462.

19. A municipal civil service commission, not being an "agency" as defined by this section, is not subject to the provisions of the administrative procedure act in promulgating rules: Karrick v. Board of Education, 174 OS 467, 23 OO(2d) 114, 190 NE (2d) 256.

20. Proceedings before the state personnel board of review, and on appeal from such board, are governed by the administrative procedure act: Graul v. Board of Review, 117 App 108, 23 OO(2d) 216, 191 NE(2d) 188.

21. A decision of the state personnel board of review affirming an order of an appointing authority "laying off" an employee in the classified service of the state is a final appealable order, and, pursuant to the provisions of RC chapter 119, such employee may appeal therefrom to the court of common pleas of Franklin county: State ex rel Kendrick v. Masheter, 120 App 168, 28 OO(2d) 426, 201 NE(2d) 707.

22. An "appointing authority" has no right of appeal to the common pleas court from a decision of the state personnel board of review disaffirming a job-abolishment by such "appointing authority": In re Job Abolishment of Jenkins, 120 App 385, 29 OO (2d) 247, 202 NE(2d) 634.

23. There are three ways in which a state board may be subjected to the administrative procedure act under par. (A) of this section, namely: (1) certain boards are specifically named, (2) the legislation concerning a board specifically subjects such board to this Act, and (3) a board which has authority to issue, suspend, remove or cancel licenses: In re Martins Ferry Met. Housing Authority, 2 OApp(2d) 237, 31 OO(2d) 365, 207 NE(2d) 672.

24. On appeal from an order of an agency (as defined in RC § 119.01) to the court of common pleas, the power of the court to modify such order is limited to the ground set forth in this section, i.e., the absence of a finding that the order is supported by reliable, probative, and substantial evidence: Henry's Cafe, Inc. v. Board of Liquor Control, 170 OS 233, 10 OO(2d) 177, 163 NE(2d) 678.

## § 119.02 Compliance; validity of rules. (GC § 154-63)

Every agency authorized by law to adopt, amend, or rescind rules shall comply with the procedure prescribed in sections 119.01 to 119.13, inclusive, of the Revised Code, for the adoption, amendment, or rescission of rules. Unless otherwise specifically provided by law, the failure of any agency to comply with such procedure shall invalidate any rule or amendment adopted, or the rescission of any rule.

HISTORY: GC § 154-63; 120 v 358 (359), § 1. Eff 10-1-53.

Research Aids
O-Jur2d
Admin. Law §§ 68, 78
Am-Jur2d
Adm. Law §§ 278, 300

Law Review

The growth and regularization of the licensing process in Ohio. Francis R. Aumann. 21 CinLRev 97.

Ohio administrative law and procedure—recent developments. Maurice C. Culp. 14 WestResLRev 765.

### CASE NOTES AND OAG

1. The superintendent of building and loan associations in issuing, suspending, revoking or cancelling the certificates provided for in GC §§ 9643-1, 9660-3a, 679 and 690 (RC §§ 1151.03, 1151.38 and 1151.-64), is subject to the administrative procedure act: 1945 OAG No.523.

2. In giving or withholding his approval, consent or certificate provided for in GC §§ 693-1, 693-2, 9643-4, 9645, 9649, 9655, 9657, 9660-2, 9660-3, 9660, 9665 and 9670 (RC §§ 1151.61, 1151.62, 1151.05, 1151.08, 1151.09, 1151.10, 1151.20, 1151.27, 1151.29, 1151.36, 1151.37, 1151.34, 1151.45 and 1151.49), the superintendent of building and loan associations is not subject to the administrative procedure act: 1945 OAG No.523.

3. The provisions of RC §§ 119.02 and 119.03, a part of the administrative procedure act, which have to do with the procedure for the adoption of rules by an agency subject to such act and compliance therewith, are mandatory, and the failure by such an agency to adopt a rule as to giving notice before it initiates or takes steps to adopt a regulatory rule invalidates such regulatory rule: In re Appeal from Rules, 118 App 407, 25 OO(2d) 310, 195 NE(2d) 112.

4. A charge that a licensed race horse owner violated Ohio state racing commission Rule 65, which permits license revocation "for conduct detrimental to the best interests of racing" in that he "was on the premises of . . . race track without authorization in the stall of" a certain horse and that such "unauthorized presence" constituted improper practice on the part of a racing commission license holder," relates directly to the conduct of horse racing and is supported by reliable, probative and substantial evidence where witnesses testify to seeing him in the stable area and in the stable of such horse on the date alleged and he admits being in such stable area about the time in question: In re Cline, 3 OApp(2d) 345, 32 OO(2d) 461, 210 NE(2d) 737.

## § 119.03 Procedure for adoption, amendment, or rescission of rules. (GC § 154-64)

In the adoption, amendment, or rescission of any rule an agency shall comply with the following procedure:

(A) Reasonable public notice shall be given at least thirty days prior to the date set for a hearing, in such manner and form and for such length of time as the agency determines and shall include:

(1) A statement of the agency's intention to consider adopting, amending, or rescinding a rule;

(2) A synopsis of the proposed rule, amendment, or rule to be rescinded or a general statement of the subject matter to which such proposed rule relates;

(3) The date, time, and place of a hearing on said proposed action. In addition to such public notice the agency may give whatever other notice it deems necessary. Each agency shall adopt a rule setting forth in detail the method which such agency shall follow in giving public notice as to the adoption, amendment, or rescission of rules.

(B) The full text of the proposed rule, amendment, or rule to be rescinded shall be filed with the secretary of state at least thirty days prior to the date set for the hearing and shall be available at the office of the agency in printed or other legible form without charge to any person affected by such proposal. Failure to furnish such text to any person requesting it shall not invalidate any action of the agency in connection therewith.

(C) On the date and at the time and place designated in the notice, the agency shall conduct a public hearing at which any person affected by the proposed action of the agency may appear and be heard in person, by his attorney, or both, may present his position, arguments, or contentions, orally or in writing, offer and examine witnesses, and present evidence tending to show that said proposed rule, amendment, or rescission, if adopted or effectuated, will be unreasonable or unlawful.

At such hearing a stenographic record of the testimony and rulings on the admissibility shall be made at the expense of the agency.

In any hearing under this section the agency may administer oaths or affirmations.

The agency shall pass upon the admissibility of evidence, but the person affected may at the time make objection to the ruling of the agency, and if the agency refuses to admit evidence the person offering the same shall make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

(D) After complying with divisions (A), (B), and (C) of this section, the agency may issue an order adopting such proposed rule, amendment, or rescission, or revision thereof, consistent with the public notice and at that time shall designate the effective date thereof which shall not be earlier than the tenth day after said rule, amendment, or rescission has been filed in its final form with the secretary of state as provided in section 119.04 of the Revised Code. No rule shall be amended except by a new rule which shall contain the entire rule as amended, and shall repeal the rule amended.

(E) Prior to the effective date of a rule, amendment, or rescission thereof the agency shall make reasonable effort to inform those affected thereby and to have available for distribution to those requesting it the full text of the rule as adopted or as amended.

(F) If the governor, upon request of an agency, determines that an emergency requires the immediate adoption, amendment, or rescission of a rule, he shall issue a written order, a copy of which shall be filed with the secretary of state, that the procedure prescribed by this section with respect to the adoption, amendment, or rescission of a specified rule is suspended and the agency may then adopt immediately said emergency rule, amendment, or rescission and it becomes effective on the date it is certified to and filed with the secretary of state. Any such emergency rule, amendment, or rescission shall become invalid at the end of the sixtieth day after the filing thereof with the secretary of state unless prior to that date the agency has complied with the procedure prescribed by this section for the adoption, amendment, and rescission of rules. If said agency fails to adopt the rule, amendment, or rescission in conformity with the procedure prescribed in this section within the sixty-day period the emergency rule shall become inoperative forthwith.

(G) Rules adopted by an authority within the department of taxation or the bureau of unemployment compensation shall be effective without a hearing as provided by this section if the statutes pertaining to such agency specifically give a right of appeal to a higher authority within such agency or to a court, and also give the appellant a right to a hearing on such appeal. This division does not deny the right to appeal to a court as provided in section 119.11 of the Revised Code from such higher authority within such agency.

HISTORY: GC § 154-64; 120 v 358 (359); 121 v 578 (579), § 1. Eff 10-1-53.

Cross-References to Related Sections

Board of building standards—
Notice of public hearing to change rule to be given in accordance with this section, RC § 3781.12
Proceedings governed by this section, RC § 4104.02

Credit life and credit accident insurance—
Superintendent of insurance may adopt rules relative to, in accordance with this section, RC § 3918.12

Insecticides—
Petition on restricted use to be filed in accordance with this section, RC § 921.07
Secretary of state, rules to be filed with, RC § 111.15

See RC § 119.04 which refers to this section.

Research Aids

Page
Admin. Law & Proc. § 50 et seq
O-Jur2d
Admin. Law §§ 68-74
Am-Jur2d
Adm. Law §§ 278-287

Law Review

A comparative analysis of the federal and Ohio administrative procedure acts. 24 CinLRev 365.

Legislative control over administrative rule-making. Charles H. Melville. 32 CinLRev 33.

## CASE NOTES AND OAG

INDEX

Amendment by agency director before adopting wage board recommendations, 15
Amendment of rule requires repeal of former rule, 10
Appeal of alleged noncompliance by administrative agency, 17
Board of liquor control must comply in adopting regulations, 11
Compliance finding not supported by record, 12
Challenge of new rule, 1.1
Comparative analysis of federal and state administrative procedure acts, 4
Consideration of proposed rules by public health council, 6, 7
Consistency required between proposed and adopted amendments, 18
Designation of effective date of rules or rule changes, 9
Effective date, 19
General statement as substitute for synopsis, 3
Legislative control over administrative rule-making, 14
Mandatory, provisions are, 20
Ohio board of building standards, adoption of rule by, 5
"Parties adversely affected," who are, 13
Racing commission's substantial compliance, public notice of hearing, 1, 2
Regulations concerning internal management of agency not affected, 16
Restriction on interested persons at hearing, improper procedure, 8

---

1. Where the record shows that the procedural requirements in adopting and amending rules under RC § 119.01 (GC § 154-62) et seq have been substantially complied with by the state racing commission, a party actually present and taking an active part in the hearings involved therein has no right to complain that the provisions relating to the public notice of such hearings were not strictly complied with: Standard "Tote" Inc. v. Ohio State Racing Comm., 68 OLA 19, 58 OO 337, 121 NE(2d) 463 (CP).

1.1 By virtue of this section, that no administrative rule shall be amended except by a new rule containing the entire rule as amended and repealing the rule amended, the new rule may be challenged and tested in its entirety, even though it contains provisions of the rule amended: Motors Ins. Corp. v. Dressel, 80 App 505, 36 OO 301, 73 NE(2d) 817.

2. This section, relating to the publication of notice of a change of rules by an administrative agency provides in the alternative that such notice must contain a synopsis of the rule or a general statement of the subject matter to which the rule relates and a notice of a proposed change in rules by the state racing commission which refers to the rules as "Rules 41, 49, 50 relating to permits to race . . . Rules 256 and 257, Corrupt Practices" constitutes a substantial compliance with such section: Standard "Tote" Inc. v. Ohio State Racing Comm., 68 OLA 19, 58 OO 337, 121 NE(2d) 463 (CP).

3. The language of RC § 119.03 after referring to a synopsis of a proposed rule is followed by the disjunctive "or," thus making it optional that a general statement of the subject matter to which the proposed rule relates may be substituted for such synopsis: Standard "Tote" Inc. v. Ohio State Racing Comm., 58 OO 337, 121 NE(2d) 463 (CP).

5. Where the Ohio board of building standards deems it advisable to adopt a rule or regulation or amendment or annulment thereof, under RC § 3781.-12, the board must comply with the provision in RC § 3781.12, to the effect that the notice of public hearing thereon must state in full the proposed rule or regulation to be adopted, amended or annulled, or the proposed amendment, since that section and not this section controls the question of what constitutes proper legal notice: 1956 OAG No.6199.

6. In its consideration of proposed rules, the public health council may, under the provisions of this section, hold operational meetings with its staff subsequent to the public hearings required by law, in order to implement its rule-making function and arrive at a test of such rules in "final form" for adoption; and such agency may consult its departmental staff after such public hearing as to the advisability of adopting the original proposal or with respect to amendments to or substitutes for provisions of such original proposal: Ohio State Federation v. Public Health Council, 113 App 113, 17 OO(2d) 108, 172 NE(2d) 726.

7. Under the provisions of this section, paragraph (D), the public health council may revise a rule after the original proposal is presented at the public hearing required by law; and such rule, as adopted, may contain amendments, substitutions and additions to that originally proposed by the agency and considered by it at such public hearing; but such power of revision is limited by the requirement that the rule adopted be "consistent with the public notice": Ohio State Federation v. Public Health Council, 113 App 113, 17 OO(2d) 108, 172 NE(2d) 726.

8. A hearing conducted by the board of embalmers and funeral directors prior to the adoption of various changes in the rules and regulations governing funeral directors and the conducting of funerals does not comply with the procedural requirements of the administrative procedure act, where rulings and remarks by the chairman of such board unreasonably restrict interested persons in the exercise of their rights under such act (paragraph (C) of this section), and the hearing is adjourned after only two hours during which lengthy remarks are made by the chairman: Golubski v. Board of Embalmers, 114 App 111, 18 OO(2d) 442, 180 NE(2d) 861.

9. The provision of paragraph (D) of this section, a part of the administrative procedure act, that, in promulgating rules or changes in rules, an administrative agency "shall designate the effective date thereof," is mandatory; and an order of the board of embalmers and funeral directors attempting to enact or amend a rule of such board, which fails to fix any date when the attempted change is effective, is fatally defective: Golubski v. Board of Embalmers, 114 App 111, 18 OO(2d) 442, 180 NE(2d) 861.

10. The provision of the administrative procedure act (paragraph (D) of this section), that "no rule [of an administrative board subject to such act] shall be amended except by a new rule which shall contain the entire rule as amended, and shall repeal the rule amended," is mandatory; and an attempted amendment of a rule without any repeal of the former rule is illegal and never becomes effective: Golubski v. Board of Embalmers, 114 App 111, 18 OO(2d) 442, 180 NE(2d) 861.

11. The board of liquor control in the adoption of regulations is required to comply with the mandatory procedure prescribed by this section: Maggiore v. Board of Liquor Control, 115 App 131, 20 OO(2d) 234, 184 NE(2d) 248.

12. On appeal to the common pleas court from an order of the board of liquor control adopting a

regulation fixing the minimum mark-up for carry-out retail sales of beer and malt beverages, in the absence of a transcript of the proceedings before the board showing compliance with the procedure prescribed by this section for the adoption of regulations, a finding of the common pleas court that the procedural requirements in adopting the regulation were complied with, and its judgment affirming the action of the board in adopting the regulation, are not supported by the record: Maggiore v. Board of Liquor Control, 115 App 131, 20 OO(2d) 234, 184 NE(2d) 248.

13. Parties who have been represented at a hearing before the board of review of the bureau of unemployment compensation at which certain rules of procedure were adopted, who are amenable to the unemployment compensation laws and who object that certain rules adopted are unlawful or unreasonable are parties adversely affected as contemplated by this section: Columbus Green Cabs, Inc. v. Board of Review, 88 OLA 107, 184 NE(2d) 257 (CP).

15. In deciding whether the director of industrial relations is granted authority by RC § 4111.07 to make amendments before adopting the recommendations of a wage board appointed for the purpose of establishing a minimum wage for women and minors employed in an industry, the court may consider the language of RC § 119.03(D), of the administrative procedure act, that permits an agency to adopt "such proposed rule, amendment, or rescission, or revision thereof, consistent with the public notice": Acme Laundry &c. Co. v. Mahoney, 92 OLA 147, 189 NE (2d) 915 (CP).

16. The provisions of this section having to do with the enactment of rules by an administrative agency, do not apply to a so-called "directive and order" of an administrative agency addressed "to all personnel" of such agency, and which is for the guidance of departmental procedures to regulate the work of such agency and involves only internal procedures: Lloyd v. Industrial Comm., 119 App 467, 28 OO(2d) 80, 200 NE(2d) 705.

17. An alleged noncompliance with the provisions of this section, paragraph (E), by an administrative agency is not an issue which may be presented in an appeal under RC § 119.11: Maggiore v. Department of Liquor Control, 4 OApp(2d) 255, 33 OO(2d) 308, 211 NE(2d) 916.

18. Amendments which are finally adopted pursuant to this section, paragraph (D) may differ from the synopsis of proposed amendments published under paragraph (A) of this section and the full text of the proposed amendments filed under paragraph (B) of this section, provided the amendments finally adopted are sufficiently consistent with the public notice to insure that all persons affected have been afforded a reasonable opportunity to present their views on the substance and effect of the amendments at the public hearing conducted therefor: Jamison Plumbing &c. Co. v. Rose, 14 OApp(2d) 47, 43 OO (2d) 136, 236 NE(2d) 561.

19. This section, paragraph (D), requires that the effective date of amendments to existing rules be specifically designated at the time the order adopting such amendments is issued. A declaration that the amendments will be effective ten days following their filing with the Secretary of State is insufficient: Jamison Plumbing &c. Co. v. Rose, 14 OApp(2d) 47, 43 OO(2d) 136, 236 NE(2d) 561.

20. The provisions of RC §§ 119.02 and 119.03, a part of the administrative procedure act, which have to do with the procedure for the adoption of rules by an agency subject to such act and compliance therewith, are mandatory, and the failure by such an agency to adopt a rule as to giving notice before it initiates or takes steps to adopt a regulatory rule invalidates such regulatory rule: In re Appeal from Rules, 118 App 407, 25 OO(2d) 310, 195 NE(2d) 112.

## § 119.04 Rules effective; standards; duties of secretary of state.

(A) On and after January 1, 1967, no rule shall continue in effect which was not by four p.m. on December 31, 1966, filed with the secretary of state in compliance with the following standards:

(1) Each agency filing rules with the secretary of state shall number such rules in accordance with a numbering system which the secretary of state shall devise and provide to every agency.

(2) Every rule to be filed with the secretary of state shall be typed, single-spaced, on one side of white paper of good quality, eight and one-half inches by eleven inches, leaving margins of one and one-half inches on all sides, with double space between paragraphs. Each rule shall begin on a separate sheet of paper, and no sheet shall contain parts of more than one rule. Each rule shall have an underlined subject heading following the rule number. Acceptance for filing of a rule by the secretary of state is conclusive evidence of compliance with this subdivision. The secretary of state may accept copy prepared in a uniform manner by data processing methods in lieu of typed copy to meet the requirements of this section.

(3) Each rule shall clearly state the date on which it is to be effective and the date on which it will expire, if known.

(4) Each rule which amends, supersedes, or repeals another rule shall clearly refer to the rule which is amended, superseded, or repealed. Each amendment shall fully restate the rule as amended.

(5) Three certified copies of each rule shall be filed; two of which may be carbon copies provided they are legible and are on the same weight and grade of paper required for the first copy. Every signature, stamp, or other mark carried by the first copy shall be carried identically by the other two copies.

(B) No rule adopted by any agency on or after January 1, 1967, shall be effective before the tenth day after three certified copies of such rule in final form and in compliance with the standards provided in division (A) of this section have been filed with the secretary of state. The amendment or rescission of any rule, or section of a rule, shall likewise be ineffective unless promulgated in the same manner. An emergency rule, amendment, or rescission adopted as authorized by division (F) of section 119.03 of the Revised

Code, may become effective on the date of filing with the secretary of state, but the same standards as to form shall be complied with. A rule, amendment, or rescission not adopted as an emergency in such manner shall become effective the tenth day after filing with the secretary of state unless the agency in the adoption thereof has designated a later date.

(C) The secretary of state shall bind in appropriate binders and preserve in an accessible manner all rules filed by the various agencies. One of the three copies filed may be filed without binding and one copy may be made available on loan to any law publishing company which may wish to reproduce any rule.

Any rule which has been adopted in compliance with section 119.03 of the Revised Code and which is in effect before January 1, 1967, may be divided into sections, numbered, provided with a section heading, and filed with the secretary of state to comply with the provisions of this section without carrying out the adoption procedure required by section 119.03 of the Revised Code; codification of existing rules to comply with this section shall not constitute adoption, amendment, or rescission.

HISTORY: 131 v 14. Eff 11-5-65.

Somewhat analogous to former RC § 119.04, repealed in 131 v 1897, § 2 [GC § 154-65; 120 v 358 (360); 121 v 578 (531), § 1]. Eff 11-5-65.

NOTE: As originally enacted, §§ 1 and 2 of H 628 (131 v 1897) were effective 12-31-66. However, the effective date was changed to 11-5-65 by the Secretary of State.

Cross-References to Related Sections

Insecticides, restricted use—
Effective date of rule setting forth notice of petition provided by this section, RC § 921.07

See RC § 119.03 which refers to this section.

Research Aids

O-Jur2d
Admin. Law § 76

Am-Jur2d
Adm. Law § 287

**§ 119.05** Rules compiled for distribution. (GC § 154-66)

Each agency shall compile currently, publish, and at all times have available for distribution in book or pamphlet form all laws administered by it, all rules of general and uniform operation promulgated by it, and any of sections 119.01 to 119.13, inclusive, of the Revised Code, with which the agency is required to comply. Agencies which perform more than one function may comply with this section by compiling, publishing, and having available for distribution in separate books or pamphlets such laws, rules, and any of such sections relating to one or more functions. Such book or pamphlet shall be furnished to any person who requests it, without charge, or upon payment of a charge not to exceed the actual cost of printing said book or pamphlet. Failure to furnish such book or pamphlet shall not invalidate any action of the agency.

HISTORY: GC § 154-66; 120 v 358 (360); 121 v 578 (582), § 1. Eff 10-1-53.

Cross-References to Related Sections

Interstate highway—
Advertising regulations, additional, director of highways to furnish, RC § 5516.03

Research Aids

O-Jur2d
Admin. Law § 73

Am-Jur2d
Adm. Law § 287

CASE NOTES AND OAG

1. This section does not affect the duty of the director of health to furnish without request and free of charge a public health manual to every health commissioner in the state as prescribed by GC § 1236-1 RC § 3701.05): 1944 OAG No.6785.

**§ 119.06** Adjudication order of agency valid and effective; hearings; periodic registration of licenses. (GC § 154-67)

No adjudication order of an agency shall be valid unless said agency is specifically authorized by law to make such order.

No adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code. Such opportunity for a hearing shall be given before making the adjudication order except in those situations where this section provides otherwise.

The following adjudication orders shall be effective without a hearing:

(A) Orders revoking a license in cases where an agency is required by statute to revoke a license pursuant to the judgment of a court;

(B) Orders suspending a license where a statute specifically permits the suspension of a license without a hearing;

(C) Orders or decisions of an authority within an agency if the rules of the agency or the statutes pertaining to such agency specifically give a right of appeal to a higher authority within such agency or to another agency and also give the appellant a right to a hearing on such appeal.

Such sections do not require a stenographic record at a hearing except where the record of the hearing may be the basis of an appeal to court.

When a statute permits the suspension of a license without a prior hearing, any agency issuing an order pursuant to such statute shall afford the person to whom the order is issued a hearing upon request.

Whenever an agency claims that a person is required by statute to obtain a license, it shall afford a hearing upon the request of a person who claims that the law does not impose such a requirement.

Every agency shall afford a hearing upon the request of any person who has been refused admission to an examination where such examination is a prerequisite to the issuance of a license unless a hearing was held prior to such refusal.

Every agency shall afford a hearing upon the request of a person whose application for a license has been rejected and to whom the agency has refused to issue a license, whether it is a renewal or a new license, unless a hearing was held prior to the refusal to issue such license.

When periodic registration of licenses is required by law the agency shall afford a hearing upon the request of any licensee whose registration has been denied, unless a hearing was held prior to such denial.

When periodic registration of licenses or renewal of licenses is required by law, a licensee who has filed his application for registration or renewal within the time and in the manner provided by statute or rule of the agency, shall not be required to discontinue a licensed business or profession merely because of the failure of the agency to act on his application. Action of an agency rejecting any such application shall not be effective prior to fifteen days after notice of the rejection is mailed to the licensee.

HISTORY: GC § 154-67; 120 v 358 (361); 121 v 578 (582), § 1. Eff 10-1-53.

Cross-References to Related Sections

Liquor permit, RC § 4303.27.1.

See RC § 119.07 which refers to this section.

Research Aids

Page
Admin. Law & Proc. § 78 et seq
O-Jur2d
Admin. Law §§ 88, 108, 109
Am-Jur2d
Adm. Law §§ 279-281, 138-140, 363

Law Review

The growth and regularization of the licensing process in Ohio. Francis R. Aumann. 21 CinLRev 97.

A comparative analysis of the federal and Ohio administrative procedure acts. 24 CinLRev 365.

Licensing, and administrative procedure acts. Homer W. Giles. 6 ClevMLRev 301.

CASE NOTES AND OAG

1. An applicant for a real estate broker's license who has been refused a license by the state board of real estate examiners on the ground that he failed to make the minimum grade of 75% at the examination given to him, by such board may ask for and must be given an adjudication hearing before such board as provided by GC § 154-67, and §§ 154-69 to 154-71 (RC § 119.06, and 119.08 to 119.10), inclusive, at which hearing he has the burden of proving by a preponderance of the evidence that he made the minimum grade at the examination given to him by such board, and if such board makes an adjudication order following such hearing that he is not entitled to a license because of his failure to pass the examination, he may then appeal from such order to the court of common pleas as provided for under GC § 154-73 (RC § 119.12): In re Gram, 39 OO 477, 86 NE(2d) 42 (CP).

§ 119.061 Agency with rule-making power may suspend license; limitation on power to limit advertising right.

Every agency authorized by law to adopt, amend, or rescind rules may suspend the license of any person, over whom such agency has jurisdiction within the purview of sections 119.01 to 119.13, inclusive, of the Revised Code, following a conviction of such person under section 2911.41 of the Revised Code. Except as otherwise expressly provided by law existing as of November 2, 1959, no agency may make rules which would limit or restrict the right of any person to advertise.

HISTORY: 128 v 318, § 1 (Eff 11-2-59); 130 v 16. Eff 1-23-63.

Style deviations in this section were corrected by the amendment in HB 1 (130 v 16). No change in the law was intended; see RC § 1.26.

Research Aids

O-Jur2d
Admin. Law § 108
Am-Jur2d
Adm. Law § 180

CASE NOTES AND OAG

1. Revised Code § 4301.03, having to do with the adoption of rules and regulations by the board of liquor control, is a specific statute and does not come within the operation of RC § 119.06.1, a part of the administrative procedure act, which limits the power of an agency to limit or restrict the right of a person to advertise: International Breweries, Inc. v. Crouch, 118 App 202, 25 OO(2d) 55, 193 NE(2d) 734.

§ 119.07 Notice of hearing; contents; notice of order of suspension of license; publication of notice; effect of failure to give notice. (GC § 154-68)

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. Such notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for such proposed action, the law or rule

directly involved, and a statement informing the party that he is entitled to a hearing if he requests it within thirty days of the time of mailing the notice. The notice shall also inform the party that at the hearing he may appear in person, by his attorney, or by such other representative as is permitted to practice before the agency, or may present his position, arguments, or contentions in writing and that at the hearing he may present evidence and examine witnesses appearing for and against him. A copy of such notice shall be mailed to attorneys or other representatives of record representing the party. This paragraph does not apply to situations in which such section provides for a hearing only when it is requested by the party.

When a statute specifically permits the suspension of a license without a prior hearing, notice of the agency's order shall be sent to the party by registered mail, return receipt requested, not later than the business day next succeeding such order. Such notice shall state the reasons for the agency's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if he requests it within thirty days of the time of mailing the notice. A copy of such notice shall be mailed to attorneys or other representatives of record representing the party.

Whenever a party requests a hearing in accordance with this section and section 119.06 of the Revised Code, the agency shall immediately set the date, time, and place for such hearing and forthwith notify the party thereof. The date set for such hearing shall be within fifteen days, but not earlier than seven days, after the party has requested a hearing, unless otherwise agreed to by both the agency and the party.

When any notice required by sections 119.01 to 119.13, inclusive, of the Revised Code, to be sent by registered mail, is returned because of inability to deliver, the notice required shall be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. A copy of the newspaper, with the first publication of said notice marked, shall be mailed to the party at such address and the notice shall be deemed received as of the date of the last publication.

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, in the manner provided in this section shall invalidate any order entered pursuant to such hearing.

HISTORY: GC § 154-68; 120 v 358 (362); 121 v 578 (583), § 1. Eff 10-1-53.

Cross-References to Related Sections

Liquor permit—
Hearing on application for, conducted as provided in this section, RC § 4303.26.1

Radiation, notice of violence specified by this section, RC § 3701.97

Water pollution control board proceedings, RC § 6111.06

See RC § 119.09 which refers to this section.

Research Aids

O-Jur2d
Admin. Law § 95-97

Am-Jur2d
Adm. Law §§ 353, 398-406

Law Review

Licensing, and administrative procedure acts. Homer W. Giles. 6 ClevMLRev 301.

CASE NOTES AND OAG

1. Where an automobile dealer is charged with a violation of one section of the certificate of motor vehicle title law of which he is found not guilty, a finding of the motor vehicle dealers' licensing board suspending such dealer for alleged violation of another section of such law upon which he was not charged is not in conformity with this section, a part of the administrative procedure act, and such order of suspension is invalid: Ohio Motor Vehicle Dealers' Board v. Memphis Auto Sales, 103 App 347, 3 OO (2d) 377, 142 NE(2d) 268.

2. A horse trainer cited to appear before the Ohio state racing commission, who appears in person before such agency, expressly indicates he wants to proceed without counsel, specifically waives any defects in the notice of the alleged violation of a rule of such agency and consents to an amendment of the original citation to include an alleged violation of another rule of such agency, is estopped from thereafter denying the validity of such agency's order on the ground that the notice issued to him was defective in that it did not meet the requirements of this section, a part of the administrative procedure act: Fogt v. Ohio State Racing Comm., 3 OApp(2d) 423, 32 OO(2d) 546, 210 NE(2d) 730.

3. The fact that a receiver of a liquor permit holder did not receive notice of the hearing before the board of liquor control, at which hearing such permit was revoked, does not invalidate such order where the record shows that the receiver was represented by attorney at the time of the hearing and thus submitted himself to the jurisdiction of the board, made no objection at the hearing to the jurisdiction of the board and in fact entered a plea of guilty: Meyer v. Board of Liquor Control, 69 OLA 407, 119 NE(2d) 156 (CP).

## § 119.08 Date, time, and place of adjudication hearing. (GC § 154-69)

The date, time, and place of each adjudication hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, shall be determined by the agency. If requested by the party in writing, the agency may designate as the place of hearing the county seat of the county wherein such person resides or a place within fifty miles of such person's residence.

HISTORY: GC § 154-69; 120 v 358 (363); 121 v 578 (584), § 1. Eff 10-1-53.

Research Aids

O-Jur2d
Admin. Law § 116

Am-Jur2d
Adm. Law § 405

Law Review

Licensing and administrative procedure acts. Homer W. Giles. 6 ClevMLRev 301.

## § 119.09 Adjudication hearing. (GC § 154-70)

For the purpose of conducting any adjudication hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, the agency may require the attendance of such witnesses and the production of such books, records, and papers as it desires, and it may take the depositions of witnesses residing within or without the state in the same manner as is prescribed by law for the taking of depositions in civil actions in the court of common pleas, and for that purpose the agency may, and upon the request of any party receiving notice of said hearing as required by section 119.07 of the Revised Code, shall, issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers, directed to the sheriff of the county where such witness resides or is found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the sheriff and witnesses shall be the same as that allowed in the court of common pleas in criminal cases. Fees and mileage shall be paid from the fund in the state treasury for the use of the agency in the same manner as other expenses of the agency are paid.

An agency may postpone or continue any adjudication hearing upon the application of any party or upon its own motion.

In any case of disobedience or neglect of any subpoena served on any person or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, the court of common pleas of any county where such disobedience, neglect, or refusal occurs or any judge thereof, on application by the agency shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein.

At any adjudication hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, the record of which may be the basis of an appeal to court, a stenographic record of the testimony and other evidence submitted shall be taken at the expense of the agency. Such record shall include all of the testimony and other evidence, and rulings on the admissibility thereof presented at the hearing. This paragraph does not require a stenographic record at every adjudication hearing. In any situation where an adjudication hearing is required by sections 119.01 to 119.13, inclusive, of the Revised Code, if an adjudication order is made without a stenographic record of the hearing, the agency shall, on request of the party, afford a hearing or rehearing for the purpose of making such a record which may be the basis of an appeal to court. The rules of an agency may specify the situations in which a stenographic record will be made only on request of the party, otherwise such a record shall be made at every adjudication hearing from which an appeal to court might be taken.

The agency shall pass upon the admissibility of evidence, but a party may at the time make objection to the rulings of the agency thereon, and if the agency refuses to admit evidence, the party offering the same shall make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

In any adjudication hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, the agency may call any party to testify under oath as upon cross-examination.

The agency, or any one delegated by it to conduct an adjudication hearing, may administer oaths or affirmations.

In any adjudication hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, the agency may appoint a referee or examiner to conduct said hearing. He shall have the same powers and authority in conducting said hearing as granted to the agency. Such referee or examiner shall have been admitted to the practice of law in the state and be possessed of such additional qualifications as the agency requires. The referee or examiner shall submit to the agency a written report setting forth his findings of fact and conclusions of law and a recommendation of the action to be taken by the agency. A copy of such written report and recommendation of the referee or examiner shall within five days of the date of filing thereof, be served upon the party or his attorney or other representative of record, by registered mail. The party may, within ten days of receipt of such copy of such written report and recommendation, file with the agency written objections to the report and recommendation, which objections shall be considered by the agency before approving, modifying, or disapproving the recommendation. The agency may grant extensions of time to the party within which to file such objections. No recommendation of the referee or examiner shall be approved, modified, or disapproved by

the agency until after ten days after service of such report and recommendation as provided in this section. The agency may order additional testimony to be taken or permit the introduction of further documentary evidence. The recommendation of the referee or examiner may be approved, modified, or disapproved by the agency, and the order of the agency based on such report, recommendation, transcript of testimony and evidence, or objections of the parties, and additional testimony and evidence shall have the same effect as if such hearing had been conducted by the agency. No such recommendation shall be final until confirmed and approved by the agency as indicated by the order entered on its record of proceedings, and if the agency modifies or disapproves the recommendations of the referee or examiner it shall include in the record of its proceedings the reasons for such modification or disapproval.

After such order is entered on its journal, the agency shall serve by registered mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of such order shall be mailed to the attorneys or other representatives of record representing the party.

HISTORY: GC § 154-70; 120 v 358 (363); 121 v 578 (584), § 1. Eff 10-1-53.

Cross-References to Related Sections

Liquor permit—
Hearing on application for, power of director in conducting provided by this section, RC § 4303.26.1

Research Aids

Page
Admin. Law & Proc. § 88 et seq
O-Jur2d
Admin. Law §§ 114-134
Am-Jur2d
Adm. Law §§ 397-426

Law Review

The growth and regularization of the licensing process in Ohio. Francis R. Aumann. 21 CinLRev 97.

A comparative analysis of the federal and Ohio administrative procedure acts. 24 CinLRev 365.

Licensing, and administrative procedure acts. Homer W. Giles. 6 ClevMLRev 301.

CASE NOTES AND OAG

1. This section does not authorize the board of liquor control to appoint one of its members who is an attorney as its referee or examiner to conduct a hearing and report to the board his findings of fact, conclusions of law, and recommendation of board action, but such board is authorized by RC § 4301.04 to designate any member of such board to conduct a hearing and to make up a record of the evidence, therein adduced, for review by the board as a whole: 1958 OAC No.2009.

2. Where a party to an adjudication hearing under RC § 119.01 et seq presents his position in writing and does not testify in his own behalf, the administrative agency conducting the hearing has the right under this section, to call such party to testify under oath as upon cross-examination: 1960 OAG No.1573.

3. The provisions of this section, a part of the administrative procedure act, govern the board of liquor control in the matter of admitting evidence in a hearing before it, and it is not error for the board, in a hearing before it, to deny a permittee the right to examine a witness of the board under the provisions of RC § 2317.52, which section is not controlling in such hearing: Lakis v. Board of Liquor Control, 120 App 163, 28 OO(2d) 423, 201 NE(2d) 605.

## [§ 119.09.1] § 119.091 [Effect of failure of agency to hold adjudication hearing before expiration of license.]

The failure of any agency to hold an adjudication hearing before the expiration of a license shall not terminate the request for a hearing and shall not invalidate any order entered by the agency after holding the hearing. If during or after such hearing but before the issuance of an order the existing license shall expire the adjudicatory agency shall in its order in favor of the affected party provide that the licensing authority shall renew the license upon payment of the fee prescribed by law for the renewal of the license.

HISTORY: 125 v 241. Eff 10-2-53.

Research Aids

O-Jur2d
Admin. Law §§ 109.5, 132

## § 119.10 Counsel to represent agency. (GC § 154-71)

At any adjudication hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, the record of which may be the basis of an appeal to court, and in all proceedings in the courts of this state or of the United States, the attorney general or any of his assistants or special counsel who have been designated by him shall represent the agency.

HISTORY: GC § 154-71; 120 v 358 (363); 121 v 578 (586), § 1. Eff 10-1-53.

Research Aids

O-Jur2d
Admin. Law § 66

## § 119.11 Appeal from orders affecting rules; procedure; transcript; hearing; order.

Any person adversely affected by an order of an agency in adopting, amending, or rescinding a rule or in adopting, readopting, or continuing a rule, amendment, or rescission previously adopted as an emergency rule as provided in section 119.03 of the Revised Code, may appeal to the court of common pleas of Franklin county

on the ground that said agency failed to comply with the law in adopting, amending, rescinding, publishing, or distributing said rule, or that the rule as adopted or amended by the agency is unreasonable or unlawful, or that the rescission of the rule was unreasonable or unlawful. No emergency rule, amendment, or rescission adopted as provided in division (F) of section 119.03 of the Revised Code shall be subject to an appeal during the effective period of the emergency rule, amendment or rescission.

Any person desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of his appeal. Such notice of appeal shall be filed within fifteen days after the order of said agency and prior to the effective date of such rule, amendment, or order of rescission and such notice shall operate as a stay of the effective date thereof unless the appeal has been heard and determined prior to such effective date. A copy of said notice of appeal forthwith shall be filed by the appellant with the court.

Within ten days after a notice of appeal is filed, the agency shall transmit to the clerk of the court of common pleas of Franklin county a transcript of its record of proceedings relating to said rule. Within three days after receiving the transcript of the record the court shall set the date, time, and place for a hearing and immediately notify the appellant and the agency thereof. Such hearing shall be held within twenty days after receiving the transcript of the record, and the decision of the court shall be rendered within thirty days after the conclusion of said hearing and shall be based upon the arguments, briefs of counsel, and the transcript of the record of proceedings as transmitted by the agency.

If the court decides that the procedural requirements in adopting, amending, or rescinding a rule have been complied with by the agency and that the rule as adopted or amended by the agency is reasonable and lawful, or that the rescission of the rule was reasonable and lawful it shall affirm the order of the agency. If the court decides that the procedural requirements in adopting, amending, or rescinding a rule have not been complied with by the agency, or that the rule as adopted or amended by the agency is unreasonable or unlawful, or that the rescission of the rule was unreasonable or unlawful, it shall declare invalid such order by said agency.

Any order of the court in reviewing on appeal an order of any agency in adopting, amending, or rescinding a rule shall be final unless an appeal is taken therefrom, but no person affected thereby shall be precluded from attacking at any time the reasonableness or legality of any rule in its application to a particular set of facts or circumstances.

HISTORY: GC § 154-72; 120 v 358 (363); 121 v 578 (586), § 1; 126 v 108, § 1. Eff 10-11-55.

Cross-References to Related Sections

Board of building standards, proceedings determined by this section and Revised Code section 119.03, RC § 3781.10.1

Interstate highway advertising regulations, appeal from, RC § 5516.05

See RC § 119.03 which refers to this section.

Forms

Rates

Notice of appeal from order of an administrative agency, Nos. 101.30, 101.31.

Research Aids

Page
Admin. Law & Proc. §§ 118, 137

O-Jur2d
Admin. Law §§ 167, 168, 202, 203

Am-Jur2d
Adm. Law §§ 553-775

Law Review

Analysis of the Ohio Securities Act. Milton C. Boesel, Jr. 5 WestRLRev 352.

Licensing, and administrative procedure acts. Homer W. Giles. 6 ClevMLRev 301.

## CASE NOTES AND OAG

INDEX

Additional testimony, 7
Appeal—
Common pleas court, error proceedings, 13
Common pleas court, jurisdiction, 20
Proper court, 95
Questions available, on, 19
Racing commission rules, 3
Attack limited to operation of rule as amended, 14
Auto insurers and dealers, appeal by, 1
Effect of section, 8, 9
Error proceeding provided, 9
Finality of order, application of provisions concerning, 18
Motion for new trial, effect of filing, 6
Liquor control board—
Record of proceedings must be transmitted, 12, 17
Relief from ruling obtainable, 4
Proof that one is adversely affected, 15, 21
Racing commission rule concerning drugged horse, invalid, 11
Racing commission's rules, determination of legality is judicial function, 2
Record of proceedings to be transmitted on appeal, 12, 17
Rule of administrative agency, attack on, 10, 16

---

1. When an administrative rule adversely affects automobile insurers and dealers, within the meaning of this section, they may appeal from such order in the manner prescribed in such section: Motors Ins. Corp. v. Dressel, 80 App 505, 36 OO 301, 73 NE (2d) 817.

2. A determination by a court in passing upon the legality and reasonableness of the rules adopted by the Ohio state racing commission is a judicial function; and on appeal, the review of such function under RC § 119.11 is judicial rather than adminis-

trative: Standard "Tote," Inc. v. Ohio State Racing Comm., 98 App 494, 58 OO 40, 130 NE(2d) 455.

3. The administrative procedure act authorizes an appeal to the court of appeals from an adverse decision rendered by the common pleas court upon a duly perfected appeal questioning the validity of rules adopted by the Ohio state racing commission: Standard "Tote," Inc. v. Ohio State Racing Comm., 98 App 494, 58 OO 40, 130 NE(2d) 455.

4. Where the enforcement of a rule of the board of liquor control would result in a gross injustice to an applicant for transfer of a liquor permit, such applicant may seek and obtain relief under the provisions of RC § 119.11: Mastrolanni v. Board of Liquor Control, 98 App 500, 58 OO 42, 130 NE(2d) 380.

6. A motion for a new trial, filed within the time provided by law, seeking a re-examination of issues of law adjudged by the common pleas court upon an appeal from an administrative agency taken pursuant to this section, results in tolling the time for taking an appeal to the court of appeals; and the common pleas court errs to the prejudice of the appellant in striking such motion for a new trial from the files: In re Appeal from Board of Liquor Control, 103 App 517, 4 OO(2d) 21, 146 NE(2d) 309.

7. Upon perfection of the appeal, this section requires a hearing and a decision based upon the arguments, briefs, and the transcript of the record of the proceedings of the agency. No provision is made for the taking of additional testimony such as is provided in RC § 119.12: In re Appeal from Board of Liquor Control, 103 App 517 (520), 4 OO(2d) 21, 146 NE(2d) 309.

8. Although this section contemplates an appeal to the court of appeals no specific provision is made therein as is found in RC § 119.12: In re Appeal from Board of Liquor Control, 103 App 517 (520), 4 OO(2d) 21, 146 NE(2d) 309.

9. It seems apparent that the appeal provided in this section is an error proceeding unlike the so-called "hybrid" review provided in RC § 119.12, wherein the court appraises all the evidence as to the credibility of witnesses, the probative character and the weight to be given the evidence: In re Appeal from Board of Liquor Control, 103 App 517 (520), 4 OO(2d) 21, 146 NE(2d) 309.

10. Under this section a person affected by an order of an administrative agency may attack, at any time, the reasonableness or legality of any rule adopted by such agency in its application to a particular set of facts or circumstances: In re Topper, 109 App 289, 11 OO(2d) 49, 165 NE(2d) 19.

11. Rule 311 of the rules and regulations of the Ohio state racing commission, so far as it provides for the suspension, diminution or revocation of the permit of a holder thereof where a horse entered in a race at his track is found to be stimulated or doped by a drug, is invalid: Ohio Thoroughbred Racing Assn. v. Ohio State Racing Comm., 114 App 80, 18 OO(2d) 371, 180 NE(2d) 276.

12. In an appeal under this section from an order of the board of liquor control adopting a regulation, within ten days after the notice of appeal is filed in the common pleas court the board is required to transmit to the clerk of court a transcript of its record of proceedings relating to the adoption of the regulation: Maggiore v. Board of Liquor Control, 115 App 131, 20 OO(2d) 234, 184 NE(2d) 248.

13. An appeal from the common pleas court under the provisions of this section (from an administrative board) is an error proceeding, and the statutory procedures and appellate court rules applicable to appeals on questions of law apply thereto: In re Board of Liquor Control's Amendments, 115 App 243, 20 OO(2d) 320, 184 NE(2d) 767.

14. In an appeal under this section from an order adopting an amendment to certain of its rules by the board of liquor control, altering only the percentage markup in the minimum price formula established for the sale of wine under authority of RC § 4301.13, the attack made must be limited to the operation of such rule as amended, and the court is not required to affirmatively find that the action of the board is supported by reliable, probative and substantial evidence but only whether the adopting procedure was proper and the amendment adopted reasonable and lawful: In re Board of Liquor Control's Amendments, 115 App 243, 20 OO(2d) 320, 184 NE(2d) 767.

15. The law does not require a vain attempt to prove one is adversely affected within the meaning of this section of the administrative procedure act relating to rule changes, beyond the fact that he is amenable to and controlled by the rules and objects to them as placing him in an unfavorable position different from that which he had before the new rules: Columbus Green Cabs, Inc. v. Board of Review, 88 OLA 107, 184 NE(2d) 257 (CP).

16. In an appeal to the common pleas court, under this section, from an order of an administrative agency adopting a rule, there is no burden on the agency to prove that the rule, as adopted, was supported by the evidence before it or that such rule is not unreasonable or unlawful: Long v. Division of Watercraft, 118 App 369, 25 OO(2d) 262, 195 NE(2d) 128.

17. Where the board of liquor control fails to transmit a complete record of the proceedings before it to the court of common pleas, as required by this section on appeal from an order of the board affecting a regulation adopted by the board, the cause must be remanded to the board for a compliance with such statutory requirement: Maggiore v. Board of Liquor Control, 120 App 313, 29 OO(2d) 129, 201 NE(2d) 906.

18. The provision of this section as to finality of order, applies only to those issues which can be presented in an appeal under that section: Maggiore v. Department of Liquor Control, 4 OApp(2d) 255, 33 OO(2d) 308, 211 NE(2d) 916.

19. If the unreasonableness or illegality of an administrative rule in its application to a particular set of facts or circumstances is determined, then such rule has no force or validity, as so applied, by virtue of the last paragraph of this section and, upon such determination, no issue of its constitutionality may be determined in an appeal under the provisions of RC § 119.12: Battles v. Ohio State Racing Comm., 12 OApp(2d) 52, 41 OO(2d) 100, 230 NE(2d) 662.

20. In an appeal under the provisions of RC § 119.-12, a common pleas court does not have jurisdiction to review the reasonableness and lawfulness, in its general application, of a rule adopted by an administrative agency but derives jurisdiction under the provisions of the last paragraph of RC § 119.11 to review the reasonableness or legality of the rule in its application to the particular set of facts or circumstances involved in the adjudication pertaining to licensing resulting in the order from which the appeal under § 119.12 has been perfected: Battles v. Ohio State

Racing Comm., 12 OApp(2d) 52, 41 OO(2d) 100, 230 NE(2d) 662.

21. Where amendments to the Ohio building code allow the restricted use of previously prohibited material, the sole fact that an installer of such material is thereafter permitted to partially do that which he was totally prevented from doing before does not preclude him from being a person adversely affected by the amendments: Jamison Plumbing &c. Co. v. Rose, 14 OApp(2d) 47, 43 OO(2d) 136, 236 NE(2d) 561.

## § 119.12 Appeal by party adversely affected.

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license, registration of a licensee, or revoking or suspending a license, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, provided that appeals from decisions of the liquor control commission may be to the court of common pleas of Franklin county. If any such party is not a resident of and has no place of business in Ohio, he may appeal to the court of common pleas of Franklin county.

Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, except that appeals from orders of the fire marshal, issued under section 3737.20 of the Revised Code, may be to the court of common pleas of the county in which the building of the aggrieved person is located.

This section does not apply to appeals from the department of taxation.

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of his appeal. A copy of such notice of appeal shall also be filed by appellant with the court. Unless otherwise provided by law relating to a particular agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms. In the event an appeal is taken from the judgment of the court and the court has previously granted a suspension of the agency's order as provided in this section such suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated. No renewal of a license or permit shall be denied by reason of such suspended order during the period of the appeal from the decision of the court of common pleas. The final order of adjudication may apply to any renewal of a license or permit which has been granted during the period of the appeal.

Within twenty days after receipt of notice of appeal from an order in any case wherein a hearing is required by sections 119.01 to 119.13, inclusive, of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed shall, upon motion, cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed ten days, when it is shown that the agency has made substantial effort to comply. Such record shall be prepared and transcribed and the expense thereof shall be taxed as a part of the costs on the appeal. The appellant must provide security for costs satisfactory to the court of common pleas. Upon demand by any interested party, the agency shall furnish at the cost of the party requesting it a copy of the stenographic report of testimony offered and evidence submitted at any hearing and a copy of the complete record.

Unless otherwise provided by law, in the hearing of the appeal the court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.

The court shall conduct a hearing on such appeal and shall give preference to all proceedings under sections 119.01 to 119.13, inclusive, of the Revised Code, over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. The hearing in the court of common pleas shall proceed as in the trial of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to such action. At such hearing counsel may be heard on oral argument, briefs may be submitted, and evidence introduced if the court has granted a request for the presentation of additional evidence.

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In

the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken either by the party or the agency and shall proceed as in the case of appeals in civil actions as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code. Such appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules and regulations of the agency and in such appeal the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record. Such appeals may be taken regardless of the fact that a proceeding was pending prior to the amendment of this section expressly authorizing such appeals, provided such appeals are perfected by the filing of notice of appeal within the time prescribed by section 2505.07 of the Revised Code.

The court shall certify its judgment to such agency or take such other action necessary to give its judgment effect.

**HISTORY: GC § 154-73; 129 v 558 (566); 131 v 578 (587), § 1; 134 v 202 (203), § 1; 135 v 483 (Eff 10-21-53); 138 v 1116, § 1 (Eff 11-4-59); 130 v 16, § 1. Eff 9-2-63.**

Cross-References to Related Sections

Boiler inspection certificate, revocation of—
Appeal in accord with this section, RC § 4104.09
Credit life insurance policies, judicial review of proposed withdrawal provided by this section, RC §§ 3918.07, 3918.13
Liquor control commission, appeal to—
Stay order in effect as result of suspension under this section, RC § 4301.28
State fire marshal, appeal from final order of, RC § 3737.21.
Suspension or revocation of liquid disposal permit—
Appeal taken under this section where denial is lack of approval of agency other than division of oil and gas, RC § 1509.08.1

See RC § 119.12.1 which refers to this section.

Forms

Bates
Appeal from order of administration agency, Nos. 101.30, 101.31.

Research Aids

O-Jur2d
Admin. Law §§ 159-224

Am-Jur2d
Adm. Law §§ 553-775

Law Review

Predicting scope of judicial review of board of tax appeals decisions. 19 CinLRev 486.

The scope of review under recent amendments to the Ohio administrative procedure act. (Editorial note.) 23 CinLRev 307.

Administrative procedure; survey of Ohio law, 1953. 5 WestRLRev 227.

The effect of the Ohio administrative procedure act on procedure before the board of liquor control. Isadore Topper. 13 OSLJ 451.

Right of appeal by administrative authority from adverse judicial rulings. Ervin H. Pollack and Harriet S. Martin. 14 OSLJ 408.

A comparative analysis of the federal and Ohio administrative procedure acts. 24 CinLRev 365.

Ohio administrative law and procedure—recent developments. Maurice C. Culp. 14 WestResLRev 765.

The administrative appeal—Ohio's jurisdictional morass. James C. France. 39 OBar (No.49) 1435.

Ohio sovereign immunity. Ronald E. Schultz. 28 OSLJ 75.

## CASE NOTES AND OAG

INDEX

Common pleas court—
Procedure, 9, 16, 30, 31, 55, 63-65, 69, 70, 72, 81, 84, 85, 93, 108, 111, 115, 116
Standards for review, 1, 9, 13, 18, 31, 49, 51, 59, 62, 69, 71, 73, 74, 76, 78, 80, 86, 87, 90, 94, 98, 104, 105, 107, 109, 112, 117-21, 123, 126, 129
Where to file, 12, 28, 107, 125
Court of appeals, 7, 8, 10, 17, 33-35, 38, 42, 44, 51, 52, 54, 56, 58, 60, 61, 66, 67, 88, 89, 91, 92, 95-97, 100, 101, 103, 106
Generally, 11, 15, 46, 50, 53, 57, 68, 75, 77, 82, 110, 113, 114, 127, 128
Liquor control board, 7-10, 13, 14, 29-31, 35-38, 42, 44, 52, 58-60, 63-66, 68-72, 74, 76, 81-85, 88-90, 92, 93, 95-100, 104, 106, 107, 111, 113-121, 123, 124, 129
Orders appealable, 6, 29, 37, 43, 79, 102, 103
Record from agency—
Certification, 2, 3, 23-25, 36, 39-41
Copies of documents, 4, 19, 26
Corrections, 21
Evidence, must contain, 1
Filing complete record mandatory, 5, 20, 32, 45, 47, 48, 83, 122, 124
Notice of appeal, 41
Objection to, 27
Order, 4, 19, 22

---

1. On an appeal from an order of an agency revoking a license, the common pleas court may affirm that order only "if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law"; and this means that such evidence must not only exist but must be in the record in order to support an affirmance: Doelker v. Accountancy Board, 12 OS (2d) 76, 41 OO(2d) 328, 232 NE(2d) 407.

2. This section stating that "after receipt of notice of appeal from an order in any case . . . the agency shall prepare and certify to the court a complete record of the proceedings in the case," does not require that all members of a multimember agency, such as the racing commission, certify such record: McKenzie v. Ohio State Racing Comm., 5 OS(2d) 229, 34 OO(2d) 463, 215 NE(2d) 397.

3. There is a sufficient certification by "the agency" under this section, where a member or employee of the agency certifies that what purports to be a record of such proceedings "is a compete record" thereof, that "any copies of material herein . . . are certified to be true copies of the original

matter," and that such certificate is made "by order of the" agency "and acting in its behalf," unless it is made to appear affirmatively that the one so certifying did not have authority to do so or that the record so certified is not a complete record of the proceedings: McKenzie v. Ohio State Racing Comm., 5 OS(2d) 229, 34 OO(2d) 463, 215 NE(2d) 397.

4. "A . . . record of the proceedings in the case" before an administrative agency may be "complete" within the meaning of this section, even though it contains a certified copy of and not the original of the final order of the agency, which copy is taken from the original minutes of the meeting of the agency where such final order is recorded: McKenzie v. Ohio State Racing Comm., 5 OS(2d) 229, 34 OO(2d) 463, 215 NE(2d) 397.

5. Where an appeal from an order of an administrative agency has been duly made to the common pleas court pursuant to this section and the agency has not prepared and certified to the court a complete record of the proceedings within twenty days after receipt of the notice of appeal and the court has granted the agency no additional time to do so, the court must, upon motion of the appellant, enter a finding in favor of the appellant and render a judgment for the appellant: Matash v. State, 177 OS 55, 29 OO(2d) 153, 202 NE(2d) 305.

6. An order of the state personnel board of review issued on appeal from a final decision of an appointing authority relative to layoff is appealable to the court of common pleas of Franklin county pursuant to the provisions of this section: State ex rel Kendrick v. Masheter, 176 OS 232, 27 OO(2d) 128, 199 NE(2d) 13.

7. There is no constitutional or legislative authority for an appeal by the board of liquor control, the department of liquor control, or the director of liquor control from a judgment of the court of common pleas rendered on appeal from a decision of the board of liquor control: Corn v. Board of Liquor Control, 160 OS 9, 50 OO 479, 113 NE(2d) 360.

8. Where the court of common pleas reverses an order of the board of liquor control, such board may appeal to the court of appeals for Franklin county, which court may affirm or reverse the judgment of the court of common pleas, in accordance with the provisions of RC § 119.12, but in doing so must be guided by the nature and scope of the appellate jurisdiction of the court of common pleas under such section: Andrews v. Board of Liquor Control, 164 OS 275, 58 OO 51, 131 NE(2d) 390.

9. Under GC § 154-73, as amended in 1951 (RC § 119.12), in an appeal from the board of liquor control to the court of common pleas of Franklin county, that court must give consideration to the entire record before the board of liquor control, including all evidence offered before the board, and such additional evidence as the court may admit, and must appraise all such evidence as to the credibility of witnesses, the probative character of the evidence and the weight to be given it, and, if from such a consideration it finds that the board's order is not supported by reliable, probative and substantial evidence and is not in accordance with law, the court is authorized to reverse, vacate, or modify the order of the board: Andrews v. Board of Liquor Control, 164 OS 275, 58 OO 51, 131 NE(2d) 390.

10. Under this section, as amended in 1953 (125 v 488), an administrative agency may appeal from a judgment of the court of common pleas, rendered on appeal from a decision of such agency, only upon questions of law relating to the constitutionality, construction or interpretation of statutes and rules and regulations of the agency, but when such appeal is perfected, the reviewing court has jurisdiction to review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative and substantial evidence in the entire record: Katz v. Department of Liquor Control, 166 OS 229, 2 OO(2d) 54, 141 NE(2d) 294.

11. This section contemplates an appeal from four specific types of adjudication: (1) denial to an applicant of admission to an examination; (2) denial of the issuance or renewal of a license; (3) denial of the registration of a licensee; and (4) revocation or suspension of a license: Welsh v. Ohio State Medical Board, 168 OS 520, 522, 7 OO(2d) 389, 156 NE(2d) 740.

12. The statute, in order to give meaning to all its provisions, must be interpreted as if the word, "licensee," is interchangeable with the words, "such party," where it relates to place of business or residence: Welsh v. Ohio State Medical Board, 168 OS 520, 522, 7 OO(2d) 389, 156 NE(2d) 740.

13. On appeal from an order of an agency (as defined in RC § 119.01) to the court of common pleas, the power of the court to modify such order is limited to the ground set forth in this section, i.e., the absence of a finding that the order is supported by reliable, probative, and substantial evidence: Henry's Cafe, Inc. v. Board of Liquor Control, 170 OS 233, 10 OO(2d) 177, 163 NE(2d) 678.

14. The administrative procedure act, in this section, permits any person adversely affected by any order, issued pursuant to an adjudication and denying the issuance of a license, to appeal from the decision of the board of liquor control to the court of common pleas of Franklin county: State ex rel. Stein v. Sohngen, 147 OS 359, 34 OO 283, 71 NE (2d) 483.

15. The word, "appeal," as used in this section, means the proceedings whereby a court reviews the action or decision of an administrative agency and affirms, reverses, vacates or modifies an order of the agency complained of in the appeal. The court may not substitute its judgment for that of the agency but is confined to determining the rights of the parties in accordance with the statutes and other law applicable: Farrand v. State Medical Board, 151 OS 222, 39 OO 41, 85 NE(2d) 113.

16. The word, "appeal," as used in this section, does not authorize a trial de novo of the matter which was before an administrative agency: Farrand v. State Medical Board, 151 OS 222, 39 OO 41, 85 NE (2d) 113.

17. If the unreasonableness or illegality of an administrative rule in its application to a particular set of facts or circumstances is determined, then such rule has no force or validity, as so applied, by virtue of the last paragraph of this section and, upon such determination, no issue of its constitutionality may be determined in an appeal under the provisions of RC § 119.12: Battles v. Ohio State Racing Comm., 12 OApp(2d) 52, 41 OO(2d) 100, 230 NE(2d) 662.

18. In an appeal under the provisions of RC § 119.-12, a common pleas court does not have jurisdiction to review the reasonableness and lawfulness, in its general application, of a rule adopted by an administrative agency but derives jurisdiction under the provisions of the last paragraph of RC § 119.11 to review the reasonableness or legality of the rule in its application to the particular set of facts or circumstances involved in the adjudication pertaining to licensing resulting in the order from which the appeal under

§ 119.12 has been perfected: Battles v. Ohio State Racing Comm., 12 OApp(2d) 52, 41 OO(2d) 100, 230 NE(2d) 662.

19. When the only copy of the adjudication order contained in the record of proceedings of an administrative board certified to a common pleas court in connection with an appeal to that court by a party adversely affected by such order is itself contained in an unsigned copy of a letter addressed to such person, certified in that copy to be such, the requirements of this section, that the board prepare and certify a complete record of the proceedings in the case have not been complied with, and, upon motion, the common pleas court is required to enter a finding in favor of the party adversely affected by the adjudication order: Young v. Board of Review, 9 OApp (2d) 25, 38 OO(2d) 36, 222 NE(2d) 789.

20. The provisions of this section, requiring an administrative agency to certify a complete record and requiring the court to enter a finding in favor of the appellant where the agency fails to so certify are mandatory: Brockmeyer v. Ohio Real Estate Comm., 5 OApp(2d) 161, 34 OO(2d) 301, 214 NE (2d) 265.

21. There is no provision in this section, which authorizes either the common pleas court or the court of appeals to order a diminution of the record by an administrative agency to correct an omission or other deficiency in the record as certified, where the time within which to certify has expired: Brockmeyer v. Ohio Real Estate Comm., 5 OApp (2d) 161, 34 OO(2d) 301, 214 NE(2d) 265.

22. A record certified by an agency, which does not contain the agency's order, is not a "complete record of the proceedings" as required by this section: Brockmeyer v. Ohio Real Estate Comm., 5 OApp(2d) 161, 34 OO(2d) 301, 214 NE(2d) 265.

23. As effective in June, 1963, RC chapter 3769, pertaining to the Ohio state racing commission, did not grant authority to the chairman of the commission with respect to the certification of records, and a certification by the chairman alone, is not a compliance with the requirements of this section: McKenzie v. Ohio State Racing Comm., 1 OApp(2d) 283, 30 OO(2d) 299, 204 NE(2d) 569.

24. A certification of the record by an administrative agency pursuant to this section must be by the "agency," unless the specific statutory provisions applicable to the particular agency modify the effect of this section: McKenzie v. Ohio State Racing Comm., 1 OApp(2d) 283, 30 OO(2d) 299, 204 NE(2d) 569.

25. In an appeal from a decision of the Ohio real estate commission, to the common pleas court, the transmittal of a record filed in the common pleas court and consisting of a group of detached exhibits, none of which bears the filing stamp of the commission, and papers, some of which are merely unsigned carbon copies of letters, accompanied by a letter of transmittal bearing only the rubber stamp facsimile of the signature of the secretary of the commission, is not a certification of a complete record of the proceedings in the case, as required by this section: Board of Real Estate Examiners v. Peth, 4 OApp(2d) 413, 33 OO(2d) 501, 213 NE(2d) 188.

26. A record certified by an administrative agency pursuant to this section, must contain the original documents. There is no basis for the substitution of copies for original documents, at least without the consent of the parties: McKenzie v. Ohio State Racing Comm., 1 OApp(2d) 283, 30 OO(2d) 299, 204 NE(2d) 569.

27. A motion objecting to a record certified by an administrative agency under this section is timely if filed any time prior to the final judgment: McKenzie v. Ohio State Racing Comm., 1 OApp(2d) 283, 30 OO(2d) 299, 204 NE(2d) 569.

28. An order of the state personnel board of review issued on appeal from a final decision of an appointing authority relative to layoff is not appealable to the court of common pleas of the county in which the employee resides, under RC § 143.27, but is appealable exclusively to the court of common pleas of Franklin county pursuant to the provisions of RC § 119.12: In re Zeigler, 1 OApp(2d) 336, 30 OO(2d) 344, 204 NE(2d) 692.

29. The overruling by the board of liquor control of a motion to make a departmental order definite and certain is not a final order within the provisions of this section and is not appealable: Roxy Musical Bar, Inc. v. Board of Liquor Control, 1 OApp(2d) 480, 30 OO(2d) 461, 205 NE(2d) 118.

30. A rule of the common pleas court, authorizing the dismissal of an appeal for want of prosecution upon failure of the appellant to file his brief or his demand for a transcript of the record, is invalid insofar as it applies to an appeal from an order of an agency under the provisions of this section: Grecian Gardens, Inc. v. Board of Liquor Control, 2 OApp (2d) 112, 31 OO(2d) 168, 206 NE(2d) 587.

31. An appeal from an order of the board of liquor control to the common pleas court may not be dismissed without examination of the record to find whether the order appealed from is or is not supported by "reliable, probative and substantial evidence," as required by this section: Grecian Gardens, Inc. v. Board of Liquor Control, 2 OApp(2d) 112, 31 OO(2d) 168, 206 NE(2d) 587.

32. The additional ten-day period provided in this section for an administrative agency to certify the record to the common pleas court must be computed with reference to the date of the notice of appeal, and the failure of the agency to fully comply within a total of thirty days requires a reversal of the agency's order and a judgment for the party adversely affected by its order: McKenzie v. Ohio State Racing Comm., 1 OApp(2d) 283, 30 OO(2d) 299, 204 NE(2d) 569.

33. Where, in such an appeal, the trial court has made no specific determination as to the meaning or application of a particular statute, rule or regulation, the court of appeals is without jurisdiction to review the judgment of the common pleas court: Mentor Marinas, Inc. v. Board of Liquor Control, 1 OApp(2d) 219, 30 OO(2d) 252, 204 NE(2d) 404.

34. In such an appeal, the jurisdictional question as to the constitutionality, construction, or interpretation of statutes, rules and regulations is sufficiently presented to confer jurisdiction upon the court of appeals by a specific finding by the trial court as to the meaning or application of a particular statute, rule or regulation: Mentor Marinas, Inc. v. Board of Liquor Control, 1 OApp(2d) 219, 30 OO(2d) 252, 204 NE(2d) 404.

35. The right of an administrative agency to appeal to the court of appeals from an adverse judgment of the common pleas court is, under the provisions of this section limited to an appeal on questions of law "relating to the constitutionality, construction, or interpretation of statutes and rules and regulations of the agency": Mentor Marinas, Inc. v. Board of Liquor Control, 1 OApp(2d) 219, 30 OO (2d) 252, 204 NE(2d) 404.

36. In an appeal from a decision of the board of liquor control to the common pleas court, the re-

quirement of this section that "the agency shall prepare and certify to the court a complete record of the proceedings in the case," is satisfied by a certification of a complete record of the proceedings by the clerk of the board of liquor control: Tisone v. Board of Liquor Control, 1 OApp(2d) 126, 30 OO(2d) 153, 204 NE(2d) 82.

37. Where the board of liquor control, following a hearing at which permittee's preliminary motions are overruled, finds "the permittee in violation of charges set forth" and by subsequent order suspends permittee's license and recites the number of days for which such license is suspended, such findings of a "violation of charges" lacks the finality necessary pursuant to the provisions of this section and is not subject to appeal. In such instance, the board retains jurisdiction to continue hearings, and such subsequent order only provides the necessary basis for an appeal: Lakis v. Board of Liquor Control, 120 App 163, 28 OO (2d) 423, 201 NE(2d) 605.

38. The board of liquor control cannot appeal pursuant to this section from a judgment of a common pleas court reversing a decision of such board, where no question of law was before such common pleas court which merely held in its journal entry that "the decision of the board of liquor control is not sustained by substantial, probative and reliable evidence and is not in accordance with law": Zarachowicz v. Board of Liquor Control, 119 App 133, 26 OO(2d) 331, 197 NE(2d) 370.

39. The Ohio real estate commission, formerly denominated state board of real estate examiners, on an appeal from an order adversely affecting a licensee to the common pleas court is required by this section to prepare and certify to such court a complete record of the proceedings in the case by affixing the signatures thereto of the three commissioners of the Ohio real estate commission: Ohio Real Estate Comm. v. Evans, 119 App 1, 26 OO(2d) 92, 196 NE (2d) 338.

40. The signature of the secretary of the Ohio real estate commission on a record of proceedings in which an appeal is taken from its order to the common pleas court is not a compliance with this section: Ohio Real Estate Comm. v. Evans, 119 App 1, 26 OO(2d) 92, 196 NE(2d) 338.

41. Pursuant to this section, that, within twenty days after receipt of notice of appeal in an applicable case, the state personnel board of review "shall prepare and certify to the court a complete record of the proceedings in the case," an appeal from such board will be dismissed where, in the papers forwarded by such board, there is no copy of any notice of appeal, no certificate of statement that all the original papers were forwarded, and no certificate authenticating the transcript or record of testimony: Minarik v. Board of Review, 118 App 71, 24 OO(2d) 394, 193 NE(2d) 396.

42. The board of liquor control may appeal from a decision of a court of common pleas which interprets a regulation of such board and finds such regulation and the enactment thereof to be an abuse of discretion and invalid: Zarachowicz v. Board of Liquor Control, 117 App 173, 23 OO(2d) 364, 191 NE(2d) 736.

43. An order of the state personnel board of review classifying employes in the attorney general's office is appealable, pursuant to the provisions of RC Chapter 119. and RC § 143.01.1: Graul v. Board of Review, 117 App 108, 23 OO(2d) 216, 191 NE-(2d) 188.

44. Pursuant to the provisions of this section, an order of the common pleas court reversing a decision of the board of liquor control as not supported by reliable, probative and substantial evidence may not be appealed by the board of liquor control: Cranwood Steak House, Inc. v. Board of Liquor Control, 115 App 463, 21 OO(2d) 79, 185 NE(2d) 576.

45. On an appeal to the common pleas court from an order of the motor vehicle dealers' and salesmen's licensing board sustaining an order of the registrar of motor vehicles rejecting the application of a licensed motor vehicle salesman to transfer his license from a former employer to a new employer, where the record before the court is not a complete record of the proceedings in the case, as required by this section, a judgment of affirmance, based upon a finding that the order is supported by reliable, probative and substantial evidence, is against the manifest weight of the evidence: Blankenship v. Braden, 114 App 200, 19 OO(2d) 91, 181 NE(2d) 275.

46. On an appeal to the motor vehicle dealers' and salesmen's licensing board from an order of the registrar of motor vehicles summarily rejecting the application of a motor vehicle salesman for reinstatement and transfer of his license from his former employer to his new employer, the procedure before the board must be in strict compliance with the provisions of the administrative procedure act: Blankenship v. Braden, 114 App 200, 19 OO(2d) 91, 181 NE(2d) 275.

47. In an appeal to the common pleas court from an order of the veterinary medical board suspending a license to practice veterinary medicine, where the board fails to prepare and certify to the court a complete record of the proceedings in the case within ten days, as required by this section, the sustaining of the appellant's motion for judgment in his favor is not erroneous: Stephan v. State Veterinary Medical Board, 113 App 538, 18 OO(2d) 177, 180 NE(2d) 302.

48. The word, "shall," as used in the provision of this section requiring that, in an appeal to the common pleas court from certain orders of an administrative agency, "within ten days . . . after receipt of notice of appeal . . . the agency shall prepare and certify to the court a complete record of the proceedings in the case," is a mandatory requirement: Stephan v. State Veterinary Medical Board, 113 App 538, 18 OO(2d) 177, 180 NE(2d) 302.

49. The court of common pleas has no authority to modify the penalty imposed by the board of liquor control revoking a liquor permit for violations of the liquor control act, where, on an appeal from such order of the board, the court considers the entire record and the evidence before it and determines that the order of the board is supported by reliable, probative and substantial evidence: Evans v. Board of Liquor Control, 112 App 264, 16 OO(2d) 167, 172 NE(2d) 336.

50. There is no provision whereby the state medical board is empowered to reconsider an application seeking the reinstatement of a license after an order revoking a license has become final either on appeal or by reason of the failure of the licensee to appeal as provided by this section: Welsh v. Ohio State Medical Board, 111 App 79, 12 OO(2d) 267, 165 NE(2d) 658.

51. Upon an appeal to the common pleas court from an order of an administrative agency, such court, in the absence of a finding that such order is not supported by reliable, probative and substantial evidence and is not in accordance with law, may not modify the penalty imposed by such agency; but the court of appeals, upon review of a judgment of the court of common pleas, made pursuant to this section, has jurisdiction to consider and review the

record of the proceedings before the agency and in the common pleas court to determine whether such court may have erred in finding that such order is supported by reliable, probative and substantial evidence and is in accordance with law: State Racing Comm. v. Robertson, 111 App 435, 14 OO(2d) 456, 172 NE(2d) 628.

52. Where, on appeal by the board of liquor control from a decision of the court of common pleas reversing a ruling of the board suspending a liquor permit, it appears that the trial court found insufficient evidence of an element necessary to be proved, and only a question of fact is presented on such appeal, a motion to dismiss such appeal will be sustained: Swallow Bar, Inc. v. Board of Liquor Control, 111 App 279, 14 OO(2d) 201, 170 NE(2d) 747.

53. Revised Code § 4743.03 is permissive, and the review provided for therein is not a prerequisite to an appeal to the courts under RC § 119.12: State ex rel Buchard v. State Board of Examiners, 119 App 286, 13 OO(2d) 43, 163 NE(2d) 391.

54. Where an appeal on questions of law relating to the construction or interpretation of this section, a part of the administrative procedure act, is perfected to the court of appeals from the common pleas court, the court of appeals is permitted to review and determine the correctness of the judgment of the common pleas court; and, in such review and determination, the court of appeals must follow the same procedure enjoined by this section on the common pleas court in arriving at its determination: In re Topper, 109 App 289, 11 OO(2d) 49, 165 NE(2d) 19.

55. Under the provisions of this section the court of common pleas may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency from which an appeal to such court is taken: In re Topper, 109 App 289, 11 OO(2d) 49, 165 NE(2d) 19.

56. The jurisdiction of the court of appeals, in an appeal by an administrative agency from a judgment of a common pleas court on appeal from an order of such agency, is limited and controlled by the provisions of this section, a part of the administrative procedure act: In re Topper, 109 App 289, 11 OO (2d) 49, 165 NE(2d) 19.

57. In an appeal from a final order of the industrial commission to the common pleas court under RC § 4123.51 (125 v 1016), a hearing by the court or jury is mandatory under this section (a part of the administrative procedure act): Cleere v. Inland Mfg. Div., 109 App 192, 10 OO(2d) 402, 164 NE(2d) 595.

58. The board of liquor control may appeal from a judgment of the common pleas court, rendered on appeal from an order of the board, only upon questions of law relating to the constitutionality, construction or interpretation of statutes and rules and regulations of the board: Buckeye Lake Hotel Co. v. Board of Liquor Control, 108 App 413, 9 OO(2d) 379, 154 NE(2d) 646.

59. Under the provisions of this section a reviewing court has the power to modify an order of the board of liquor control appealed from, only when it does not find that such order is supported by "reliable, probative, and substantial evidence"; and where such court finds that an order of the board of liquor control is supported by "reliable, probative and substantial evidence and is in accordance with law" it has no authority to modify the penalty imposed by such board: Buckeye Lake Hotel Co. v. Board of Liquor Control, 108 App 417, 9 OO(2d) 381, 159 NE(2d) 632.

60. Under this section the department of liquor control may appeal from a ruling of the court of common pleas, only on questions of law relating to the "constitutionality, construction or interpretation of statutes and rules and regulations of the" department, and is not authorized to appeal where the only error complained of is a ruling by the court of common pleas on the defense of entrapment: Gay v. Board of Liquor Control, 106 App 59, 6 OO(2d) 313, 151 NE(2d) 686.

61. On appeal from a judgment of the court of common pleas entered on appeal from an order of the state board of real estate examiners and under authority of this section, providing for appeal to that court by a party adversely affected by an order of any agency denying the issuance or renewal of a license or revoking or suspending a license, the court of appeals has jurisdiction to reverse, vacate or modify the judgment, and where in such a case, the court of appeals is of the opinion that a penalty of revocation of a real estate salesman's license is entirely too harsh and severe under all the facts and circumstances shown by the record, it may reverse a judgment affirming the order revoking the license and modify the judgment to a suspension for a specified time, fixed by the court: Carpenter v. Sinclair, 106 App 211, 6 OO(2d) 461, 149 NE(2d) 150.

62. The common pleas court, on an appeal taken under this section, from an order of the state board of real estate examiners revoking the license of a real estate broker for misconduct, may, where it finds that "the penalty imposed is unduly extreme and harsh," modify the order of the board and impose a lesser penalty: Jenkins v. Board of Real Estate Examiners, 106 App 391, 7 OO(2d) 154, 152 NE(2d) 282.

63. In an appeal from the board of liquor control to the common pleas court, in the absence of a request by the appellant to present new evidence, a hearing upon the transcript of the proceedings and testimony before the board, the original papers and the briefs and arguments of counsel, is a full and complete hearing as contemplated by RC § 119.12: City Products Corp. v. Board of Liquor Control, 106 App 494, 7 OO(2d) 225, 153 NE(2d) 153.

64. In an appeal from the order of an administrative agency to the common pleas court, the hearing contemplated by this section consists of a consideration of the record as certified to it by the agency, the briefs and oral arguments of counsel, and, if the court has granted a request for it, newly discovered evidence: City Products Corp. v. Board of Liquor Control, 106 App 494, 7 OO(2d) 225, 153 NE(2d) 153.

65. The provision of this section for hearing in the court of common pleas on an appeal from an administrative agency, is mandatory; and the right to a hearing implies that the appellant is entitled to notice of the time at which the hearing will be held: Contris v. Board of Liquor Control, 105 App 287, 6 OO(2d) 91, 152 NE(2d) 327.

66. An appeal to the court of appeals from a judgment of the common pleas court in a cause appealed thereto from an order of the board of liquor control, as provided for by this section, is not one of those classes of actions enumerated in RC § 2501.02 as being appealable on questions of law and fact, and, therefore, the appeal is limited to questions of law only: Arvay v. Board of Liquor Control, 104 App 208, 4 OO(2d) 365, 148 NE(2d) 81.

67. Under this section a court of appeals, in an appeal on questions of law from a decision of the

court of common pleas affirming a decision of the state board of real estate examiners revoking a real estate broker's license, is confined in its jurisdiction on review to a consideration of the record made before such board and in the common pleas court and whether the common pleas court erred in sustaining the order of the board as being supported by reliable, probative and substantial evidence and as being in accordance with law: Quinn v. State Board of Real Estate Examiners, 104 App 316, 4 OO(2d) 479, 137 NE(2d) 777.

68. Under this section the procedure before the board of liquor control is governed by the rules in civil rather than criminal actions: B. P. O. of Elks v. Board of Liquor Control, 105 App 181, 5 OO(2d) 460, 151 NE(2d) 693.

69. Under this section, the hearing upon appeal from an agency shall proceed as in the trial of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to such action. The court may affirm the order of the agency if it finds, upon consideration of the record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate or modify such order or make such other ruling as is supported by evidence and in accordance with law: In re Appeal from Board of Liquor Control, 103 App 517 (520), 4 OO(2d) 21, 146 NE(2d) 309.

70. In perfecting an appeal from a decision of the board of liquor control to the common pleas court pursuant to this section, it is mandatory that the notice of appeal be filed within fifteen days from the mailing of the board's decision: Hart v. Board of Liquor Control, 96 App 128, 54 OO 217, 121 NE (2d) 257.

71. In an appeal to the common pleas court from an order of the board of liquor control affirming a finding of the department of liquor control rejecting the appellant's application for the transfer of a liquor permit, the court is without jurisdiction to make an order respecting the issuance or renewal of such permit: Socotch v. Krebs, 97 App 8, 55 OO 155, 118 NE (2d) 309.

72. The provision of § 9 of regulation 65 of the board of liquor control for application for rehearing within thirty days after the board's decision does not extend the fifteen-day period provided by this section, for filing notice of appeal to the common pleas court from an order of an administrative agency: Hart v. Board of Liquor Control, 96 App 128, 54 OO 217, 121 NE(2d) 257.

73. In an appeal to the court of common pleas, pursuant to this section (121 v 587), from an order of the home inspection section of the division of aid for the aged, department of public welfare, denying an application for renewal of a license to operate a rest home, a general finding on the issues joined complied with the statutory requirement: In re Touchman, 94 App 92, 51 OO 300, 114 NE(2d) 736.

74. The common pleas court, on appeal from the board of liquor control, is empowered, under the provisions of this section, to review the action of the board but not to substitute its judgment for that of the board: Meyer v. Dunifon, 88 App 246, 44 OO 454, 94 NE(2d) 471.

75. Where, after revocation of a real estate broker's license, the broker appeals to the common pleas court and the court, pursuant to GC § 154-73 (RC § 119.12) enters an order suspending such revocation, such suspension order supersedes the order of revocation as of the date of the latter's issuance, and such broker is not, by force of such revocation order, deprived of his right to do business under his license: Lewis v. Anspon, 92 App 76, 49 OO 224, 109 NE(2d) 545.

76. In an appeal on law and fact from a decision of the state board of liquor control, pursuant to this section, the common pleas court must give the action its independent judgment: Toth v. Board of Liquor Control, 38 OO 422, 84 NE(2d) 256 (CP).

77. The jurisdiction and authority of the common pleas court in an appeal from an order of the Ohio aviation board is defined by this section: Hershberger v. Ohio Aviation Board, 40 OO 25 (CP).

78. The test of the common pleas court, sitting as a reviewing court, to be applied to an order of the state medical board is whether or not it was against the manifest weight of the evidence and not whether the board abused its discretion: Shearer v. State Medical Board, 44 OO 480 (App).

79. A writ of mandamus will not lie to compel the board of embalmers and funeral directors to afford an applicant an examination to qualify him to become a licensed embalmer since such applicant may, by statute, appeal from the order of such board to the court of common pleas: State ex rel. Shumaker v. Board of Embalmers, 45 OLA 556 (App).

80. Under this section the common pleas court is empowered to review the action of the board of liquor control but may not substitute its judgment for that of the board: Meyer v. Dunifon, 57 OLA 217, 94 NE(2d) 7 (App).

81. The filing of a notice of appeal under GC § 154-73 (RC § 119.12), with the director of the department of liquor control in an appeal from an order issued by the board of liquor control does not constitute a serving of notice on the agency which issued the order appealed from: Detelich v. Department of Liquor Control, 62 OLA 195, 107 NE(2d) 415 (App).

82. There must be a substantial compliance with the mandatory provisions of the General Code in order to confer jurisdiction on the common pleas court: Detelich v. Department of Liquor Control, 62 OLA 195, 107 NE(2d) 415 (App).

83. An instrument containing a statement setting forth charges made, the findings of the board and the errors assigned, constitutes a substantial compliance with the statute requiring that a true copy of the order appealed from be filed with the notice of appeal. Detelich v. Department of Liquor Control, 62 OLA 195, 107 NE(2d) 415 (App).

84. General Code § 154-73 (RC § 119.12), relating to notice of appeal on appeal from an order of an agency to the common pleas court, is mandatory: Detelich v. Department of Liquor Control, 62 OLA 195, 107 NE(2d) 415 (App).

85. Under GC § 154-73 (RC § 119.12), the notice of appeal must be filed with the agency making the order appealed from: Detelich v. Department of Liquor Control, 62 OLA 195, 107 NE(2d) 415 (App).

86. The appeal provided for in GC § 154-73 (RC § 119.12), to the court of common pleas from a decision of an administrative agency, provides only for an appeal on questions of law: State v. Taucer, 62 OLA 360, 107 NE(2d) 532 (App).

87. In an appeal under GC § 154-73 (RC § 119.12), from the decision of an administrative agency to the court of common pleas the court "may affirm, reverse, vacate, or modify the order of the agency" when it is found the agency did not follow the applicable

law, but the court is powerless to substitute its judgment for that of the agency: State v. Tancer, 62 OLA 360, 107 NE(2d) 532 (App).

88. General Code § 154-73 (RC § 119.12) provides that in an appeal from the board of liquor control to the court of common pleas the trial "shall proceed as in the trial of a civil action and the courts shall determine the right of the parties in accordance with the statutes or other laws applicable to such action" and GC § 12223-1 (RC § 2505.01) confers upon the parties to a civil action the right to appeal. The department of liquor control having been a party to a proceeding in the court of common pleas of Franklin county reversing, vacating or modifying an order of the board of liquor control, has a statutory right to prosecute an appeal to the court of appeals: Barn Cafe & Restaurant, Inc. v. Board of Liquor Control, 63 OLA 348, 107 NE(2d) 631 (App). [But see 160 OS 9, 50 OO 479].

89. Under the provisions of this section, being part of the administrative procedure act, the department of liquor control and governmental agencies are authorized to appeal only upon questions of law relating to the constitutionality, construction or interpretation of statutes and rules and regulations of the agency, and it is only when such a question of construction is involved that the reviewing court also may consider and determine the sufficiency of the evidence: Trianon Bowling Lanes, Inc. v. Department of Liquor Control, 22 OO(2d) 438, 190 NE(2d) 34 (App).

90. Where the court of common pleas, pursuant to this section, considers the whole record and evidence before it and determines that an order of the board of liquor control is supported by reliable, probative and substantial evidence, such court has no authority to modify a penalty imposed by the board: Evans v. Board of Liquor Control, 84 OLA 597 (App).

91. An appeal on questions of law by an administrative agency from a judgment of the court of common pleas finding that the action of the agency was arbitrary, capricious and unlawful because not supported by reliable, probative and substantial evidence, will be dismissed as not falling within the authorization contained in this section, which authorizes an appeal by an administrative agency only on questions of law relating to the constitutionality, construction or interpretation of statutes and rules and regulations of the agency: Metropolitan Sav. Assn. v. Burdsall, 80 OLA 327, 154 NE(2d) 754 (App).

92. The mere allegation by the board of liquor control that the court of common pleas erred in its "interpretation and application and regulation 53" of the board, does not confer authority upon the board to prosecute an appeal under this section, authorizing the board to prosecute an appeal from an adverse decision of the court of common pleas, on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules and regulations of the agency, where the record does not support such conclusion but shows only a ruling based upon facts: Magavero v. Board of Liquor Control, 82 OLA 25, 163 NE(2d) 72 (App).

93. Where both a party and her counsel knew of the existence of certain evidence more than eight months prior to the hearing of her appeal from the decision of the board of liquor control in the court of common pleas, and failed to request admission of such evidence on the appeal, which under the provisions of RC § 119.12 she had the right to do, the court of common pleas did not abuse its discretion in overruling a motion for a rehearing based on such evidence as being newly discovered: Dinardo v. Board of Liquor Control, 80 OLA 253, 158 NE(2d) 899 (App).

94. Under this section, the court of common pleas, in an appeal from an order of the superintendent of insurance revoking an insurance license, may reverse and vacate such order and restore such license where the order of the superintendent is not in accordance with law in that said order does not recite nor contain a finding of fact upon which said order is based as required by RC § 3905.13: Bretscher v. Robinson, 78 OLA 388, 153 NE(2d) 163 (App).

95. A motion to dismiss an appeal on questions of law by the board of liquor control from the judgment of the court of common pleas finding that the order of the board was supported by reliable, probative and substantial evidence and in accordance with law but modifying the penalty, on the ground that such judgment may not form the basis for an appeal by the board under this section, must be decided by the court of appeals upon the condition of the record as of the date when the motion was filed and when the motion was filed before the assignments of error were due or filed, it was filed prematurely and must be overruled since there is no way of determining from the record whether the questions the assignments of error will seek to raise will relate to the constitutionality, construction or interpretation of statutes and the rules and regulations of the board and thus be appealable by the board or whether they will relate to questions of evidence only: Buckeye Lake Hotel Co. v. Board of Liquor Control, 79 OLA 130, 154 NE(2d) 646 (App).

96. The court of appeals does not have jurisdiction to hear an appeal filed by an administrative agency pursuant to RC § 119.12, where the question presented is limited to a review of the correctness of the judgment of the court of common pleas holding that the order of the administrative agency is not supported by reliable, probative and substantial evidence: Mangold v. Board of Liquor Control, 77 OLA 457, 145 NE(2d) 500 (App).

97. Where an appeal by an administrative agency from an adverse decision of the court of common pleas under authority of RC § 119.12 does not involve the constitutionality, construction or interpretation of a statute and the rules and regulations of the agency, there can be no review of the correctness of the judgment of the court of common pleas that the order of the administrative agency is not supported by reliable, probative and substantial evidence: Katz v. Department of Liquor Control, 76 OLA 129, 145 NE(2d) 553 (App).

98. Where the court of common pleas, on an appeal from an order of the board of liquor control, under authority of this section, finds that such order is supported by reliable, probative and substantive evidence and is in accordance with law, such court has no power under the statute to modify the penalty assessed by the order: Delmonte Cafe, Inc. v. Department of Liquor Control, 74 OLA 459, 141 NE(2d) 889 (App).

99. The department of liquor control may prosecute an appeal from a decision of the court of common pleas: Tuma v. Board of Liquor Control, 73 OLA 397, 137 NE(2d) 788 (App).

100. Since there is no provision in the administrative procedure act providing for the method of certification of records by administrative agencies to reviewing courts as required by this section such certification must be governed by the provisions of the appellate procedure act (RC § 2321.07): Alle-

sandro v. Board of Liquor Control, 72 OLA 530 (App).

101. The court of appeals under RC § 119.12, relating to appeals under the administrative procedure act, may review and determine the correctness of a judgment of the court of common pleas, ordering the reinstatement of a police officer, and decide from the entire record whether the order of the municipal civil service commission, affirming an order of removal of the municipal safety director, is "supported by any reliable, probative and substantial evidence": Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

102. "Civil service commission" as used in this section, includes both state and municipal civil service commission, thus a municipal civil service commission has the right to appeal from an adverse ruling of the court of common pleas involving the removal from duty of a police officer: Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

103. A municipal safety director does not have the legal authority to prosecute an appeal to the court of appeals from a decision of the court of common pleas reversing an order of the municipal civil service commission on a question involving the removal from duty of a police officer, since his interest is not affected, nor is he an aggrieved party: Owens v. Ackerman, 72 OLA 552, 136 NE(2d) 93 (App).

104. In an appeal from the board of liquor control the court of common pleas erred in hearing the appeal as on questions of law rather than de novo: Burger v. Board of Liquor Control, 74 OLA 540, 141 NE(2d) 671 (App).

105. The Ohio state racing commission is an administrative agency, possessing certain quasi-judicial powers, whose orders are not only subject to appeal under RC § 119.12, but the court thereunder may grant a suspension of such order, fix its terms and upon final determination may reverse, vacate or modify the order or make such other ruling as is supported by the evidence and the law and since an adequate remedy at law is provided thereby a writ of prohibition will not issue to restrain regular proceedings of such agency: Green v. Ohio State Racing Comm., 70 OLA 485, 128 NE(2d) 762 (App).

106. An administrative agency appeal from the decision of the court of common pleas to the court of appeals: Fernberg v. Board of Liquor Control, 71 OLA 166, 130 NE(2d) 717 (App).

107. Under RC § 119.12 of the administrative procedure act any party adversely affected by any order of the board of liquor control issued pursuant to an adjudication denying the issuance or renewal of a liquor license may appeal to the court of common pleas of Franklin county, and such court may affirm the order of the agency complained of if it finds, upon consideration of the entire record, that the order is supported by reliable, probative and substantial evidence and is in accordance with law or in the absence of such finding may reverse, vacate or modify the order or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law, and the decision of the court shall be final and conclusive unless reversed, vacated, or modified on appeal: Fernberg v. Board of Liquor Control, 71 OLA 166, 130 NE (2d) 717 (App).

108. The fact that appellant did not receive a copy of the order of the state fire marshal in time to file her notice of appeal, due to the fact that she was out of the state, did not excuse her from filing such notice of appeal within the statutory period: Arndt v. Scott, 72 OLA 189, 134 NE(2d) 82 (App).

109. On appeal the common pleas court may affirm the order of the division of securities if it finds, upon consideration of the entire record, that the order revoking a pawnbroker's license is supported by reliable, probative and substantial evidence, and is in accordance with law: Handler v. Department of Commerce, 42 OO(2d) 198, 233 NE(2d) 147 (CP).

110. Revised Code §§ 4727.03, 4727.16 and 119.12 are in pari materia and must be construed with reference to each other: Handler v. Department of Commerce, 42 OO(2d) 198, 233 NE(2d) 147 (CP).

111. Where the board of liquor control fails to comply with the provisions of this section requiring the board to file the record of the proceedings before it within twenty days after the receipt of notice of appeal, the court is compelled to enter a finding in favor of the party adversely affected: American Legion v. Board of Liquor Control, 21 OO(2d) 320, 187 NE(2d) 195 (CP).

112. Orders of the director of industrial relations relating to "exhausts" and "gas detection" devices are not in accordance with law and are invalid where such rules were not judiciously promulgated with an honest attempt to fulfill the purposes of the law under which it is alleged they are authorized: Goodyear Synthetic Rubber Corp. v. Dept. of Indus. Relations, 76 OLA 146, 122 NE(2d) 503 (CP).

113. The legislature in enacting this section and the related sections, intended that appeals under the administrative procedure act should affect substantial rights of the parties to such appeals, and that the rights conferred by a substantive determination of the court can and must be effectuated by appropriate action on the part of the administrative board to which the order of the court is issued: Socotch v. Board of Liquor Control, 51 OO 106, 114 NE(2d) 114 (CP) [affirmed, 66 OLA 225].

114. The last paragraph of this section confers upon the court of common pleas power not vested in the administrative board, by its language: "The court shall certify its judgment to such agency or take such other action in connection therewith as may be required to give its judgment effect": Socotch v. Board of Liquor Control, 51 OO 106, 114 NE(2d) 114 (CP) [affirmed, 66 OLA 225].

115. A motion in the appellate court for an order granting the right to admit additional evidence other than that shown by the record as certified to the appellate court by the board of liquor control, to meet evidence offered before the board, which evidence, it is alleged, did not concern the original charges and resulted in unfair surprise which appellant was not prepared to meet will be overruled where there is no showing of a demand before the board that appellant be given further opportunity to meet the evidence offered before the board and where a study of the record convinces the court that there is no basis for the admission of evidence claimed to be newly discovered: Chudde v. Board of Liquor Control, 66 OLA 324, 117 NE(2d) 60 (CP).

116. An appeal to the court of common pleas from an order of the board of liquor control will be dismissed, when an action involving the same subject matter, the same parties and seeking the same relief, is pending on appeal in the court of appeals: In re Socotch, 66 OLA 232, 116 NE(2d) 455 (CP).

117. In an appeal under this section from an order of the board of liquor control finding it inadvisable to issue liquor permits for permit premises within five hundred feet of a parcel of real estate having situated thereon a church and school, the appellate court does not determine the advisability of the order

but only whether the order of the board, in the exercise of its discretion, is supported by reliable, probative and substantial evidence and is in accordance with law: Fawcett v. Board of Liquor Control, 67 OLA 53, 118 NE(2d) 697 (CP).

118. In an appeal from the board of liquor control to the court of common pleas the court is confined to the record as certified by the agency: Khoury v. Board of Liquor Control, 74 OLA 498, 141 NE (2d) 792 (CP).

119. The court of common pleas on an appeal from an order of the board of liquor control affirming the action of the department of liquor control in rejecting appellant's application for a renewal of his liquor permit is not required to determine the issue as to advisability of issuing such permit; but only to find whether the order of the board, in the exercise of its discretion, upon consideration of the entire record, is supported by reliable, probative and substantial evidence and is in accordance with law: Khoury v. Board of Liquor Control, 74 OLA 492, 141 NE(2d) 787 (CP).

120. On an appeal seeking a reversal of an order of the board of liquor control affirming the action of the department in rejecting appellant's application for renewal of his liquor permit, appellant will not be heard to object to the competency of evidence admitted by the board that he, through his agent, hired a female of seventeen years to serve intoxicating liquor in an establishment owned by him, on the grounds that she was hired by a corporation and not by appellant personally, where appellant admitted under oath that at the time of the hiring he was president and sole stockholder of the hiring corporation: Khoury v. Board of Liquor Control, 74 OLA 492, 141 NE(2d) 787 (CP).

121. The court of common pleas on an appeal from an order of the board of liquor control revoking appellant's liquor permits for the reason that he sold spirituous liquors not then and there being the holder of a proper permit which authorized such sale, is not called upon, in considering the charge against appellant, to weigh the evidence, but is required to determine first, whether there was reliable, probative and substantial evidence supporting the order of the board, and second, whether or not the board was guilty of an abuse of discretion: Miecznikowski v. State, 72 OLA 422, 135 NE(2d) 641 (CP).

122. Where no record of the hearing before the state board of landscape architect examiners was made and an applicant for a certificate filed his notice of an appeal but no transcript or record of any kind was filed in the court of common pleas as required by the mandatory provisions of this section, the decision of the agency must be reversed upon motion of the appellant: Fahrenbruck v. State Board of Landscape Architect Examiners, 41 OO(2d) 58, 230 NE(2d) 691 (CP).

123. Under this section in an appeal from an order of the liquor control commission, the hearing before the court of common pleas is not a true trial de novo but the issue before the court is whether or not the finding of the commission is supported by reliable, probative and substantial evidence: Liquor Control Comm. v. Bartolas, 39 OO(2d) 343, 10 OMisc 225, 225 NE(2d) 859 (CP).

124. The word "shall" as used in this section in relation to the preparation and certifying of the record by the board of liquor control is mandatory: American Legion v. Board of Liquor Control, 21 OO (2d) 320, 187 NE(2d) 195 (CP).

125. The word "may" as used in this section does no more than preserve the right of appeal and establish convenient venue if the disaffected party shall choose to use that right of appeal, and where such party appeals to the common pleas court of a county other than the county in which the place of business of the licensee is located or the county in which the licensee is a resident, the appeal will be dismissed: Carr v. Department of Insurance, 90 OLA 46, 187 NE(2d) 649 (CP).

126. Under this section, on an appeal to the court from an order of an administrative agency, it is incumbent upon the court, as its statutory duty, to determine whether the order of the agency is supported by reliable, probative and substantial evidence, and is in accordance with law; these specific requirements of the statute are in the conjunctive and the question arises as to whether there is now in the case upon the evidence before the court reliable, probative and substantial evidence to support the agency's order, and if there is then such order would be presumed in accordance with law; and if not such evidence, then not in accordance with law: Ohio Real Estate Comm. v. Cohen, 90 OLA 137, 187 NE(2d) 641 (CP).

127. The words "reliable," "probative" and "substantial" in this section, in that portion relating to an appeal from an order of an administrative agency, are used in their ordinary, dictionary meaning and in a way that can be understood and applied by a lay commission, as well as by a court of law, and viewed in the same aspect by both; they are not synonymous, but each has a separate and important meaning and requires evidence of that precise character: Ohio Real Estate Comm. v. Cohen, 90 OLA 137, 187 NE(2d) 641 (CP).

128. The evidence required by this section to support an order of an administrative agency on an appeal therefrom to the courts must be: (1) Reliable, that is, dependable, with reasonable assurance of its probability, as not only truthful but also true; (2) Probative relates to the evidentiary value of the testimony and other evidence in the analytical sense, having depth and being more than merely superficial or speculative; (3) Substantial would mean that the evidence has body or substance of sufficient degree to be of some weight, as well as quality, that gives it standing and credence, as well as dependable and trustworthy: Ohio Real Estate Comm. v. Cohen, 90 OLA 137, 187 NE(2d) 641 (CP).

129. The existence of some reliable, probative, and substantial evidence (although disputed) adduced in support of a finding of an administrative agency is sufficient to support such finding: Lakis v. Department of Liquor Control, 30 OO(2d) 547, 1 OMisc 109, 205 NE(2d) 613 (CP).

## [§ 119.12.1] § 119.121 Expiration of license involved in an appeal; procedure.

The expiration of the license involved in an appeal filed pursuant to section 119.12 of the Revised Code shall not affect the appeal. If during an appeal the existing license shall expire the court in its order in favor of an aggrieved person shall order the agency to renew the license upon payment of the fee prescribed by law for the license.

HISTORY: 125 v 241. Eff 10-2-53.

Research Aids
O-Jur2d
Admin. Law § 220
Am-Jur2d
Adm. Law § 208

## § 119.13 Representation of parties.

At any hearing conducted under sections 119.01 to 119.13, inclusive, of the Revised Code, a party or an affected person may be represented by an attorney or by such other representative as is lawfully permitted to practice before the agency in question, provided that only attorneys at law may represent a party or an affected person at a hearing at which a record is taken which may be the basis of an appeal to court.

At any hearing conducted under sections 119.01 to 119.13, inclusive, of the Revised Code, a witness, if he so requests, shall be permitted to be accompanied, represented, and advised by an attorney, whose participation in the hearing shall be limited to the protection of the rights of the witness, and who may not examine or cross-examine witnesses, and the witness shall be advised of his right to counsel before he is interrogated.

HISTORY: GC § 154-74; 121 v 578 (588), § 1; 129 v 1052 (1053), § 1. Eff 8-11-61.

Research Aids
O-Jur2d
Admin. Law § 66
Am-Jur2d
Adm. Law § 273

Law Review

Licensing, and administrative procedure acts. Homer W. Giles. 6 ClevMLRev 301.

### CASE NOTES AND OAG

1. Where the record certified to the Common Pleas Court from the Liquor Control Commission fails to indicate that the witnesses at the Commission hearing were advised of their right to counsel before interrogation, as required by RC § 119.13, the permit holders have no standing to complain about such failure to advise the witnesses: Kelly v. Liquor Control Comm., 40 OO(2d) 490, 230 NE(2d) 693 (CP).

## 4.0 Attorney General's Statement

# ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.), that in my opinion the laws of the State of Ohio provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Ohio Environmental Protection Agency. The specific authorities provided, which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this Statement, include the following:

1. Authority to Issue Permits.

a. Existing and new point sources.

State law provides authority to issue permits for the discharge of pollutants by existing and new point sources to the same extent as required under the permit program administered by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. (hereinafter "the FWPCA" or "the Act"). [Federal Authority: FWPCA Sections 301(a), 402(a)(1), 402(b)(1)(A); 40 C.F.R. Section 124.10.]

State Statutory or Regulatory Authority:

Ohio Revised Code Section 6111.03(J) (hereinafter cited as O.R.C.)
O.R.C. Section 6111.03(P)

Regulation EP-31-02

Remarks of the Attorney General:

Pursuant to Section 6111.03(J), the Director of the Ohio Environmental Protection (hereinafter referred to as OEPA) may:

> (J) Issue, revoke, modify, or deny 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 part thereof in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251 and mandatory regulations adopted thereunder. . . .

O.R.C. Section 6111.03(P) provides that Chapter 6111. authorizes participation in the NPDES permit program and that Chapter 6111. is to be administered consistent with the FWPCA. This section reaffirms the intention of the Ohio General Assembly that state law provide authority to issue permits to the same extent required by the U.S. Environmental Protection Agency (hereinafter referred to as the EPA) pursuant to Section 402 of the FWPCA.

In addition, O.R.C. Section 6111.04 specifies that:

> No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other waste in a location where they cause pollution of any waters of the state, and any such action is hereby declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof . . . .
>
> . . . .
>
> No person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state shall continue or cause the continuance of such discharge, without first obtaining a permit therefore issued by the director.

O.R.C. Section 6111.01 defines "pollution", "sewage", "industrial waste", and "other wastes". "Other wastes" is defined in Section 6111.01(D) to include:

> ... any other "pollutants" or "toxic pollutants" as defined in the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1362, that are not sewage or industrial waste.

In addition, the definition of "waters of the state" in O.R.C. Section 6111.01(H) includes all "navigable waters" as that term was interpreted by the EPA on page 4 of the General Instructions to Attorneys General preparing Appendix A Statements.

OEPA Regulation EP-31-02 requires that any person who discharges or allows a discharge of pollutants into the waters of the state must have an Ohio NPDES permit. Certain discharges are exempted by O.R.C. Section 6111.04, but only where a permit is not required by a regulation of the EPA. The sections quoted above authorize a permit program which, in my opinion, is at least as comprehensive as the permit system administered by the EPA pursuant to the FWPCA for new and existing point sources.

b. Disposal into wells.

State law provides authority to issue permits to control the disposal of pollutants into wells. [Federal Authority: FWPCA §402(b)(1)(D); 40 C.F.R. §124.80.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)
O.R.C. Section 6111.04

Remarks of the Attorney General:

The Director of the OEPA is given the power to issue a permit for disposal of pollutants into wells by O.R.C. Section 6111.03(J) which provides that the Director may:

> (J) Issue, revoke, modify, or deny 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 part thereof in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251 and mandatory regulations adopted thereunder . . .

"Waters of the state", as used in this section, is defined in O.R.C. Section 6111.01(H) to include wells. The intent of the Ohio legislature that pollutants disposed into wells be included in the permit program as required by the FWPCA is shown by O.R.C. Section 6111.04(B) which eliminates the requirements of a permit for:

> (B) Water, gas, or other material injected into a well to facilitate the production of oil or gas or for disposal purposes, or water derived in association with oil or gas production and disposed of in a well, in compliance with the permits issued under Chapter 1509. of the Revised Code. This division 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. . . . (emphasis added.)

The EPA requires that any state or interstate agency participating in the NPDES program have procedures to control the disposal of pollutants into wells. See 40 C.F.R. §124.80. These EPA regulations prevent the exemption from Ohio permit requirements of disposal of pollutants into wells.

O.R.C. Section 6111.04 requires a permit for both existing and new sources of well disposal. The pertinent sections state:

> No person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state ... except in such cases where the director of environmental protection has issued a valid and unexpired permit ...
>
> . . . .
>
> No person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state shall continue or cause the continuance of such discharge without first obtaining a permit . . . .

"Waters of the state", as used in this section, is defined in O.R.C. Section 6111.01(H) to include wells.

40 C.F.R. §124.80(c) requires that any permit issued for the disposal of pollutants into wells shall be issued in accordance with procedures and requirements for NPDES permits. Among the requirements for the issuance of a permit for the disposal of pollutants into wells is that of notice and public participation in the permit program. Both O.R.C. Section 6111.03(J) and O.R.C. Section 6111.04(B) require the State of Ohio to issue permits designed to comply with the regulations promulgated by the EPA pursuant to the FWPCA. Therefore, the State of Ohio must conform to the public participation procedures set forth in subpart (D) of 40 C.F.R. Part 124. The procedures which assure public participation in applications for a permit for disposal into wells are detailed under the Attorney General's remarks in authorities 8 and 9 of this certification.

2. Authority to Apply Federal Standards and Requirements

a. Effluent standards and limitations and water quality standards.

State law provides authority to apply in terms and conditions of issued permits applicable Federal effluent standards and limitations and water quality standards promulgated or effective under the FWPCA, including:

(1) Effluent limitations pursuant to Section 301;

(2) Water quality related effluent limitations pursuant to Section 302;

(3) National standards of performance pursuant to Section 306;

(4) Toxic and pretreatment effluent standards pursuant to Section 307; and

(5) Ocean discharge criteria pursuant to Section 403 [Federal Authority: FWPCA §§ 301(b), 301(e), 302, 303, 304(d), 304(f), 306, 307, 402(b)(1)(A), 403, 208(e), and 510; 40 C.F.R. §124.42.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)
O.R.C. Section 6111.042

Regulation EP-31-04(B)
Regulation EP-31-01(D)

Remarks of the Attorney General:

1. Effluent limitations pursuant to Section 301.

The OEPA has the authority to apply effluent standards which specify the amount of constituents permitted in individual wastewater discharges pursuant to O.R.C. Section 6111.03(J). That section states, inter alia:

> The director shall specify in permits for the discharge of sewage, industrial waste, and other waste, the net volume net weight, duration, frequency and, where necessary, concentration of such sewage, industrial waste, and other wastes which may be discharged into the waters of the State.

"Net" is the substantial equivalent to "total", as used in 40 C.F.R. Part 124. O.R.C. Section 6111.03(P) authorizes the Ohio program to be administered consistent with the Federal administration of the FWPCA and this interpretation is consistent with the Federal interpretation.

The Director may apply Federal effluent standards and limitations without further administrative rule-making at the State level. In accordance with O.R.C. Section 6111.03(J), the Director of the OEPA may grant a permit which is:

> . . . in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," ... and mandatory regulations adopted thereunder, and set terms and conditions of permits, including schedules of compliance, where necessary. The terms and conditions 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 such act, and any other mandatory requirements of such act that are imposed by regulation of the administrator of the United States Environmental Protection Agency . . . .

The national effluent limitations to which O.R.C. Section 6111.03(J) refers include those set by the Administrator pursuant to Section 301 and 304 of the FWPCA. The requirement that Ohio permits achieve full compliance with national effluent limitations assures that the OEPA may, as a condition for the issuance of permits, require that there shall be achieved effluent limitations for point sources:

(i) by July 1, 1977, which shall require the application of the best practicable control technology currently available and in the case of the discharge into a publicly owned treatment works, which shall require compliance with pretreatment requirements;

(ii) by July 1, 1983, which shall require the application of the best available technology economically achievable.

Publicly owned treatment works must comply:

(i) by July 1, 1977, with effluent limitations based upon secondary treatment;

(ii) by July 1, 1983, with effluent limitations based upon the study of alternative waste management techniques and the application of the best practicable waste treatment technology and information on alternative waste management techniques and systems published pursuant to Section 304(d)(2) of the FWPCA.

The Director, pursuant to O.R.C. Section 6111.042, may adopt and enforce regulations:

> ... setting forth and requiring compliance with national effluent limitations, national standards of performance for new sources, and national toxic and pretreatment effluent standards, as necessary in order to insure compliance with the "Federal Water Pollution Control Act Amendments of 1972," .... No person shall violate any such regulation, except in compliance with the terms and conditions of a permit issued under section 6111.03 of the Revised Code.

OEPA Regulation EP-31-04(B) permits the Director to determine levels of pollutants that may be discharged without violating applicable water quality standards or applicable effluent limitations.

2. Water quality related effluent limitations pursuant to Section 302

Pursuant to O.R.C. Section 6111.03(J), the Director may without further administrative rule-making at the State level, impose:

> ... as conditiions of each permit, water quality related effluent limitations in accordance with sections 301 and 302 of the "Federal Water Pollution Control Act Amendments of 1972," ....

Section 301 of the FWPCA mandates compliance with any more stringent effluent limitations required by Federal law or regulation or by State law or regulation. The authority granted to meet the Section 301 limitations also enables the OEPA to comply with Section 304(b) and Section 307 of the FWPCA, since a provision that the discharger comply with Section 304(b) and Section 307 is included in Section 301 of the FWPCA.

State water quality standards, adopted pursuant to O.R.C. Section 6111.041, must be adopted in accordance with Section 303 of the FWPCA. Therefore, O.R.C. Section 6111.03(J), which requires water quality related effluent limitations that achieve water quality standards, would impose those requirements necessary to implement the total maximum daily loads established pursuant to Section 303 of the FWPCA. Regulation EP-31-04(B) requires that the water quality standards adopted by the OEPA are not to be violated by the levels of pollutants that may be discharged in accordance with the determination of the Director.

3. National standards of performance pursuant to Section 306

As defined by Section 306(a)(1) of the FWPCA:

> (1) The term 'standard of performance' means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

Pursuant to Section 306(b)(1)(B) of the FWPCA the Administrator is to propose and publish regulations establishing Federal standards of performance for new sources within the categories designated. Section 306(e) then requires that no owner or operator of a new source may operate that source in violation of any standard of performance which may be applicable to that source.

The Ohio legislature has ensured that the Federal scheme be followed by requiring that permits contain terms and conditions designed:

> ... to achieve and maintain full compliance with the national effluent limitations, national standards of performance for new sources ... and any other mandatory requirements of such act that are imposed by regulation of the administrator of the United States Environmental Protection Agency. O.R.C. Section 6111.03(J). (emphasis added).

Compliance with national standards of performance for new sources may be had without any further administrative rule-making at the State level.

The applicable effluent limitations to be required by Regulation EP-31-04(B) include, by the definition in Regulation EP-31-01(D), standards of performance.

4. Toxic and pretreatment effluent standards pursuant to Section 307.

Section 307(a) of the FWPCA requires that the Administrator of the U.S. Environmental Protection Agency establish a list of toxic substances and promulgate regulations to establish effluent standards or prohibitions regarding these toxic substances. Section 307(b) of the FWPCA specifies that the Administrator is to promulgate regulations establishing pretreatment standards for pollutants which will enter the publicly owned treatment works and which are not susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.

The standards and effluent limitations so promulgated would be incorporated as permit terms and conditions pursuant to O.R.C. Section 6111.03(J), quoted in subsection 3 of this authority. In addition, such toxic effluent standards are applied in Ohio NPDES permits by Regulation EP-31-04(B).

5. Ocean discharge criteria pursuant to Section 403.

This federal requirement does not apply to Ohio waters.

b. Effluent limitations requirements of Sections 301 and 307.

In the absence of formally promulgated effluent standards and limitations under Sections 301(b) and 307 of the FWPCA, State law provides authority to apply in terms and conditions of issued permits effluent limitations to achieve the purposes of these sections of the FWPCA. Such limitations may be based upon an assessment of technology and processes as required under the FWPCA with respect to individual point sources, and include authority to apply:

(1) To existing point sources, other than publicly-owned treatment works, effluent limitations based on application of the best practicable control technology currently available or the best available technology economically achievable;

(2) To publicly owned treatment works, effluent limitations based upon the application of secondary treatment or the best practicable waste treatment technology; and

(3) To any point source, as appropriate, effluent standards or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly owned treatment works. [Federal Authority: FWPCA §§ 301, 304(d), 307, 402(a)(1), 402(b)(1)(A); 40 C.F.R. §124.42(a)(6).]

State Statutory and Regulatory Authority

O.R.C. Section 6111.041
O.R.C. Section 6111.03(J)

Regulation EP-31-04(B)(1)(b)

Remarks of the Attorney General:

The State is required to possess the power to fully effectuate the purposes of the FWPCA in instances where applicable effluent standards or limitations have not been promulgated by the U.S. EPA. Pursuant to O.R.C. Section 6111.041 the Director of the OEPA can adopt standards of water quality to protect the waters of the State of Ohio. To achieve and maintain the standards of water quality, the Director shall impose, pursuant to O.R.C. Section 6111.03(J):

> ... where necessary and appropriate, as conditions of each permit, water quality related effluent limitations in accordance with sections 301 and 302 of the "Federal Water Pollution Control Act Amendments of 1972," . . .

The State of Ohio does, therefore, possess the statutory authority to apply effluent limitations which are in accordance with Section 301 of the FWPCA, even where the U.S. EPA has not promulgated national effluent limitations.

The State of Ohio may also apply effluent standards and limitations pursuant to Sections 302, 306 and 307 of the FWPCA since the Director may issue permits which are, pursuant to O.R.C. Section 6111.03(J):

> ... in compliance with all requirements of the "Federal Water Pollution Control Act Amendments of 1972," ... and mandatory regulations adopted thereunder . . . .

The EPA has adopted regulation 40 C.F.R. §124.42(a)(6) which requires the State to insure compliance:

> Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to Sections 301, 302, 306 and 307, such conditions as the Director determines are necessary to carry out the provisions of the Act.

This mandatory requirement, which would allow the Director to issue permits which meet the requirements of Sections 302, 306, and 307 of the FWPCA prior to promulgation of federal regulations, has been formalized into OEPA Regulation EP-31-04(B)(1)(b).

c. Schedules of compliance.

State law provides authority to set and revise schedules of compliance in issued permits which require the achievement of applicable effluent standards and limitations or, in the absence of a schedule of compliance contained therein, within the shortest reasonable time consistent with the requirements of the FWPCA. This includes authority to set interim compliance dates in permits which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality. [Federal Authority: FWPCA §§ 301(b), 303(e), 304(b), 306, 307, 402(b)(1)(A), 502(11), and 502(17); 40 C.F.R. §§ 124.44 and 124.72.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)
O.R.C. Section 6111.01(K)

Regulation EP-31-04(A)(3)

Remarks of the Attorney General:

The State possesses the authority to require compliance with applicable FWPCA deadlines since the State is authorized to set effluent limitations and standards which will comply with the deadlines set in the FWPCA.

O.R.C. Section 6111.03(J) allows the Director of the OEPA to set terms and conditions of permits, "including schedules of compliance, where necessary." "Schedule of compliance" is defined in O.R.C. Section 6111.01(K) to be a:

> [S]chedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with standards and regulations 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.

Regulation EP-31-04(A)(3) sets forth the authority of the Director to set a satisfactory schedule of compliance as a condition of the permit in those cases determined by the Director to necessitate such measures.

The State of Ohio possesses the authority to set and revise schedules of compliances in those instances where no federal schedule of compliance has been promulgated. O.R.C. Section 6111.03(J) provides that the Ohio program shall comply with the mandatory regulations set forth by the EPA. The EPA has promulgated in 40 C.F.R. §124.44(a)(2) a requirement that:

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

This regulation which would allow the Ohio OEPA to set a schedule of compliance to meet the statutory requirements of the FWPCA.

3. Authority to Deny Permits in Certain Cases.

State law provides authority to insure that no permit will be issued in any case where:

a. The permit would authorize the discharge of a radiological, chemical, or biological warfare agent or high-level radioactive waste;

b. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States;

c. The permit is objected to in writing by the Administrator of EPA, or his designee, pursuant to any right to object provided to the Administrator under Section 402(d) of the FWPCA; or

d. The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 308(b) of the FWPCA. [Federal Authority: FWPCA §§ 301(f), 402(b)(6), 402(d)(2), and 208(e); 40 C.F.R. §§124.41 and 124.46.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-31-04(A)(2)

Remarks of the Attorney General:

O.R.C. Section 6111.03(J) authorizes the Director of the OEPA to deny an application for a permit or renewal of a permit if:

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

(2) The director determines that the proposed discharge or source would conflict with an area wide waste treatment management plan adopted in accordance with Section 208 of the "Federal Water Pollution Control Act Amendments of 1972," . . . .

(3) The administrator of the United States environmental protection agency objects in writing to the issuance or renewal of a permit in accordance with Section 402(d) of the "Federal Water Pollution Control Act Amendments of 1972," 86 Sta. 880, 33 U.S.C.A. 1342(d); or

(4) 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.

The requirement that permits be denied in this situation is reflected in Regulation EP-31-04(A)(2) of the OEPA regulations.

4. Authority to Limit Duration of Permits.

State law provides authority to limit the duration of permits to a fixed term not exceeding five years.
[Federal Authority: FWPCA §402(b)(1)(B); 40 C.F.R. §124.51.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-31-09

Remarks of the Attorney General:

O.R.C. Section 6111.03(J) states that "[a] permit may be issued for a period not to exceed five years . . . ." This requirement is echoed in Regulation EP-31-09. A permit may be renewed upon application and upon a finding by the Director that "the permit holder is making satisfactory progress towards the achievement of all applicable standards and has complied with the terms and conditions of the existing permit."

5. Authority to Apply Recording, Reporting, Monitoring, Entry, Inspection and Sampling Requirements.

State law provides authority to:

a. Require any permit holder or industrial user of a publicly owned treatment works to:

(1) Establish and maintain specified records;

(2) Make reports;

(3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);

(4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as may be prescribed); and

(5) Provide such other information as may reasonably be provided.

b. Enable an authorized representative of the State, upon presentation of such credentials as are necessary, to:

(1) Have a right of entry to, upon, or through any premises of a permittee or of an industrial user of a publicly-owned treatment works in which premises an effluent source is located or in which any records are required to be maintained;

(2) At reasonable times have access to and copy any records required to be maintained;

(3) Inspect any monitoring equipment or method which is required; and

(4) Have access to and sample any discharge of pollutants to State waters or to publicly owned treatment works resulting from the activities or operation of the permittee or industrial user.
[Federal Authority: FWPCA §§ 304(h)(2)(A) and (B),

308(a), 402(b)(2), and 402(b)(9); 40 C.F.R. §§ 124.45(c), 124.61-63, and 124.73(d).]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(G)
O.R.C. Section 6111.03(J)
O.R.C. Section 6111.03(O)
O.R.C. Section 6111.05

Regulation EP-31-05

Remarks of the Attorney General:

Chapter 6111. of the Ohio Revised Code provides adequate authority to assure that recording, reporting, monitoring, entry, inspection, and sampling provisions, as required by the FWPCA, be applied by the State to holders of NPDES permits.

O.R.C. Section 6111.03 permits the Director of the Ohio EPA to:

> (G) Adopt, modify, and repeal regulations in accordance with Chapter 119. of the Revised Code governing the procedure for hearings, filing of reports, the issuance of permits, the issuance of industrial water pollution control certificates and all other, matters relating to procedure; (emphasis added.)
>
> . . . .
>
> (J) . . . The director shall specify in such permits that the permit is conditioned upon the right of his authorized representatives to enter upon the premises of a person to whom a permit has been issued for the purpose of determining compliance with sections 6111.01 to 6111.08 of the Revised Code, rules adopted thereunder, or the terms and conditions of a permit, order, or other determination . . . . The director may

condition permits upon the installation of discharge or water quality monitoring equipment or devices and the filing of such periodic reports on the amounts and contents of discharges and the quality of receiving waters as the director prescribes.

. . . .

(O) Issue, modify, and revoke orders requiring any "indistrial user" of any "publicly owned treatment works" as defined in sections 212(2) and 502(18) of the "Federal Water Pollution Control Act Amendments of 1972," . . . to 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 such methods, at such locations, at such intervals, and in such manner as the director determines, and provide such other information as is necessary to ascertain whether or not there is compliance with toxic and pretreatment effluent standards.

O.R.C. Section 6111.05 further provides, inter alia, that:

The director or his duly authorized representative may enter at reasonable times upon any private or public property to inspect and investigate conditions relating to pollution of any waters of the state, inspect any monitoring equipment, and sample any discharges . . . .

Any authorized representative of the director may at reasonable times examine any records or memorandums pertaining to the operation of disposal systems or discharges by "industrial users" into "publicly owned treatment works" as defined in the "Federal Water Pollution Control Act Amendments of 1972," . . . . The director may require the maintenance of records relating to the operation of such disposal systems or discharges. The director may make copies of such records.

O.R.C. Section 6111.03(G) authorizes the Director of the Ohio

EPA to promulgate regulations which provide for the establishment and maintenance of records, reporting, and providing such other information as may be required. The Director of the Ohio EPA may order industrial users of publicly owned treatment works to provide the information required by authority 5.(a) of the General Instructions pursuant to O.R.C. Section 6111.03(O). Industrial users of publicly owned treatment works are subject to the maintenance of records and allowing the copying of such records upon the action of the Director pursuant to O.R.C. Section 6111.05. The same section provides authorization required by authority 5. (1), (3) and (4) of permit holders or industrial users of publicly owned treatment works upon action of the Director or his authorized representatives. Pursuant to O.R.C. Section 6111.03(J), permits may be specifically conditioned upon (1) the establishment and maintenance of records, (2) the installation and use of monitoring equipment, and (3) the right of entry into the premises of a permittee or an industrial user of publicly owned treatment works.

Regulation EP-31-05 requires monthly and annual reports by permit holders and reports of new introductions of pollutants by publicly owned treatment works. The Director may require monitoring and annual submission of reports of monitoring results. The Director or his authorized representative may, pursuant to Regulation EP-31-05, enter the permitee's premises to copy required records, inspect monitoring equipment, or sample the discharge.

6. Authority to Require Notice of Introductions of Pollutants into Publicly Owned Treatment Works.

State law provides authority to require in permits issued to publicly owned treatment works conditions requiring the permittee to give notice to the State permitting agency of:

a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the FWPCA if such source were discharging pollutants directly to State waters;

b. New introductions of pollutants into such works from a source which would be a point source subject to Section 301 if it were discharging such pollutants directly to State waters; or

c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit.
[Federal Authority: FWPCA §402(b)(8); 40 C.F.R. 124.45(d).]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-31-05(A)(10)

Remarks of the Attorney General.

O.R.C. Section 6111.03(J) provides adequate authority for the State of Ohio to comply with the requirements of Section 402(b)(8) of the FWPCA in that:

> The director shall condition each permit for a government-owned disposal system, or any other "publicly owned treatment works" as defined in the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 844, 33 U.S.C.A. 1292, upon the reporting

of new introductions of industrial waste or other wastes and substantial changes in volume or character thereof being introduced into such systems or works from "industrial users" as defined in section 502 of such act, as necessary to comply with section 402(b)(8) of such act.

This requirement is reflected in Regulation EP-31-05(A)(10). The notice of new introduction of pollutants is to include information on the quality and quantity of such pollutants.

A municipal permittee will have adequate authority to carry out the reporting duties imposed by Section 402(b)(8) of the FWPCA with the aid of the State pursuant to the authority given to the OEPA in O.R.C. Section 6111.03(O) and O.R.C. Section 6111.05, as set forth under authority 5 above.

7. Authority to Insure Compliance by Industrial Users with Sections 204(b), 307, and 308.

State law provides authority to insure that any industrial user of a publicly owned treatment works will comply with FWPCA requirements concerning:

a. User charges and recovery of construction costs pursuant to Section 204(b);

b. Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307; and

c. Inspection, monitoring and entry pursuant to Section 308.

[Federal Authority: FWPCA §402(b)(9); 40 C.F.R. §124.45(e).]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(L)
O.R.C. Section 6111.03(J)
O.R.C. Section 6111.07
O.R.C. Section 6111.09
O.R.C. Section 6111.99
O.R.C. Section 6111.03(O)

Remarks of the Attorney General:

The Director of the Ohio EPA is given the specific power to enforce Sections 204(b), 307, and 308 of the FWPCA by O.R.C. Section 6111.03(L). This section allows the Director of the Ohio EPA to:

> (L) Institute or cause to be instituted in any court of competent jurisdiction, proceedings to compel compliance with sections 6111.01 to 6111.08 of the Revised Code, with the orders of the director issued under such sections, or to insure compliance with Sections 204(b), 307 and 308 of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 835, 33 U.S.C.A. 1284(b), 1317 and 1318;

Industrial users of publicly owned treatment works must also comply with these sections of the FWPCA, since O.R.C. Section 6111.03(J) is included as a section for which the Director may compel compliance. O.R.C. Section 6111.03(J) enables the Ohio EPA to comply with the FWPCA and mandatory regulations promulgated thereunder, and compliance by industrial users with Section 204(b), Section 307, and Section 308 is included in 40 C.F.R. §124.45(e).

Authority for the State to monitor discharges by industrial users into publicly owned treatment works is set forth in O.R.C. Section 6111.03(O) and notice of the introduction of pollutants into publicly owned treatment works is required by O.R.C. Section 6111.03(J).

A person who violates or fails to perform a duty imposed by O.R.C. Section 6111.03(J) or O.R.C. Section 6111.03(L) is subject to civil penalties pursuant to O.R.C. Section 6111.09 and criminal penalties pursuant to O.R.C. Section 6111.99. These sections in relevant parts, together with the prohibitive section, state:

Section 6111.07:

> (A) No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code, or violate any order, regulation, or term or condition of a permit issued by the director of environmental protection pursuant to such sections . . . .

Section 6111.09:

> 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 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code. Any action under this section is a civil action . . . .

Section 6111.99:

(A) Whoever violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars or imprisoned not more than one year, or both.

8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings.

State law provides authority to comply with requirements of the FWPCA and EPA Guidelines for "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System", 40 C.F.R. Part 124 (hereinafter "the Guidelines") to:

a. Notify the public, affected States and appropriate governmental agencies of proposed actions concerning the issuance of permits;

b. Transmit such documents and data to and from the U.S. Environmental Protection Agency and to other appropriate governmental agencies as may be necessary; and

c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.

[Federal Authority: Generally: FWPCA §§ 101(e) and 304(h)(2)(B).]

Function 8(a): FWPCA §§ 402(b)(3) (public notice), 402(b)(5) (notice to affected States), 402(b)(6) (notice to Army Corps of Engineers); 40 C.F.R. §§ 124.31 (tentative permit determinations), 124.32 (public notice), 124.33 (fact sheets) and 124.34 (notice to government agencies).

Function 8(b): FWPCA §§ 402(b)(4) (notices and permit applications to EPA), 402(b)(6) (notices and fact sheets to Army Corps of Engineers); 40 C.F.R. §§ 124.22 (receipt and use of Federal data), 124.23 (transmission of data to EPA), 124.34 (notice to other government agencies), 124.46 (transmission of proposed permits to EPA), 124.47 (transmission of issued permits to EPA).

Function 8(c): FWPCA §402(b)(3) (opportunity for public hearing); 40 C.F.R. §§ 124.36 (public hearings), 124.37 (notice of public hearings.)

State Statutory and Regulatory Authority

O.R.C. Section 6111.03(P)

Regulation EP-40-05(A)
Regulation EP-40-07
Regulation EP-40-08
Regulation EP-40-06
Regulation EP-40-10(B)

Regulation EP-40-09

Regulation EP-40-12(A), (B)
Regulation EP-40-08(B)
Regulation EP-40-07

Remarks of the Attorney General:

The State of Ohio has the authority to promulgate regulations which comply with the requirements of the FWPCA and EPA Guidelines for public participation in the NPDES permit program. O.R.C. Section 6111.03(P), authorizes the Director of the Ohio EPA to exercise all incidental power necessary to carry out the purposes of these sections by providing:

> Sections 6111.01 to 6111.09 and 6111.99 of the Revised Code authorize the state to participate in the National Pollutant Discharge Elimination System in accordance with the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251. Such sections shall be administered, consistent with the laws of this state and federal law, in the same manner that the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 816, 33 U.S.C.A. 1251, are required to be administered.

That authority has been utilized to promulgate Chapter EP-40 of the Ohio EPA Regulations for the purpose of complying with public participation requirements.

The proposed action of the Director and a draft NPDES permit, as required prior to public notice of proposed issuance or denial by 40 C.F.R. §124.31, are provided in OEPA regulation EP-40-05(A) which states:

> (A) . . . in all actions of the Agency, the Director shall prepare and give notice to the parties of a proposed action without an adjudication hearing. The proposed action shall be in the same form as, and include all elements of, a final action and where issuance of permits is proposed, shall include a proposed permit . . . . (emphasis added.)

The proposed permit would, of necessity, incorporate as conditions of the permit proposed effluent limitations, proposed schedules of compliance, and proposed special conditions pursuant to the authority granted in O.R.C. Section 6111.03(J). (See authority 2 above.)

The public notice required of every complete application for an NPDES permit, as set forth in 40 C.F.R. §124.32, is provided in Regulations EP-40-07(A) and EP-40-08(A). These regulations assure that notice is circulated in the geographical area of the discharge and among those people who have requested notice or who are on a mailing list to receive copies of notices. The public notice allows a period of 30 days for the submission of written views by interested persons on the proposed action and provides pertinent information concerning the Agency and the proposed action.

In accord with all the requirements of 40 C.F.R. §124.33, Regulation EP-40-06(A) requires that the Agency prepare a fact sheet for those discharges which have a total volume of more than 500,000 gallons on any day. The fact sheets include:

(1) a sketch or detailed description of the location of the discharge described in the application;

(2) a quantitative description of the discharge described in the application;

(3) the proposed action of the director including the terms, specifications, conditions, and limitations of a proposed permit;

(4) a description of the uses for which the receiving waters have been classified, if any, and identification of applicable water quality and effluent standards;

(5) the description of the procedures for the formulation of a final determination; and

(6) instructions to persons desiring to be on the mailing list.

Regulation EP-40-06(B) requires the OEPA to maintain a mailing list of persons who request fact sheets for specified applications and the fact sheet is mailed on or before the date of publication to those on the mailing list in accordance with Regulation EP-40-07(A)(3).

The notice to other government agencies, required by 40 C.F.R. §124.34, is provided by Regulation EP-40-07(A)(4), EP-40-09, and EP-40-10(B). Pursuant to Regulation EP-40-07(A)(4), notice of a proposed action is mailed to any state, interstate, federal or local governmental agency having jurisdiction over waters which may be affected by the Agency's action. Regulation EP-40-09(B) requires that such notice is also mailed to:

(1) any agency responsible for an areawide waste treatment management plan pursuant to Section 208(b) of the FWPCA;

(2) any agency responsible for preparation of a continuous planning process under Section 303(e) of the FWPCA; and

(3) public health agencies.

Fact sheets for major discharges are also transmitted to the appropriate District Engineer of the Army Corps of Engineers in accordance with Regulation EP-40-10(B).

The public notice which must be sent to these various entities shall include, pursuant to Regulation EP-40-09(A):

(1) the information required for public notice and may include a copy of such public notice;

(2) a statement that such state or agency may submit written recommendations to the Director and to the Regional Administrator. Such recommendation will be incorporated into the final action or a written explanation will be given; and

(3) a copy of the fact sheet and an offer to supply a copy of the permit application, proposed permit, and ancillary papers upon request.

In administering the NPDES program pursuant to authorization by the EPA, the OEPA will be bound by conditions of the agreement negotiated as a condition precedent to such authorization. Accordingly, data will be forwarded to comply with the authority required by 8(a) and 8(b). However, the OEPA has promulgated regulations which cover the functions of 8(a).

Regulation EP-40-10(A)(1) provides for the transmission to the Regional Administrator of proposed NPDES permits as required by 40 C.F.R. §124.46 and function 8.b. Regulation EP-40-10(A)(2) provides for the transmission to the Regional Administrator of a final issuance, modification, or renewal of a permit as required by 40 C.F.R. §124.47 and function 8.b.

The public hearings required by 40 C.F.R. §124.36 are provided for in Regulation EP-40-12. This regulation permits any person to request a public meeting within thirty days of notice of the Director's proposed action to issue or renew a permit. If the Director determines that there is a significant public interest in a proposed action he shall hold a public meeting. Public notice of a public meeting is given in EP-40-07(A) as required in 40 C.F.R. §124.37(a). The contents of the public notice pursuant to Regulation EP-40-08(B) provide the required information about the agency holding the hearing, the applicant whose application will be considered, and the specifics regarding the meeting and the purpose of the meeting. These Federal requirements are set forth in 40 C.F.R. §124.37(b).

9. Authority to Provide Public Access to Information.

State law provides authority to make information available to the public, consistent with the requirements of the FWPCA and the Guidelines, including the following:

a. Except insofar as trade secrets would be disclosed, the following information is available to the public for inspection and copying:

(1) Any NPDES permit, permit application, or form;

(2) Any public comments, testimony or other documentation concerning a permit application; and

(3) Any information obtained pursuant to any monitoring, recording, reporting or sampling requirements or as a result of sampling or other investigatory activities of the State.

b. The State may hold confidential any information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. [Federal Authority: FWPCA §§ 304(h)(2)(B), 308(b), 402(b)(2) and 402(j); 40 C.F.R. §124.35.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.05

Regulation EP-40-07
Regulation EP-40-08

Remarks of the Attorney General:

Authority exists to require that information be made available to the public, consistent with requirements of the FWPCA and 40 C.F.R. §124.35. O.R.C. Section 6111.05 provides for the protection of confidential information, excluding effluent data, which is shown by any person to be entitled to protection as trade secrets. O.R.C. Section 6111.05 states, inter alia:

> . . . Any records, reports, or information obtained under Chapter 6111. of the Revised Code shall be available for public inspection, except that:
>
> (A) Upon a showing statisfactory to the director of environmental protection by any person that such 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 such person, the director shall consider such 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) Such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the state, another state, or of the United States, when necessary to sustain an action brought pursuant to Chapter 6111. of the Revised Code or during an adjudication hearing, or when otherwise necessary to fulfill any requirement of the "Federal Water Pollution Control Act Amendments of 1972," 85 Stat. 816, 33 U.S.C.A. 1251.

This section allows the publication of commercial or financial information which, although confidential, does not constitute a trade secret. This interpretation is consistent with the administration of the FWPCA.

The procedures for review by the Regional Administrator of information which may be entitled to protection as trade secrets in accordance with 40 C.F.R. 124.35(b) are provided in the Memorandum of Agreement between the OEPA and the EPA.

Pursuant to O.R.C. Section 6111.05, which makes any records, reports, or information obtained available for public inspection, Regulations EP-40-07 and EP-40-08 have been promulgated to provide the procedures to make such information available. Regulation EP-40-07(A) requires the Agency to give

public notice of all applications for issuance, modification, or renewal of permits, proposed actions, public meetings, and adjudication hearings. Regulation EP-40-08(A)(1) requires public notice of proposed actions for issuance or renewal of a permit, including:

> (1) The name of the Agency and the address and telephone number of the facilities where Agency files and records pertaining to the application are located and may be inspected and copied, and instructions for persons desiring to obtain additional information or a copy of any fact sheet prepared or of the proposed permit; and instructions to persons desiring to be included on a mailing list provided for in EP-40-06(B).

O.R.C. Section 6111.03(J) requires that the Director issue permits which are in compliance with the requirements of the FWPCA and mandatory regulations adopted thereunder. 40 C.F.R. §124.35(a) requires a state agency to make available public comments; and the Director may also make available other information obtained by the agency pursuant to its participation in the NPDES permit program. The records, reports, or information required by O.R.C. Section 6111.05 to be made available for public inspection, include public comments concerning the permit application and, at the Director's discretion, other information which has been obtained by the Agency.

10. Authority to Terminate or Modify Permits.

State law provides authority to terminate or modify permits for cause including, but not limited to, the following:

a. Violation of any condition of the permit (including, but not limited to, conditions concerning monitoring, entry, and inspection);

b. Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or

c. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

[Federal Authority: FWPCA §402(b)(1)(C); 40 C.F.R. §§ 124.45(b) and 124.72.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.03(J)

Regulation EP-40-07(A)

Remarks of the Attorney General:

Statutory authority allows the Ohio EPA to terminate or modify permits for cause, pursuant to O.R.C. Section 6111.03(J), which states, inter alia:

> ... 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; or changes in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

Effluent standards, water quality standards and compliance dates are a condition of the Ohio NPDES permit, as set forth in authority 2, supra. The statutory authority for permit requirements of entry, inspection, and sampling is listed in authority 5, supra. Since each of these factors is a condition of a

permit, O.R.C. Section 6111.03(J), as quoted above, allows the modification or termination of the permit where any of these permit conditions are violated. The opportunity for a public hearing on the modification, suspension, or revocation of a permit, as required by 40 C.F.R. §124.72(a), is satisfied by Regulation EP-40-07(A).

11. Authority to Abate Violations of Permits or the Permit Program.

State law provides authority to:

a. Abate violations of:

(1) Requirements to obtain permits;

(2) Terms and conditions of issued permits;

(3) Effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly owned treatment works); and

(4) Requirements for recording, reporting, monitoring, entry, inspection, and sampling.

b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:

(1) Injunctive relief, without the necessity of a prior revocation of the permit;

(2) Civil penalties;

(3) Criminal fines for willful and negligent violations; and

(4) Criminal fines against persons who knowingly make any false statement, representation or certification in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement;

c. Apply maximum civil and criminal penalties and fines which are comparable to the maximum amounts recoverable under Section 309 of the FWPCA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied. Each day of continuing violation is a seperate offense for which civil and criminal penalties and fines may be obtained. [Federal Authority: FWPCA §§ 402(b)(7), 309, 304(a)(2)(C), 402(h), 504; 40 C.F.R. §124.73.]

State Statutory and Regulatory Authority:

O.R.C. Section 6111.07
O.R.C. Section 6111.09
O.R.C. Section 6111.99

Remarks of the Attorney General:

O.R.C. Section 6111.07(A) provides that:

> No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code, or violate any order, regulation, or term or condition of a permit issued by the director of environmental protection pursuant to such sections.

Sections 6111.01 to 6111.08 of the Revised Code authorize the Director, as required by Section 402(b) of the FWPCA, to require discharge permits, to set effluent limitations and water quality standards, and to apply requirements for recording, reporting, and sampling. Violation of any of these requirements will subject the violator to prosecution. O.R.C. Section 6111.07(A) specifically makes the violation of a term or condition of the permit subject to sanction.

Injunctive relief, civil penalties, and criminal fines are available as sanctions to enforce the violations described in Section 6111.07. O.R.C.

Section 6111.07(B) directs the Attorney General, upon written request of the Director of the Environmental Protection Agency, to:

> . . . bring an action for an injunction against any person violating or threatening to violate such sections, or violating or threatening to violate any order, regulation, or condition of a permit issued by the director pursuant to such sections. 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.

The power to seek an injunction applies to Sections 6111.01 to 6111.08 of the Revised Code. The permit need not be revoked before seeking injunctive relief.

Civil penalties are imposed by O.R.C. Section 6111.09, which states:

> Any person who violates section 6111.04, 6111.042, 61111.05, or division (A) of section 6111.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars . . . . The attorney general, upon written request by the director of environmental protection, shall commence an action under this section against any person who violates sections 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code. Any action under this section is a civil action . . . .

Criminal sanctions are imposed on violators by O.R.C. Section 6111.99 which states:

> (A) Whoever violates section 6111.04, 6111.042, 6111.05, or division (A) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars or imprisoned not more than one year, or both.
>
> . . . .
>
> (C) Whoever violates division (C) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars.

Any violation of these sections may result in the imposition of criminal fines against the violators, whether or not the violations were willful or negligent. The violations for which a fine can be imposed include: knowingly making a false statement, misrepresentation or failure to disclose information in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a reporting, recording, or monitoring requirement. O.R.C. Section 6111.07(C) specifically states that:

> No person shall knowingly submit false information or records or fail to submit information or records pertaining to discharges required as a condition of a permit.

The fine of twenty-five thousand dollars per day of violation which may be levied against the violator of these provisions is comparable to those fines set forth in Section 309(c) of the FWPCA. Each day of a violation constitutes a separate offense as provided in O.R.C. Section 6111.07(A).

There is no minimum criminal fine imposed by Chapter 6111. of the Revised Code, as is imposed in the FWPCA, but provision is made for imprisonment for periods up to one year by O.R.C. Section 6111.99(A) for most violations. (Section quoted above.)

12. State Board Membership

> No State board or body which has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal, includes [or will include, at the time of approval of the State permit program], as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. No State law requires representation on the State board or body which has or shares authority to issue permits which would violate the conflict of interest provision contained in Section 304(h)(2) of the FWPCA.
> [Federal Authority: FWPCA §304(h)(2)(D); 40 C.F.R. §124.94.]
>
> State Statutory and Regulatory Authority:
>
> O.R.C. Section 121.03(A)
> O.R.C. Section 3745.02
>
> Remarks of the Attorney General:

O.R.C. Section 121.03(A) provides for the appointment of the Director of the Ohio Environmental Protection Agency by the Governor, with the advice and consent of the Senate. The Director holds his office during the term of the appointing governor, but is subject to removal at the pleasure of the governor.

The composition of the Environmental Board of Review, an administrative appeal board, consists of:

> . . . three members appointed by the governor with the advice and consent of the senate for terms of six years, except that the terms of the first members of the board shall be for two, four, and six years, respectively, as designated by the governor at the time of the appointment. Any vacancy in the office of a member of the board shall be filled by appointment by the governor for the unexpired term of the member whose office will be vacant. . . . Each member shall have extensive experience in pollution control and abatement technology, ecology, public health, environmental law, economics of natural resource development, or related fields. At least one member shall be an attorney. No more than two members shall be of the same political party. Each member shall serve full time. O.R.C. Section 3745.02.

The Director or the members of the Environmental Board of Review need not be represented by individuals who would violate Section 304(h)(2) of the FWPCA. Based on affidavits solicited from members of the Environmental Board of Review and the Director and correspondence with John R. Quarles, Jr., as attached, I find that the members of the Environmental Board of Review and the Director of the Ohio Environmental Protection Agency do not appear to have financial interests which are incompatible with 40 C.F.R. Section 124.94 promulgated pursuant to the FWPCA.

All necessary statutory and regulatory authority has been cited to support the OEPA "Program Description".

Certified on this 14th day of December, A.D., 1973 in the City of Columbus, State of Ohio.

William J. Brown

WILLIAM J. BROWN
Attorney General, State of Ohio

Attachments to Attorney General's Certification

Certification Correlation Sheet
S.B. 80
Chapter 1509. of the Revised Code
O.R.C. §121.03(A)
O.R.C. §3745.02
Regulation Chapter EP-31
Regulation Chapter EP-40
Affidavits

ATTORNEY GENERAL'S
CERTIFICATION CORRELATION SHEET

| FEDERAL REQUIREMENTS | OHIO STATUTE AND REGULATION |
|---|---|
| **Authority 1.** | |
| a. Issue permits to new and existing point sources | O. R. C. Section 6111.03(J) at p. 6<br>O. R. C. Section 6111.03(P) at p. 13<br>O. R. C. Section 6111.04 at p. 14-15<br>O. R. C. Section 6111.01 at p. 2-3<br>EP-31-02 |
| b. Issue permits to control disposal of pollutants into wells | O. R. C. Section 6111.03(J) at p. 6<br>O. R. C. Section 6111.01(H) at p. 3<br>O. R. C. Section 6111.04 at p. 16<br>O. R. C. Section 6111.04 at p. 14-15 |
| **Authority 2.** | |
| a. Apply applicable Federal effluent standards and limitations and water quality standards | O. R. C. Section 6111.03(J) at p. 7<br>O. R. C. Section 6111.042 at p. 19<br>EP-31-04(B)<br>EP-31-01(D) |
| (1) Effluent limitations pursuant to Section 301 | O. R. C. Section 6111.03(J) at p. 7 and p. 8 |
| (2) Water quality related effluent limitations pursuant to Section 302 | O. R. C. Section 6111.03(J) at p. 8 |
| (3) National standards of performance pursuant to Section 306 | O. R. C. Section 6111.03(J) at p. 7 |
| (4) Toxic and pretreatment effluent standards pursuant to Section 307 | O. R. C. Section 6111.03(J) at p. 7 |

| | |
|---|---|
| (5) Ocean discharge criteria pursuant to Section 403 | Not applicable |
| b. Effluent limitations requirements of Sections 301 and 307 | O. R. C. Section 6111.041 at p. 17<br>O. R. C. Section 6111.03(J) at p. 8<br>O. R. C. Section 6111.03(J) at p. 7<br>EP-31-04(B)(1)(b) |
| c. Schedules of compliance | O. R. C. Section 6111.03(J) at p. 7<br>O. R. C. Section 6111.01(K) at p. 3<br>EP-31-04(A)(3) |
| Authority 3. | |
| Authority to deny permits in certain cases | O. R. C. Section 6111.03(J) at p. 7-8<br>EP-31-04(A)(2) |
| Authority 4. | |
| Authority to limit duration of permits | O. R. C. Section 6111.03(J) at p. 10<br>EP-31-09 |
| Authority 5. | |
| a. Require a permit holder or industrial user of a publicly owned treatment works to sample, monitor, and report | O. R. C. Section 6111.03(G) at p. 5<br>O. R. C. Section 6111.03(J) at p. 9-10<br>O. R. C. Section 6111.03(O) at p. 12<br>O. R. C. Section 6111.05 at p. 20<br>EP-31-05 |
| b. Enable an authorized representative of the State to enter, have access to records, copy records, and inspect monitoring equipment or samples | O. R. C. Section 6111.03(J) at p. 9-10<br>O. R. C. Section 6111.05 at p. 19-20<br>EP-31-05 |
| Authority 6. | |
| Authority to require notice of introductions of pollutants into publicly owned treatment works | O. R. C. Section 6111.03(J) at p. 10<br>EP-31-05(A)(10) |

Authority 7.

| | |
|---|---|
| Authority to insure compliance by industrial users with Sections 204(b), 307, and 308 | O. R. C. Section 6111.03(L) at p. 11<br>O. R. C. Section 6111.03(J) at p. 7<br>O. R. C. Section 6111.07 at p. 21<br>O. R. C. Section 6111.09 at p. 22<br>O. R. C. Section 6111.99 at p. 23 |

Authority 8.

| | |
|---|---|
| Authority to issue notices, transmit data, and provide opportunity for public hearings | O. R. C. Section 6111.03(P) at p. 13 |

Section 124.31. Tentative determinations and draft permits.

| | |
|---|---|
| a. proposed actions | EP-40-05(A) |
| (1) proposal to issue or deny | EP-40-05(A) |
| (2) if proposal to issue: | |
| (i) effluent limitations | O. R. C. Section 6111.03(J) at p. 7-8 |
| (ii) compliance schedule | |
| (iii) other conditions | |

Section 124.32. Public notice.

| | |
|---|---|
| a. public notice of complete application | |
| (1) circulation may include: | |
| (i) N/A | |
| (ii) publication in newspapers | EP-40-07(A)(1) |
| (2) mailed upon request | EP-40-07(A)(3) |
| (3) mailing list | EP-40-07(A)(2); O. R. C. Section 3745. |
| b. 30 day public comment period | EP-40-08(A)(6)(b) |
| comments retained by director | EP-40-04(A)(4); EP-40-05(B) |

| | | |
|---|---|---|
| c. | public notice must contain: | |
| (1) | name of agency | EP-40-08 (A) (1) |
| (2) | name of applicant | " (2) |
| (3) | description of discharge | " (3) |
| (4) | location of discharge | " (4) |
| (5) | determination to issue or deny | " (5) |
| (6) | statement of procedures | " (6) |
| (7) | instructions as to availability of information | " (1) |

Section 124.33. Fact Sheets

| | | |
|---|---|---|
| a. | to be sent on request, shall include: | EP-40-07 (A) (3) |
| (1) | location of discharge | EP-40-06 (A) (1) |
| (2) | description of discharge | " (2) |
| (i) | volume | " (2) (a) |
| (ii) | average temp. | " (2) (b) |
| (iii) | discharge in pounds/day | " (2) (c) |
| (3) | requirements of Section 124.31 as to tentat. determination | EP-40-06 (A) (3) |
| (4) | description of waters | " (4) |
| (5) | " " procedures | " (5) |
| (i) | public comment | " (5) (a) |
| (ii) | request for public hearing | " (5) (b) |
| (iii) | other procedures | " (5) (c) |
| b. | addition of name to the mailing | " (B) |

Section 124.34. Notice to Other State Agencies Shall Include: EP-40-07 (A) (4)

| | | |
|---|---|---|
| a. | notice to other states and agencies; opportunity to comment, etc. | EP-40-09 (A) (2) |
| b. | notice to interstate agency | EP-40-09 (B) (1) |
| c. | notice to A.C.O.E. | EP-40-10 (B) |
| d. | notice to other agencies with procedure for: public comments request public hearing; | EP-40-07 (A) (5) EP-40-12 (A) |

| | |
|---|---|
| specific request for fact sheet. Agencies shall include: | EP-40-06 (B) (1) |
| (1) those under Section 208 (b) FWPCA | EP-40-09 (B) (1) |
| (2) Section 303 (e) agencies | " (B) (2) |
| e. public health agencies | EP-40-09 (B) (3) |
| Section 124.35. Public access to information | |
| a. public health agencies | EP-40-04 (A) (5) |
| b. trade secrets | |
| c. disclosure of confidential information to the Regional Administration | |
| d. copying facilities | EP-40-20 (B) |
| Section 124.36. Public Hearings | EP-40-12 |
| Section 124.37. Public notice of public hearings | |
| a. public notice of public hearings | EP-40-07 (A) |
| (1) publication in a newspaper | " (A) (1) |
| (2) to whom mailed | " (A) (b) (5) |
| (3) mailed upon request | " (A) (3) |
| (4) shall be effected 30 days in advance | EP-40-07 (c) |
| b. notice shall contain: | EP-40-08 (B) |
| (1) name, address of agency | " (B) (1) |
| (2) name, address of applicant | " (B) (2) |
| (3) location of discharge | " (B) (3) |
| (4) reference to public notice of application | " (B) (4) |
| (5) time and place of hearing | " (B) (5) |
| (6) purpose of the hearing | " (B) (8) |
| (7) statement of issues | " (B) (6) |
| (8) where information may be obtained | " (B) (1) |
| (9) nature and procedure of | " (B) (7) |
| Section 124.46. Proposed Permit Transmitted to Regional Administration | EP-40-10 (A) (1) |

a. inclusion to all terms and conditions
b. R. A. 's objection right
c. procedures upon written objection by the R. A.
d. written waiver

| | |
|---|---|
| Section 124. 47. Transmission of issued permit | EP-40-10 (A) (2) |

Authority 9.

| | |
|---|---|
| Authority to provide public access to information | O. R. C. Section 6111. 05 at p. 20-21 |

Authority 10.

| | |
|---|---|
| Authority to terminate or modify permits | O. R. C. Section 6111. 03 (J) at p. 11<br>EP-40-07 (A) |

Authority 11.

| | |
|---|---|
| Authority to abate violations of permit or the permit program | O. R. C. Section 6111. 07 (A) at p. 21<br>O. R. C. Section 6111. 07 (B) at p. 22<br>O. R. C. Section 6111. 09 at p. 22<br>O. R. C. Section 6111. 99 at p. 23 |

Authority 12.

| | |
|---|---|
| No violation of conflict of interest provision by Director of Board of Environmental Review | O. R. C. Section 121. 03 (A)<br>O. R. C. Section 3745. 02 |

...shall go into

110th GENERAL ASSEMBLY,
REGULAR SESSION,
1973-1974

Sub. S. B. No. 80

MRS. WEISENBORN-MESSRS. HALL-MESHEL-CARNEY-
VAN METER-ARMSTRONG-CALABRESE-JAMES-BOGGS-
O'NEILL-SCOTT-MALOTT-COOK-SPECK-MAIER-CHRISTMAN

# A BILL

To amend sections 6111.01, 6111.03, 6111.04, 6111.041, 6111.05, 6111.07, and 6111.99 and to enact sections 6111.031, 6111.042 and 6111.09 of the Revised Code to comply with the Federal Water Pollution Control Act Amendments of 1972, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 6111.01, 6111.03, 6111.04, 6111.041, 6111.05, 6111.07, and 6111.99 be amended, and sections 6111.031, 6111.042, and 6111.09 of the Revised Code be enacted to read as follows:

Sec. 6111.01. As used in sections 6111.01 to 6111.08 [~~, inclusive,~~] and sections 6111.31 to 6111.38 [~~, inclusive,~~] of the Revised Code:

(A) "Pollution" means the placing of [~~any noxious or deleterious substances~~] ANY SEWAGE, INDUSTRIAL WASTE, OR OTHER WASTES in any waters of the state [~~or affecting the properties of any waters of the state in a manner which renders such water harmful or inimical to the public health, or to animal or aquatic life or to the use of such waters for domestic water supply, or industri~~

~~or agricultural purposes, or for recreation~~].

(B) "Sewage" means any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals [~~, which pollutes the waters of the state~~].

(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 [~~, which pollutes the waters of the state~~].

(D) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime [~~(except hydrated or dehydrated lime)~~], sand, ashes, offal, night soil, oil, tar, coal dust, or silt, [~~and~~] other substances [~~which~~] THAT are not [~~included within the definitions of~~] sewage [~~and~~] OR industrial waste [~~set forth in this section, which pollute the waters of the state~~], AND ANY OTHER "POLLUTANTS" OR "TOXIC POLLUTANTS" AS DEFINED IN THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 886, 33 U.S.C.A. 1362, THAT ~~THE~~ ARE NOT SEWAGE OR INDUSTRIAL WASTE.

(E) "Sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting waterborne sewage, industrial waste, or other wastes to a point of disposal or treatment.

(F) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes, EXCEPT AS OTHERWISE DEFINED.

(G) "Disposal system" means a system for disposing of

sewage, 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 all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.

(I) "Person" means the state, any municipal corporation, [~~notwithstanding section 6111.11 of the Revised Code,~~] political subdivision [~~, public or private corporation, individual, partnership, or other entity~~] OF THE STATE, PERSON AS DEFINED IN SECTION 1.59 of the REVISED CODE, OR INTERSTATE BODY CREATED BY COMPACT.

(J) [~~On and after November 1, 1967, "industrial~~] "INDUSTRIAL water pollution control facility" means any disposal system or any treatment works, pretreatment works, appliance, equipment machinery, or installation constructed, used, or placed in operatio primarily for the purpose of reducing, controlling, or eliminatin water pollution caused by industrial waste, or for reducing, co trolling, or eliminating the discharge into a disposal system industrial waste or what would be industrial waste if discharg into the waters of the state.

(K) "SCHEDULE OF COMPLIANCE" MEANS A SCH ULE OF REMEDIAL MEASURES INCLUDING AN ENFOR ABLE SEQUENCE OF ACTIONS OR OPERATIONS LEAD TO COMPLIANCE WITH STANDARDS AND REGULAT ADOPTED UNDER SECTIONS 6111.041 AND 6111.042 OF

REVISED CODE OR COMPLIANCE WITH TERMS AND CONDITIONS OF PERMITS SET UNDER DIVISION (J) OF SECTION 6111.03 OF THE REVISED CODE.

Sec. 6111.03. The director of environmental protection [~~shall have power~~] MAY:

(A) [~~To develop~~] DEVELOP plans and programs for the prevention, control, and abatement of new or existing pollution of the waters of the state [~~, including, but not limited to, adopting, amending, and repealing standards of quality for the waters of the state~~];

(B) [~~To advise~~] 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 sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code. BEFORE ADOPTING, MODIFYING, OR REPEALING A STANDARD OR REGULATION PURSUANT TO DIVISION (G) OF SECTION 6111.03 OR SECTION 6111.041 OR 6111.042 OF THE REVISED CODE, THE DIRECTOR SHALL (1) MAIL NOTICE TO EACH STATE-WIDE ORGANIZATION THAT HE DETERMINES REPRESENTS PERSONS WHO WOULD BE AFFECTED BY THE PROPOSED STANDARD OR REGULATION, AMENDMENT THERETO, OR REPEAL THEREOF AT LEAST THIRTY-FIVE DAYS BEFORE ANY PUBLIC HEARING THEREON, (2) MAIL A COPY OF EACH PROPOSED STANDARD OR REGULATION, AMENDMENT THERETO, OR REPEAL THEREOF TO ANY PERSON WHO REQUESTS A COPY, WITHIN FIVE DAYS AFTER RECEIPT OF THE REQUEST THEREFOR, AND (3) CONSULT WITH APPROPRIATE STATE AND LOCAL GOVERNMENT AGENCIES OR THEIR REPRESENTATIVES, IN-

CLUDING STATE-WIDE ORGANIZATIONS OF LOCAL GOVERNMENT OFFICIALS, INDUSTRIAL REPRESENTATIVES, AND OTHER INTERESTED PERSONS. ALTHOUGH THE DIRECTOR IS EXPECTED TO DILIGENTLY DISCHARGE THESE DUTIES, 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) [~~To administer~~] 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) [~~To administer~~] ADMINISTER state grants for the construction of sewage and waste collection and treatment works;

(E) [~~To encourage~~] ENCOURAGE, participate in, or conduct studies, investigations, research, and demonstrations relating t water pollution, and the causes, prevention, control, and abatemer thereof, as is advisable and necessary for the discharge of i duties under sections 6111.01 to 6111.08 of the Revised Code;

(F) [~~To collect~~] COLLECT and disseminate information lating to water pollution and prevention, control, and abatem thereof;

(G) [~~To adopt~~] ADOPT, modify, and repeal regulations ACCORDANCE WITH CHAPTER 119. OF THE REVISED C governing the procedure for hearings, filing of reports, the issu of permits, the issuance of industrial water pollution contro tificates, and all other matters relating to procedure;

(H) [~~To issue~~] ISSUE, modify, or revoke orders to pr control, or abate water pollution [~~; subject to section 6111.01~~

~~Revised Code,~~] (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 such connections or extensions would result in an increase in the polluting properties of the effluent from such system when discharged into any waters of the state; (4) REQUIRING COMPLIANCE WITH ANY STANDARD OR REGULATION ADOPTED UNDER SECTION 6111.041 OR 6111.042 OF THE REVISED CODE, OR TERM OR CONDITION OF A PERMIT. In the making of such orders, WHEREVER COMPLIANCE WITH A REGULATION ADOPTED UNDER SECTION 6111.042 OF THE REVISED CODE IS NOT INVOLVED, CONSISTENT WITH THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251, the director shall give consideration to, and base his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with such orders and to evidence relating to conditions calculated to result from compliance with such orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code;

(I) [~~To review~~] 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 sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code;

(J) [~~To issue~~] ISSUE, revoke, modify, or deny permits for

the discharge of sewage, industrial waste, or other wastes into the waters of the state, and for the installation [,] OR modification [, or ~~operation~~] of disposal systems or any parts thereof IN COMPLIANCE WITH ALL REQUIREMENTS OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251 AND MANDATORY REGULATIONS ADOPTED THEREUNDER, and set terms and conditions of permits, [~~in order to prevent, control, or abate water pollution~~] INCLUDING SCHEDULES OF COMPLIANCE, WHERE NECESSARY. THE TERMS AND CONDITIONS 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 SUCH ACT, AND ANY OTHER MANDATORY REQUIREMENTS OF SUCH ACT THAT ARE IMPOSED BY REGULATION OF THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. AN APPLICATION FOR A PERMIT OR RENEWAL THEREOF SHALL BE DENIED IF:

(1) THE SECRETARY OF THE ARMY DETERMINES IN WRITING THAT ANCHORAGE OR NAVIGATION WOULD BE SUBSTANTIALLY IMPAIRED THEREBY;

(2) THE DIRECTOR DETERMINES THAT THE PROPOSED DISCHARGE OR SOURCE WOULD CONFLICT WITH AN AREA WIDE WASTE TREATMENT MANAGEMENT PLAN ADOPTED IN ACCORDANCE WITH SECTION 208 OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 839, 33 U.S.C.A. 1288;

(3) THE ADMINISTRATOR OF THE UNITED STA

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 AMENDMENTS OF 1972," 86 STAT. 880, 33 U.S.C.A. 1342 (d); OR

(4) 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.

[~~In issuing, revoking, modifying, or denying permits~~] 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 AND 302 OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1311 AND 1312, AND SHALL give consideration to, and base his determination on, evidence relating to the technical feasibility and economic reasonableness of removing the polluting properties from such wastes and to evidence relating to conditions calculated to result from such action, and their relation to benefits to the people of the state and to accomplishment of the purposes of sections 6111.01 to 6111.08 of the Revised Code.

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 MAIN-

TAIN COMPLIANCE WITH APPLICABLE STANDARDS OF QUALITY FOR THE WATERS OF THE STATE, WHICH LIMITATIONS OR CONDITIONS WILL ASSURE 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 SUCH THERMAL COMPONENT WITH SEWAGE, INDUSTRIAL WASTE, OR OTHER WASTES, THE DIRECTOR SHALL NOT IMPOSE ANY MORE STRINGENT LIMITATION ON THE THERMAL COMPONET OF SUCH DISCHARGE, AS A CONDITION OF A PERMIT OR RENEWAL THEREOF FOR SUCH 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.

The director shall specify in permits for the discharge of sewage, industrial waste, and other waste, the NET volume, NET WEIGHT, duration, frequency, and [~~strength~~], WHERE NECESSARY, CONCENTRATION of such sewage, industrial waste, an other wastes which may be discharged INTO THE WATERS O THE STATE. The director shall specify in such permits that t permit is conditioned upon the right of his authorized represen tives to enter upon the premises of the person to whom the per has been issued for the purpose of determining compliance w sections 6111.01 to 6111.08 of the Revised Code, rules [~~and re tions~~] adopted thereunder, or the terms AND CONDITIONS permit, order, or other determination. The director shall issu

deny an application for a permit for a new discharge, [~~or~~] for the installation or modification of a disposal system, OR FOR RENEWAL OF A PERMIT, within one hundred [~~twenty~~] EIGHTY days of the date on which he receives a complete application with all plans, specifications, construction schedules, and other pertinent information required by the director. [~~Applications for renewals of permits shall be acted upon by the director within sixty days.~~] The director may condition [~~such~~] permits upon the installation of discharge or water quality monitoring equipment or devices and the filing of such periodic reports on the amounts and contents of discharges and the quality of receiving waters as the director prescribes. THE DIRECTOR SHALL CONDITION EACH PERMIT FOR A GOVERNMENT-OWNED DISPOSAL SYSTEM, OR ANY OTHER "PUBLICLY OWNED TREATMENT WORKS" AS DEFINED IN THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1292, UPON THE REPORTING OF NEW INTRODUCTIONS OF INDUSTRIAL WASTE OR OTHER WASTES AND SUBSTANTIAL CHANGES IN VOLUME OR CHARACTER THEREOF BEING INTRODUCED INTO SUCH SYSTEMS OR WORKS FROM "INDUSTRIAL USERS" AS DEFINED IN SECTION 502 OF SUCH ACT, AS NECESSARY TO COMPLY WITH SECTION 402(b)(8) OF SUCH ACT. In requiring monitoring devices and reports the director shall give consideration to technical feasibility and economic reasonableness, and allow reasonable time for compliance. A permit may be issued for a period not to exceed [~~three~~] FIVE years, and may be renewed upon application for renewal, and upon a finding by the director that the permit holder is making satisfactory progress toward the achievement of ALL applicable [~~discharge and water quality~~] standards AND HAS 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; OR CHANGES IN ANY CONDITION THAT REQUIRES EITHER A TEMPORARY OR PERMANENT REDUCTION OR ELIMINATION OF THE PERMITTED DISCHARGE. No application shall be denied or permit revoked or modified without a written order stating the findings upon which denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or permit holder by certified mail.

(K) Adopt, modify, and repeal regulations, in accordance with Chapter 119. of the Revised Code, prescribing a schedule of application and renewal fees to be paid by applicants for and holders of permits under division (J) of this section. Such schedule of fees shall be designed solely to defray the costs of processing, issuing, revoking, modifying, and denying permits. NO APPLICATION OR RENEWAL FEE MAY EXCEED TWO HUNDRED FIFTY DOLLARS. NO APPLICATION OR RENEWAL FEE MAY BE CHARGED THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE.

(L) [~~To institute~~] INSTITUTE or cause to be instituted any court of competent jurisdiction, proceedings to compel compliance with sections 6111.01 to 6111.08 of the Revised Code, [illegible] with the orders of the director issued under such sections, OR INSURE COMPLIANCE WITH SECTIONS 204 (b), 307, AND OF THE "FEDERAL WATER POLLUTION CONTROL AMENDMENTS OF 1972," 86 STAT. 835, 33 U.S.C.A. 1284

1317, AND 1318;

(M) [~~To issue~~] ISSUE, deny, revoke, or modify industrial water pollution control certificates;

(N) [~~To certify~~] CERTIFY to the government of the United States or any agency thereof that an industrial water pollution facility is in conformity with the state program or requirements for control of water pollution whenever such certification may be required for a taxpayer under the Internal Revenue Code of the United States, as amended [.];

(O) 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 AMENDMMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1292 AND 1362 TO 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 SUCH METHODS, AT SUCH LOCATIONS, AT SUCH INTERVALS, AND IN SUCH MANNER AS THE DIRECTOR DETERMINES, AND PROVIDE SUCH OTHER INFORMATION AS IS NECESSARY TO ASCERTAIN WHETHER OR NOT THERE IS COMPLIANCE WITH TOXIC AND PRETREATMENT EFFLUENT STANDARDS. IN ISSUING, MODIFYING, AND REVOKING SUCH ORDERS THE DIRECTOR SHALL GIVE CONSIDERATION TO TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS, AND ALLOW REASONABLE TIME FOR COMPLIANCE.

[~~To exercise~~] (P) EXERCISE all incidental powers necessary

to carry out the purposes of sections 6111.01 to 6111.08 and sections 6111.31 to 6111.38 of the Revised Code.

SECTIONS 6111.01 TO 6111.09 AND 6111.99 OF THE REVISED CODE AUTHORIZE THE STATE TO PARTICIPATE IN THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM IN ACCORDANCE WITH THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251. SUCH SECTIONS SHALL BE ADMINISTERED, CONSISTENT WITH THE LAWS OF THIS STATE AND FEDERAL LAW, IN THE SAME MANNER THAT THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251, ARE REQUIRED TO BE ADMINISTERED.

Sec. 6111.031. (A) THE DIRECTOR OF ENVIRONMENTAL PROTECTION MAY MODIFY THE TERMS AND CONDITIONS OF A PERMIT OR ISSUE A PERMIT UPON CONDITIONS AT VARIANCE FROM A NATIONAL EFFLUENT LIMITATIO SET UNDER SECTION 301 (b) (2) (A) OF THE "FEDERA WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972 86 STAT. 845, 33 U.S.C.A. 1311, UPON APPLICATION FILI THEREFOR AFTER JULY 1, 1977, AND A SHOWING SAT FACTORY TO THE DIRECTOR THAT SUCH MODIFIED TER AND CONDITIONS (1) WILL REQUIRE THE MAXIMUM I OF TECHNOLOGY WITHIN THE ECONOMIC CAPABILITY THE OWNER OR OPERATOR, AND (2) WILL RESULT IN R SONABLE FURTHER PROGRESS TOWARD THE ELIM TION OF THE DISCHARGE OF SEWAGE, INDUST WASTE, AND OTHER WASTES INTO THE WATERS OF STATE.

(B) THE DIRECTOR MAY, AFTER OPPORTUNITY

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.

Sec. 6111.04. No person shall cause pollution [~~as defined in division (A) of section 6111.01 of the Revised Code of any waters of the state,~~] or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state [~~. Any~~]. AND ANY such action is hereby

declared to be a public nuisance, except in such cases where the director of environmental protection has issued a valid and unexpired permit, or renewal thereof, as provided in sections 6111.01 to 6111.08 of the Revised Code, or an application for renewal is pending.

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, industrial waste, or other wastes in excess of the permissive discharges specified under such existing permit without first receiving a permit from the director to do so.

No person who is discharging or causing the discharge of any sewage, industrial waste, or other wastes into the waters of the state shall continue or cause the continuance of such discharge [~~after September 27, 1952~~], without first obtaining a permit therefor issued by the director [~~pursuant to rules and regulations to be prescribed by him~~]. THE DIRECTOR SHALL PRESCRIBE BY REGULATION A REASONABLE FILING PERIOD WITHIN WHICH APPLICATIONS MAY BE FILED TO OBTAIN PERMITS FOR EXISTING DISCHARGES THAT HAVE NOT BEEN AUTHORIZED BY PERMIT.

The director may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of permits.

This section does not apply to:

(A) Waters used in washing sand, gravel, other aggrega or mineral products, when such washing and the ultimate posal of the water used in such washing [~~is~~]_ INCLUDING SEWAGE, INDUSTRIAL WASTE, OR OTHER WASTES TAINED IN SUCH WATERS, ARE entirely confined to the under the control of the person engaged in the recovery and

sing of such sand, gravel, other aggregates, or mineral products, AND DO NOT RESULT IN THE POLLUTION OF WATERS OF THE STATE;

(B) [~~The discharge of hydrated or dehydrated lime into the waters of the state in such quantities as are, in the opinion of the board, beneficial to such waters~~] WATER, GAS, OR OTHER MATERIAL INJECTED INTO A WELL TO FACILITATE THE PRODUCTION OF OIL OR GAS OR FOR DISPOSAL PURPOSES, 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. THIS DIVISION 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;

(C) APPLICATION OF ANY MATERIALS TO LAND FOR AGRICULTURAL PURPOSES OR RUNOFF OF SUCH MATERIALS FROM SUCH APPLICATION. THIS DIVISION 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;

[~~(C)~~] (D) The [~~excrementitious discharge~~] EXCREMENT of domestic and farm animals [~~, however this~~] DEFECATED ON LAND OR RUNOFF THEREFROM INTO ANY WATERS OF THE STATE. THIS division does not [~~permit the disposal into the waters of the state of excrementitious discharge and incident wastes resulting from the operation of facilities used in the mass commercial production of such animals when it results in the pollution of waters~~

of the state] 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;

[~~(D)~~] (E) The discharge of sewage, industrial waste, or other wastes into a sewerage system maintained by the state or a political subdivision [;] ;

(F) SEPTIC TANKS OR ANY OTHER DISPOSAL SYSTEMS FOR THE DISPOSAL OR TREATMENT OF SEWAGE FROM SINGLE-FAMILY, TWO-FAMILY, OR THREE-FAMILY DWELLINGS IN COMPLIANCE WITH THE SANITARY CODE AND SECTION 1541.21 OR 3707.01 OF THE REVISED CODE. THIS DIVISION 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.

THE HOLDER OF A PERMIT ISSUED UNDER SECTION 402 (a) OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 880, 33 U.S.C.A. 1342, NEED NOT OBTAIN A PERMIT FOR A DISCHARGE AUTHORIZED BY SUCH PERMIT UNTIL ITS EXPIRATION DATE THE DIRECTOR OF ENVIRONMENTAL PROTECTION SHAL ADMINISTER AND ENFORCE SUCH PERMITS WITHIN TH STATE, AND MAY MODIFY THE TERMS AND CONDITIO THEREOF IN ACCORDANCE WITH DIVISION (J) OF SE TION 6111.03 OF THE REVISED CODE.

Sec. 6111.041. In furtherance of sections 6111.01 to 611 of the Revised Code, the director of environmental protection adopt standards of water quality to be applicable to the wate the state [; ~~and may adopt effluent standards for discharge~~

~~such waters. The effluent standards shall be designed to achieve and maintain the water quality standards 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 [~~according to criteria for the protection of~~], 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 AMENDMENTS OF 1972," 86 STAT. 846, 33 U.S.C.A. 1313, 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.

[~~The provisions of this section supersede Chapter 119. of the Revised Code.~~]

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 give consideration to any standards so established in the issuance, revocation, modification, or denial of permits.

Sec. 6111.042. IN ACCORDANCE WITH CHAPTER 119. OF THE REVISED CODE, THE DIRECTOR OF ENVIRONMENTAL

PROTECTION SHALL ADOPT AND ENFORCE, AND MAY MODIFY AND REPEAL, REGULATIONS SETTING FORTH AND REQUIRING COMPLIANCE WITH NATIONAL EFFLUENT LIMITATIONS, NATIONAL STANDARDS OF PERFORMANCE FOR NEW SOURCES, AND NATIONAL TOXIC AND PRETREATMENT EFFLUENT STANDARDS, AS NECESSARY IN ORDER TO INSURE COMPLIANCE WITH THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 846, 33 U.S.C.A. 1311, 1316, AND 1317. NO PERSON SHALL VIOLATE ANY SUCH REGULATION, EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF A PERMIT ISSUED UNDER SECTION 6111.03 OF THE REVISED CODE.

Sec. 6111.05. The director of environmental protection may on his own initiative investigate or make inquiries in any manner into any alleged act of pollution or failure to comply with sections 6111.01 to 6111.08 of the Revised Code, or any order, REGULATION, THE TERMS AND CONDITIONS OF A PERMIT, or other determination pursuant thereto. However, upon written complaint by any person the director shall conduct such investigations and make such inquiries as are required.

The director or his duly authorized representative may ente at reasonable times upon any private or public property to inspe and investigate conditions relating to pollution of any waters the state, INSPECT ANY MONITORING EQUIPMENT, A SAMPLE ANY DISCHARGES, and [~~upon refusal of the per owning or controlling such property to permit such entrance, the di tor~~] may apply to the court of common pleas having jurisdic [~~of such property~~] for a warrant permitting such entrance inspection.

Any authorized representative of the director may AT REASONABLE TIMES examine any records or memorandums pertaining to the operation of disposal systems OR DISCHARGES BY "INDUSTRIAL USERS" INTO "PUBLICLY OWNED TREATMENT WORKS" AS DEFINED IN THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 844, 33 U.S.C.A. 1292 AND 1362. The director may require the maintenance of records relating to the operation of SUCH disposal systems OR DISCHARGES. The director may make copies of such records [~~, but if such records pertain to a private disposal system, such copies may not be made available to the public without express permission of the owner, except that information on the amounts and contents of discharges shall be matters of public record~~]. ANY RECORDS, REPORTS, OR INFORMATION OBTAINED UNDER CHAPTER 6111. OF THE REVISED CODE SHALL BE AVAILABLE FOR PUBLIC INSPECTION, EXCEPT THAT:

(A) UPON A SHOWING SATISFACTORY TO THE DIRECTOR OF ENVIRONMENTAL PROTECTION BY ANY PERSON THAT SUCH 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 SUCH PERSON, THE DIRECTOR SHALL CONSIDER SUCH 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) SUCH RECORD, REPORT, OR INFORMATION MAY BE DISCLOSED TO OTHER OFFICERS, EMPLOYEES, OR AUTHORIZED REPRESENTATIVES OF THE STATE, ANOTHER STATE, OR OF THE UNITED STATES, WHEN NECESSARY TO SUSTAIN AN ACTION BROUGHT PURSUANT TO CHAPTER 6111. OF THE REVISED CODE OR DURING AN ADJUDICATION HEARING, OR WHEN OTHERWISE NECESSARY TO FULFILL ANY REQUIREMENT OF THE "FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972," 86 STAT. 816, 33 U.S.C.A. 1251.

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

Sec. 6111.07. (A) No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code, or violate any order [~~of~~], REGULATION, OR TERM OR CONDITION OF A PERMIT ISSUED BY the director of environmental protection [~~promulgated~~] pursuant to such sections. Each day [~~such~~] OF violation [~~continues after a conviction for a violation of such sections or order of the director and the final determination thereof~~] is a separate offense [~~, provided the court may grant reasonable period of time for compliance~~].

Any person convicted of violating such sections may also be enjoined, as provided in division (B) of this section, from continuing such violation.

(B) The attorney general, upon the WRITTEN reques

the director of environmental protection, shall prosecute any person who violates, or who fails to perform any duty imposed by, sections 6111.01 to 6111.08 of the Revised Code, or who violates any order [~~of~~]_ REGULATION, OR CONDITION OF A PERMIT ISSUED BY the [~~board promulgated~~] DIRECTOR pursuant to such sections.

The attorney general, upon WRITTEN request of the director of environmental protection, shall bring an action for an injunction against any person violating or threatening to violate such sections, or violating or threatening to violate any order [~~of~~]_ REGULATION, OR CONDITION OF A PERMIT ISSUED BY the director [~~promulgated~~] pursuant to such sections. 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 shall knowingly submit false information or records OR FAIL TO SUBMIT INFORMATION OR RECORDS PERTAINING TO DISCHARGES required as a condition of a permit.

Sec. 6111.09. ANY PERSON WHO VIOLATES SECTION 6111.04, 6111.042, 6111.05, OR DIVISION (A) OF SECTION 6111.07 OF THE REVISED CODE SHALL PAY A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS, TO BE PAID INTO THE STATE TREASURY TO THE CREDIT OF THE GENERAL REVENUE FUND. THE ATTORNEY GENERAL, UPON WRITTEN REQUEST BY THE DIRECTOR OF ENVIRONMENTAL PROTECTION, SHALL COMMENCE AN ACTION UNDER THIS SECTION AGAINST ANY PERSON WHO VIOLATES SECTIONS 6111.04, 6111.042, 6111.05, OR DIVISION (A) OF SECTION 6111.07 OF THE REVISED CODE. ANY AC-

TION UNDER THIS SECTION IS A CIVIL ACTION, GOVERNED BY THE OHIO RULES OF CIVIL PROCEDURE AND OTHER RULES OF PRACTICE AND PROCEDURE APPLICABLE TO CIVIL ACTIONS.

Sec. 6111.99. (A) Whoever violates SECTION 6111.04, 6111.042, 6111.05, OR division (A) of section 6111.07 of the Revised Code shall be fined not more than [~~ten~~] TWENTY-FIVE thousand dollars or imprisoned not more than one year, or both.

(B) Whoever violates sections 6111.13 to 6111.15, 6111.45, or 6111.46 of the Revised Code, shall be fined not more than five hundred dollars.

(C) Whoever violates division (C) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand 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 such 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 one hundred dollars.

SECTION 2. That existing sections 6111.01, 6111.03, 6111.04, 6111.041, 6111.05, 6111.07, and 6111.99 of the Revised Code are hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is the fact that immediate action is necessary to delegate to the Ohio Environmental Protection Agency legal authority to adopt and enforce programs enabling it to comply with the Federal Water Pollution C

trol Act Amendments of 1972. Therefore this act shall go into immediate effect.

purposes of protection of Lake Erie shores and waters, and the prevention of erosion, investigations therefor, and for planning, development, and construction of facilities for recreational use of Lake Erie, pursuant to appropriations of the general assembly.

* HISTORY: 131 v 458 (Eff 11-5-65); 134 v H 94 (Eff 10-16-72); 134 v S 397. Eff 10-23-72.

# CHAPTER 1509: OIL AND GAS

*Editorial Comments by*

JOHN L. ASHWORTH *of the firm of* Emens and Ashworth, MARION, OHIO

Section


1509.01 Definitions.
1509.02 Division of oil and gas.
1509.03 Rules and regulations; enforcement.
1509.04 Enforcement.
1509.05 Permit to drill; fee.
[1509.05.1] 1509.051 Liquid disposal permit.
1509.06 Application for permit; fee.
1509.07 Surety bond required; exemption.
[1509.07.1] 1509.071 Forfeiture of bond; oil and gas well plugging fund.
1509.08 Issuance of permit; procedure when well is in coal bearing township; restrictions near mines.
[1509.08.1] 1509.081 Issuance, suspension or revocation of liquid disposal permit; appeal.
1509.09 Changing location of well.
1509.10 Well log to be filed; contents.
1509.11 Statement of production.
1509.12 Defective casing; plugging required; county plugging fund.
1509.13 Permit to plug and abandon; fee; exemption; when well is in coal bearing township.
1509.14 Report of abandonment of well; contents; inspectors may administer oaths.
1509.15 Methods of plugging abandoned wells.
1509.16 Plugging and abandonment of well passing through potable water stratum.
1509.17 Well shall be encased; withdrawal of casing.
1509.18 Method of drilling through mine.
1509.19 Plugging and abandonment of well passing through mineral seams.
1509.20 Waste of oil or gas to be prevented; flaring of gas.
1509.21 Secondary recovery operations; permit.
1509.22 Contamination of water prohibited; disposal of well water.
1509.23 Safety regulations.
1509.24 Setting of minimum size for drilling units and minimum distance requirements.
1509.25 Special drilling unit requirements for a particular pool.
1509.26 Voluntary pooling to form drilling unit.
1509.27 Mandatory pooling orders.
1509.28 Order for operation of entire pool as a drilling unit; application; approval by owners; cost sharing.
1509.29 Exception tracts.

[OIL AND GAS BOARD OF REVIEW]

1509.35 Oil and gas board of review.
1509.36 Appeal to board.
1509.37 Appeal to court.
1509.38 Technical advisory council on oil and gas.
1509.39 Municipal ordinances.
1509.40 Limitation on production.
1509.41 Anti-trust violations.
1509.99 Penalties.


## § 1509.01 Definitions.

As used in sections 1509.01 to 1509.99, inclusive, of the Revised Code:

(A) "Well" means any borehole, whether drilled or bored, within the state, for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters, sewage, and any liquid used in or resulting from any process or industry, manufacture, trade, business, or agriculture.

(B) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include hydrocarbons that were originally in a gaseous phase in the reservoir.

(C) "Gas" means all natural gas and all other fluid hydrocarbons not defined above as oil, including condensate.

(D) "Condensate" means liquid hydrocarbons that were originally in the gaseous phase in the reservoir.

(E) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both, but does not include a gas storage reservoir. Each zone of a geological structure that is completely separated from any other zone in the same structure may contain a separate pool.

(F) "Field" means the general area underlaid by one or more pools.

(G) "Drilling unit" means the minimum acreage on which one well may be drilled, but does not apply to a well for injecting gas into or removing gas from a gas storage reservoir.

(H) "Waste" includes:

(1) Physical waste, as such term is generally understood in the oil and gas industry;

(2) Inefficient, excessive, or improper use, or the unnecessary dissipation of, reservoir energy;

(3) Inefficient storing of oil or gas;

(4) Locating, drilling, equipping, operating, or producing an oil or gas well in a manner that reduces or tends to reduce the quantity of oil or gas ultimately recoverable under prudent and proper operations from the pool into which it is drilled, or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

(5) Other underground or surface waste in the production or storage of oil, gas, or condensate, however caused.

appropriations of the

1-5-( 34 v H 94 (Eff 10-

RION, OHIO

orehole, whether drilled , for production, extrac- gas or liquid mineral, to be used as such, but icial brines and oil field liquid used in or result- industry, manufacture, lture.

petroleum oil and all ardless of gravity, that rm by ordinary produc- ot include hydrocarbons a gaseous phase in the

atural gas and all other lefined above as oil, in-

ns liquid hydrocarbons ne gaseous phase in the

underground reservoir cumulation of oil or gas, lude a gas storage reser- ological structure that is n any other zone in the ain a separate pool. general area underlaid

ans the minimum acre- nay be drilled, but does injecting gas into or re- torage reservoir.

such term is generally l gas industry; ve, or improper use, or on of, reservoir energy; of oil or gas; equipping, operating, or well in a manner that re- e the quantity of oil or le under prudent and he pool into which it is tends to cause unneces- loss or destruction of oil

l or surface waste in the oil, gas, or condensate,



(I) "Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under his tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

(J) "Tract" means a single, individually taxed parcel of land appearing on the tax list.

(K) "Owner," unless referring to a mine, means the person who has the right to drill on a tract or drilling unit and to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom either for himself or for others.

(L) "Royalty interest" means the fee holder's interest in the production from a well, usually one-eighth of the gross production.

(M) "Discovery well" means the first well capable of producing oil or gas in commercial quantities from a pool.

(N) "Prepared clay" means a clay which is plastic and is thoroughly saturated with fresh water to a weight and consistency great enough to settle through saltwater in the well in which it is to be used, except as otherwise approved by the chief of the division of oil and gas.

(O) "Rock sediment" means the combined cutting and residue from drilling sedimentary rocks and formation.

(P) "Excavations and workings," "mine," and "pillar" have the meaning set forth in section 4151.01 of the Revised Code.

(Q) "Coal bearing township" means a township designated as such by the chief of the division of mines under section 4151.11 of the Revised Code.

(R) "Gas storage reservoir" means a continuous area of a subterranean porous sand or rock stratum or strata into which gas is or may be injected for the purpose of storing it therein and removing it therefrom, and includes a gas storage reservoir as defined in division (A) of section 4161.01 of the Revised Code.

**HISTORY: 131 v 458 (Eff 10-15-65); 132 v S 226, § 1. Eff 6-26-67.**

**Comment**

New chapter 1509 of the Revised Code creates a division of oil and gas in the department of natural resources. This chapter contains provisions concerning spacing of wells, pooling, unitization, secondary recovery, waste, water contamination, safety, permit and appeal procedures, drilling in coal mine areas and plugging and abandonment of wells. Background materials can be found in staff research report No. 63 of the Ohio legislative service commission.

**Cross-References to Related Sections**

Chief of division of mines, powers and duties, RC § 4151.06.
Designation of coal or mineral bearing township, RC § 4151.11.
Duties as to new mines, RC § 4151.12.
Duties of mine foreman in mines generating firedamp, RC § 4153.24.
Entry and examination of mine by chief of division of mines or deputy mine inspector, RC § 4153.06.
Examination of mine by fire boss, RC § 4153.28.
Laboratory, division of mines, RC § 4151.27.
Mine examination board, RC § 4151.14
Notice to mine owner of hazardous condition, RC § 4151.35.
Owner enjoined from operating mine, RC § 4143.46.
Penalty (RC §§ 1509.01 to 1509.29), RC § 1509.99.

**Research Aids**

See Kuntz: A Treatise on the Law of Oil & Gas.

**CASE NOTES**

1. Petroleum conservation in Ohio. Charles J. Meyers and Howard R. Williams. 26 OSLJ 591.

## § 1509.02 Division of oil and gas.

There is hereby created in the department of natural resources the division of oil and gas, which shall be administered by the chief of the division of oil and gas.

The chief shall not hold any other public office, nor shall he be engaged in any occupation or business which might interfere with or be inconsistent with his duties as chief.

All moneys collected by the chief pursuant to the provisions of ◆ sections 1509.06 and 1509.13 of the Revised Code shall be deposited by him with the treasurer of state to the credit of the general revenue fund.

**HISTORY: 131 v 460 (Eff 10-15-65); 132 v H 510, § 1. Eff 12-1-67.**

**Comment**

Oil and gas functions were formerly administered by the division of mines in the department of industrial relations under provisions of former chapter 4159 of the Revised Code.

**Research Aids**

Officers and employees, funds:
O-Jur2d: Conservation §§ 6, 7

## § 1509.03 Rules and regulations; enforcement.

The chief of the division of oil and gas shall make, adopt, repeal, rescind, and amend, in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code, rules and regulations for the administration, implementation, and enforcement of Chapter 1509. of the Revised Code.

Any orders authorized or notices required to be made by the chief pursuant to Chapter 1509. of the Revised Code shall be made in compliance with the provisions of sections 119.01 to 119.13, inclusive, of the Revised Code, except that personal service may be used in lieu of service by

mail. Every order authorized in Chapter 1509. of the Revised Code and described as such shall be considered an adjudication order for purposes of sections 119.01 to 119.13, inclusive, of the Revised Code.

Where notice to the owners is required by Chapter 1509. of the Revised Code such notice shall be given as prescribed by a regulation adopted by the chief to govern the giving of notices. Such regulation shall provide for notice by publication except in those cases where other types of notice are necessary in order to meet the requirements of the law.

The chief or any inspector designated by him may at any time go upon lands, public or private, for the purpose of administration or enforcement of Chapter 1509. of the Revised Code, or the rules, regulations, or orders made thereunder. No person shall prevent or hinder the chief or an inspector in the performance of his duties.

**HISTORY: 131 v 461 (Eff 10-15-65); 132 v H 310, § 1. Eff 12-1-67.**

**Comment**

The provisions of § 3 of H 234 (131 v 1737) continue the effect of existing regulations by providing:

**Section 3.** All rules, regulations, and orders of the division of mines relating to the exploration, drilling, or producing of oil and gas or the disposal of salt water and other oil field wastes, which have been adopted in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code prior to the effective date of the act, are valid rules, regulations, and orders of the division of oil and gas.

**Research Aids**

Rule making power:
O-Jur2d: Conservation §§ 5, 6, Adm. Law, Etc., §§ 18, 19, 24
Am-Jur: Public Adm. Law § 93 et seq

## § 1509.04 Enforcement.

The oil and gas well inspectors shall, under the supervision of the chief of the division of oil and gas, enforce the provisions of Chapter 1509. of the Revised Code and the rules, regulations, and orders issued pursuant thereto.

The chief may apply to the court of common pleas in the county in which any of the provisions of Chapter 1509. of the Revised Code or any rules, regulations, or orders issued pursuant to Chapter 1509. of the Revised Code are being violated for a temporary or permanent injunction restraining any person from such violation.

**HISTORY: 131 v 461. Eff 10-15-65.**

**Comment**

The provisions of § 4 of H 234 (131 v 1738) transfer certain employees from the division of mines to the new division of oil and gas as follows:

**Section 4.** All oil and gas inspectors and other employees of the division of mines whose principal function is administering the oil and gas laws, who are in the classified civil service of the state, shall be transferred to the division of oil and gas as of the effective date of this act and shall retain the same civil service rights, seniority, and length of service in effect at the time of the transfer.

In addition to the injunction powers granted to the chief by this section, other enforcement provisions appear in the bond requirements of RC § 1509.07 and the penalties set forth in RC § 1509.99.

**Research Aids**

Rule making power:
O-Jur2d: Conservation §§ 5, 6, Adm. Law, Etc., §§ 18, 19, 24
Am-Jur: Public Adm. Law § 93 et seq

## § 1509.05 Permit to drill; fee.

No person shall drill a new well, drill an existing well any deeper, reopen a well, or plug back a well to a source of supply different from the existing pool, without having a permit to do so issued by the chief of the division of oil and gas, and until the original permit or a photostatic copy thereof is posted or displayed in a conspicuous and easily accessible place at the well site. The permit or a photostatic copy thereof shall be continuously displayed in such manner at all times during the work authorized by the permit.

Such permit shall be issued by the chief in accordance with the provisions of Chapter 1509. of the Revised Code. The chief may by rule establish a period of time from date of issue during which permits will be valid.

**HISTORY: 131 v 461. Eff 10-15-65.**

**Research Aids**

Rule making power:
O-Jur2d: Conservation §§ 5, 6, Adm. Law, Etc., §§ 18, 19, 24
Am-Jur: Public Adm., Law § 93 et seq

## [§ 1509.05.1] § 1509.051 Liquid disposal permit.

No person shall use a well for the injection of sewage or any liquid used in or resulting from any process of industry, manufacture, trade, business, or agriculture, without having a liquid disposal permit issued by the chief of the division of oil and gas, and the original permit or a true copy thereof displayed in a conspicuous and easily accessible place at the well site.

A permit to drill a new well, drill an existing well deeper, or to reopen a well, is a liquid disposal permit if the permit was issued in satisfaction of the requirements of section 1509.081 [1509.08.1] of the Revised Code, or if a permit authorizing such use has been issued under section 1509.21 of the Revised Code, or if such use is approved by the chief under section 1509.22 of the Revised Code.

**HISTORY: 132 v S 226, § 1. Eff 6-26-67.**

**See RC §§ 1509.06, 1509.08.1 which refer to this section.**



## § 1509.06

An application
drill an existing
plug back a well
or use a well for
permit is require
1] of the Revise
chief of the div
form as the chi
the following inf
(A) The name
(B) The signa
ized agent. Wh
application it sh
copy of his app
(C) The nam
holding the ro
which the well
posed drilling
(D) The loc
on which the
section or lot
and county;
(E) Designa
(F) The ge
used and the
(G) The ty
used;
(H) The n
surety and th
(I) The pl
waste substa
duced in co
or production
(J) If the
uid, identity
used as the
position of t
Each suc
by a map, c
dred feet to
istered surv
well and c
prescribed
located wit
mine the n
such mine,
of the pers
Each ap
cept a we
section 15
be accom
for a well
or twenty
sand feet
into or re

## § 1509.06 Application for permit; fee.

An application for a permit to drill a new well, drill an existing well deeper, reopen a well, ◆ plug back a well to a different source of supply, or use a well for injection of a liquid for which a permit is required by section 1509.051 [1509.05.-1] of the Revised Code, shall be filed with the chief of the division of oil and gas upon such form as the chief prescribes and shall contain the following information:

(A) The name and address of the owner;

(B) 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.

(C) The names and addresses of all persons holding the royalty interest in the tract upon which the well is to be drilled or within a proposed drilling unit;

(D) The location of the tract or drilling unit on which the well is to be drilled identified by section or lot number, city [,] village, township, and county;

(E) Designation of well by name and number;

(F) The geological formation to be tested or used and the proposed total depth of the well;

(G) The type of drilling equipment to be used;

(H) The name and address of the corporate surety and the identifying number of the bond;

(I) The plan for disposal of water and other waste substances resulting, obtained, or produced in connection with exploration, drilling, or production of oil or gas.

(J) If the well is for the ◆ injection of a liquid, identity of the geological formation to be used as the ◆ injection medium and the composition of the liquid to be injected.

Each such application 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 such well and containing such other data as may be prescribed by the chief. If the well is or is to be located within the excavations and workings of a mine the map shall also include the location of such mine, the name of the mine, and the name of the person operating the mine.

Each application to drill or reopen a well, except a well drilled or reopened for purposes of section 1509.22 of the Revised Code, shall also be accompanied by a fee of thirty-five dollars for a well two thousand feet or more in depth, or twenty dollars for a well less than two thousand feet in depth or for a well for injecting gas into or removing gas from an underground gas storage reservoir. If for any reason the permit is denied, such fee shall be returned to the applicant.

HISTORY: 131 v 462 (Eff 10-15-65); 132 v S 226, § 1. Eff 6-26-67.

**Cross-References to Related Sections**

See RC § 1509.02 which refers to this section.

**Comparative Legislation**

Ill.—Smith-Hurd Rev Stat, ch 104, § 73 et seq
Ind.—Burns' Stat, 1965 Repl, § 46-1720
Ky.—KRS 353.060
Penn.—Purdons Stat, tit 58 § 406
Tenn.—Code Ann, § 60-111
W.Va.—Code 1961, §§ 2465, 2466

**Research Aids**

See Kuntz: A Treatise on the Law of Oil & Gas
Construction and operation of wells:
Page: Oil and Gas § 5
O-Jur2d: Gas and Oil § 68 et seq
Am-Jur: Gas and Oil §§ 103, 140, 145, 148 to 150
Inspection of oils:
Page: Oil and Gas § 6

## § 1509.07 Surety bond required; exemption.

An owner before being issued a permit under section 1509.05 of the Revised Code shall execute and file with the division of oil and gas a surety bond conditioned on compliance with the plugging requirements of section 1509.12 and the permit provisions of section 1509.13 of the Revised Code and all rules, regulations, and orders of the chief of the division of oil and gas relating thereto, in an amount set by rule of the chief.

In lieu of such bond, the chief may accept proof of financial responsibility consisting of a sworn financial statement showing a net financial worth within this state equal to twice the amount of the bond for which it substitutes and, as may be required by the chief, a list of producing properties of the owner within this state or such other evidence showing ability and intent to comply with the law and regulations concerning plugging as may be required by regulation of the chief. The chief may at any time require updating of the documents filed and shall, upon determining that an owner for whom the chief has accepted proof of financial responsibility in lieu of bond cannot demonstrate financial responsibility, order that the owner execute and file a bond as required by this section for the wells specified in the order within ten days of receipt of the order. If the order is not complied with, all wells of the owner which are specified in the order and for which no bond is filed, shall be plugged. No owner shall fail or refuse to plug such a well. Each day on which a well remains

unplugged thereafter constitutes a separate offense.

The surety bond provided for in this section shall be executed by a surety company authorized to do business in this state.

The chief shall not approve any bond until it is personally signed and acknowledged by both principal and surety, or as to either by his attorney in fact, with a certified copy of the power of attorney attached thereto. The chief shall not approve such bond unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact a fidelity and surety business in this state.

All bonds shall be given in a form to be prescribed by the chief and shall run to the state as obligee.

This section does not apply to a well for injecting gas into or removing gas from an underground gas storage reservoir.

HISTORY: 131 v 463 (Eff 10-15-65); 132 v H 310 (Eff 12-1-67); 133 v H 1. Eff 3-18-69.

Style deviations in this section were corrected by HB 1 (133 v —). No change in the meaning of the law was intended; see RC § 1.29.

**Comment**

The surety bond required under this section is to be conditioned upon compliance with chapter 1509 of the Revised Code and all rules, regulations and orders thereunder. Bonding is therefore utilized to enforce the new law.

**Research Aids**

Governmental regulation generally:
O-Jur2d: Gas and Oil § 68
Am-Jur: Gas and Oil §§ 140 to 145

## [§ 1509.07.1] § 1509.071 Forfeiture of bond; oil and gas well plugging fund.

When the chief of the division of oil and gas finds that an owner has failed to comply with the plugging requirements of section 1509.12 or the permit provisions of section 1509.13 of the Revised Code or the rules, regulations, and orders relating thereto he shall make a finding of such fact and declare any surety bond filed to insure compliance with such sections, rules, and regulations forfeited in the amount set by rule of the chief. The chief shall thereupon certify the total forfeiture to the attorney general who shall proceed to collect the amount thereof.

In lieu of total forfeiture, the surety, at its option, may cause the well to be properly plugged and abandoned or pay to the treasurer of state the cost thereof.

All moneys collected on account of forfeitures of bonds as provided in this section shall be held by the treasurer of state in a fund hereby created and designated as the "oil and gas well plugging fund." Such fund shall be expended by the chief to plug wells for which such bonds have been forfeited.

Expenditures from the oil and gas well plugging fund shall be made only for the purpose of plugging wells and pursuant to contracts entered into by the chief with persons who agree to furnish all of the materials, equipment, work, and labor as specified and provided in such contract.

HISTORY: 132 v H 310 (Eff 12-1-67); 133 v H 1. Eff 3-18-69.

Style deviations in this section were corrected by HB 1 (133 v —). No change in the meaning of the law was intended; see RC § 1.29.

## § 1509.08 Issuance of permit; procedure when well is in coal bearing township; restrictions near mines.

Upon receipt of an application for a permit to drill a new well, drill an existing well any deeper, reopen a well, or plug back a well to a different source of supply, or upon receipt of an application for a permit to plug and abandon under section 1509.13 of the Revised Code, the chief of the division of oil and gas shall determine whether such well is or is to be located in a coal bearing township.

If such well is not or is not to be located in a coal bearing township, the chief shall issue such permit if the provisions of Chapter 1509. of the Revised Code have been complied with.

If the application concerns a well which is or is to be located in a coal bearing township the chief of the division of oil and gas shall transmit to the chief of the division of mines two copies of such application and map required in section 1509.06 of the Revised Code. If the application concerns a well which is not or is not to be located within five thousand feet of the excavations and workings of a mine, or the drilling of an existing well any deeper, or plugging back a well to a different source of supply, or to plug and abandon a well, the chief of the division of mines shall note upon such application that it has been examined by the division of mines, retain a copy of the application and map, and immediately return a copy of the application to the chief of the division of oil and gas with his notation thereon. Thereupon the chief of the division of oil and gas shall issue such permit if the provisions of Chapter 1509. of the Revised Code pertaining to the issuance of such permit have been complied with.

If the application concerns a new well or a reopening of an existing well which 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 mines shall immediately notify the owner or lessee of such mine that such application has been filed, and send to such owner or lessee a copy of the map accompanying the application setting forth the location of the well. The chief of the division of mines shall note on



such application th
such owner or less
tion and map, at
of the application
oil and gas with h
the chief of the d
such permit if th
of the Revised C
of such permit ha

If the applica
reopening of an e
located within fi
ground excavatio
within five hund
tions and worki
division of min
owner or lessee
tion has been fi
lessee a copy
application setti
If such owner
of the well, he
sion of mines of
therefor, within
notice. If the
ceives no objec
the mine with
such notice by
opinion of the
objections offe
sufficiently w
approve such
application an
application to
gas with his
the chief of
issue such p
1509. of th
issuance of s

If the chi
an objection
mine as to
days after r
or lessee, an
objection is
such applic
chief of the
his reasons
for a new
the divisio
notify the
approval a
of the divi
such well.
plication
well at th
the divisi
approval

such application that such notice has been sent to such owner or lessee, retain a copy of the application and map, and immediately return a copy of the application to the chief of the division of oil and gas with his notation thereon. Thereupon the chief of the division of oil and gas shall issue such permit if the provisions of Chapter 1509. of the Revised Code pertaining to the issuance of such permit have been complied with.

If the application concerns a new well or reopening of an existing well which 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 mines shall immediately notify the owner or lessee of such mine that such application has been filed, and send to such owner or lessee a copy of the map accompanying the application setting forth the location of the well. If such owner or lessee objects to the location of the well, he shall notify the chief of the division of mines of such objection, giving the reasons therefor, within six days after the receipt of such notice. If the chief of the division of mines receives no objections from the owner or lessee of the mine within ten days after the receipt of such notice by such owner or lessee, or if in the opinion of the chief of the division of mines the objections offered by the owner or lessee are not sufficiently well founded, he shall immediately approve such application, retain a copy of the application and map, and return a copy of the application to the chief of the division of oil and gas with his approval noted thereon. Thereupon the chief of the division of oil and gas shall issue such permit if the provisions of Chapter 1509. of the Revised Code pertaining to the issuance of such permit have been complied with.

If the chief of the division of mines receives an objection from the owner or lessee of the mine as to the location of the well, within ten days after receipt of such notice by such owner or lessee, and if in the opinion of the chief such objection is well founded, he shall disapprove such application and immediately return it to the chief of the division of oil and gas together with his reasons for such disapproval and a suggestion for a new location for such well. The chief of the division of oil and gas shall immediately notify the applicant for such permit of such disapproval and any suggestion made by the chief of the division of mines as to a new location for such well. The applicant may withdraw his application or amend his application to drill the well at the location suggested by the chief of the division of mines or he may appeal the disapproval of the application by the chief of the division of mines to the mine examining board created under section 4151.14 of the Revised Code. Such appeal must be filed within thirty days from the date the applicant receives notice of such disapproval. No approval or disapproval of an application shall be delayed by the chief of the division of mines for more than fifteen days from the date of sending of notice to the mine owner or lessee as required by this section.

The chief of the division of oil and gas shall not issue a permit to drill a new well or reopen a well which 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 therein, nor within one hundred feet of any building or inflammable structure connected therewith and actually used as a part of the operating equipment of such mine, unless the chief of the division of mines determines that life or property will not be endangered by drilling and operating the well in such location.

HISTORY: 131 v 464. Eff 10-15-65.

**Comment**

If the well is or is to be located in a coal bearing township, the chief of the division of oil and gas transmits the application and map to the chief of the division of mines to determine whether the location is within 5000 feet of surface or underground excavations and workings of a mine. The mine owner or lessee merely receives notice of the permit application where the location is more than 500 feet but less than 5000 feet from surface excavations and workings of a mine, but can object and the chief of the division of mines can refuse to approve the permit where the well location is within 5000 feet of underground excavations or within 500 feet of surface excavations and workings of a mine.

**Cross-References to Related Sections**

See RC § 1509.08.1 which refers to this section.

**Comparative Legislation**

Ind.—Burns' Stat, 1965 Repl, 46-1724
Ky.—KRS 353.080

**Research Aids**

Construction and operation of wells:
Page: Oil and Gas § 5
O-Jur2d: Gas and Oil § 68
Am-Jur: Gas and Oil §§ 103, 140 to 145, 148 to 150
Inspection of oils:
Page: Oil and Gas § 6

**[§ 1509.08.1] § 1509.081** Issuance, suspension, or revocation of liquid disposal permit; appeal.

Upon receipt of an application for a permit to drill a new well, drill an existing well deeper, reopen a well, or use a well for injection of a liquid for which a permit is required by section 1509.051 [1509.05.1] of the Revised Code, other than one which comes within the requirements of

section 1509.21 or 1509.22 of the Revised Code, the chief of the division of oil and gas shall determine whether the proposed injection would present an unreasonable risk that waste or contamination of oil or gas in the earth will occur. If he determines such risk to exist, he shall make an order rejecting the application. If he determines such risk not to exist, he shall transmit copies of the application and the map required by section 1509.06 of the Revised Code to the director of environmental protection, the chief of the division of geological survey ◆ and, if so required by section 1509.08 of the Revised Code, to the chief of the division of mines.

The chief of the division of geological survey shall approve the application unless he determines that the proposed injection would present an unreasonable risk of loss or damage to valuable mineral resources.

◆

The director of environmental protection shall approve the application if he determines that the proposed injection will not cause pollution as defined in division (A) of section 6111.01 of the Revised Code.

Upon approval by the director of environmental protection, the chief of the division of geological survey, and by the chief of the division of mines if required by section 1509.08 of the Revised Code, the chief of the division of oil and gas shall issue a liquid disposal permit with such conditions as may be necessary to protect health, safety, or the conservation of natural resources, including all conditions appended by the director of environmental protection.

If the chief is unable to obtain the required approvals, he shall issue an order denying the application. In an appeal from such an order where the application was denied because of lack of approval by an agency or agencies other than the division of oil and gas, the appeal shall be taken under section 119.12 of the Revised Code as if the order had been made by the agency whose approval is lacking.

The chief of the division of oil and gas may adopt rules and regulations for the administration and implementation of this section as may be necessary to protect health, safety, or the conservation of natural resources.

The chief may order that a liquid disposal permit be suspended and that operations cease if he determines that the well is being operated in violation of law, regulation, order, or condition of the permit. Upon service of a copy of the order upon the permit holder, his agent, or assignee, the permit and operations thereunder shall be immediately suspended 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 chief may, after hearing, revoke the permit.

The chief may order that a liquid disposal permit be suspended and that operations cease if he has reasonable cause to believe that the permit would not have been issued if 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, his agent, or assignee, the permit and operations thereunder shall be immediately suspended without prior hearing, but a permit may not be suspended for such reason without prior hearing unless immediate suspension is necessary to prevent waste or contamination of oil or gas, pollution as defined in division (A) of section 6111.01 of the Revised Code, damage to valuable mineral resources, or danger to human life or health. If [,] after hearing [,] the chief 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, he shall revoke the permit.

A revocation of permit shall not prejudice the right of the holder to obtain another permit. When a permit has been revoked, the permit holder or other person responsible therefor shall immediately plug the well.

In an appeal from an order of suspension or revocation where the order was made because of objection of an agency or agencies named in this section other than the division of oil or gas, the appeal shall be taken under section 119.12 of the Revised Code as if the order had been made by the agency upon whose objection the order was based.

HISTORY: 132 v S 226 (Eff 6-26-67); 133 v H 1 (Eff 3-18-69); 134 v S 397. Eff 10-23-72.

Style deviations in this section were corrected by HB 1 (133 v —). No change in the meaning of the law was intended; see RC § 1.29.

## § 1509.09 Changing location of well.

A well may be drilled under a permit only at the location designated on the map required in section 1509.06 of the Revised Code. The location of a well may be changed after the issuance of a permit only with the approval of the chief of the division of oil and gas and, if the well is located in a coal bearing township, with the approval of the chief of the division of mines the same as required in section 1509.08 of the Revised Code for the application for a permit to drill a well. If a permittee requests a change of location he shall return the original permit and file an amended map indicating the proposed new location.



Drilling shall not
location until the or
tion of approval b
well site.

HISTORY: 131 v 46

Examination of m
RC § 4151.31.

Research Aids
Regulation general
O-Jur2d: Gas a
Am-Jur: Gas an

## § 1509.10

Any person drilli
thirty days after t
with the division
designating:

(A) The purp
drilled;

(B) The chara
geological formati
water, coal seam
and gas bearing

(C) The lengt
casing and tubin
amount removed
setting depth of
relating to mudd
such casing or t
dry, gas, oil, co
artificial brine w

(D) The elev
point from whi
made, stating a
ground level at

The log shal
first copy shall
in the files of
shall be transm
of oil and gas

Any electric
geophysical lo
well shall be f
shall transmit
logical survey
the owner fo
months, or
granted by t
pletion of th
shown in th
1509.06 of th

Upon req
division of
ginning of d
the well sha
cuttings acc

The form
shall be on

ıe : ıd within a
ıay, after hearing,

liquid disposal per-
ıerations cease if he
ve that the permit
if information avail-
ı had been available
was made by one of
uthority of this sec-
y of the order upon
or assignee, the per-
er shall be immedi-
rior hearing, but a
led for such reason
; immediate suspen-
waste or contamina-
s defined in division
Revised Code, dam-
ıurces, or danger to
after hearing [,] the
mit would not have
ion available at the
en available at the
ıade by one of the
ty of this section, he

ıll not prejudice the
ain another permit.
evoked, the permit
nsible therefor shall

ler of suspension or
vas made because of
encies named in this
ın of oil or gas, the
r section 119.12 of
rder had been made
objection the order

67); 133 v H 1 (Eff 3-18-

on were corrected by
n the meaning of the
29.

**location of well.**

nder a permit only
n the map required
Revised Code. The
changed after the
ith the approval of
oil and gas and, if
l bearing township,
ef of the division of
in section 1509.08
ıe application for a
permittee requests a
return the original
map indicating the



Drilling shall not be commenced at a new location until the original permit bearing a notation of approval by the chief is posted at the well site.

HISTORY: 131 v 466. Eff 10-15-65.

Examination of mine by deputy mine inspector, RC § 4151.31.

Research Aids
Regulation generally:
O-Jur2d: Gas and Oil, § 68
Am-Jur: Gas and Oil §§ 140, 146

## § 1509.10 Well log to be filed; contents.

Any person drilling within the state shall, within thirty days after the completion of the well, file with the division of oil and gas an accurate log designating:

(A) The purpose for which the well was drilled;

(B) The character, depth, and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations;

(C) The length in feet of the various sizes of casing and tubing used in drilling the well, the amount removed after completion, the type and setting depth of each packer, and all other data relating to mudding in the annular space behind such casing or tubing, indicating completion as a dry, gas, oil, combination oil and gas, brine, or artificial brine well;

(D) The elevation above mean sea level of the point from which the depth measurements were made, stating also the height of the point above ground level at the well.

The log shall be submitted in duplicate. The first copy shall be retained as a permanent record in the files of the division, and the second copy shall be transmitted by the chief of the division of oil and gas to the division of geological survey.

Any electric log, or radioactivity log, or other geophysical log, is made in connection with the well shall be filed with the division and the chief shall transmit such logs to the division of geological survey. Such logs may be retained by the owner for a period of not more than six months, or such additional time as may be granted by the chief in writing, after the completion of the well substantially to the depth shown in the application required by section 1509.06 of the Revised Code.

Upon request in writing by the chief of the division of geological survey prior to the beginning of drilling of the well, the person drilling the well shall make available a complete set of cuttings accurately identified as to depth.

The form of the log required by this section shall be one which has been approved by the chief of the division of oil and gas and the chief of the division of geological survey. The filing of a log as required by this section fulfills the requirement of filing a log with the chief of the division of geological survey in section 1505.-04 of the Revised Code.

HISTORY: 131 v 466. Eff 10-15-65.

Comment
Retention of geophysical logs for a period of not more than six months or such additional time as the chief may grant is permitted in order that the confidential nature of the information gained can be insured for a reasonable time.

Comparative Legislation
Ill.—Smith-Hurd Rev Stat, ch 104, § 34
Ind.—Burns' Stat, 1965 Repl, § 46-1717

Research Aids
Regulation generally:
O-Jur: Gas and Oil § 68
Am-Jur: Gas and Oil §§ 140, 146

## § 1509.11 Statement of production.

The owner of any well producing or capable of producing oil or gas shall file with the chief of the division of oil and gas, on or before the first of March, a statement of production for the last preceding calendar year in such form as the chief may prescribe.

HISTORY: 131 v 467. Eff 10-15-65.

Research Aids
See Kuntz: A Treatise on the Law of Oil and Gas
Regulation generally:
Page: Oil and Gas § 5
O-Jur2d: Gas and Oil § 68
Am-Jur: Gas and Oil §§ 140, 146

## § 1509.12 Defective casing; plugging required; county plugging fund.

No owner of any well shall permit defective casing or tubing in such well to leak fluids or gas which may cause damage to other permeable strata. Upon notice from the chief of the division of oil and gas, such owner shall immediately repair such tubing or casing or plug and abandon such well.

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged, but no well shall be required to be plugged under this section which is being used to produce oil or gas for domestic purposes, or which is being lawfully used for a purpose other than production of oil or gas. When the chief finds that a well should be plugged, he shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the

time specified in the order. Each day on which such a well remains unplugged thereafter constitutes a separate offense.

Where the plugging method, as outlined in sections 1509.01 to 1509.19, inclusive, of the Revised Code, cannot be applied or if applied would be ineffective in carrying out the protection which the law is meant to give, the oil and gas well inspector or, if the well is located in a coal bearing township, the gas storage well inspector may designate the method of plugging to be used. The abandonment report shall show the manner in which the well was plugged.

In case of oil or gas wells abandoned prior to September 1, 1951, the board of county commissioners of the county in which such wells are located may submit to the electors of the county the question of establishing a special fund, by special levy, bond issue, or out of current funds, which shall be approved by a majority of the electors voting upon such question for the purpose of plugging such wells. The fund shall be administered by the board and the plugging of oil and gas wells shall be under the supervision of the chief of the division of oil and gas, and the board shall let contracts for such purpose, provided that such fund shall not be used for the purpose of plugging oil or gas wells which were abandoned subsequent to September 1, 1951.

**HISTORY: 131 v 467 (Eff 10-15-65); 132 v H 310 (Eff 12-1-67); 133 v H 1. Eff 3-18-69.**

Style deviations in this section were corrected by HB 1 (133 v —). No change in the meaning of the law was intended; see RC § 1.29.

**Comment**

This section substantially follows the provisions of former RC § 4159.12 and, as did former RC § 4159.22, also grants authority to the oil and gas well inspector or gas storage well inspector to designate plugging methods in certain circumstances.

**Cross-References to Related Sections**

Examination of mine by deputy mine inspector, RC § 4151.31.

See RC §§ 1509.07, 1509.07.1 which refer to this section.

**Research Aids**

Regulation generally:
Page: Oil and Gas § 5
O-Jur2d: Gas and Oil § 70
Am-Jur: Gas and Oil § 109

**§ 1509.13** Permit to plug and abandon; fee; exemption; when well is in coal bearing township.

No person shall plug and abandon a well without having a permit to do so issued by the chief of the division of oil and gas. Such permit shall be issued by the chief in accordance with the provisions of Chapter 1509. of the Revised Code, and upon application by the owner for a permit to plug and abandon as many days in advance as will be necessary for an oil and gas well inspector, or, if the well is located in a coal bearing township, the gas storage well inspector or a deputy mine inspector to be present at such plugging. Such application shall be filed with the chief of the division of oil and gas upon such form as the chief prescribes and shall contain the following information:

(A) The name and address of the owner;

(B) 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.

(C) The location of the well identified by section or lot number, city, village, township, and county;

(D) Designation of well by name and number;

(E) The total depth of the well to be plugged;

(F) The date and amount of last production from the well;

(G) Such other data as the chief may require.

If oil or gas has been produced from the well, the application shall be accompanied by a fee of twenty dollars. If a new dry well has been drilled in accordance with law, the application may be filed with and the permit issued by an oil and gas well inspector, or, if the well is located in a coal bearing township, the gas storage well inspector or a deputy mine inspector so that such well can be plugged and abandoned without undue delay. No well located outside a coal bearing township shall be plugged and abandoned without an oil and gas well inspector present unless permission has been granted by the chief of the division of oil and gas, and no well located within a coal bearing township shall be plugged and abandoned without the gas storage well inspector or a deputy mine inspector present unless permission has been granted by the chief of the division of mines. The owner of the well shall give written notice at the same time to the owner of the land upon which the well is located, the owners or agents of adjoining land, adjoining well owners or agents, and if such well penetrates or passes within one hundred feet of the excavations and workings of a mine to the owner or lessee of such mine, of his intention to abandon the well, and of the time when he will be prepared to commence plugging the same.

This section does not apply to a well plugged or abandoned in compliance with section 4161.05 of the Revised Code.

**HISTORY: 131 v 468. Eff 10-15-65.**

**Comment**

This section prohibits plugging and abandonment of wells without a permit. A twenty dollar plugging fee is required where oil and gas has been produced



from the well.
§ 4159.13 are in

Cross-References
Requirements
storage wel
mine, RC §

See RC §§ 15(
to this secti

Comparative Le
Penn.—Purdo
W.Va.—Code

Research Aids
See Kuntz: A
Abandonmen
Page: Oil
O-Jur2d: (
Am-Jur: C

**§ 1509.1**
well; content

Any person
permission ha
division of oil
of mines to a
an inspector
plugging, sh
abandonment
permission.
lowing:
(A) The d
(B) The r
such well a
post-office a
(C) The l
and county
surface upo
address the
(D) The
(E) The
(F) Whet
(G) The
(H) The
which the
(I) The
through;
(J) A de
plugged, gi
the coal a
and the d
cluding the
the pluggi
Such re
operator a
such well
signing. F
and gas
spectors,

from the well. Many provisions of former RC § 4159.13 are incorporated into this section.

**Cross-References to Related Sections**

Requirements for plugging and reconditioning gas storage well or reservoir which underlies coal mine, RC § 4161.05.

See RC §§ 1509.02, 1509.07, 1509.07.1 which refer to this section.

**Comparative Legislation**

Penn.—Purdon's Stat, tit 58, § 1 et seq
W.Va.—Code 1961, § 2472

**Research Aids**

See Kuntz: A Treatise on the Law of Oil and Gas
Abandonment of wells:
Page: Oil and Gas § 29
O-Jur2d: Gas and Oil § 70
Am-Jur: Gas and Oil § 109

## § 1509.14 Report of abandonment of well; contents; inspectors may administer oaths.

Any person who abandons a well, when written permission has been granted by the chief of the division of oil and gas or the chief of the division of mines to abandon and plug such well without an inspector being present to supervise the plugging, shall make a written report of such abandonment to the chief who granted such permission. The report shall include the following:

(A) The date of abandonment;

(B) The name of the owner or operator of such well as the time of abandonment and his post-office address;

(C) The location of such well as to township and county and the name of the owner of the surface upon which such well is drilled, with the address thereof;

(D) The date of the permit to drill;

(E) The date when drilled;

(F) Whether such well has been mapped;

(G) The depth of the well;

(H) The depth of the top of the formation to which the well was drilled;

(I) The depth of each seam of coal drilled through;

(J) A detailed report as to how such well was plugged, giving in particular the manner in which the coal and various formations were plugged, and the date of the plugging of such well, including therein the names of those who witnessed the plugging of the well.

Such report shall be signed by the owner or operator agent thereof who abandons and plugs such well and verified by the oath of the party so signing. For the purposes of this section the oil and gas well inspectors, gas storage well inspectors, or deputy mine inspectors may take acknowledgments and administer oaths to the parties signing such report.

**HISTORY: 131 v 469. Eff 10-15-65.**

**Comment**

This section sets forth information required to be submitted in a report of abandonment where, with the permission of the chief, a well is plugged and abandoned without an inspector being present.

**Comparative Legislation**

Penn.—Purdon's Stat, tit 58, § 1 et seq
W.Va.—Code 1961, § 2472

**Research Aids**

See Kuntz: A Treatise on the Law of Oil and Gas
Abandonment generally:
Page: Oil and Gas § 29
O-Jur2d: Gas and Oil § 70
Am-Jur: Gas and Oil § 109

## § 1509.15 Methods of plugging abandoned wells.

When any well is to be abandoned, it must first be plugged by filling the hole with rock sediment or properly prepared clay to a point above the oil or gas sand or rock formation. There shall then be placed or driven on top of the sediment or clay one or more seasoned wooden plugs or a lead plug as the case may require and such plug or plugs shall be placed or driven in such manner that the same shall be at the top of the oil, gas, or rock formation, and will prevent the escape of gas or oil and will prevent water or destructive matter entering the oil or gas, sand or rock formation. Such hole shall be filled at least one hundred feet above such plug or plugs or filled to the lowest casing seat with rock sediment or clay and such material used for such filling shall be properly prepared. After the first string of casing has been withdrawn from such well, a wooden plug or iron ball of sufficient size shall be placed upon the casing seat and at least fifty feet of rock sediment or properly prepared clay placed upon such wooden plug or iron ball.

Wells shall be plugged and abandoned in accordance with sections 1509.01 to 1509.19, inclusive, of the Revised Code, and any additional rules and regulations deemed necessary by the chief of the division of oil and gas to obtain proper protection of all formations of economic value.

In the abandonment and plugging of wells located in congested areas, where the plugging method, as outlined in such sections, cannot be applied or, if applied, would be ineffective in carrying out the protection which the law is meant to give, the chief may designate the method of plugging to be used. He may also

require the installation of casing and vent pipe to provide additional safety to the surrounding area. The ◆ abandonment report shall show the manner in which the well was plugged.

**HISTORY: 131 v 470 (Eff 10-15-65); 132 v H 1, § 1. Eff 2-21-67.**

Style deviations in this section were corrected by the amendment in HB 1 (132 v —). No change in the law was intended; see RC § 1.28.

**Comment**

This section sets forth plugging procedures, many of which appeared in former RC § 4159.14.

**Cross-References to Related Sections**

Requirements for plugging and reconditioning gas storage well or reservoir which underlies coal mine, RC § 4161.05.

**Comparative Legislation**

Ill.—Smith-Hurd Rev Stat, ch 104 § 180
Penn.—Purdon's Stat, tit 58, § 4
Tenn.—Code Ann, § 60-208
W.Va.—Code 1961, § 2473

**Research Aids**

Abandonment of wells:
Page: Oil and Gas § 29
O-Jur2d: Gas and Oil § 70
Am-Jur: Gas and Oil § 109

## § 1509.16 Plugging and abandonment of well passing through potable water stratum.

If any well has passed through a stratum bearing potable water, it shall, when it is abandoned, be plugged by bridging the hole a minimum of fifty feet below all potable water stratum and filling it to the surface with properly prepared clay or rock sediment. Where there are two or more fresh water strata, a bridge shall be set below the lowest fresh water stratum, and filling shall be continued to a point as specified in this section.

**HISTORY: 131 v 471. Eff 10-15-65.**

**Comment**

This section duplicates former RC § 4159.15 dealing with plugging procedures where potable water is encountered.

## § 1509.17 Well shall be encased; withdrawal of casing.

Any person who drills a well shall, before drilling into the principal or major producing formation therein, encase such well with good and sufficient wrought iron or steel casing so as to exclude all surface, fresh, or salt water from any part of such well penetrating the oil or gas bearing sand or rock or fresh water strata. The method of placing such casing shall be approved by the chief of the division of oil and gas, and shall be in accord with the most approved method used in the operation of such type of well. The chief may, in lieu of the casing method outlined in this section, accept adequate mudding methods with prepared clay in the annular space behind such casing in sufficient quantities to shut off all gas or oil and which will exclude all surface, fresh, or salt water from any part of such well penetrating the oil, gas, or mineral bearing formation, or fresh water strata.

Written approval from the chief is required in each case. In the operation of a gas well, it is permissible, with the written consent of the chief, to withdraw all casing in such well, leaving only the tubing and the packer therein, provided that such well is filled with prepared clay from the top of such packer to the surface, as each succeeding string of casing in such well is withdrawn. When the well penetrates the excavations of a mine, the casing shall remain intact as provided in section 1509.18 of the Revised Code and be plugged and abandoned in accordance with section 1509.19 of the Revised Code.

When a well is to be abandoned which has been completely filled with prepared clay around the tubing from the top of the packer to the surface, it shall be optional to use the following methods:

(A) The hole shall be filled through the tubing from the bottom to the ground surface with prepared clay, and such tubing shall remain intact and all fluid shall be removed from the hole before filling is begun.

(B) The tubing shall be parted immediately above the packer and then filled to the surface with prepared clay through the tubing as it is withdrawn from the well.

**HISTORY: 131 v 471. Eff 10-15-65.**

**Comment**

This section substantially follows the casing requirements of former RC § 4159.17.

**Cross-References to Related Sections**

Requirements for plugging and reconditioning gas storage well or reservoir which underlies coal mine, RC § 4161.05.

**Comparative Legislation**

Tenn.—Code Ann, § 60-202

**Research Aids**

Abandonment of wells:
Page: Oil and Gas § 29
O-Jur2d: Gas and Oil § 70
Am-Jur: Gas and Oil § 109

## § 1509.18 Method of drilling through mine.

Any person who drills a well within the limits of a mining operation shall give consideration for the safety of the men working in such mine, and, if possible, shall locate such well so as to penetrate a pillar.

If a well is to be drilled within the limits of a mining operation which may penetrate the excavation of a mine, the hole shall be reduced

approximately fifteen feet above the roof of the mine. If roof conditions at the mine warrant, the hole shall be reduced in the rock formation immediately above such mine, and a string of casing placed upon the shoulder so as to shut off all water, then drilling shall be continued to a point approximately thirty feet below the floor of the mine and another string of casing set. Both strings of casing shall be approximately the same diameter as the diameter of the hole.

If no water is encountered between the bottom of the drive pipe and the approximate casing shoulder above the roof of such mine, in lieu of the casing method outlined above, it is permissible to use the following casing method: the hole shall be drilled thirty feet below the floor of the mine and a string of casing shall be extended from the surface to a point thirty feet below the floor of the mine with a packer of sufficient size attached to such string of casing. Such packer shall be placed so that it will be below all water and will be located in the rock formation immediately above such mine and shall prevent water or destructive matter from entering therein. Then the annular space above such packer between the casing and well wall shall be filled with prepared clay a minimum distance of fifty feet.

If a well is drilled within the limits of a mining operation and does not penetrate the excavations of a mine, the hole shall be reduced thirty feet below the coal or mineral which is being mined and a string of casing placed at this point. The annular space behind such casing shall be filled with neat cement from the casing seat to a point not less than fifty feet above such seam of coal or mineral which is being mined. The packer method, outlined in this section, is also permissible in this type of well.

It is permissible to attach a release coupling or a right and left nipple to the string of casing that extends through the mine, but such release coupling or right and left nipple shall be placed in such a manner that it is above the packer or at least twenty feet above the coal or mineral that is being mined.

In wells penetrating the excavation of a mine, the casing shall be enclosed, if possible, with a column extending from the floor to the roof of such mine, built of brick or other suitable material, subject to the approval of the chief of the division of mines. If the chief of the division of mines finds the method prescribed in this section unsafe, inadequate, or not suitable, he shall require such method to be altered in such manner that it will be safe.

HISTORY: 131 v 472. Eff 10-15-65.

Comment

This section substantially follows the provisions of former RC § 4159.11.

Cross-References to Related Sections

Duties of mine foreman, RC § 4155.02.
Right of action for mine injury, RC § 4155.13.

Comparative Legislation

Ky.—KRS 353.080
W.Va.—Code 1961, §§ 2468, 2471

Research Aids

Penetration of mine by well:
Page: Oil and Gas § 5
O-Jur2d: Gas and Oil § 72
Am-Jur: Gas and Oil § 28

## § 1509.19 Plugging and abandonment of well passing through mineral seams.

If any well has passed through a vein or seam of coal or mineral, it shall, when it is abandoned, be plugged by driving a seasoned wooden plug to a point fifty feet below the lowest seam of coal or mineral, and filling the hole with properly prepared clay or rock sediment to a point at least twenty feet above this seam of coal or mineral at which point another wood plug shall be placed and the hole filled for a distance of thirty feet with properly prepared clay or rock sediment. If there is more than one seam of coal or mineral, the next seam above must be plugged off in like manner. When any well which has been drilled is to be abandoned and has passed through the excavations of any mine, the person owning such well shall leave the casing in it from a point thirty feet below the floor of such mine to a point at least fifteen feet above the roof of such mine or to the rock above the seam if roof conditions at such mine warrant the extension thereto. A seasoned wooden plug shall be driven to a point at least one hundred feet below the floor of such mine and the hole above such plug, together with the casing left in, which extends through the mine, shall be filled with properly prepared concrete; then a seasoned wooden plug shall be driven on top of such casing, and the hole filled with properly prepared concrete for a distance of not less than twenty feet.

HISTORY: 131 v 473. Eff 10-15-65.

Comment

This section substantially follows the provisions of former RC § 4159.16.

Cross-References to Related Sections

Duties of mine foreman, RC § 4155.02.
Right of action for mine injury, RC § 4155.13.

Comparative Legislation

Ky.—KRS 353.110, 353.120

**Research Aids**

Abandonment of wells:
Page: Oil and Gas § 29
O-Jur2d: Gas and Oil § 70
Am-Jur: Gas and Oil § 109

## § 1509.20 Waste of oil or gas to be prevented; flaring of gas.

All owners, lessees, or their agents, drilling for or producing crude oil or natural gas, shall use every reasonable precaution in accordance with the most approved methods of operation to stop and prevent waste of oil or gas, or both. Any well productive of natural gas in quantity sufficient to justify utilization shall be utilized or shut in within ten days after completion.

The owner of any well producing both oil and gas may burn such gas in flares when the gas is lawfully produced and there is no economic market at the well for the escaping gas.

HISTORY: 131 v 474. Eff 10-15-65.

**Comment**

This section substantially follows the provisions of former RC § 4159.20 prohibiting waste of oil or gas but adds a provision authorizing the flaring of gas from a well producing both oil and gas when no economic market for the gas exists at the well.

**Research Aids**

Prevention of waste:
O-Jur2d: Gas and Oil § 69
Am-Jur: Gas and Oil § 148

## § 1509.21 Secondary recovery operations; permit.

The owner of a tract may apply to the chief of the division of oil and gas for a permit to conduct secondary or additional recovery operations using any method approved by the chief. Such permit shall be in addition to any permit required by section 1509.05 of the Revised Code. Secondary recovery operations shall be conducted in accordance with such rules, regulations, or orders of the chief as are necessary for protection of the public health and safety or conservation of natural resources.

HISTORY: 131 v 474. Eff 10-15-65.

**Comment**

This section replaces the provisions of former RC § 4159.19 concerning water flooding with a broad authority in the chief to issue rules, regulations or orders for secondary recovery operations.

See RC §§ 1509.05.1 1509.08.1 which refer to this section.

## § 1509.22 Contamination of water prohibited; disposal of well water.

Contamination of surface or underground water by substances resulting, obtained, or produced in connection with exploration, drilling, or producing of oil or gas is prohibited, and the chief of the division of oil and gas shall adopt such rules and regulations relating thereto as may be necessary for protection of the public health and safety or conservation of natural resources. All water produced from a well shall be injected into an underground formation approved by the chief, or disposed of by an alternative method or methods approved by the chief.

HISTORY: 131 v 474. Eff 10-15-65.

See RC §§ 1509.05.1, 1509.06 which refer to this section.

## § 1509.23 Safety regulations.

Rules and regulations of the chief of the division of oil and gas may include rules and regulations specifying safety practices to be followed in the drilling of wells and production of oil and gas, including specification of devices, distances, and methods of operation to safeguard against hazards to life, limb, and property.

HISTORY: 131 v 475. Eff 10-15-65.

## § 1509.24 Setting of minimum size for drilling units and minimum distance requirements.

The chief of the division of oil and gas, with the approval of the technical advisory council on oil and gas created in section 1509.38 of the Revised Code, may establish, amend, modify, or rescind rules and regulations relative to minimum acreage requirements for drilling units, and minimum ◆ distances from which a new well may be drilled or an existing well deepened, plugged back, or reopened to a source of supply different from the existing pool from boundaries of tracts, drilling units, ◆ other wells, and from streets, roads, highways, railroad tracks, and buildings for the purpose of conserving oil and gas reserves and the safety of persons ◆. Rules and regulations made pursuant to this section and special orders made under section 1509.25 of the Revised Code shall apply only to new wells to be drilled or existing wells to be deepened, plugged back, or reopened to a source of supply different from the existing pool for the purpose of extracting oil or gas in their natural state.

HISTORY: 131 v 475 (Eff 10-15-65); 132 v H 510, § 1. Eff 12-1-67.

**Comment**

The chief of the division of oil and gas is granted general authority to set minimum acreage and distance requirements with the approval of the technical advisory council. Regulations relative to minimum acreage and distance requirements may be issued only for the specified purposes and are not applicable to injection wells.

## § 1509.25 Special drilling unit requirements for a particular pool.

The chief of the division of oil and gas, upon his own motion or upon application of an owner,

may hold a hearing to consider the need or desirability of adopting a special order for drilling unit requirements in a particular pool different from those established under section 1509.24 of the Revised Code. The chief shall notify every owner of land within the area proposed to be included within the order, of the date, time, and place of the hearing and the nature of the order being considered at least thirty days prior to the date of hearing. Each application for such an order shall be accompanied by such information as the chief may request. If the chief finds that the pool can be defined with reasonable certainty, that the pool is in the initial state of development, and that the establishment of such different requirements for drilling a well on a tract or drilling unit in such pool is reasonably necessary to protect correlative rights or to provide effective development, use or conservation of oil and gas, the chief, with the written approval of the technical advisory council on oil and gas created in section 1509.38 of the Revised Code, shall make a special order designating the area covered by the order, and specifying the acreage requirements for drilling a well on a tract or drilling unit in such area, which acreage requirements shall be uniform for the entire pool. The order shall specify minimum distances from the boundary of the tract or drilling unit for the drilling of wells and minimum distances from other wells and allow exceptions for wells drilled or drilling in a particular pool at the time of the filing of the application. The chief may exempt the discovery well from minimum acreage and distance requirements in the order. After the date of the notice for a hearing called to make such order, no additional well shall be commenced in the pool for a period of sixty days or until an order has been made pursuant to the application, whichever is earlier. The chief, upon his own motion or upon application of an owner, after hearing and with the approval of the technical advisory council on oil and gas may include additional lands determined to be underlaid by a particular pool or to exclude lands determined not to be underlaid by a particular pool, and may modify the spacing and acreage requirements of the order.

Nothing in this section shall permit the chief to establish drilling units in a pool by requiring the use of a survey grid coordinate system with fixed or established unit boundaries.

HISTORY: 131 v 476. Eff 10-15-65.

Comment

After a hearing, and with the approval of the technical advisory council, special orders setting forth minimum acreage and distance requirements for a particular pool may be issued by the chief of the division of oil and gas. While the pool must be in the initial state of development, it must also be capable of being defined with reasonable certainty. Wells which are already drilling or which have been drilled, presumably under the general spacing provided for in RC § 1509.24, may be the subject of exceptions from the new acreage and distance requirements.

Research Aids

See Kuntz: A Treatise on the Law of Oil and Gas
Construction and operation of wells:
Page: Oil and Gas § 5
O-Jur2d: Gas and Oil § 68
Am-Jur: Gas and Oil §§ 103, 140 to 145, 148 to 150
Inspection of oils:
Page: Oil and Gas § 6

## § 1509.26 Voluntary pooling to form drilling unit.

The owners of adjoining tracts may agree to pool such tracts to form a drilling unit which conforms to the minimum acreage and distance requirements of the division of oil and gas under section 1509.24 or 1509.25 of the Revised Code. Such agreement shall be in writing, a copy of which shall be submitted to the division of oil and gas with the application for permit required by section 1509.05 of the Revised Code. Parties to the agreement shall designate one of their number as the applicant for such permit.

HISTORY: 131 v 476. Eff 10-15-65.

Comment

This section confirms the validity of voluntary pooling agreements.

## § 1509.27 Mandatory pooling orders.

If a tract of land is of insufficient size or shape to meet the requirements for drilling a well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner has been unable to form a drilling unit under agreement provided in section 1509.26 of the Revised Code, on a just and equitable basis, the owner of such tract may make application to the division of oil and gas for a mandatory pooling order.

Such application shall include such data and information as shall be reasonably required by the chief of the division of oil and gas and shall be accompanied by an application for permit as required by section 1509.05 of the Revised Code. The chief shall notify all owners of land within the area proposed to be included within the order of the filing of such application and of their right to a hearing if requested. After the hearing or after the expiration of thirty days from the date notice of application was mailed to such owners, the chief, if satisfied that the application is proper in form and that mandatory

pooling is necessary to protect correlative rights or to provide effective development, use, or conservation of oil and gas, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, which shall:

(A) Designate the boundaries of the drilling unit within which the well shall be drilled;

(B) Designate the proposed drilling site;

(C) Describe each separately owned tract or part thereof pooled by the order;

(D) Allocate on a surface acreage basis a pro rata portion of the production to the owner of each tract;

(E) Specify the basis upon which each owner shall share all reasonable costs and expenses of drilling and producing;

(F) Designate the person to whom the permit shall be issued.

If an owner does not elect to participate in the risk and cost of the drilling and operation, or operation, of a well, he may elect to be a nonparticipating owner in the drilling and operation, or operation, of the well, on a limited or carried basis upon terms and conditions determined by the chief to be just and reasonable. If one or more of the participating owners bear the costs of drilling, equipping, or operating a well for the benefit of a nonparticipating owner, as provided for in the pooling order, then such participating owner or owners shall be entitled to the share of production from the drilling unit accruing to the interest of such nonparticipating owner, exclusive of the royalty interest if the fee holder has leased his land to others, otherwise, one-eighth of his share of the production, until ◆ there has been received the share of costs charged to such nonparticipating owner plus such additional percentage of said share of costs as the chief shall determine. The total amount receivable hereunder shall in no event exceed double the share of costs charged to such nonparticipating owner.

If there is a dispute as to costs of drilling, equipping, or operating a well, the chief shall determine such costs.

In instances where a well is completed prior to the pooling of interests in a drilling unit under this section, the sharing of production and adjustment of the original costs of drilling, equipping, and completing the well shall be from the effective date of the mandatory pooling order.

From and after the date of a pooling order, all operation, including the commencement of drilling or the operating of or production from a well upon any tract or portion of the drilling unit, shall be deemed for all purposes the conduct of such operations upon ◆ and production from any lease or contract for lands any portion of which is included in the drilling unit.

HISTORY: 131 v 476 (Eff 10-15-65); 132 v H 1, § 1 (Eff 2-21-67); 132 v H 310, § 1. Eff 12-1-67.

**Comment**

This section authorizes mandatory pooling upon application by the owner of a tract of insufficient size or shape to satisfy applicable spacing requirements if voluntary pooling is not possible on a just and equitable basis and if the chief, after hearing or waiver thereof, finds that mandatory pooling is necessary to protect correlative rights or provide effective development, use or conservation of oil and gas. The pooling order must comply with the minimum spacing requirements of RC § 1509.24 or 1509.25. Unlike RC §§ 1509.25 and 1509.28, application for a mandatory pooling order must be by the owner of an affected tract and cannot follow the motion of the chief of the division of oil and gas. If an owner elects not to pay his share of costs, the remaining owners must carry the full risk of a dry hole but are entitled to recover twice the non-participating owner's share of costs from any production which may accrue to the non-participating owner's interest, exclusive of royalty.

## § 1509.28 Order for operation of entire pool as a drilling unit; application; approval by owners; cost sharing.

(A) The chief of the division of oil and gas, upon his own motion or upon application by the owners of sixty-five per cent of the land area overlying the pool, shall hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof. An application by owners shall be accompanied by such information as the chief may request.

The chief shall make an order providing for the unit operation of a pool or part thereof if he finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the unitized area, termed the unit area;

(2) A statement of the nature of the operations contemplated;

(3) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the chief shall determine the value, from the evidence introduced at the hearing, of each separately owned tract i
physical equipment,
gas by unit operati
cated to each tract
the value of each
the value of all trac

(4) A provision f
be made in the adj
the unit area for t
wells, tanks, pump
equipment contribu

(5) A provision
of unit operations,
shall be determinec
owned tracts and
paid;

(6) A provision
otherwise financin
meet his financial
the unit, allowing
for such service;

(7) A provision
of the unit opera
person shall hav
sponding to the
unit operations
of such person;

(8) The time
commence, and
circumstances u
shall terminate;

(9) Such addi
be appropriate
tions, and for
correlative right

(B) No order
operations shall
the plan for u
chief has beer
owners who, u
quired to pay
costs of the
royalty or, wit
owners of sixty
be included i
operations has
and royalty c
viding for uni
upon applica
mental hearin
if and when t
so approved.
or either, o
interest in t
plan for uni
months from
viding for u

rately owned tract in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the value of each tract so determined bears to the value of all tracts in the unit area.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(5) A provision providing how the expenses of unit operations, including capital investment, shall be determined and charged to the separately owned tracts and how said expenses shall be paid;

(6) A provision, if necessary, for carrying or otherwise financing any person who is unable to meet his financial obligations in connection with the unit, allowing a reasonable interest charge for such service;

(7) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of such person;

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate;

(9) Such additional provisions as are found to be appropriate for carrying on the unit operations, and for the protection or adjustment of correlative rights.

(B) No order of the chief providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the chief has been approved in writing by those owners who, under the chief's order, will be required to pay at least sixty-five per cent of the costs of the unit operation, and also by the royalty or, with respect to unleased acreage, fee owners of sixty-five per cent of the ◆ acreage to be included in the unit. If the plan for unit operations has not been so approved by owners and royalty owners at the time the order providing for unit operations is made, the chief shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the owners and royalty owners, or either, owning the required percentage of interest in the unit area do not approve the plan for unit operation within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of force and shall be revoked by the chief.

An order providing for unit operations may be amended by an order made by the chief, in the same manner and subject to the same conditions as an original order providing for unit operations, provided:

(1) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners shall not be required.

(2) No such order of amendment shall change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning interest in such tract.

The chief, by an order, may provide for the unit operation of a pool or a part thereof that embraces a unit area established by a previous order of the chief. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the preivous order.

Oil and gas allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from such tract, and all operations, including, but not limited to, the commencement, drilling, ◆ operation of or production from a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations ◆ and production from any lease or contract for lands any portion of which is included in the unit area. The operations conducted pursuant to the order of the chief shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the chief.

Oil and gas allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

No order of the chief or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired for the account of the owners within the unit area shall be the property of such owners ◆ in the proportion that the expenses of unit operations are charged.

**HISTORY: 131 v 478 (Eff 10-15-65); 132 v H 510, § 1. Eff 12-1-67.**

**Comment**

This section authorizes the chief of the division of oil and gas, after hearing and with the approval of the owners who will be required to pay at least sixty-five percent of costs and the owners of sixty-five percent of the normal one-eighth royalty, to issue an order for unit operation of all or part of a pool. While RC § 1509.27 provides for a one well mandatory pooling order, this section contemplates unit operation of all or part of an entire pool. Unit production under this section is to be allocated to the separately owned tracts in accordance with voluntary agreement or in accordance with findings based upon evidence introduced at the hearing. As in RC § 1509.27, production and all operations on any part of the unit are deemed to be production and operations on all included tracts.

**Research Aids**

See Kuntz: A Treatise on the Law of Oil and Gas
Construction and operation of wells:
Page: Oil and Gas § 5
O-Jur2d: Gas and Oil § 68
Am-Jur: Gas and Oil §§ 103, 140 to 145, 148 to 150
Inspection of oils:
Page: Oil and Gas § 6

## § 1509.29 Exception tracts.

Upon application by an owner of a tract for which a drilling permit may not be issued, and a showing by him that he is unable to enter a voluntary pooling agreement and that he would be unable to participate under a mandatory pooling order, the chief of the division of oil and gas shall issue a permit and order establishing the tract as an exception tract if the chief finds that such owner would otherwise be precluded from producing oil or gas from his tract because of minimum acreage or distance requirements. The order shall set a percentage of the maximum daily potential production at which the well may be produced. The percentage shall be the same as the percentage that the number of acres in the tract bears to the number of acres in the minimum acreage requirement which has been established under section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, but if the well drilled on such tract is located nearer to the boundary of the tract than the required minimum distance, the percentage may not exceed the percentage determined by dividing the distance from the well to the boundary by the minimum distance requirement. Within ten days after completion of the well, the maximum daily potential production of the well shall be determined by such drill stem, open flow, or other tests as may be required by the chief. The chief shall require such tests, at least once every three months, as are necessary to determine the maximum daily potential production at that time.

**HISTORY: 131 v 481. Eff 10-15-65.**

**Comment**

Where a tract is of insufficient size or shape to permit the drilling of a well complying with minimum acreage and distance requirements and where neither voluntary nor mandatory pooling are available, presumably by reason of the proximity of existing production, the owner is not denied the opportunity to drill but can produce only a percentage of his well's maximum daily potential. The percentage for such an exception well shall be the smaller of either the percentage that acreage in the exception tract bears to the minimum required acreage or the percentage that the distance from the well location to the tract's boundary bears to the minimum applicable distance requirement. The maximum daily potential production to which such percentage is applied is re-determined at least once every three months.

## § 1509.30 Reports to royalty holders; records to be preserved two years.

The holder of a royalty interest in any natural gas well may request the owner to report to him, no more frequently than the payment period in his contract with the owner:

(A) The volume of natural gas for which he was or is being paid for the most recent period in his contract with the owner, and for any other previous periods within two years of the date of production for which the owner has not already given him such a report;

(B) The price per thousand cubic feet paid to the holder for such gas;

(C) The volume of natural gas which was shown to have passed through the owner's meter for the field containing the holder's well.

The owner shall preserve records of such volume for at least two years after the date the record is made. Upon receipt by the owner or his agent of a request by the holder pursuant to this section, the owner shall supply the information to the holder within fifteen days, or the end of the current payment period in the contract, whichever is later.

If the holder's well is metered, the owner shall in such report also inform the holder of the volume of natural gas which was shown to have passed through such meter during the period.

The volume of gas required to be reported by this section shall be indicated on the basis of a standard cubic foot of gas.

**HISTORY: 134 v S 387. Eff 7-14-72.**



## § 1509.31

Whenever an o
otherwise transfer
shall notify the h
and if a well or w
sion of oil and g
the assignee or tra
receipt requested,
the date of the a

**HISTORY: 134 v S**

[OIL AND C

## § 1509.35

There is herel
of review consis
by the governor
that the terms c
board shall be f
years, respective
at the time of t
vacancy in the o
shall be filled b
for the unexpir
office is vacant.
board shall be
sixty days after
appointees to su
by reason of hi
or affiliations, c
of a major pet
pointees to suc
by reason of h
or affiliations,
of the public.
board shall be
previous traini
as a represen
operators. On
shall be a per
training and
learned and e
of the appoint
who, by reas
perience, can
experienced i
members shal
party.

Three men
action of the
currence of
shall keep a

Each men
fixed pursua
Code per di
performance
engaged in
such work.

### § 1509.31 Notice.

Whenever an oil and gas lease is assigned or otherwise transferred, the assignor or transferor shall notify the holders of the royalty interests, and if a well or wells exist on the lease, the division of oil and gas, of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than thirty days after the date of the assignment or transfer.

HISTORY: 134 v S 387. Eff 7-14-72.

[OIL AND GAS BOARD OF REVIEW]

### § 1509.35 Oil and gas board of review.

There is hereby created an oil and gas board of review consisting of five members appointed by the governor for terms of five years, except that the terms of the first five members of said board shall be for one, two three, four, and five years, respectively, as designated by the governor at the time of the appointment, except that any vacancy in the office of any member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment, or affiliations, can be classed as a representative of a major petroleum company. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment, or affiliations, can be classed as a representative of the public. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as a representative of independent petroleum operators. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one learned and experienced in oil and gas law. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one learned and experienced in geology. Not more than three members shall be members of the same political party.

Three members constitute a quorum and no action of the board is valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings.

Each member shall be paid ◆ an amount fixed pursuant to section 143.09 of the Revised Code per diem when actually engaged in the performance of his work as a member and when engaged in travel necessary in connection with such work. In addition to such compensation each member shall be reimbursed for all traveling, hotel, and other expenses necessarily incurred in the performance of his work as a member.

The board shall select from among its members a chairman, a vice-chairman, and a secretary. Such officers shall serve for terms of one year.

The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance.

The board shall, in accordance with sections 119.01 to 119.13, inclusive, of the Revised Code, adopt rules and regulations to govern its procedure.

HISTORY: 131 v 481 (Eff 10-15-65); 132 v H 1, § 1. (Eff 2-21-67); 132 v H 93, § 1. Eff 5-17-67.

### § 1509.36 Appeal to board.

Any person claiming to be aggrieved or adversely affected by an order by the chief of the division of oil and gas may appeal to the oil and gas board of review for an order vacating or modifying such order.

The person so appealing to the board shall be known as appellant and the chief shall be known as appellee. Appellant and appellee shall be deemed to be parties to the appeal.

Such appeal shall be in writing and shall set forth the order complained of and the grounds upon which the appeal is based. Such appeal shall be filed with the board within thirty days after the date upon which appellant received notice by registered mail of the making of the order complained of. Notice of the filing of such appeal shall be filed with the chief within three days after the appeal is filed with the board.

Upon the filing of such appeal the board shall promptly fix the time and place at which the hearing on the appeal will be held, and shall give the appellant and the chief at least ten days' written notice thereof by mail. The board may postpone or continue any hearing upon its own motion or upon application of appellant or of the chief.

The filing of an appeal provided for in this section does not automatically suspend or stay execution of the order appealed from, but upon application by the appellant the board may suspend or stay such execution pending determination of the appeal upon such terms as it deems proper.

Either party to the appeal or any interested person who, pursuant to board rules and regulations has been granted permission to appear, may submit such evidence as the board deems admissible.

For the purpose of conducting a hearing on an appeal, the board may require the attendance of

witnesses and the production of books, records, and papers, and it may, and at the request of any party it shall, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records, or papers, directed to the sheriff of the counties where such witnesses are found, which subpoenas shall be served and returned in the same manner as subpoenas in criminal cases are served and returned. The fees and mileage of sheriffs and witnesses shall be the same as those allowed by the court of common pleas in criminal cases. Such fees and mileage expenses incurred at the request of appellant shall be paid in advance by the appellant, and the remainder of such expenses shall be paid out of funds appropriated for the expenses of the division of oil and gas.

In case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the court of common pleas of the county in which such disobedience, neglect or refusal occurs, or any judge thereof, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Witnesses at such hearings shall testify under oath, and any member of the board may administer oaths or affirmations to persons who so testify.

At the request of any party to the appeal, a stenographic record of the testimony and other evidence submitted shall be taken by an official court shorthand reporter at the expense of the party making the request therefor. Such record shall include all of the testimony and other evidence and the rulings on the admissibility thereof presented at the hearing. The board shall pass upon the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the board thereon, and if the board refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

If upon completion of the hearing the board finds that the order appealed from was lawful and reasonable, it shall make a written order affirming the order appealed from; if the board finds that such order was unreasonable or unlawful, it shall make a written order vacating the order appealed from and making the order which it finds the chief should have made. Every order made by the board shall contain a written finding by the board of the facts upon which the order is based.

Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by registered mail.

The order of the board is final unless vacated by the court of common pleas of Franklin county in an appeal as provided for in section 1509.37 of the Revised Code. Sections 1509.01 to 1509.37, inclusive, of the Revised Code, providing for appeals relating to orders by the chief or by the board, or relating to regulations adopted and promulgated by the chief, do not constitute the exclusive procedure which any person who deems his rights to be unlawfully affected by such sections or any official action taken thereunder must pursue in order to protect and preserve such rights, nor do such sections constitute procedure which such person must pursue before he may lawfully appeal to the courts to protect and preserve such rights.

HISTORY: 131 v 482 (Eff 10-15-65); 132 v H 310, § 1. Eff 12-1-67.

## § 1509.37 Appeal to court.

Any party adversely affected by an order of the oil and gas board of review may appeal to the court of common pleas of Franklin county. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law or questions of law and fact. A copy of such notice shall also be filed by appellant with the court and shall be mailed or otherwise delivered to appellee. Such notices shall be filed and mailed or otherwise delivered within thirty days after the date upon which appellant received notice from the board by registered mail of the making of the order appealed from. No appeal bond shall be required to make either an appeal on questions of law or an appeal on questions of law and fact effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of such order and fix its terms.

Within fifteen days after receipt of the notice of appeal the board shall prepare and file in the court the complete record of proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which has been submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. Appellant shall provide security for costs satisfactory to the court. Upon demand by a party the board shall furnish at the cost of the party requesting the same a copy of such record. In the event such complete record is not filed in the court within the time provided for in this

thereof to each such

is f unless vacated
cas o. Franklin county
for in section 1509.37
ions 1509.01 to 1509.-
d Code, providing for
by the chief or by the
ulations adopted and
do not constitute the
any person who deems
illy affected by such
tion taken thereunder
protect and preserve
ections constitute pro-
must pursue before
the courts to protect

0-15-65); 132 v H 510, § 1.

to court.

ected by an order of
review may appeal to
s of Franklin county.
appeal shall file with
ppeal designating the
tating whether the ap-
of law or questions of
ich notice shall also be
e court and shall be
red to appellee. Such
mailed or otherwise
s after the date upon
notice from the board
making of the order
bond shall be required
n questions of law or
law and fact effective.
appeal shall not auto-
ension of the order of
to the court that an
ellant will result from
order pending deter-
e court may grant a
d fix its terms.
receipt of the notice
repare and file in the
of proceedings out of
ncluding a transcript
evidence which has
board. The expense
ing such record shall
costs of the appeal.
curity for costs satis-
demand by a party
the cost of the party
y of such record. In
ecord is not filed in
provided for in this

section either party may apply to the court to have the case docketed, and the court shall order such record filed.

In the hearing of the appeal the court is confined to the record as certified to it by the board. The court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the board. The court shall conduct a hearing on such appeal and shall give preference to such hearing over all other civil cases irrespective of the position of the proceedings on the calendar of the court. The hearing in the court shall proceed as in the trial of a civil action and the court shall determine the rights of the parties in accordance with the laws applicable to such action. At such hearing counsel may be heard on oral argument, briefs may be submitted, and evidence introduced if the court has granted a request for the presentation of additional evidence.

If the court finds that the order of the board appealed from was lawful and reasonable, it shall affirm such order. If the court finds that such order was unreasonable or unlawful, it shall vacate such order and make the order which it finds the board should have made. The judgment of the court is final unless reversed, vacated, or modified on appeal.

HISTORY: 131 v 484. Eff 10-15-65.

## § 1509.38 Technical advisory council.

There is hereby created in the division of oil and gas a technical advisory council on oil and gas which shall consist of eight members to be appointed by the governor with the advice and consent of the senate. Three members shall be independent oil or gas producers, operators, or their representatives, operating and producing primarily in Ohio, three members shall be oil or gas producers, operators, or their representatives having substantial oil and gas producing operations in Ohio and at least one other state, one member shall represent the public, and one member shall represent persons having landowners' royalty interests in oil and gas production. All members must be residents of Ohio, and all members, except the members representing the public and persons having landowners' royalty interests, must have at least five years of practical or technical experience in oil or gas drilling and production. Not more than one member may represent any one company, producer, or operator.

The members first appointed shall have terms expiring on the first Monday of February, two to expire in each of the years 1967 and 1968, and three in the year 1969. Annually, as the term of a member expires, the governor shall appoint a member to serve for a term of three years, beginning on the first Monday of February. A vacancy in the office of a member shall be filled by the governor, with the advice and consent of the senate, for the remainder of the unexpired term.

The council shall select from among its members a chairman, a vice-chairman, and a secretary. All members are entitled to their actual and necessary expenses incurred in the performance of their duties as such members, payable from the appropriations for the division.

The governor may remove any member for inefficiency, neglect of duty, or malfeasance in office.

The council shall hold at least one regular meeting in each quarter of a calendar year, and shall keep a record of its proceedings. Special meetings may be called by the chairman, and shall be called by him upon receipt of a written request therefor signed by two or more members of the council. A written notice of the time and place of each meeting shall be sent to each member of the council. Five members constitute a quorum, and no action of the council is valid unless five members concur.

The council shall, when requested by the chief of the division of oil and gas, consult with and advise the chief and perform such other duties as may be lawfully delegated to it by the chief. The council shall have the right to participate in hearings held by the chief pursuant to Chapter 1509. of the Revised Code, and shall have powers of approval as provided in sections 1509.24 and 1509.25 of the Revised Code.

* * * *[No change in last paragraph]*

HISTORY: 131 v 485 (Eff 10-15-65); 134 v S 425. Eff 8-24-72.

Comment

The chairman selected by the membership of the technical advisory council also becomes a member of the recreation and resources commission under RC § 1501.04.

See RC §§ 1501.04, 1509.24, 1509.25 which refer to this section.

## § 1509.39 Municipal ordinances.

The sections of Chapter 1509. of the Revised Code or rules and regulations promulgated pursuant to any section of Chapter 1509. of the Revised Code shall not be construed to prevent a municipal corporation from enacting and enforcing municipal ordinances regulating health and safety standards for the drilling and exploration for oil and gas, provided that such municipal regulations are not less restrictive than

the rules promulgated by the division of oil and gas or provided for by statute.

HISTORY: 131 v 486. Eff 10-15-65.

**§ 1509.40 Limitation on production.**

Except as provided in section 1509.29 of the Revised Code, no authority granted in Chapter 1509. of the Revised Code shall be construed as authorizing a limitation of production of oil or gas for any reason whatsoever.

HISTORY: 131 v 487. Eff 10-15-65.

**§ 1509.41 Anti-trust violations.**

No combination of persons or interests authorized by any provisions of Chapter 1509. of the Revised Code shall be construed to be a trust, monopoly, or other combination in restraint of trade prohibited by law.

HISTORY: 131 v 487. Eff 10-15-65.

**§ 1509.99 Penalties.**

Whoever violates sections 1509.01 to 1509.31, inclusive, of the Revised Code, or any rules, regulations, or orders issued pursuant to these sections, shall be fined not less than one hundred nor more than five hundred dollars for a first offense; for each subsequent offense such person shall be fined not less than two hundred nor more than one thousand dollars.

HISTORY: 131 v 487 (Eff 10-15-65); 134 v S 387. Eff 7-14-72.

**§ 1511.01 Duties of division of lands and soil.**

The division of lands and soil shall:

(A) Cooperate with all agencies engaged in soil conservation work in Ohio;

(B) Furnish aid and equipment to the soil and water conservation districts upon such terms as are mutually agreeable to said districts and the department of natural resources;

(C) Consider policies and programs affecting state lands in the custody of the Ohio state archaeological and historical society, the division of forestry and reclamation, the agricultural research and development center, the division of wildlife, the department of public works, the department of public welfare, the department of highways, and the division of parks and recreation;

(D) Make recommendations to the department of natural resources on all matters concerning soil conservation and proper land use.

* HISTORY: 133 v H 1 (Eff 3-18-69); 133 v S 160 (Eff 11-6-69); 134 v S 305. Eff 1-3-72.

**§ 1511.02 Study and report on natural resources.**

The division of lands and soil may assemble information through the medium of any state department or agency or from any other source.

The division shall study and report on the lands, and the natural resources thereof, of the state, which are available and suitable for state forests, recreational or scenic parks, or wildlife preserves, or which are of scientific, historical, or archaeological interest. The study shall include lakes, rivers, and streams suitable for recreational purposes or for the conservation and natural propagation of wildlife. ◆ This information shall be published in a biennial report to the director of natural resources and the director of environmental protection, and made available to the public. This section and section 1511.01 of the Revised Code do not authorize the division to survey, plan, consider, recommend, or otherwise examine into any project which has for its ultimate object or which may or will result in the establishment or the improvement of any natural or artificial waterway for transportation purposes.

* HISTORY: 134 v S 397. Eff 10-23-72.

**§ 1513.01 Definitions.**

As used in Chapter 1513. of the Revised Code:

(A) "Strip mining" means all or any part of the process followed in the production of coal from a natural deposit whereby the coal may be extracted after removing overburden, including mining by the auger method or any similar method which penetrates a mineral seam and removes coal directly through a series of openings made by a machine which enters the seam from a surface excavation, or the removing of overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit.

(B) "Overburden" means all of the earth and other materials which cover a natural deposit of coal, and also means such earth and other materials after removal from their natural state in the process of strip mining.

(C) "Spoil bank" means a deposit of removed overburden.

(D) "Area of land affected" means the area of land from which overburden has been removed, or upon which a spoil bank exists, or both, or beneath which augering has occurred.

(E) "Operation" or "strip mining operation" means all of the premises, facilities, and equipment used in the process of producing coal, by strip mining, from a designated pit or from a designated mining cut or opening, in the creation of which pit, cut, or opening overburden or coal is disturbed or removed, such pit, cut, or opening being located upon a single tract of land or upon two or more contiguous tracts of land.

(F) "Operator" means any person ◆ engaged in strip mining who removes or intends to remove more than two hundred fifty tons of coal from the earth by strip mining within twelve successive calendar months ◆ or who removes overburden

11-4-59); 130 v 18, § 1 (Eff 6-11-63); 130 v 19, § 1 (Eff 10-7-63); 132 v H 495, § 1 (Eff 10-24-67); 132 v S 235, § 1. Eff 11-14-67.

The provisions of § 2 of H 495 (132 v —) read as follows:

SECTION 2. All personnel, contracts, and unexpended funds received under such contracts, files, books, papers, records, equipment and any property of any department or office, the functions, powers and duties of which have been assigned or transferred to the department of urban affairs under Chapter 124. of the Revised Code shall upon the effective date of this act (10-24-67) be transferred to the department or office to which such assignment or transfer has been made under the provisions of the act.

Cross-References to Related Sections

See RC § 151.01 which refers to this section.

Research Aids

Page
St. of Ohio § 33
O-Jur2d
Governor § 2
St. of Ohio §§ 9, 10
Am-Jur2d
Adm. Law §§ 23-48

## CASE NOTES AND OAG

INDEX

Compensation for addresses, right to, 4
Education, department of
  Application for federal funds, 8
  Film censorship, 3
  Purpose of, 7
Health, department of
  Assistant health director, 6
  Public health service, 5
Highways, department of, 2, 10
Industrial relations, department of, 1
Personnel, establishment within departments, 9
Public works, department of, 2

---

See also case note 1 under RC § 121.17.

1. By GC § 154-1 (RC § 121.01) et seq the department of industrial relations became the successor of the industrial commission as to the powers and duties prescribed by GC § 7630-1 (RC § 3375.35). General Code § 154-1 (RC § 121.01) et seq requires the administration of the affairs of the department by its director, who shall keep a record of its official acts: Industrial Comm. v. Snyder, 113 OS 405, 149 NE 397.

2. By the amendment of GC § 154-3 (RC § 121.02) in 112 v 478, the department of highways was created and separated from the department of public works: State ex rel. McCormick v. Raschig, 147 OS 522, 34 OO 420, 72 NE(2d) 262.

3. The director of the department of education is the executive head of such department, with full power to manage, supervise and direct, including the division of film censorship. The director of the division of film censorship exercises no power independent of the supervisory prerogatives of the director of the department. The advisory board assists the department of education, in censoring films by its counsel, advice and information which the director may use or reject in his final action: 1922 OAG vol.1, p.269.

4. The directors of the several administrative departments of state government, as created by this section, except the director of education, may lawfully receive compensation for making addresses at teachers' institutes, school commencements or other educational gatherings, so long as these payments do not constitute an illegal expenditure of public funds: 1933 OAG No.896.

5. The responsibility for public health service on and within state-owned property rests primarily with the state department of health: 1940 OAG No.1921.

6. Because of GC § 154-16 (RC § 121.12) an assistant director of the department of health may not serve simultaneously as chief of the bureau of direct services in the department of health if he is entitled to and receives separate compensation in each position: 1950 OAG No.2143.

7. The department of education of Ohio is the sole state agency designated by the legislature to carry out the purposes stated in § 101, title I, public law 815, 81st congress: 1951 OAG No.94.

8. The department of education of Ohio is authorized to make and file application for federal grants of funds for the school facilities survey contemplated by § 101, title I, public law 815, 81st congress: 1951 OAG No.94.

9. The director of a state department created by this section, has authority, subject to the approval of the governor, under GC § 154-8 (RC § 121.07), to establish a central personnel within his department to serve the needs of his department: 1951 OAG No. 2531.

10. The sections of 125 v 127 which will remain in force after July 1, 1954 together with RC § 141.03(O) adequately provide for the position of director of highway safety after that date: 1953 OAG No.3045.

## § 121.03 Appointment of directors.

(A) The following administrative department heads shall be appointed by the governor, with the consent of the senate, and shall hold their offices during the term of the appointing governor but subject to removal at the pleasure of the governor:

(1) The director of finance;
(2) The director of commerce;
(3) The director of highways;
(4) The director of agriculture;
(5) The director of industrial relations;
(6) The director of public welfare;
(7) The director of liquor control;
(8) The director of highway safety;
(9) The superintendent of insurance;
(10) The director of development;
(11) The tax commissioner;
(12) The director of state personnel;
(13) The administrator of workmen's compensation;
(14) The administrator of the bureau of unemployment compensation;
(15) The director of natural resources;
(16) The director of mental hygiene and correction;
(17) The director of health;
(18) The director of the youth commission;
(19) The director of urban affairs.

(B) The director of public works shall be appointed by the governor, with the consent of the

senate, and shall hold his office for a term of one year from date of appointment.

HISTORY: GC § 154-4; 109 v 105 (106); 118 v 367, § 1; 125 v 128; 125 v 824 (Eff 7-1-54); 126 v 655 (655); 127 v 7, § 1; 127 v 653 (654); 128 v 876, § 1 (Eff 11-4-59); 130 v 21, § 1 (Eff 6-11-63); 130 v 20, § 1 (Eff 9-25-63); 130 v 22, § 1 (Eff 10-7-63); 132 v H 495, § 1 (Eff 10-24-67); 132 v S 235, § 1. Eff 11-14-67.

See provisions of § 2 of HB 495 (132 v —) following RC § 121.02.

Comment

This section is derived from GC §§ 154-4, 154-12, 154-46 and 404. See also RC §§ 3301.01, 121.10 and 123.04.

Cross-References to Related Sections

See RC § 145.38.2 which refers to this section.

Research Aids

Page
St. of Ohio § 35
O-Jur2d
Governor §§ 2, 18
St. of Ohio § 10

CASE NOTES AND OAG

See case note 1 under RC § 121.02; 20 under RC § 121.16.1.

1. Should a vacancy occur in the position of director of highway safety after July 1, 1954, the power to appoint to fill such vacancy is in the governor, the appointee to serve at the pleasure of the governor: 1953 OAG No.3045.

2. Where a vacancy occurs in the office of director of mental hygiene and correction, at a time when the general assembly is not in session, and where no appointment is made by the then governor to fill such vacancy, and where such vacancy continues to exist through a special session of the general assembly and after its adjournment and during the tenure of a succeeding governor, the tenure of a third governor and a general session of the general assembly, such vacancy "continues to occur" until the governor makes an appointment to fill it after the sine die adjournment of the general assembly and during a recess prior to the next session thereof: State ex rel Haines v. Rhodes, 168 OS 165, 5 OO(2d) 467, 151 NE(2d) 716.

3. When a vacancy occurs, during the time the senate is in session, in an office required by law to be filled by the governor with the advice and consent of the senate, the failure of the governor to present a nomination to the senate before adjournment sine die precludes the making of a valid appointment while the senate is not in session: 1958 OAG No.1868.

## § 121.04 Offices created in the several departments.

Offices are created within the several departments as follows:

In the department of finance:
Superintendent of budget;
Superintendent of purchases and printing.

In the department of commerce:
Superintendent of building and loan associations;
Fire marshal.

In the department of public works:
State architect and engineer.

In the department of highways:
First assistant director of highways.

In the department of agriculture:
Chiefs of divisions as follows:
Administration;
Animal industry;
Dairy marketing;
Foods, dairies, and drugs;
Plant industry;
Markets;
Weights and measures.

In the department of natural resources:
Chief engineer.
Chiefs of divisions as follows:
Land and soil;
Water;
Forestry and reclamation;
Wildlife;
Geological survey;
Parks and recreation;
Watercraft;
Oil and gas.

In the department of industrial relations:
Chiefs of divisions as follows:
Workshops and factories;
Bedding inspection;
Elevator inspection;
Boiler inspection;
Examiners of steam engineers;
Labor statistics;
Mines;
Minimum wage.

In the department of liquor control:
Chiefs of divisions as follows:
Accounting and finance;
Store management;
Investigation and enforcement;
Personnel;
Beer.

In the department of insurance:
Deputy superintendent of insurance;
Assistant superintendent of insurance, technical;
Assistant superintendent of insurance, administrative;
Assistant superintendent of insurance, research.

In the department of development:
Deputy director.
Chiefs of divisions as follows:
Research;
Sales and service;
Financing;
Planning;
Information.

pleas reverses the order of the liquor control commission upon the basis of a question of law interpreting the application of a regulation of the commission: A. B. Jac., Inc. v. Liquor Comm., 29 OS(2d) 139, 58 OO(2d) 342, 280 NE(2d) 371.

**§ 121.02 Administrative departments created.**

The following administrative departments and their respective directors are hereby created:

* * * *[No change in (A) through (C)]*

(D) The department of transportation, which shall be administered by the director of transportation; * * *

* * * *[No change in (E) through (K)]*

(L) The department of mental health and mental retardation, which shall be administered by the director of mental health and mental retardation;

(M) The department of insurance, which shall be administered by the superintendent of insurance as director thereof;

(N) The department of economic and community development, which shall be administered by the director of economic and community development;

(O) The youth commission, which shall be administered by the director of the youth commission;

◈ (P) The department of rehabilitation and correction, which shall be administered by the director of correction;

(Q) The environmental protection agency, which shall be administered by the director of environmental protection.

The director of each department shall exercise the powers and perform the duties vested by law in such department.

* HISTORY: 134 v H 494 (Eff 7-12-72); 134 v H 1064 (Eff 9-29-72); 134 v S 485 (Eff 10-18-72); 134 v S 397. Eff 10-23-72.

The provisions of §§ 3, 4, 5 of HB 1064 (134 v —) read as follows:

SECTION 3. In connection with the transfer of duties, powers, and functions provided for in Section 1 of this act:

(A) All personnel of the Department of Highways whose duties are transferred to the Department of Transportation shall be transferred to such Department; and all such personnel who are in the classified civil service of the state shall be transferred with the same civil rights, seniority, length of service, and compensation in effect at the time of such transfer.

(B) All real property and interests therein, documents, books, papers, records, machinery, furnishings, office equipment, furniture, and all other property over which the Department of Highways has control and which pertain to the duties transferred shall be transferred to the Department of Transportation.

(C) All appropriations or reappropriations heretofore made for the purposes of the performance of the duties, powers, and functions transferred to the Department of Transportation, or segregated therefor pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated, and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the Department of Transportation for performing the same duties, powers, and functions for which originally appropriated or reappropriated, and payments for liabilities for expenses of personal service, maintenance, and operation heretofore incurred in connection with such duties shall be made on vouchers or certificates approved by the Director of Transportation.

SECTION 4. The Governor shall cause a report to be made to the 110th General Assembly, based on such studies as are considered appropriate, as to planning, including planning functions and priorities, and the implementation thereof, relating to transportation facilities as defined in section 5500.01 of the Revised Code. The report shall include recommendations as to funding, both in amounts and sources of funds, of the recommendations made. The Director of Transportation shall provide necessary technical and clerical assistance in the conduct of such studies and the preparation of the report.

SECTION 5. There are hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund, which are not otherwise appropriated, for the purposes designated:

Department of Transportation

Total Operating Expenses.....$100,000

The foregoing appropriations shall be in addition to any appropriations to be transferred for the purposes of the department pursuant to Section 1 of this act or Section 21 of Am. Sub. H. B. 475 of the 109th General Assembly, shall be subject to the provisions of said Am. Sub. H. B. 475, and shall not be expended to pay liabilities or deficiences incurred subsequent to June 30, 1973.

**§ 121.03 Appointment of directors.**

(A) The following administrative department heads shall be appointed by the governor, with the advice and consent of the senate, and shall hold their offices during the term of the appointing governor but subject to removal at the pleasure of the governor:

(1) The director of finance;

(2) The director of commerce;

(3) The director of transportation;

* * * *[No change in (4) through (9)]*

(10) The director of economic and community development;

* * * *[No change in (11) through (15)*

(16) The director of mental health and mental retardation;

(17) The director of health;

(18) The director of the youth commission;

(19) The director of rehabilitation and correction;

(20) The director of environmental protection.

(B) The director of public works shall be appointed by the governor, with the advice and consent of the senate, and shall hold his office for a term of one year from date of appointment.

*HISTORY: 133 v H 1 (Eff 3-18-69); 134 v H 494 (Eff 7-12-72); 134 v H 1064 (Eff 9-25-72); 134 v S 485 (Eff 10-18-72); 134 v S 397. Eff 10-23-72.

The provisions of § 3 of SB 485 (134 v —) read as follows:

SECTION 3. (A) All equipment, materials, records and other resources in the department of urban affairs and the department of development shall be transferred to the department of economic and community development created under this act as of the effective date of this act.

(B) All employees of the department of urban affairs and the department of development who are in the classified civil service of the state shall, upon the transfer of the department of urban affairs and the department of development, be automatically transferred to the department of economic and community development and shall retain the same civil service rights, seniority, length of service, and compensation in effect at the time of such transfer.

(C) All rights, liabilities, and obligations of the department of urban affairs and the department of economic development arising out of contracts entered into by either of said departments prior to the effective date of this act shall be rights, liabilities, and obligations of the department of economic and community development created under this act.

(D) Any appropriation made to the department of urban affairs and the department of development for the 1971-73 biennium shall upon the effective date of this act be transferred to the use of the department of economic and community development.

The provisions of §§ 3 to 7 of SB 397 (134 v —) read as follows:

SECTION 3. The air pollution control board, the water pollution control board, and the Ohio water commission are hereby abolished on the effective date of this act. The abolishment of the boards and the commission, and the transfer of functions, employees, and appropriated funds to the environmental protection agency pursuant to this act shall not affect the civil service status of any employee.

All employees of the department of natural resources and the department of health who are engaged in carrying out such functions as may be necessary for the exercise of the functions of the environmental protection agency are hereby transferred to the environmental protection agency. Employees hereby transferred shall retain their respective civil service classifications and status. For the purpose of determining the employees holding certified appointment in competitive class positions to be transferred, such employees shall be selected in each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and nondisabled veterans. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination, or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to section 143.25 of the Revised Code.

SECTION 4. For the purpose of succession to all functions, powers, duties, and obligations of departments, agencies, boards, commissions, and directors or commissioners thereof, transferred and assigned to, devolved upon and assumed by the environmental protection agency pursuant to this act, the agency shall be deemed and held to constitute the continuation of such departments, commissions, boards and other agencies.

Any business or other matter undertaken or commenced by departments, commissions, boards, or other agencies or the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties hereby transferred and assigned, and pending on the effective date of this act, shall be conducted and completed by the environmental protection agency in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by such departments, commissions, boards, or other agencies or commissioners and directors thereof.

All rules, regulations, acts, determinations, and decisions of departments, commissions, boards, or other agencies and commissioners and directors thereof pertaining to the functions transferred and assigned by this act to the environmental protection agency in force at the time of such transfer, assignment, assumption, or devolution shall continue in force and effect as rules, regulations, acts, determinations, and decisions of the environmental protection agency until duly modified or repealed by the environmental protection agency.

Wherever the departments, commissions, boards, or other agencies or commissioners and directors thereof, the functions, powers, obligations and duties of which are transferred by this act to the environmental protection agency, are referred to or designated in any law, contract, or document pertaining to the functions, powers, obligations, and duties hereby transferred and assigned, such reference or designation shall be deemed to refer to the environmental protection agency or the director of environmental protection as may be appropriate.

SECTION 5. No existing right or remedy of any character shall be lost, impaired, or affected by reason of this act, except insofar as such rights and remedies shall be administered by the environmental protection agency in lieu of a predecessor department or board.

SECTION 6. No action or proceeding pending at the time this act takes effect, brought by or against the departments, commissions, boards, or other agencies or commissioners and directors thereof, the functions, powers, obligations, and duties of which are transferred, by this act to the environmental protection agency, shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the director of environmental protection agency. In all such actions and proceedings the environmental protection agency, upon application to the court, shall be substituted as a party.

SECTION 7. The director of environmental protection, appointed under section 121.03 of the Revised Code, shall be classified under section 143.0 of the Revised Code and assigned to pay range forty-six, step one. Each member of the environmental board of review, appointed under section 3745.02 of the Revised Code, shall be classified under section 143.09 of the Revised Code and assigned to pay range forty-four, step one, designated with a letter (S), and shall not receive step advancements.

**§ 3745.02 Creation of environmental board of review; membership; organization; employees and consultants; budget.**

There is hereby created an environmental board of review, consisting of three members appointed by the governor with the advice and consent of the senate for terms of six years, except that the terms of the first members of the board shall be for two, four, and six years, respectively, as designated by the governor at the time of the appointment. Any vacancy in the office of a member of the board shall be filled by appointment by the governor for the unexpired term of the member whose office will be vacant. Each vacancy shall be filled by appointment within sixty days after the vacancy occurs. Each member shall have extensive experience in pollution control and abatement technology, ecology, public health, environmental law, economics of natural resource development, or related fields. At least one shall be an attorney. Not more than two members shall be of the same political party. Each member shall serve full time.

The board may appoint a secretary to hold office at its pleasure. The secretary shall perform such duties as the board prescribes, and shall receive such compensation as the board fixes in accordance with schedules as are provided by law for the compensation of state employees. The board may employ such other employees as are necessary to perform its duties, and such other employees shall be in the classified service. The board may retain the services of experts, consultants, and intermittent help. The environmental protection agency shall furnish such clerical and stenographic services to the board as the board requests and is reasonably available.

Two members constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least two members. The board shall keep a record of its proceedings.

Biennially one member shall be elected as chairman and another member shall be elected as vice-chairman. Such officers shall serve for terms of two years.

The governor may remove any member of the board from office for conflict of interest, malfeasance, or nonfeasance, after delivering to the member the charges against him in writing together with at least ten days' written notice of the time and place at which the governor will publicly hear the member, either in person or by counsel, in defense of the charges against him. If the member is removed from office, the governor shall file in the office of the secretary of state a complete statement of the charges made against the member and a complete report of the proceedings thereon. The action of the governor in removing the member from office is final.

The board shall provide itself and its employees with such offices, equipment, and supplies as are necessary to perform its duties, using those available from the environmental protection agency wherever possible. The board shall prepare and submit budgets and appropriation requests separate from those of the environmental protection agency, in accordance with section 125.08 of the Revised Code.

HISTORY: 134 v S 397. Eff 10-23-72.

The provisions of § 7 of SB 397 (134 v —) read as follows:

SECTION 7. The director of environmental protection, appointed under section 121.03 of the Revised Code, shall be classified under section 143.01 of the Revised Code and assigned to pay range forty-six, step one. Each member of the environmental board of review, appointed under section 3745.02 of the Revised Code, shall be classified under section 143.09 of the Revised Code and assigned to pay range forty-four, step one, designated with a letter (S), and shall not receive step advancements.

Cross-References to Related Sections

See RC § 3734.09 which refers to this section

**§ 3745.03 Regulations of board.**

The environmental board of review shall adopt regulations governing procedure to be followed for hearings before it. No regulation adopted by the board shall be effective until the tenth day after it has been adopted by the filing of a certified copy thereof with the secretary of state who shall record them under the heading "regulations of the environmental board of review." The regulations shall be numbered consecutively under the heading and shall bear the date of filing. The regulations shall be public records open to public inspection.

No regulation filed in the office of the secretary of state pursuant to this section shall be amended except by a regulation which contains the entire regulation as amended and which repeals the regulation amended. Each regulation which amends a regulation shall bear the same consecutive regulation number as the number of the regulation which it amends, and it shall bear the date of filing.

No regulation filed in the office of the secretary of state pursuant to this section shall be repealed except by a regulation. Each regulation which repeals a regulation shall bear the same consecutive regulation number as the number of the regulation which it repeals, and it shall bear the date of filing.

The authority and the duty of the board to adopt regulations under this section shall be governed by or be subject to Chapter 119 of the Revised Code.

The board shall have available at all times copies of all regulations of the board which has filed in the office of the secretary of

EP-31-01 Definitions.

(A) "Act" means Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.A. Chapter 26, Supplement.

(B) "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(C) "Applicable Water Quality Standards" means all water quality standards which apply under Chapter EP-1 of Ohio EPA Regulations and under Federal Regulations to the waters of the State.

(D) "Applicable Effluent Standards and Limitations" means all State and Federal effluent standards, and limitations to which a discharge is subject under the Act, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(E) "Applicant" means any person who files for an Ohio NPDES permit.

(F) "Application" means the form used to apply for an Ohio NPDES permit.

(G) "Director" means the Director of the Ohio Environmental Protection Agency.

(H) "Discharge" means discharge of any pollutant or pollutants from a discharge point.

(I) "Discharge of a pollutant or pollutants" means any addition of any pollutant to waters of the state from a discharge point.

(J) "Point Source" means any discernible, confined and discrete conveyance, including but not limited to any

pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(K) "NPDES" means National Pollutant Discharge Elimination System.

(L) "Ohio EPA" means the Ohio Environmental Protection Agency or its Director, as the context or other law or regulations may require.

(M) "Ohio NPDES Permit" means a permit issued by the State of Ohio for a discharge which is either in compliance with authorized discharge levels or which includes a schedule which will bring the point source into compliance with authorized discharge levels.

(N) "Pollutant" means sewage, industrial waste or other waste as defined by Section 6111.01 (B) through (D) of the Ohio Revised Code.

(O) "Person" means the state, any municipal corporation, political subdivision of the state, person as defined in Section 1.59 of the Ohio Revised Code, or interstate body created by compact.

(P) "Refuse Act Permit Application" means an application for a discharge permit filed under the 1899 Refuse Act.

(Q) "Regional Administrator" means the Administrator of U.S. Environmental Protection Agency, Region V.

(R) "Schedule of Compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with standards and regulations adopted under Section 6111.041 and 6111.042 of the Ohio Revised Code or compliance with terms and conditions of permits set under division (J) of Section 6111.03 of the Ohio Revised Code.

(S) "Wastewater treatment facility" means treatment works as defined by Section 6111.01 (F) of the Ohio Revised Code that convey or may convey effluents that will be discharged into the waters of the state.

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

EP-31-02 Ohio NPDES Permit Required.

(A) No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this Chapter, EP-31. Any person who holds an NPDES permit issued under Section 402 (a) of the Act is not required to obtain an Ohio NPDES permit until its expiration date. The Director shall administer and enforce permits issued under Section 402 (a) of the Act within this state, and may modify the terms and conditions thereof, in accordance with Section 6111.03 (J) of the Ohio Revised Code.

(B) Each point source shall come under the Ohio NPDES permit system. The Director may issue a single permit covering more than one point source, but authorized discharge levels, monitoring requirements, and other appropriate requirements shall be specified for each point source.

(C) No Ohio NPDES permit shall be required for any discharge exempted from the NPDES permit system by regulations adopted or subsequently amended by the Administrator, including 40 C.F.R. 124.11.

EP-31-03 Permit Applications.

(A) Applications for Ohio NPDES permits shall be filed only on forms approved by the Ohio EPA and shall contain such information as the Ohio EPA deems necessary.

(B) Any person proposing to commence the discharge of pollutants shall file an application at least 180 days prior to commencement of the discharge. Any person who has filed a complete Refuse Act application in timely fashion and whose application has not been denied is not required to apply for a permit under these regulations unless the discharge described in the application for a Refuse Act permit has substantially changed in nature, volume, or frequency. If, however, the discharge described in the Refuse Act permit application has substantially changed in nature, volume, or frequency, the applicant shall complete, sign and submit the appropriate NPDES application form.

(C) Any application that on its face fails to provide the Ohio EPA with requested information needed for ascertaining compliance with the applicable provisions of this Chapter, EP-31, may be considered defective. The Ohio EPA may either request additional information or return the application to the applicant without further processing. An indication of the deficiency shall accompany the application returned.

(D) An application submitted to the Director pursuant to this Chapter shall be signed as follows:

(1) In the case of a corporation, by a principal executive officer of at least the level of

Vice President, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application originates.

(2) In the case of a partnership, by a general partner.

(3) In the case of a sole proprietorship, by the proprietor.

(4) In the case of a municipal, state, or other public facility, by either the principal executive officer, the ranking elected official or other duly authorized employee.

EP-31-04 Issuance of Ohio NPDES Permits.

(A) Criteria for issuing Ohio NPDES Permits.

(1) If on the basis of all information available to the Ohio EPA, the Director determines that:

(a) The authorized discharge levels specified in subsection (B) of this section are not being exceeded by the applicant; and

(b) Adequate provisions for monitoring to obtain required pollutant discharge information have been made;and

(c) If required by the Ohio EPA, performance tests, conducted at the applicant's expense after the application was filed and in accordance with methods prescribed by the Ohio EPA, demonstrate that the discharge is in compliance with the authorized discharge levels,

the Director shall issue an Ohio NPDES permit for the discharge.

(2) The Director shall deny an application for a permit or renewal thereof if

(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 area-wide waste treatment management plan adopted in accordance with Section 208 of the Act;

(c) the Administrator objects in writing to the issuance or renewal of the permit in accordance with Section 402 (d) of the 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 State.

(3) Schedule of Compliance.

If the Director determines the requirements of paragraph (A)(1) cannot be met, he may grant the point source an Ohio NPDES Permit with a satisfactory schedule of compliance, which shall become a condition of the permit.

(a) A satisfactory schedule of compliance shall include the following elements:

(i) an enforceable schedule of steps, no two of which shall be separated by more than 9 months, to be taken by the applicant that will bring the discharge into compliance with authorized discharge levels at the earliest possible date but no later than those dates necessary to achieve the objectives set forth in the Act; and

(ii) such additional steps as the Director shall specify, including interim measures, to eliminate any danger or serious threat of danger to human health and to minimize any deleterious effect on the environment. Such measures may include interim treatment techniques, reduced levels of operations, or the imposition of a connection ban.

(b) No later than fourteen (14) days following each interim date and the final date of compliance the permittee shall provide the Director with written notice of the permittee's compliance or noncompliance with interim or

final requirements.

(4) Possession of an Ohio NPDES Permit shall not relieve any person of the responsibility to comply with the authorized discharge levels specified in the permit or other provisions of applicable law.

(5) If a point source is constructed or should have been constructed pursuant to a Permit to Install under Chapter EP-30 of Ohio EPA Regulations and does not meet authorized discharge levels, the point source may be granted an Ohio NPDES Permit with a satisfactory schedule of compliance which shall become a condition of the permit. Such a permit must require the discharge to come into compliance with authorized discharge levels at the earliest possible date but no later than one year from the date of issuance. If such a discharge is not in compliance with authorized discharge levels at that time, the discharge shall be terminated until it comes into compliance.

(B) Authorized Discharge Levels.

(1) Final Limitations.

(a) Except as provided by paragraph (3), for each point source from which pollutants are discharged, the Director shall determine and specify in the permit the maximum levels of pollutants that may be discharged to insure compliance with

(i) applicable water quality standards, and

(ii) applicable effluent limitations, which shall be the national effluent limitations and guidelines adopted by the Administrator pursuant to Sections 301 and 302 of the Act, and national standards of performance for new sources pursuant to Section

306 of the Act, and national toxic and pretreatment effluent limitations pursuant to Section 307 of the Act, and

(iii) standards which prohibit significant degradation of the waters of the state, if the point source was installed or should have been installed pursuant to a Permit to Install under Chapter EP-30 of the Ohio EPA Regulations, and

(iv) any more stringent requirements necessary to comply with a plan for area-wide waste treatment management, approved pursuant to Section 208 (b) of the Act, and

(v) any more stringent limitations required to comply with any other State or Federal law or regulation, including 40 C.F.R. Section 124.42.

(b) Prior to promulgation of regulations by the Administrator setting forth effluent standards and limitations, or standards of performance pursuant to the Act, the Director may impose standards, limitations, or conditions, in an Ohio NPDES permit necessary to insure compliance with Chapter 6111 of the Ohio Revised Code and the Act.

(2) Interim Limitations. Except as provided in paragraph (3) the Director may establish the maximum levels of pollutants which may be discharged during the period of the compliance program.

(3) Present Discharge Levels. The Director may fix the maximum levels of pollutants specified in an Ohio NPDES permit as either Final Limitations or Interim Limitations at the levels indicated by the applicant as its

current maximum levels of discharge, even where limitations to such discharge levels is not essential to avoid violation of either applicable water quality standards or effluent standards.

(4) Characterization of Discharge Levels. Authorized levels of pollutants that may be discharged shall be stated to the extent possible given the nature of the pollutant in terms of the volume, weight in pounds per day (except for those pollutants not expressible by weight), duration, frequency, and where appropriate, concentration of each pollutant discharge. The Director shall specify average and maximum daily quantitative limitations.

(C) Time for Issuance.

The Director shall issue or deny an application for a permit for a new discharge for the installation or modification of a disposal system, or for renewal of a permit, within 180 days of the date on which he receives a complete application with all plans, specifications, construction schedules, and other pertinent information required by the Director.

(D) Renewal of Permits.

(1) The Director shall notify the permittee that any permittee who wishes to continue to discharge after the expiration date of his Ohio NPDES permit must file for reissuance of the permit at least 180 days prior to its expiration. Except as provided by paragraph (2), Ohio NPDES permits shall be renewed in accordance with the provisions for issuance of permits under this Chapter EP-31, of the Ohio EPA Regulations.

(2) A permit shall not be renewed unless the Director determines that the permittee is making satisfactory progress toward the achievement of all applicable limitations and has complied with the terms and conditions

of the existing permit.

(3) Any point source the construction of which is commenced after the date of enactment of the Act and which is so constructed to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a 10 year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purpose of Section 167 or 169 (or both) of the Internal Revenue Code of 1954 whichever period ends first.

EP-31-05 General Permit Conditions.

(A) Each Ohio NPDES permit shall contain the following requirements:

(1) That all discharges authorized under the NPDES permit shall be consistent with the terms and conditions of the permit. The discharge of any pollutants more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit; and

(2) That facility expansions, production increases, or process modification which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the Director of notice of such new or increased discharge of pollutants; and

(3) That the permittee shall submit to the Ohio EPA monthly reports containing such information as shall be specified by the Director; and

(4) That the permittee shall submit an annual report containing such information as shall be specified by the Director; and

(5) That the permittee shall report in such manner as shall be specified by the Director, any discharge of pollutants in violation of permit terms and conditions; and

(6) That the point source is equipped with instrumentation to monitor and record data and other information about the operation of the point source, if required by the Director. Reports of monitoring results obtained by the permittee shall be submitted annually (or on such a more frequent schedule as is required in the permit) to the Ohio EPA. Monitoring and recording of monitoring results shall be conducted in accordance with regulations adopted or subsequently amended by the Administrator, including 40 C.F.R. Sections 124.61 and 126.62.

(7) That the permittee shall allow the Director or his authorized representative to enter upon the permittee's premises. The authorized representative shall have access to any records required to be kept under the terms of the permit and may copy any such records. The Director or his authorized representative shall have access to any monitoring equipment or wastewater treatment facilities operated by the permittee for the purpose of inspecting such equipment or method required in the permit and shall have access to point sources for the purpose of sampling the discharge; and

(8) That the permittee shall maintain in good working order and operate at optimum levels in accordance with good engineering practices any wastewater treatment facilities or control systems installed to achieve compliance with the terms and conditions of the permit regardless of the quality of the effluent; and

(9) That the permittee shall provide adequately trained and qualified personnel as required by Chapter HE-37 of the Ohio EPA Regulations to operate such wastewater treatment facilities; and

(10) That the permittee for a government-owned disposal system, or any other "publicly owned treatment works" as defined in the Act shall

(a) report new introductions of industrial waste or other wastes and substantial changes in volume or character thereof being introduced into such systems or works from "industrial users" as defined in Section 502 of the Act; and

(b) report any new introduction of pollutants into such

treatment works from a source which would be a new source as defined in Section 306 of the Act if such source were discharging pollutants;

(c) require any industrial user of such treatment works to comply with the requirements of Sections 204(b), 307 and 308 of the Act. The permitee shall require that each industrial user subject to the requirements of Section 307 of the Act submit periodic notice that demonstrates what progress has been made toward full compliance with the requirements of Section 307 of the Act. Such notice shall be forwarded to the Director at intervals not to exceed nine months. Such report or notice shall include information on the quality and quantity of wastes introduced into treatment works or systems and anticipated impact of such change in the quantity or quality of effluent to be discharged.

(11) That the permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to:

(a) violation of any terms or conditions of the permit;

(b) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

(c) a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(12) That if a toxic effluent standard or prohibition (including a schedule of compliance) is established under Section 307 (a) of the Act for a toxic pollutant which is present in the permittee's discharge

and such standard or prohibition (including a schedule of compliance) is more stringent than any limitation upon such pollutant in the NPDES permit, the Director shall modify the permit in accordance with the toxic effluent standard and so notify the permittee.

(B) The Director may include in an Ohio NPDES permit any other terms or conditions he finds reasonable and appropriate for the prevention and abatment of pollution.

EP-31-06 Modification of Permits at the Request of the Permittee.

(A) Applications for modifications of permits at the request of the permittee shall be made only on forms approved by the Ohio EPA and shall contain such information that the Ohio EPA deems necessary.

(B) Such application shall contain

(1) a specific description of the relevant provisions of the existing permit,

(2) the precise changes requested,

(3) the reasons for the changes requested, and

(4) an explanation demonstrating that the permit as modified will comply with applicable State and Federal statutes and regulations.

(C) A modification at the request of a permittee shall not be approved unless the Director determines

(1) that the permit as modified will comply with all applicable State and Federal statutes and regulations, and

(2) that

(a) the permit would have been issued with the provisions contained in the proposed modifications if all information presently available had been available at that time, or

(b) valid cause for such revision exists over which the permittee had little or no control, or

(c) a good faith modification in the nature of the operation was made.

(3) That the Regional Administrator does not object in writing to such modification within 30 days following receipt of notice from the Director.

EP-31-07 Applicability of Rules of Procedure.

Ohio NPDES permit applications shall be acted upon and challenged in accordance with provisions of the Rules of Procedure Chapter EP-40, of the Ohio EPA Regulations.

EP-31-08 Transfer of Permits.

(A) An Ohio NPDES permit is transferable. The Ohio EPA must be notified in writing sixty (60) days prior to any proposed transfer of an Ohio NPDES permit. The transferee must inform the Ohio EPA that it will assume the responsibilities of the original permittee transferor.

(B) At any time during the sixty (60) day period between notification of the proposed transfer and the effective date of the transfer, the Director may prevent the transfer if he concludes that such transfer will jeopardize compliance with the terms and conditions of the permit. The Director shall notify both the original permittee transferor and the transferee in writing of his decision.

EP-31-09 Termination of Permits.

Each Ohio NPDES permit shall expire as of the date indicated on the permit. No permit shall be issued which will run for a period of more than five (5) years.

EP-31-10 Revocation of Permits.

(A) The Director may revoke a permit at any time if he determines that any applicable laws, rules, regulations or permit terms or conditions have been violated.

(B) The permittee shall be notified of the proposed revocation and reasons for such proposed revocation. The Director shall afford a prompt hearing to any permittee whose permit he proposes to revoke and who requests such a hearing, in accordance with the provisions of the Rules of Procedure, Chapter EP-40 of the Ohio EPA Regulations.

APPENDIX

40 C.F.R. Section 124.11

EXCLUSIONS

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel: Provided, that this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is operating in a capacity other than a vessel such as when a vessel is being used as a storage facility or a cannery;

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources;

(c) Approved aquaculture projects;

(d) Dredged or fill material discharged into navigable waters;

(e) Additions of sewage, industrial wastes or other materials into publicly owned treatment works. (This exclusion applies only to the actual addition of materials into the publicly owned treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the dis-

charges of pollutants to navigable waters are actually eliminated. It also should be noted that in all appropriate cases, pretreatment standards promulgated by the Administrator pursuant to section 307 (b) of the Act must be complied with.);

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency, the Director or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303 (e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(g) Any discharge of any pollutant when such discharge conforms with the national contingency plan for removal of oil and hazardous substances, published pursuant to subsection 311 (c) (2) of the Act.

(h) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and run-off from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such

facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds;

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the

number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tail-water, tile drainage, surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if:

(i) There is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial and;

(ii) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

OhioEPA

REGULATIONS EP-40-01
THROUGH EP-40-30

# RULES OF PROCEDURE

ADOPTED
JUNE 18, 1973
EFFECTIVE
JULY 5, 1973

Before
THE ENVIRONMENTAL PROTECTION AGENCY
OF
THE STATE OF OHIO

FILED
'73 JUN 21 PM 3:49
SECRETARY OF STATE
PER

In the matter of )
The adoption of proposed )
regulations EP-40-01 through )
EP-40-30, inclusive, in final )
form, and the rescission of )
HEwp-5-01 through HEwp-5-17, )
inclusive )

FINDING AND ORDER

The Director of Environmental Protection, having considered, in compliance with the Administrative Procedure Act, the adoption of proposed regulations EP-40-01 through EP-40-30, inclusive, in final form, and the rescission of regulations HEwp-5-01 through HEwp-5-17, inclusive, finds:

1. That due notice of public hearing, pursuant to the Administrative Procedure Act, was given, that the hearing was held on March 26, 1973 and that all persons were afforded an opportunity to be heard; and

2. That upon due consideration, and upon the basis of the statements made at the public hearing and in written comments submitted in relation to this matter, the adoption of regulations EP-40-01 through EP-40-30, inclusive, in final form, and the rescission of regulations HEwp-5-01 through HEwp-5-17, inclusive, is reasonable, within the purview of authority provided by law, and is consistent with public notice.

It is therefore

ORDERED, That said proposed regulations EP-40-01 through EP-40-30, inclusive, in final form, be adopted, and that said regulations HEwp-5-01 through HEwp-5-17, inclusive, be rescinded.

It is further

ORDERED, That the effective date of the new regulations and the rescission of the existing regulations contained in the proposal shall be July 5, 1973.

It is further

ORDERED, That three copies of the Finding and Order and three certified copies of the new regulations, in final form, be filed with the Secretary of State as required by law.

Ira L. Whitman

Ira L. Whitman, Ph.D
Director of Environmental Protection

Issued at Columbus, Ohio

This 18th day of JUNE 1973.

FILED

'73 JUN 21 PM 3:49

SECRETARY OF STATE

PER

STATE OF OHIO
THE ENVIRONMENTAL PROTECTION AGENCY

CERTIFICATION

I, Ira L. Whitman, Director of Environmental Protection, State of Ohio, do hereby certify that the attached is an exact copy of regulations EP-40-01 through EP-40-30, inclusive, in final form, adopted by Order of JUNE 18th, 1973, to become effective July 5th, 1973.

Ira L. Whitman

Ira L. Whitman, Ph.D.
Director of Environmental Protection

Sworn to and subscribed in my presence by Ira L. Whitman, this 18th day of JUNE, 1973.

Mary K. Deverse

Notary Public

MARY K. DEVERSE
NOTARY PUBLIC, FRANKLIN COUNTY, OHIO
MY COMMISSION EXPIRES SEPT. 23, 1979

FILED
'73 JUN 21 PM 3:51
SECRETARY OF STATE
PER

STATE OF OHIO

ENVIRONMENTAL PROTECTION AGENCY

# PROCEDURAL RULES

EP-40-01 APPLICABILITY

(A) These Rules shall govern procedure for all adjudication hearings, public meetings, and other proceedings relating to adjudicatory acts conducted by the Ohio Environmental Protection Agency or by its duly authorized hearing examiners pursuant to Chapters 119, 3704, 3745, 6111, and Sections 1505.07, 1509.081, 3707.42, 3734.02, 6101.13, 6101.39, 6103.17, 6112.02, 6117.34, 6117.46, and 6119.35, Ohio Revised Code, or any other statute requiring an adjudication hearing before the Agency.

(B) These Rules shall be effective 10 days after enactment and shall govern all procedural questions in new or pending proceedings arising thereafter.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-03 DEFINITIONS

As used herein:

(A) "Act" shall mean any statute administered by the Ohio Environmental Protection Agency.

(B) "Action" shall mean the issuance, modification, or revocation of any lawful order, other than an emergency order; the issuance, denial, renewal, modification, or revocation of a license, permit, lease, variance, or certificate; or the approval or disapproval of plans and specifications pursuant to law or regulation thereunder.

(C) "Adjudication hearing" shall mean an adversary proceeding at which are determined rights, duties, privileges, benefits or legal relationships of a specified person.

(D) "Agency" shall mean the Ohio Environmental Protection Agency.

(E) "Director" shall mean the Director of Environmental Protection of Ohio.

(F) "Fact sheet" shall mean the statement of facts provided for in EP-40-06(A), relative to an application for issuance or renewal of a permit under Section 6111.03(J), Ohio Revised Code.

(G) "Final action" shall mean the decision on any adjudicatory matter when all administrative remedies have been exhausted, or waived by failure timely to pursue such remedies.

(H) "Hearing examiner" shall include the Director when he personally conducts a hearing or performs any other act which hearing examiners are authorized to perform.

(I) "Initiation of hearing proceedings" shall mean the occurrence of that event which requires that an adjudication hearing be held, including but not limited to, a request for a hearing pursuant to Section 3745.07, Ohio Revised Code, service of a verified complaint upon an alleged violator pursuant to Section 3745.08, Ohio Revised Code, and notice of a hearing pursuant to Section 6111.32, Ohio Revised Code.

(J) "Party" shall mean (1) the State or Agency and the applicant or respondent; (2) any person who requests an adjudication hearing pursuant to EP-40-13(A); or (3) any person who intervenes pursuant to Rule EP-40-15.

EP-40-04 HEARING CLERK

(A) The duties of the Hearing Clerk shall be performed by the employee, designated by the Agency as Hearing Clerk, together with such assistants as he may require to accomplish his duties. The Hearing Clerk shall:

(1) Immediately upon initiation of hearing proceedings, open a hearing file and assign a docket number to the proceedings.

(2) Be the custodian of all hearing files for the Agency.

(3) Upon initiation of hearing proceedings, include in the hearing file copies of the proposed action, all notices, the fact sheet where one is required, and all written comments and recommendations received by the Agency.

(4) During the pendency of the proceedings carefully preserve in the hearing file all papers delivered to him for that purpose and all written comments and recommendations pertaining to the proceedings received by the Agency, recording on all such papers the date of receipt thereof.

(5) Permit any person to make a copy of any papers in the hearing file or other files of the Agency in his possession except where such matters are privileged.

(6) Effect all notices pertaining to Agency public meetings and adjudication hearings required by statute, rule, or regulation.

(7) Prepare and certify the record or documents in the hearing file in any instance where certification by the Agency or Director is required by law.

(8) Perform such other duties as are assigned to him by the Director.

(B) The acceptance of papers or documents for filing or the commission of any other act by the Hearing Clerk shall not be construed as an admission by the Agency of the validity or proper filing of such paper or of compliance with any procedural requirements imposed by statute or regulation.

EP-40-05 PROPOSED ACTION

(A) Except as provided in Section EP-40-05(D), in all actions of the Agency, the Director shall prepare and give notice to the parties of a proposed action without an adjudication hearing. The proposed action shall be in the same form as, and include all elements of, a final action and where issuance of permits is proposed, shall include a proposed permit. Any person may file comments or request an adjudication hearing as provided by these Rules. The Director may hold a public meeting on an application for a permit or variance or renewal thereof prior to the issuance of a proposed action.

(B) If no adjudication hearing is held, or if no public meeting is held subsequent to the issuance of a proposed action, the Director, after consideration of all written comments submitted within thirty days of public notice of the proposed action, or such longer period specified in the public notice, shall: (1) issue the proposed action as his final action; (2) permit the proposed action to become final if the proposed action provides that the proposed action will become final unless withdrawn by the Director prior to the expiration of a specified period of time; or (3) withdraw the proposed action and issue a revised proposed action. A revised proposed action shall be treated in all respects as a proposed action except that the Agency need not hold further public meetings.

(C) The Director may withdraw a proposed action at any time before the proposed action becomes final.

(D) Notwithstanding the provisions of EP-40-05(A) above, the Director may issue a final action without a hearing where the rules of the Agency or the statutes pertaining to the Agency specifically give a right to appeal to the Environmental Board of Review and also give the appellant a right to a hearing de novo on such appeal, and where no statutory provision or regulation prohibits such action from being effective before persons permitted by statute or regulation to participate in an adjudication hearing have been afforded an opportunity for a hearing.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-06 FACT SHEETS

(A) Before the Director issues a proposed action on any application for issuance or renewal of a permit pursuant to Section 6111.03(J), Ohio Revised Code, for a discharge which has a total volume of more than 500,000 gallons on any day, the Agency shall prepare a fact sheet which shall include:

(1) A sketch or detailed description of the location of the discharge described in the application;

(2) A quantitative description of the discharge described in the application which includes at least the following:

(a) The rate, quantity, and character of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day.

(b) For thermal discharges, the average summer and winter temperatures in degrees Fahrenheit; and

(c) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under applicable water quality or effluent standards.

(3) The proposed action of the Director including the terms, specifications, conditions, and limitations of any permit proposed to be issued;

(4) Description of the uses for which the receiving waters have been classified, if any, and identification of the applicable water quality and effluent standards;

(5) Description of the procedures for the formulation of final determinations including:

(a) The period, not to be less than thirty days, in which the public may comment upon the proposed action;

(b) Procedures for requesting a public meeting or adjudication hearing and the nature and procedure of such meetings and hearings; and

(c) Any other procedures by which the public may participate in the formulation of the final determinations.

EP-40-07 NOTICES

(A) The Agency shall give public notice of all applications for issuance, modification, or renewal of permits, licenses, variances, and of proposed actions, actions, verified complaints, public meetings and adjudication hearings. Such notice shall be:

(1) Published once in a newspaper having general circulation in the county in which the source or facility is located. This notice may be summary in form specifying the source or facility involved, the owner, the type of action proposed if any, and the address of the Agency from which further information, including the full notice, may be obtained.

(2) Mailed, on or before the date of publication, by first class mail to all persons on the current mailing list of subscribers maintained by the Director pursuant to Section 3745.07, Ohio Revised Code. This notice may be summary in form specifying the source or facility involved, the owner, the type of action proposed, and the address of the Agency from which further information, including the full notice, may be obtained.

(3) Mailed on or before the date of publication to any person who has requested notice concerning the source or facility or the owner thereof, or who has requested a copy of the application, the proposed action or the fact sheet.

(4) In the case of any proposed action for issuance or renewal of a permit under Section 6111.03(J), Ohio Revised Code, mailed on or before the date of publication to any state, interstate, federal, or local governmental agency having jurisdiction over waters which may be affected by the Agency's action.

(B) For purposes of determining the time of notice, public notice is complete upon publication as required in subparagraph (A) (1) above.

(C) After receipt by the Agency of a completed application for issuance, modification, or renewal of a permit, license, certificate, or variance or filing of a verified complaint under Section 3745.08, notice thereof shall be mailed within one week and published within ten days. In all cases, notice of hearings and public meetings shall be given at least thirty days prior to the date of hearing or meeting. Notices of proposed actions shall be given at least thirty days before such proposed action becomes final.

EP-40-08 CONTENTS OF PUBLIC NOTICES

(A) Public notices of proposed actions for issuance, or renewal of permits under Section 6111.03(J), Ohio Revised Code, shall include:

(1) The name of the Agency and the address and telephone number of the facilities where Agency files and records pertaining to the application are located and may be inspected and copied, and instructions for persons desiring to obtain additional information or a copy of any fact sheet prepared or of the proposed permit; and instructions to persons desiring to be included on the mailing list provided for in EP-40-06(B).

(2) The name and address of the applicant.

(3) A brief description of the applicant's activities or operations which result in the discharge described in the application.

(4) The location of the source or operation including the waterway to which each discharge is made, and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge.

(5) A statement of the Director's proposed action to issue or deny the permit for the discharge described in the application.

(6) A statement:

(a) that the proposed action of the Director shall become final on the effective date specified in the proposed action unless (1) an adjudication hearing is requested or (2) the Director revises or withdraws the proposed action after consideration of the record of a public meeting or written comments, or upon disapproval by the Administrator of the United States Environmental Protection Agency;

(b) that any person may submit a written statement within thirty days as to why the Director should revise the proposed action;

(c) that if significant public interest is shown a public meeting may be held on motion of the Director prior to issuance of any final action; and

(C) Public notice of verified complaints filed pursuant to Section 3745.08, Ohio Revised Code, or complaints filed pursuant to Section 6111.32, Ohio Revised Code, shall include to the extent known to the Agency:

(1) The name of the agency and the address and telephone number of the facilities where further information may be obtained and agency files and records pertaining to the proceedings may be inspected and copied.

(2) The name and address of the party filing the complaint.

(3) The name and address of the person against whom the complaint was filed.

(4) A short description of the location of the source or operation, including for discharges to waters of the State, the waterway to which the discharge is made.

(5) A brief description of the activities or operations of the party against whom the complaint was filed as they pertain to the controversy.

(6) A statement that any person within thirty days may submit a written statement to the Director concerning the facts or opinions relating to the matter raised in the complaint.

(7) A statement that any person may request notice concerning further actions pursuant to the complaint, including the outcome of the proceedings.

(D) All other public notices from the Agency shall include to the extent known to the Agency:

(1) The name of the agency and the address and telephone number where further information may be obtained and agency files and records pertaining to the proceedings may be inspected and copied.

(2) The name and address of the person responsible for the source.

(3) The location of the source, including for discharges to waters of the State the waterway to which the discharge is made.

EP-40-09 NOTICE OF WATER PERMIT APPLICATIONS

TO GOVERNMENT AGENCIES

(A) The notice required by EP-40-07(A)(4) to be given to state and governmental agencies shall include:

(1) The information required in EP-40-08 for public notices, and may include a copy of such public notice.

(2) A statement that such state or agency may submit written recommendations to the Director, and to the Regional Administrator of the United States Environmental Protection Agency, which the Director may incorporate into the permit if issued and that if the recommendation of the state or agency is not incorporated in the final action of the Director, a written explanation of his reasons for not accepting the recommendation will be provided that state or agency and the Regional Administrator of the United States Environmental Protection Agency.

(3) A copy of the fact sheet and a statement that a copy of the application for a permit or of the proposed permit including all ancillary papers will be provided upon request.

(B) The notice required by EP-40-07(A)(4) shall also be given, when applicable, to:

(1) Any agency responsible for an "Areawide Waste Treatment Management Plan" pursuant to Section 208(b) of the Federal Water Pollution Control Act Amendments of 1972.

(2) Any agency responsible for the preparation of a plan pursuant to an approved continuous planning process under Section 303(e) of the Federal Water Pollution Control Act Amendments of 1972.

(3) Public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-11 FILING OF PAPERS

(A) An original and two copies of all papers shall be filed with the Hearing Clerk, and copies shall be served upon all parties. If a party is represented by an attorney, service shall be made upon the attorney.

(B) All items except copies of documents filed in the proceedings shall be on eight and one-half by eleven inch paper and shall be entitled "Before the Ohio Environmental Protection Agency" and shall be styled with the name of the applicant or respondent, as the case may be (e.g., "In the Matter of _____ _____, Applicant" or In the Matter of _____, Respondent"), and shall set forth the docket number of the case except where no docket number has been assigned.

(C) All papers shall be deemed filed upon receipt by the Hearing Clerk.

(D) In computing any period of time prescribed for filing and serving a document, the day upon which the document or notice of the action to be contested or answered was received, or the day of any other event after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

(E) Any request for an extension of time must be filed within the time allowed for the filing or serving of the document with the Agency.

(F) Papers filed with the Hearing Clerk shall not be considered by the Hearing Examiner unless proof of service is endorsed thereon. The proof of service shall state the date and manner of service and shall be signed by the party filing such paper or his attorney.

(G) All papers filed by a party shall be typewritten and shall have typed or printed thereon the name, address, and telephone number of the party or his attorney if he has one. If a party is represented by a firm of attorneys, a particular attorney within the firm having primary responsibility for the case shall be indicated on such paper. All papers filed shall be signed by the party or his counsel.

EP-40-12 PUBLIC MEETING

(A) Within thirty days of notice of the Director's proposed action to issue or renew a permit, any person may request or petition for a public meeting for presentation of evidence, statements, or opinions.

(B) If the Director determines that there is significant public interest in a proposed action or where required to do so by statute or regulation, the Director shall hold a public meeting in the county where the source or facility affected is located, or in a contiguous county, at which meeting interested persons may submit written or oral statements and present evidence concerning the proposed action. If an adjudication hearing is held on the same proposed action, the Director may hold such meeting and hearing so that one proceeding will commence immediately following the close of the other, or hold such meeting and hearing on separate occasions. In the consideration of an application for issuance or renewal of a permit or variance, the Director may hold a public meeting prior to issuance of a proposed action.

(C) In any public meeting, the Director may appoint a Hearing Examiner to conduct such meeting. On the date and at the time and place specified in the notice, the public meeting shall be held, at which any person (1) may appear and be heard in person or by his attorney, or both; (2) may present his position, arguments, or contentions orally or in writing; and (3) may, in the discretion of the Director or Hearing Examiner, question or examine persons who appear to present positions, arguments, or contentions at such meeting.

(D) Comments received or evidence or statements presented at a public meeting held pursuant to this Rule shall be considered by the Director, who shall issue a proposed action, or, if the public meeting was held subsequent to the issuance of a proposed action, may withdraw the proposed action or issue a revised proposed action. A revised proposed action shall be treated in all respects as a proposed action under these Rules, except that the Agency need not hold further public meetings.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-13 REQUESTS FOR ADJUDICATION

(A) An adjudication hearing shall be held in accordance with these Rules (1) upon receipt of a request for a hearing from the applicant within thirty days of notice of the proposed action, or (2) upon receipt of an objection by any person pursuant to Section 3745.07, Ohio Revised Code.

(B) All requests for adjudication hearings shall be in writing. Proposed actions together with requests for adjudication hearings shall constitute the pleadings for hearings held pursuant to these rules. All requests for adjudication hearings shall state the questions to be considered at the requested hearing, enumerating the specific findings, orders, or actions of the Agency objected to, and shall state reasons why such provisions of the proposed action are contested. Failure to comply with this subsection shall constitute a default. If a party desires to request that an adjudication hearing be held at a specific time or place, such request shall be included in the hearing request.

(C) When an adjudication hearing is duly requested, or when an objection requesting a hearing is duly made pursuant to Section 3745.07, Ohio Revised Code, the proposed action shall not be considered an action of the Director, but a proposal upon which evidence is to be heard.

(D) The person filing an objection requesting an adjudication hearing pursuant to Section 3745.07, Ohio Revised Code, shall be a party to the hearing and the Agency may participate in the hearing actively or refrain from active participation permitting the other parties to prosecute the proceedings.

(E) If the opportunity for an adjudication hearing is not availed of within the requisite time period, all persons entitled to request a hearing shall be deemed to have waived all rights to a hearing and all rights to contest the Director's action, and they shall be deemed to have consented to the proposed action which shall become final and as valid as if a hearing had been held at which sufficient reliable, probative, and substantial evidence had been presented in support thereof.

EP-40-14 AUTHORITY AND DUTIES OF HEARING EXAMINERS

(A) Adjudication hearings shall be conducted before a Hearing Examiner except where the Director determines to hear the case.

(B) Immediately upon receiving notice of initiation of the hearing proceedings from the Hearing Clerk, the Chief Hearing Examiner shall assign a Hearing Examiner to the case.

(C) The Hearing Examiner shall conduct hearings in such a manner as to prevent unnecessary delay, maintain order, and ensure the development of a clear and adequate record.

(D) The authority of the Hearing Examiner shall include, but not be limited to, authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas to require the attendance of witnesses at hearings and depositions;

(3) Compel all parties to state their positions in writing with respect to the controversy;

(4) Examine witnesses and direct witnesses to testify;

(5) Make rulings on the admissibility of evidence;

(6) Make rulings on procedural motions, whether such motions are oral or written;

(7) Hold conferences to discuss settlement or for the simplification of issues pursuant to EP-40-10;

(8) Request the parties or their attorneys to file suggested findings, orders, conclusions of law and briefs before or following the hearing and within such time limits as he may determine;

(9) Request any party or counsel to prepare entries, findings, or orders;

(10) Take such other action as may be necessary to accomplish the purposes of subsection (C).

EP-40-15 INTERVENTION

(A) Any person may file a motion for leave to intervene in an adjudication hearing conducted under these Rules. A motion must set forth the grounds for the proposed intervention and the position and interest of the movant in the proceedings. A motion shall be accompanied by a pleading setting forth the matter for which intervention is sought. Movant shall serve a copy of the motion and pleading upon the parties as provided in Rule EP-40-17.

(B) A motion for leave to intervene in a hearing must ordinarily be filed prior to the commencement of the first prehearing conference, or, if no prehearing conference is held, fifteen (15) days prior to commencement of the hearing. Any motion filed after that time must contain, in addition to the information set forth in subsection (A) of this Rule, a statement of good cause for the failure to timely file the motion and shall be granted only upon a finding (1) that extraordinary circumstances justify the granting of the motion; or (2) that the intervenor shall be bound by agreements, arrangements, and other matters previously made in the proceeding.

(C) Leave to intervene will be freely granted. The factors to be considered by the Hearing Examiner in granting leave to intervene shall include, where relevant: (1) the nature and extent of the movant's interest in the subject matter of the hearing and the degree to which the disposition of the hearing may as a practical matter impair or impede his ability to protect that interest; (2) the adequacy of the representation of movant's interest by existing parties; (3) the relationship of movant's interest to the subject matter of the hearing; (4) the avoidance of multiplicity of suits; (5) whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties; (6) the contribution the movant may make to the just determination of the issues.

(D) In any hearing in which intervention is granted under this Rule, the Hearing Examiner, in the interest of just and expeditious adjudication, may impose reasonable conditions or restrictions on the extent of the intervenor's participation in the proceedings.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-16 (RESERVED)

EP-40-17 MOTIONS

(A) All applications to the Hearing Examiner concerning procedural relief, including determinations of jurisdiction, shall be by motion which, unless made before the Hearing Examiner with a hearing stenographer in attendance, shall be made in writing. A written motion shall state with particularity the relief or order sought and shall be accompanied by a memorandum setting forth the grounds therefor.

(B) Within ten days after service of a motion, or such other time as fixed by the Hearing Examiner, any party may file and serve an answer to a motion. A movant may reply to an answer only with the permission of the Hearing Examiner. Procedural motions shall not cause delay of a hearing without a finding by the Hearing Examiner that good cause for such delay exists.

(C) Before deciding a written motion, the Hearing Examiner shall consider all memoranda filed. He shall file his written decision, including the procedural order issued, with the Hearing Clerk and shall serve copies on all parties. His ruling on all oral motions shall be included in the transcript except that he may elect to take the motion under advisement and issue a written ruling later.

(D) All decisions on procedural motions shall be subject to review by the Director upon review of the report of the Hearing Examiner.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-19 PREHEARING CONFERENCES

(A) Upon written notice by the Hearing Examiner to all parties, the parties or their attorneys may be directed to appear at a specified time and place for a conference, presided over by the Hearing Examiner, prior to or during the course of the hearing, to consider such matters as the Hearing Examiner shall direct; including, but not limited to:

(1) The settlement of the controversy;

(2) The simplification of the issues;

(3) The disclosure of names, identities and location of witnesses together with a brief statement of what is proposed to be established by the testimony of each;

(4) The limitation of the number of and the exchange of reports of expert witnesses expected to be called by either party;

(5) Obtaining

(a) admissions of fact;

(b) stipulations as to the admissibility into evidence of documents and other exhibits to avoid unnecessary proof;

(6) The exchange of documentary evidence to be submitted at the hearing.

(B) The Hearing Examiner may require the parties to prepare prehearing briefs prior to or subsequent to the prehearing conference covering such matters as he may specify.

(C) The proceedings at a prehearing conference shall be off-the-record, except that the Hearing Examiner may prepare, or order prepared, a prehearing conference report encompassing the agreements reached and decisions made at the prehearing conference, including any admissions, stipulations, or proposals agreed to. All offers of settlement, proposals of adjustment, and proposed stipulations not agreed to shall be privileged, shall not constitute admissions, and shall not be admissible in evidence against the person making the offer or proposal.

EP-40-20 DISCOVERY; AVAILABILITY OF AGENCY FILES

(A) Any party may serve interrogatories upon another party and take the deposition of witnesses within or without the State in the same manner as is prescribed in the Civil Rules and may require the production of such books, records, and papers as it desires and for that purpose may obtain from the Hearing Examiner a subpoena or a subpoena duces tecum, as in criminal cases.

(B) The files, books, and records of the Agency, other than communications with the Attorney General, materials or information obtained or prepared for use in pending hearing proceedings, materials or information not available for public inspection pursuant to regulation, and materials or information privileged pursuant to statutory provisions relating to trade secrets, shall be made available by the Agency during regular business hours for review and copying by any person, whether or not hearing proceedings are pending. The Agency shall provide facilities for the inspection of all Agency files and a machine or device for the copying of papers and documents for which it may charge a fee commensurate with the cost to the Agency of providing such equipment. A record of the location of all files in use by State employees and removed from such facility for that purpose shall be maintained and any such State employee shall permit any person to see such file upon request.

(C) No subpoena duces tecum shall be issued to compel production of the files, books, and records of the Agency for purposes of an adjudication hearing unless the Hearing Examiner finds that a person has been refused access to said records.

(D) No adjudication hearing shall be continued to a date more than sixty days after initiation of the hearing proceedings for the purpose of allowing a party to take depositions unless the Hearing Examiner finds in writing that the party requesting the continuance diligently pursued discovery but was unable to complete the taking of depositions by the unusual complexity of the case.

(E) Parties shall cooperate in conducting discovery procedures with a view to accomplish full and complete disclosure of all relevant facts. Informal consultation among parties concerning depositions shall be attempted before filing of formal motions to compel discovery.

EP-40-21 ADJUDICATION HEARING PROCEDURES

(A) The Hearing Examiner shall admit all relevant and material evidence, except evidence that is unduly repetitious, even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value. In all hearings the testimony of witnesses shall be taken orally, except as provided by these rules or by the Hearing Examiner. Parties shall have the right to cross-examine a witness who appears at the hearing.

(B) If a party objects to the admission or rejection of any evidence, he shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the Hearing Examiner, with the consent of all parties, orders that such argument not be transcribed. The ruling of the Hearing Examiner on any objection shall be a part of the transcript. An automatic exception to that ruling will follow.

(C) A copy of each documentary exhibit filed with the Hearing Examiner shall be furnished to each other party. A true copy of an exhibit may, in the discretion of the Hearing Examiner, be substituted for the original.

(D) Whenever evidence is deemed inadmissible, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of a document or exhibit, it shall be inserted in the record in total. In the event the Director decides that the Hearing Examiner's ruling in excluding the evidence was erroneous, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the Director may evaluate the evidence and proceed to a final decision.

(E) Official notice may be taken of such matters as are within the expertise of the Hearing Examiners, provided, however, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

EP-40-22 DIRECTOR NOT TO BE A WITNESS

**The Director, the Assistant Director, and the Deputy Directors of the Agency, because of their duties in deciding, or aiding the Director in deciding, adjudicatory matters, shall not be competent witnesses nor subject to deposition in any adjudication hearing before the Agency. Evidence from other persons relating to the mental processes of these persons deciding adjudicatory matters shall not be admissible.**

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-24 REPORT OF HEARING EXAMINER

OR PRESIDING OFFICER

(A) Within forty-five days following receipt of the transcript of an adjudication hearing and upon due consideration of the competent evidence admitted at the hearing, the oral arguments, and the briefs, if any, the Hearing Examiner shall submit to the Director by filing with the Hearing Clerk a written report setting forth findings of fact, conclusions of law, and recommendations of the action to be taken by the Director.

A copy of the written report and recommendations of the Hearing Examiner shall be mailed to all parties or their attorneys by certified mail within five days after the submission of such report to the Director. Any party or interested person shall have the right to submit to the Director, within ten days of receipt of such copy of such written report and recommendations, a written statement of objections to such written report and recommendations, which written statement of objections shall be considered by the Director before approving, modifying, or disapproving such recommendations. All such submissions to the Director shall be filed with the Hearing Clerk.

(B) Within fifteen days after the conclusion of a public meeting, the presiding officer shall prepare, and submit to the Director, a brief summary of the evidence, testimony, and opinions presented.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-26 FINAL ACTION

(A) Not less than ten days after service of the written report of the Hearing Examiner upon the parties, the Director shall take final action based on the record, including such additional evidence as he shall order admitted, by issuing a written decision.

(B) The written decision of the Director may adopt the report of the Hearing Examiner, or parts thereof. When the decision of the Director disapproves or modifies the recommendations of the Hearing Examiner in whole or in part, the Director's written decision shall include:

(1) The reasons for rejecting the recommendations of the Hearing Examiner.

(2) Findings of fact and conclusions of law together with the reasons therefor with respect to all matters where the Director does not adopt the recommendations of the Hearing Examiner.

(C) The decision of the Director shall be entered on the Journal and into the record of the hearing and certified copy thereof together with a statement of the time and method by which an appeal may be perfected shall be served within five days of the Director's action upon the parties by certified mail, return receipt requested. Copies of the decision or order shall be served on all attorneys of record in the proceedings by ordinary mail.

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-28 REGISTERS OF CURRENT AND PAST ACTIONS

(A) The Agency shall maintain a register, indexed according to the name of the permit holder, applicant or respondent and by the County in which the source or facility is located, of all pending applications for permits, leases, licenses, variances, certificates, and for approval of plans and specifications, of all hearing proceedings pending, and of all other proposed actions not yet finalized, which register shall state the docket number, the dates on which such matter was filed, the hearing date and other relevant dates, and shall identify the files containing materials pertaining to the proceedings.

(B) The Agency shall maintain a register of all adjudicatory actions of the Agency indexed as required by (A) above, stating the date for the permit or orders where applicable, the hearing docket number if one was assigned, and identifying Agency files containing pertinent information.

(C) The registers maintained pursuant to (A) and (B) above shall be conveniently located, available to the public during reasonable hours, and shall be maintained in compliance with the provisions of EP-40-30(B).

Former regulations HEwp-5-01 through HEwp-5-16 inclusive, adopted August 8, 1972, effective August 28, 1972, are rescinded.

(Adopted June 18, 1973; effective July 5, 1973.)

EP-40-30 RULES OF ETHICS

In order to avoid all possibilities of prejudice, real or apparent, to the public interest and persons involved in proceedings pending before the Agency, the following rules of ethics shall be observed after the initiation of hearing proceedings:

(A) No party shall submit any ex parte, off-the-record communication to the Director, or to the Agency staff, or to the Hearing Examiner, about any matter in issue in an adjudicatory proceeding; and the Director, the Agency staff participating in the proceeding, and the Hearing Examiner shall not request or entertain any such ex parte, off-the-record communication.

(B) All communications prohibited by EP-40-30(A) above, shall be reported immediately to the Hearing Examiner who shall place the communication or a memorandum thereof in public files associated with the case, but separate from the record material upon which the Agency will rely in reaching a decision. The Hearing Examiner shall take such additional action as he deems advisable which may include recommending entry of a default on the part of the party guilty of the malfeasance.

(C) The Director and members of the Agency staff shall not offer opinions about any matter in issue in an adjudicatory proceeding to any other party thereto or such party's attorneys, at any time after hearing proceedings have been initiated.

(D) A Hearing Examiner shall at any time disqualify himself if for any reason he may not be able to preside in a fair and impartial manner and render an impartial report to the Director, or if he receives or has during the previous two years, received ten percent or more of his gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends (except that income from the State or from diversified investments where he does not know the identity of the primary sources of income shall not be included as contributing toward such percentage), from the applicant or respondent, or any subsidiary or owner thereof. To disqualify himself, a Hearing Examiner shall file an affidavit stating the reason for disqualification.

(E) In the exercise of adjudicatory functions, Hearing Examiners shall behave in the manner prescribed for judges generally in the Canons of Judicial Ethics of the Supreme Court of Ohio which Canons are hereby expressly incorporated by reference.