

AN ACT

To amend sections 6111.01, 6111.12, and 6131.14 of the Revised Code to declare, for purposes of the state antidegradation statute, that a historically channelized watercourse provides technical, social, and economic benefits, to preclude the Director of Environmental Protection from requiring further antidegradation review upon making specified findings, including a finding that work is necessary to restore or maintain such a watercourse, and to require, where appropriate, the Director of Natural Resources and, if applicable, the Director of Transportation and the board of directors of a conservancy district to make recommendations to a county engineer regarding the use of best management practices in the construction of an improvement under the ditch statutes.

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

SECTION 1. That sections 6111.01, 6111.12, and 6131.14 of the Revised Code be amended to read as follows:

Sec. 6111.01. As used in ~~Chapter 6111. of the Revised Code~~ this chapter:

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

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

(C) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural

resource, together with such sewage as is present.

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

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

(F) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, building sewer connected directly to treatment works, incinerator, or other works used for the purpose of treating, stabilizing, 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, regardless of the depth of the strata in which underground water is located, ~~which that~~ are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters ~~which that~~ do not combine or effect a junction with natural surface or underground waters.

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

(J) "Industrial water pollution control facility" means any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, pipeline or conduit, pumping station, force main, or installation constructed, used, or placed in operation primarily for the purpose of collecting or conducting industrial waste to a point of disposal or treatment; reducing, controlling, or eliminating water pollution caused by industrial waste; or ~~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 rules adopted under sections 6111.041 and 6111.042 of the Revised Code or compliance with terms and conditions of permits set under division (J) of section 6111.03 of the Revised Code.

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

(M) "Historically channelized watercourse" means the portion of a watercourse on which an improvement, as defined in divisions (C)(2) to (4) of section 6131.01 of the Revised Code, was constructed pursuant to Chapter 1515., 6131., or 6133. of the Revised Code or a similar state law that preceded any of those chapters and authorized such an improvement.

Sec. 6111.12. (A) The director of environmental protection shall establish an antidegradation policy applicable to surface waters of the state pursuant to applicable federal laws and regulations. The purpose of the policy shall be to maintain levels of water quality that are currently better than prescribed by applicable standards except in situations when a need to allow a lower level of water quality is demonstrated based on technical, social, and economic criteria. Not later than March 31, 1994, the director shall revise the existing antidegradation policy established in rules adopted under section 6111.041 of the Revised Code and revise any necessary implementation procedures to conform them to the following principles and any mandatory regulations adopted under the "Federal Water Pollution Control Act":

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

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

(3) Whenever current ambient water quality is determined to be of a higher quality than prescribed in the standards, on a pollutant-by-pollutant basis, and the water body lacks exceptional recreational or ecological value, the director may allocate to existing sources eighty per cent of the pollutant assimilative capacity as determined by appropriate total maximum daily load procedures without further antidegradation review. The permittee for any existing source may receive an effluent limitation based on not more than one hundred per cent of the mass or concentration levels necessary to meet applicable water quality in the receiving water body as determined by appropriate total maximum daily load procedures, provided that there has been a satisfactory demonstration of the need to allow lower water quality based on technical, social, and economic criteria and the action is preceded by a public notice. Sources other than existing sources that result in ten per cent or greater change, that is, degradation, of ambient chemical water quality shall require a demonstration of technical, social, and economic need and shall be the subject of a public notice.

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

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

(B) Effluent limitations established by the director for any existing source in any permit issued under division (J) of section 6111.03 of the Revised Code prior to ~~the effective date of this section~~ JULY 1, 1993, shall continue in effect unless the permit is modified by the director. A discharger seeking modification of antidegradation-based limitations that were based

n existing quality of discharge when the permit was issued shall apply to the director for modification of the permit, consistent with rules adopted under division (A) of this section, not later than one hundred eighty days after ~~the effective date of this section~~ JULY 1, 1993 If the permittee has filed such a timely application for modification, the director shall not pursue administrative or judicial enforcement actions for violations of antidegradation-based limitations based on the existing quality of effluent that occur after ~~the effective date of this section~~ JULY 1, 1993.

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

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

(2) The work is performed pursuant to section 1515.08 of the Revised Code or a petition filed under section 6131.04 or 6133.02 of the Revised Code.

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

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

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

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

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

(8) Plans for the work have been submitted to the applicable soil and water conservation district organized under Chapter 1515. of the Revised Code.

(9) A storm water runoff plan has been developed for the watershed

prior to or during planning and design of the work and the work is consistent with the plan.

(D) As used in this section:

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

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

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

Sec. 6131.14. The clerk of the board of county commissioners shall certify to the county engineer immediately, after the requirements of section 6131.12 of the Revised Code have been met, a copy of the findings and orders of the board of county commissioners in favor of an improvement. The engineer shall make the necessary survey for the proposed improvement. ~~He~~ The engineer shall make plans for structures, maps showing the location of the land proposed to be assessed, and profiles showing the cuttings and gradient of the improvement and shall make an estimate of the cost of the construction of the improvement, which shall include actual construction cost, the cost of engineering, and the cost of notices, publication, and other incidental expenses. ~~He~~ The engineer shall recommend the maintenance district in which the improvement shall be placed. The assessment of the improvement for maintenance for one year shall be added to the cost of construction in making the actual assessment and shall be credited to the maintenance fund of the district.

The county engineer shall set proper construction stakes and shall note the intersection of the line of the improvement with the apparent land boundaries of separate owners, township and county lines, natural landmarks, road crossings, or other lines or marks. ~~He~~ The engineer shall take and note any necessary levels off the line of the improvement to determine the area of the land subject to drainage.

The engineer shall also establish, at intervals of not less than one in each

mile, in the most practicable permanent form, and in locations where destruction or disturbance is improbable, bench marks from which the original levels of the improvement can be established. The bench marks and all levels of the improvement shall be based upon some established elevation of the geological survey of the United States, if any, in the county, and the relation of any assumed elevation used by the engineer in ~~his~~ the work upon any improvement to the elevation established by the geological survey shall be accurately stated in ~~his~~ the engineer's report. The engineer shall make a plan of the work proposed to be done, which shall show the grade, the depth, the excavating to be done, the location of the permanent bench marks and their actual elevation above or below the base elevation used, and such other data as in the judgment of the engineer will aid in retracing lines, levels, or other features of the improvement. The plan shall indicate the profile and the nature of the excavation.

As soon as the engineer has completed the maps, profiles, and plans for the improvement, ~~he~~ the engineer shall transmit copies thereof to the director of natural resources, the director of transportation when a state highway is affected, and the board of directors of any conservancy district within which any part of the lands or streams affected by the proposed improvement may lie. The director of natural resources, the director of transportation, and the directors of the conservancy district shall review the plans submitted and within thirty days file with the county engineer a report indicating approval or, in case that approval cannot be given, a report with recommendations.

The approval or report with recommendations, which, where appropriate, shall include recommendations regarding the use of best management practices that are consistent with the prayer of the petition, shall be transmitted by the engineer to the board of county commissioners, who shall take notice of the approval or recommendations and shall authorize the engineer to make any changes or alterations that in the judgment of the board are necessary or desirable.

Upon receipt of approval of the plans by the director of natural resources, the director of transportation, and the directors of any conservancy districts affected, or upon completion of any changes authorized by the board of county commissioners, the engineer shall file with the clerk of the board of county commissioners all maps, profiles, and plans as provided by this section.

The engineer shall prepare specifications for the construction of the improvement. The engineer shall specify a width of temporary easement for construction purposes. The specifications shall provide for spreading and

leveling of spoil banks and shall provide for erosion and sediment control through the establishment of a sod or seeded strip not fewer than four feet nor more than fifteen feet wide, measured at right angles to the top of the ditch bank, on both sides of the ditch, except where suitable vegetative cover exists. The strip or other such controls shall be considered a part of the permanent improvement. Sod or seeded strips established and maintained in excess of four feet shall be compensated for by their removal from the taxable valuation of the property of which they are a part. The engineer shall make estimates of the cost of excavating and of the cost of material and may divide the construction of the improvement into construction areas as considered expedient. The engineer shall make a note of all fences, floodgates, culverts, or bridges that will be removed in constructing the improvement and of all culverts or bridges that must be adjusted or the channel of which must be enlarged to construct the improvement.

In estimating the cost of an improvement, the engineer may include the cost of installing gates in fences on the reserved right-of-way where needed to provide access for maintenance. The gates shall be kept locked when requested by the owner and shall be considered a part of the original improvement and subject to maintenance as provided by sections 6137.01 to 6137.12 of the Revised Code. The engineer shall make an estimate of the cost of inspecting the work as it progresses and shall, with the assistance of the prosecuting attorney, prepare forms for contracts with bidders and forms of bid guaranties that meet the requirements of section 153.54 of the Revised Code. Upon the acceptance of the contract work, the engineer shall file with the county recorder a property plat showing the general location of the improvement and a statement describing the width of permanent easement for maintenance as provided for in section 6137.12 of the Revised Code. The engineer shall make an itemized bill of the costs and expenses incurred in the proper discharge of duties set forth in this section and shall file the maps, profiles, plans, schedules, and reports with the clerk of the board of county commissioners upon completing them.

SECTION 2. That existing sections 6111.01, 6111.12, and 6131.14 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____