

As Introduced

**125th General Assembly
Regular Session
2003-2004**

H. B. No. 516

Representatives Seitz, McGregor

A BILL

To amend sections 123.01, 317.08, 3734.22, 3734.24 to 1
3734.26, 3745.01, 3746.04, 3746.10, and 3746.14 2
and to enact sections 5301.80 to 5301.92 of the 3
Revised Code to establish environmental covenants 4
as an interest in real property generally arising 5
under an environmental remediation or mitigation 6
project that imposes activity and use limitations 7
on the property, to require the recording of such 8
covenants, and to establish other requirements 9
regarding environmental covenants. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 123.01, 317.08, 3734.22, 3734.24, 11
3734.25, 3734.26, 3745.01, 3746.04, 3746.10, and 3746.14 be 12
amended and sections 5301.80, 5301.81, 5301.82, 5301.83, 5301.84, 13
5301.85, 5301.86, 5301.87, 5301.88, 5301.89, 5301.90, 5301.91, and 14
5301.92 of the Revised Code be enacted to read as follows: 15

Sec. 123.01. (A) The department of administrative services, 16
in addition to those powers enumerated in Chapters 124. and 125. 17
of the Revised Code and provided elsewhere by law, shall exercise 18
the following powers: 19

(1) To prepare, or contract to be prepared, by licensed 20

engineers or architects, surveys, general and detailed plans, 21
specifications, bills of materials, and estimates of cost for any 22
projects, improvements, or public buildings to be constructed by 23
state agencies that may be authorized by legislative 24
appropriations or any other funds made available therefor, 25
provided that the construction of the projects, improvements, or 26
public buildings is a statutory duty of the department. This 27
section does not require the independent employment of an 28
architect or engineer as provided by section 153.01 of the Revised 29
Code in the cases to which that section applies nor affect or 30
alter the existing powers of the director of transportation. 31

(2) To have general supervision over the construction of any 32
projects, improvements, or public buildings constructed for a 33
state agency and over the inspection of materials previous to 34
their incorporation into those projects, improvements, or 35
buildings; 36

(3) To make contracts for and supervise the construction of 37
any projects and improvements or the construction and repair of 38
buildings under the control of a state agency, except contracts 39
for the repair of buildings under the management and control of 40
the departments of public safety, job and family services, mental 41
health, mental retardation and developmental disabilities, 42
rehabilitation and correction, and youth services, the bureau of 43
workers' compensation, the rehabilitation services commission, and 44
boards of trustees of educational and benevolent institutions. 45
These contracts shall be made and entered into by the directors of 46
public safety, job and family services, mental health, mental 47
retardation and developmental disabilities, rehabilitation and 48
correction, and youth services, the administrator of workers' 49
compensation, the rehabilitation services commission, and the 50
boards of trustees of such institutions, respectively. All such 51
contracts may be in whole or in part on unit price basis of 52

maximum estimated cost, with payment computed and made upon actual 53
quantities or units. 54

(4) To prepare and suggest comprehensive plans for the 55
development of grounds and buildings under the control of a state 56
agency; 57

(5) To acquire, by purchase, gift, devise, lease, or grant, 58
all real estate required by a state agency, in the exercise of 59
which power the department may exercise the power of eminent 60
domain, in the manner provided by sections 163.01 to 163.22 of the 61
Revised Code; 62

(6) To make and provide all plans, specifications, and models 63
for the construction and perfection of all systems of sewerage, 64
drainage, and plumbing for the state in connection with buildings 65
and grounds under the control of a state agency; 66

(7) To erect, supervise, and maintain all public monuments 67
and memorials erected by the state, except where the supervision 68
and maintenance is otherwise provided by law; 69

(8) To procure, by lease, storage accommodations for a state 70
agency; 71

(9) To lease or grant easements or licenses for unproductive 72
and unused lands or other property under the control of a state 73
agency. Such leases, easements, or licenses shall be granted for a 74
period not to exceed fifteen years and shall be executed for the 75
state by the director of administrative services and the governor 76
and shall be approved as to form by the attorney general, provided 77
that leases, easements, or licenses may be granted to any county, 78
township, municipal corporation, port authority, water or sewer 79
district, school district, library district, health district, park 80
district, soil and water conservation district, conservancy 81
district, or other political subdivision or taxing district, or 82
any agency of the United States government, for the exclusive use 83

of that agency, political subdivision, or taxing district, without 84
any right of sublease or assignment, for a period not to exceed 85
fifteen years, and provided that the director shall grant leases, 86
easements, or licenses of university land for periods not to 87
exceed twenty-five years for purposes approved by the respective 88
university's board of trustees wherein the uses are compatible 89
with the uses and needs of the university and may grant leases of 90
university land for periods not to exceed forty years for purposes 91
approved by the respective university's board of trustees pursuant 92
to section 123.77 of the Revised Code. 93

(10) To lease office space in buildings for the use of a 94
state agency; 95

(11) To have general supervision and care of the storerooms, 96
offices, and buildings leased for the use of a state agency; 97

(12) To exercise general custodial care of all real property 98
of the state; 99

(13) To assign and group together state offices in any city 100
in the state and to establish, in cooperation with the state 101
agencies involved, rules governing space requirements for office 102
or storage use; 103

(14) To lease for a period not to exceed forty years, 104
pursuant to a contract providing for the construction thereof 105
under a lease-purchase plan, buildings, structures, and other 106
improvements for any public purpose, and, in conjunction 107
therewith, to grant leases, easements, or licenses for lands under 108
the control of a state agency for a period not to exceed forty 109
years. The lease-purchase plan shall provide that at the end of 110
the lease period, the buildings, structures, and related 111
improvements, together with the land on which they are situated, 112
shall become the property of the state without cost. 113

(a) Whenever any building, structure, or other improvement is 114

to be so leased by a state agency, the department shall retain 115
either basic plans, specifications, bills of materials, and 116
estimates of cost with sufficient detail to afford bidders all 117
needed information or, alternatively, all of the following plans, 118
details, bills of materials, and specifications: 119

(i) Full and accurate plans suitable for the use of mechanics 120
and other builders in the improvement; 121

(ii) Details to scale and full sized, so drawn and 122
represented as to be easily understood; 123

(iii) Accurate bills showing the exact quantity of different 124
kinds of material necessary to the construction; 125

(iv) Definite and complete specifications of the work to be 126
performed, together with such directions as will enable a 127
competent mechanic or other builder to carry them out and afford 128
bidders all needed information; 129

(v) A full and accurate estimate of each item of expense and 130
of the aggregate cost thereof. 131

(b) The department shall give public notice, in such 132
newspaper, in such form, and with such phraseology as the director 133
of administrative services prescribes, published once each week 134
for four consecutive weeks, of the time when and place where bids 135
will be received for entering into an agreement to lease to a 136
state agency a building, structure, or other improvement. The last 137
publication shall be at least eight days preceding the day for 138
opening the bids. The bids shall contain the terms upon which the 139
builder would propose to lease the building, structure, or other 140
improvement to the state agency. The form of the bid approved by 141
the department shall be used, and a bid is invalid and shall not 142
be considered unless that form is used without change, alteration, 143
or addition. Before submitting bids pursuant to this section, any 144
builder shall comply with Chapter 153. of the Revised Code. 145

(c) On the day and at the place named for receiving bids for 146
entering into lease agreements with a state agency, the director 147
of administrative services shall open the bids and shall publicly 148
proceed immediately to tabulate the bids upon duplicate sheets. No 149
lease agreement shall be entered into until the bureau of workers' 150
compensation has certified that the person to be awarded the lease 151
agreement has complied with Chapter 4123. of the Revised Code, 152
until, if the builder submitting the lowest and best bid is a 153
foreign corporation, the secretary of state has certified that the 154
corporation is authorized to do business in this state, until, if 155
the builder submitting the lowest and best bid is a person 156
nonresident of this state, the person has filed with the secretary 157
of state a power of attorney designating the secretary of state as 158
its agent for the purpose of accepting service of summons in any 159
action brought under Chapter 4123. of the Revised Code, and until 160
the agreement is submitted to the attorney general and the 161
attorney general's approval is certified thereon. Within thirty 162
days after the day on which the bids are received, the department 163
shall investigate the bids received and shall determine that the 164
bureau and the secretary of state have made the certifications 165
required by this section of the builder who has submitted the 166
lowest and best bid. Within ten days of the completion of the 167
investigation of the bids, the department shall award the lease 168
agreement to the builder who has submitted the lowest and best bid 169
and who has been certified by the bureau and secretary of state as 170
required by this section. If bidding for the lease agreement has 171
been conducted upon the basis of basic plans, specifications, 172
bills of materials, and estimates of costs, upon the award to the 173
builder the department, or the builder with the approval of the 174
department, shall appoint an architect or engineer licensed in 175
this state to prepare such further detailed plans, specifications, 176
and bills of materials as are required to construct the building, 177
structure, or improvement. The department shall adopt such rules 178

as are necessary to give effect to this section. The department 179
may reject any bid. Where there is reason to believe there is 180
collusion or combination among bidders, the bids of those 181
concerned therein shall be rejected. 182

(15) To acquire by purchase, gift, devise, or grant and to 183
transfer, lease, or otherwise dispose of all real property 184
required to assist in the development of a conversion facility as 185
defined in section 5709.30 of the Revised Code as that section 186
existed before its repeal by ~~H.B.~~ Amended Substitute House Bill 95 187
of the 125th general assembly; 188

(16) To lease for a period not to exceed forty years, 189
notwithstanding any other division of this section, the 190
state-owned property located at 408-450 East Town Street, 191
Columbus, Ohio, formerly the state school for the deaf, to a 192
developer in accordance with this section. "Developer," as used in 193
this section, has the same meaning as in section 123.77 of the 194
Revised Code. 195

Such a lease shall be for the purpose of development of the 196
land for use by senior citizens by constructing, altering, 197
renovating, repairing, expanding, and improving the site as it 198
existed on June 25, 1982. A developer desiring to lease the land 199
shall prepare for submission to the department a plan for 200
development. Plans shall include provisions for roads, sewers, 201
water lines, waste disposal, water supply, and similar matters to 202
meet the requirements of state and local laws. The plans shall 203
also include provision for protection of the property by insurance 204
or otherwise, and plans for financing the development, and shall 205
set forth details of the developer's financial responsibility. 206

The department may employ, as employees or consultants, 207
persons needed to assist in reviewing the development plans. Those 208
persons may include attorneys, financial experts, engineers, and 209
other necessary experts. The department shall review the 210

development plans and may enter into a lease if it finds all of 211
the following: 212

(a) The best interests of the state will be promoted by 213
entering into a lease with the developer; 214

(b) The development plans are satisfactory; 215

(c) The developer has established the developer's financial 216
responsibility and satisfactory plans for financing the 217
development. 218

The lease shall contain a provision that construction or 219
renovation of the buildings, roads, structures, and other 220
necessary facilities shall begin within one year after the date of 221
the lease and shall proceed according to a schedule agreed to 222
between the department and the developer or the lease will be 223
terminated. The lease shall contain such conditions and 224
stipulations as the director considers necessary to preserve the 225
best interest of the state. Moneys received by the state pursuant 226
to this lease shall be paid into the general revenue fund. The 227
lease shall provide that at the end of the lease period the 228
buildings, structures, and related improvements shall become the 229
property of the state without cost. 230

(17) To lease to any person any tract of land owned by the 231
state and under the control of the department, or any part of such 232
a tract, for the purpose of drilling for or the pooling of oil or 233
gas. Such a lease shall be granted for a period not exceeding 234
forty years, with the full power to contract for, determine the 235
conditions governing, and specify the amount the state shall 236
receive for the purposes specified in the lease, and shall be 237
prepared as in other cases. 238

(18) To manage the use of space owned and controlled by the 239
department, including space in property under the jurisdiction of 240
the Ohio building authority, by doing all of the following: 241

(a) Biennially implementing, by state agency location, a	242
census of agency employees assigned space;	243
(b) Periodically in the discretion of the director of	244
administrative services:	245
(i) Requiring each state agency to categorize the use of	246
space allotted to the agency between office space, common areas,	247
storage space, and other uses, and to report its findings to the	248
department;	249
(ii) Creating and updating a master space utilization plan	250
for all space allotted to state agencies. The plan shall	251
incorporate space utilization metrics.	252
(iii) Conducting a cost-benefit analysis to determine the	253
effectiveness of state-owned buildings;	254
(iv) Assessing the alternatives associated with consolidating	255
the commercial leases for buildings located in Columbus.	256
(c) Commissioning a comprehensive space utilization and	257
capacity study in order to determine the feasibility of	258
consolidating existing commercially leased space used by state	259
agencies into a new state-owned facility.	260
(B) This section and section 125.02 of the Revised Code shall	261
not interfere with any of the following:	262
(1) The power of the adjutant general to purchase military	263
supplies, or with the custody of the adjutant general of property	264
leased, purchased, or constructed by the state and used for	265
military purposes, or with the functions of the adjutant general	266
as director of state armories;	267
(2) The power of the director of transportation in acquiring	268
rights-of-way for the state highway system, or the leasing of	269
lands for division or resident district offices, or the leasing of	270
lands or buildings required in the maintenance operations of the	271

department of transportation, or the purchase of real property for 272
garage sites or division or resident district offices, or in 273
preparing plans and specifications for and constructing such 274
buildings as the director may require in the administration of the 275
department; 276

(3) The power of the director of public safety and the 277
registrar of motor vehicles to purchase or lease real property and 278
buildings to be used solely as locations to which a deputy 279
registrar is assigned pursuant to division (B) of section 4507.011 280
of the Revised Code and from which the deputy registrar is to 281
conduct the deputy registrar's business, the power of the director 282
of public safety to purchase or lease real property and buildings 283
to be used as locations for division or district offices as 284
required in the maintenance of operations of the department of 285
public safety, and the power of the superintendent of the state 286
highway patrol in the purchase or leasing of real property and 287
buildings needed by the patrol, to negotiate the sale of real 288
property owned by the patrol, to rent or lease real property owned 289
or leased by the patrol, and to make or cause to be made repairs 290
to all property owned or under the control of the patrol; 291

(4) The power of the division of liquor control in the 292
leasing or purchasing of retail outlets and warehouse facilities 293
for the use of the division; 294

(5) The power of the director of development to enter into 295
leases of real property, buildings, and office space to be used 296
solely as locations for the state's foreign offices to carry out 297
the purposes of section 122.05 of the Revised Code; 298

(6) The power of the director of environmental protection to 299
enter into environmental covenants, to grant and accept easements, 300
or to sell property pursuant to division (G) of section 3745.01 of 301
the Revised Code. 302

(C) Purchases for, and the custody and repair of, buildings 303
under the management and control of the capitol square review and 304
advisory board, the rehabilitation services commission, the bureau 305
of workers' compensation, or the departments of public safety, job 306
and family services, mental health, mental retardation and 307
developmental disabilities, and rehabilitation and correction, and 308
buildings of educational and benevolent institutions under the 309
management and control of boards of trustees, are not subject to 310
the control and jurisdiction of the department of administrative 311
services. 312

(D) Any instrument by which real property is acquired 313
pursuant to this section shall identify the agency of the state 314
that has the use and benefit of the real property as specified in 315
section 5301.012 of the Revised Code. 316

Sec. 317.08. (A) Except as provided in divisions (C) and (D) 317
of this section, the county recorder shall keep six separate sets 318
of records as follows: 319

(1) A record of deeds, in which shall be recorded all deeds 320
and other instruments of writing for the absolute and 321
unconditional sale or conveyance of lands, tenements, and 322
hereditaments; all notices as provided in sections 5301.47 to 323
5301.56 of the Revised Code; all judgments or decrees in actions 324
brought under section 5303.01 of the Revised Code; all 325
declarations and bylaws, and all amendments to declarations and 326
bylaws, as provided in Chapter 5311. of the Revised Code; 327
affidavits as provided in section 5301.252 of the Revised Code; 328
all certificates as provided in section 5311.17 of the Revised 329
Code; all articles dedicating archaeological preserves accepted by 330
the director of the Ohio historical society under section 149.52 331
of the Revised Code; all articles dedicating nature preserves 332
accepted by the director of natural resources under section 333

1517.05 of the Revised Code; all agreements for the registration 334
of lands as archaeological or historic landmarks under section 335
149.51 or 149.55 of the Revised Code; all conveyances of 336
conservation easements and agricultural easements under section 337
5301.68 of the Revised Code; all instruments extinguishing 338
agricultural easements under section 901.21 or 5301.691 of the 339
Revised Code or pursuant to terms of such an easement granted to a 340
charitable organization under section 5301.68 of the Revised Code; 341
all instruments or orders described in division (B)(1)(c)(ii) of 342
section 5301.56 of the Revised Code; all no further action letters 343
issued under section 122.654 or 3746.11 of the Revised Code; all 344
covenants not to sue issued under section 3746.12 of the Revised 345
Code, including all covenants not to sue issued pursuant to 346
section 122.654 of the Revised Code; any restrictions on the use 347
of property contained in a no further action letter issued under 348
section 122.654 of the Revised Code, ~~any restrictions on the use~~ 349
~~of property identified pursuant to division (C)(3) of section~~ 350
~~3746.10 of the Revised Code,~~ and any restrictions on the use of 351
property contained in a deed or other instrument as provided in 352
division (E) of section 3737.882 of the Revised Code; any easement 353
executed or granted under section 3734.22, 3734.24, 3734.25, or 354
3734.26 of the Revised Code; any environmental covenant entered 355
into in accordance with sections 5301.80 to 5301.92 of the Revised 356
Code; all memoranda of trust, as described in division (A) of 357
section 5301.255 of the Revised Code, that describe specific real 358
property; and all agreements entered into under division (A) of 359
section 1521.26 of the Revised Code; 360

(2) A record of mortgages, in which shall be recorded all of 361
the following: 362

(a) All mortgages, including amendments, supplements, 363
modifications, and extensions of mortgages, or other instruments 364
of writing by which lands, tenements, or hereditaments are or may 365

be mortgaged or otherwise conditionally sold, conveyed, affected, 366
or encumbered; 367

(b) All executory installment contracts for the sale of land 368
executed after September 29, 1961, that by their terms are not 369
required to be fully performed by one or more of the parties to 370
them within one year of the date of the contracts; 371

(c) All options to purchase real estate, including 372
supplements, modifications, and amendments of the options, but no 373
option of that nature shall be recorded if it does not state a 374
specific day and year of expiration of its validity; 375

(d) Any tax certificate sold under section 5721.33 of the 376
Revised Code, or memorandum of it, that is presented for filing of 377
record. 378

(3) A record of powers of attorney, including all memoranda 379
of trust, as described in division (A) of section 5301.255 of the 380
Revised Code, that do not describe specific real property; 381

(4) A record of plats, in which shall be recorded all plats 382
and maps of town lots, of the subdivision of town lots, and of 383
other divisions or surveys of lands, any center line survey of a 384
highway located within the county, the plat of which shall be 385
furnished by the director of transportation or county engineer, 386
and all drawings and amendments to drawings, as provided in 387
Chapter 5311. of the Revised Code; 388

(5) A record of leases, in which shall be recorded all 389
leases, memoranda of leases, and supplements, modifications, and 390
amendments of leases and memoranda of leases; 391

(6) A record of declarations executed pursuant to section 392
2133.02 of the Revised Code and durable powers of attorney for 393
health care executed pursuant to section 1337.12 of the Revised 394
Code. 395

(B) All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, internal revenue tax liens and other liens in favor of the United States as described in division (A) of section 317.09 of the Revised Code, personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, broker's liens, and liens provided for in sections 1513.33, 1513.37, 3752.13, 5111.021, and 5311.18 of the Revised Code.

The recording of an option to purchase real estate, including any supplement, modification, and amendment of the option, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the option.

(C) In lieu of keeping the six separate sets of records required in divisions (A)(1) to (6) of this section and the records required in division (D) of this section, a county recorder may record all the instruments required to be recorded by this section in two separate sets of record books. One set shall be called the "official records" and shall contain the instruments listed in divisions (A)(1), (2), (3), (5), and (6) and (D) of this section. The second set of records shall contain the instruments listed in division (A)(4) of this section.

(D) Except as provided in division (C) of this section, the county recorder shall keep a separate set of records containing all corrupt activity lien notices filed with the recorder pursuant to section 2923.36 of the Revised Code and a separate set of records containing all medicaid fraud lien notices filed with the recorder pursuant to section 2933.75 of the Revised Code.

Sec. 3734.22. Before beginning to clean up any facility under 428
section 3734.21 of the Revised Code, the director of environmental 429
protection shall endeavor to enter into an agreement with the 430
owner of the land on which the facility is located, or with the 431
owner of the facility, specifying the measures to be performed and 432
authorizing the director, employees of the agency, or contractors 433
retained by the director to enter upon the land and perform the 434
specified measures. 435

Each agreement shall contain provisions for the reimbursement 436
of the state for the costs of the cleanup. 437

All reimbursements and payments shall be credited to the 438
hazardous waste clean-up fund created in section 3734.28 of the 439
Revised Code. 440

The agreement may require the owner to execute an easement 441
whereby the director, an authorized employee of the agency, or a 442
contractor employed by the agency in accordance with the bidding 443
procedure established in division (C) of section 3734.23 of the 444
Revised Code may enter upon the facility to sample, repair, or 445
reconstruct air and water quality monitoring equipment constructed 446
under the agreement. Such easements shall be for a specified 447
period of years and may be extinguished by agreement between the 448
owner and the director. When necessary to protect the public 449
health or safety, the agreement may require the owner to ~~execute a~~ 450
~~restrictive covenant to run with the land that specifies the uses~~ 451
~~that may be made of the facility after work performed is~~ 452
~~completed, specifies the period for which the restrictive covenant~~ 453
~~applies, and provides terms whereby modifications to the~~ 454
~~restrictive covenant, or other land uses, may be initiated or~~ 455
~~proposed to the director by the owner or by subsequent owners of~~ 456
~~the facility. All easements or covenants required under this~~ 457
~~section shall be recorded in the office of the county recorder of~~ 458

~~the county in which the facility is located, and the recording~~ 459
~~fees shall be paid by the director~~ enter into an environmental 460
covenant with the director in accordance with sections 5301.80 to 461
5301.92 of the Revised Code. 462

Upon a breach of the reimbursement provisions of the 463
agreement by the owner of the land or facility, or upon 464
notification to the director by the owner that the owner is unable 465
to perform the duties under the reimbursement provisions of the 466
agreement, the director shall record the unreimbursed portion of 467
the costs of cleanup at the office of the county recorder of the 468
county in which the facility is located. The costs so recorded 469
constitute a lien against the property on which the facility is 470
located until discharged. Upon written request of the director, 471
the attorney general shall institute a civil action to recover the 472
unreimbursed portion of the costs of cleanup. Any moneys so 473
recovered shall be credited to the hazardous waste clean-up fund. 474

Sec. 3734.24. After the cleanup of a solid waste facility or 475
a hazardous waste facility acquired and cleaned up under section 476
3734.23 of the Revised Code, the director of environmental 477
protection may, if the facility is suitable for use by any other 478
state department, agency, office, or institution and if the 479
proposed use of the facility is compatible with the condition of 480
the facility as cleaned up, transfer the facility to that state 481
department, agency, office, or institution. The director shall 482
continue to provide for the post-closure care, maintenance, and 483
monitoring of any such cleaned-up facility as required by section 484
3734.23 of the Revised Code. 485

If the director determines that any facility so cleaned up is 486
suitable, because of its condition as cleaned up, for restricted 487
or unrestricted use, ~~he~~ the director may, with the approval of the 488
attorney general, sell the facility if the sale is advantageous to 489

the state. Prior to selling the cleaned-up facility, the director 490
shall, when necessary to protect public health or safety, execute 491
~~a restrictive covenant to run with the land that specifies the~~ 492
~~uses that may be made of the facility, specifies the period for~~ 493
~~which the restrictive covenant applies, and provides terms whereby~~ 494
~~modifications to the restrictive covenant, or other land uses, may~~ 495
~~be initiated or proposed to the director by subsequent owners of~~ 496
~~the facility~~ enter into an environmental covenant in accordance 497
with sections 5301.80 to 5301.92 of the Revised Code. When selling 498
any such cleaned-up facility, the director shall retain the right 499
to enter upon the facility, in person or by ~~his~~ an authorized 500
agent, to provide for the post-closure care, maintenance, and 501
monitoring of the facility. The director shall provide for the 502
post-closure care, maintenance, and monitoring of any such 503
facility sold as required by section 3734.23 of the Revised Code. 504

With the approval of the attorney general, the director may 505
grant easements or leases on any such cleaned-up facility if ~~he~~ 506
the director determines that the use of the facility under the 507
easement or lease is compatible with its condition as cleaned up. 508

Any moneys derived from the sale of such cleaned-up 509
facilities or from payments from easements or leases shall be 510
credited to the hazardous waste clean-up fund created in section 511
3734.28 of the Revised Code. 512

Sec. 3734.25. (A) The director of environmental protection 513
may make grants of moneys from the hazardous waste clean-up fund 514
created in section 3734.28 of the Revised Code for payment by the 515
state of up to two-thirds of the reasonable and necessary expenses 516
incurred by a municipal corporation, county, or township for the 517
proper closure of or abatement of air or water pollution or soil 518
contamination from a solid waste facility in which significant 519
quantities of hazardous waste were disposed of and that the 520

political subdivision owns and once operated. 521

(B) A municipal corporation, county, or township shall submit 522
an application for a grant on forms provided by the director, 523
together with detail plans and specifications indicating the 524
measures to be performed, an itemized estimate of the project's 525
cost, a description of the project's benefits, and such other 526
information as the director prescribes. The plan for closure or 527
abatement of air or water pollution or soil contamination may be 528
prepared in consultation with the director or the board of health 529
of the city or general health district in which the facility is 530
located. The director may award the applicant a grant only if ~~he~~ 531
the director finds that the proposed measures will provide for the 532
proper closure of the facility and will abate or prevent air or 533
water pollution or soil contamination, including, but not limited 534
to, those measures necessary or desirable to: 535

(1) In the case of a facility at which land burial of 536
hazardous waste occurred, establish and maintain a suitable cover 537
of soil and vegetation over the cells in which waste is buried in 538
order to minimize erosion, the infiltration of surface water into 539
the cells, the production of leachate, and the accumulation or 540
runoff of contaminated surface waters and to prevent air emissions 541
of hazardous waste from the facility; 542

(2) Collect and treat contaminated surface water runoff from 543
the facility; 544

(3) Collect and treat leachate produced at the facility; 545

(4) Install test wells and other equipment or facilities to 546
monitor the quality of surface waters receiving runoff from the 547
facility or to monitor air emissions of hazardous waste from the 548
facility; 549

(5) Regularly monitor and analyze surface water runoff from 550

the facility, the quality of waters receiving the runoff, and 551
~~groundwater~~ ground water quality in the vicinity of the facility, 552
and regularly monitor leachate collection and treatment systems 553
installed under the grant and analyze samples from them; 554

(6) Remove and dispose of hazardous waste from the facility 555
at a suitable hazardous waste disposal facility where necessary to 556
protect public health or safety or to prevent or abate air or 557
water pollution or soil contamination. 558

(C) The director shall determine the amount of the grant 559
based upon ~~his~~ the director's determination of what constitutes 560
reasonable and necessary expenses for the proper closure of the 561
facility or for the prevention or elimination of air or water 562
pollution or soil contamination from the facility. In making a 563
grant, the director shall enter into a contract with the municipal 564
corporation, county, or township that owns the facility to ensure 565
that the moneys granted are used for the purposes of this section 566
and that measures performed are properly done. The final payment 567
under a grant may not be made until the director inspects and 568
approves the completed cleanup. 569

The contract shall require the municipal corporation, county, 570
or township to execute an easement whereby the director, an 571
authorized employee of the agency, or a contractor employed by the 572
director may enter upon the facility to sample, repair, or 573
reconstruct air and water quality monitoring equipment constructed 574
under the contract. Such easements shall be for a specified period 575
of years and may be extinguished by agreement between the 576
political subdivision and the director. 577

When necessary to protect public health or safety, the 578
contract may require the municipal corporation, county, or 579
township to ~~execute a restrictive covenant to run with the land~~ 580
~~that specifies the uses that may be made of the facility after~~ 581
~~work performed under the contract is completed, specifies the~~ 582

~~period for which the restrictive covenant applies, and provides 583
terms whereby modifications to the restrictive covenant, or other 584
land uses, may be initiated or proposed to the director by the 585
political subdivision or by subsequent owners of the facility. Any 586
easements or covenants required under this section shall be 587
recorded in the office of the county recorder of the county in 588
which the facility is located, and the recording fees shall be 589
paid by the recipient of the grant enter into an environmental 590
covenant with the director in accordance with sections 5301.80 to 591
5301.92 of the Revised Code. 592~~

Sec. 3734.26. (A) The director of environmental protection 593
may make grants of moneys from the hazardous waste clean-up fund 594
created in section 3734.28 of the Revised Code to the owner, other 595
than a political subdivision, of a solid waste facility in which 596
significant quantities of hazardous waste were disposed of or a 597
hazardous waste facility for up to fifty per cent of the cost of 598
the reasonable and necessary expenses incurred for the proper 599
closure of or abatement or prevention of air or water pollution or 600
soil contamination from the facility and for developing the land 601
on which it was located for use in industry, commerce, 602
distribution, or research. 603

The director shall not make grants to the owner of any land 604
on which such facilities are located if the owner at any time 605
owned or operated the facility located thereon for profit or in 606
conjunction with any profit-making enterprise located in this 607
state or to any person who at any time owned or operated a 608
facility concerning which the director has taken action under 609
section 3734.20, 3734.22, or 3734.23 of the Revised Code. However, 610
the director may make grants under this section to any subsequent 611
owner of the land, provided that the person has no affiliation 612
with any person who owned or operated the facility located on the 613
land for profit or in conjunction with any profit-making 614

enterprise located in this state or who owned or operated a 615
facility concerning which the director has taken action under 616
section 3734.20, 3734.22, or 3734.23 of the Revised Code. 617

(B) The owner shall submit an application for a grant on 618
forms furnished by the director, together with detail plans and 619
specifications for the measures to be performed to close the 620
facility properly or to abate or prevent air or water pollution or 621
soil contamination from the facility, an itemized estimate of the 622
project's cost, a description of the project's estimated benefits, 623
and such other information as the director prescribes. The plan 624
may be prepared in consultation with the director or with the 625
board of health of the city or general health district in which 626
the facility is located. The director may award the applicant a 627
grant only ~~if he finds~~ after finding that the proposed measures 628
will provide for the proper closure of the facility or will abate 629
or prevent air or water pollution or soil contamination from the 630
facility, including, but not limited to, those measures necessary 631
or desirable to: 632

(1) In the case of a facility for the land burial of 633
hazardous waste, establish and maintain a suitable cover of soil 634
and vegetation over the cells in which waste is buried in order to 635
minimize erosion, the infiltration of surface water into the 636
cells, the production of leachate, and the accumulation or runoff 637
of contaminated surface water and to prevent air emissions of 638
hazardous waste from the facility; 639

(2) Collect and treat contaminated surface water runoff from 640
the facility; 641

(3) Collect and treat leachate produced at the facility; 642

(4) Install test wells and other equipment or facilities to 643
monitor the quality of surface waters receiving runoff from the 644
facility or to monitor air emissions of hazardous waste from the 645

facility; 646

(5) Regularly monitor and analyze surface water runoff from 647
the facility, the quality of waters receiving the runoff, and 648
~~groundwater~~ ground water quality in the vicinity of the facility, 649
and regularly monitor leachate collection and treatment systems 650
installed under the grant and analyze samples from them; 651

(6) Remove and dispose of hazardous waste from the facility 652
at a suitable hazardous waste disposal facility where necessary to 653
protect public health or safety or to abate or prevent air or 654
water pollution or soil contamination. 655

(C) The director shall determine the amount of the grant 656
based upon ~~his~~ the director's determination of what constitutes 657
reasonable and necessary expenses for the proper closure of the 658
facility or for the abatement or prevention of air or water 659
pollution or soil contamination from the facility. The amount of 660
the grant shall not exceed one-half of the total, as determined by 661
the director, of what constitutes reasonable and necessary 662
expenses actually incurred for the proper closure of or abatement 663
or prevention of air or water pollution or soil contamination from 664
the facility. 665

In making a grant, the director shall enter into a contract 666
for funding with each applicant awarded a grant to ensure that the 667
moneys granted are used for the purpose of this section and that 668
the measures performed are properly performed. The final payment 669
under a grant may not be made until the director inspects and 670
approves the completed cleanup and the plans for developing the 671
land for use in industry, commerce, distribution, or research. 672

Each contract for funding shall contain provisions for the 673
reimbursement of the state of a portion of the costs of the 674
cleanup that is commensurate with the increase in the market value 675
of the property attributable to the cleanup thereon, as determined 676

by appraisals made before and after cleanup in the manner stated 677
in the contract. For reimbursement of that portion, the contract 678
may include provisions for: 679

(1) Payment to the state of the share of the income derived 680
from the productive use of the land; 681

(2) Imposition of a lien in the amount of the increase in 682
fair market value payable upon the transfer or conveyance to a new 683
owner; 684

(3) Waiver of all reimbursement if the determination 685
discloses an increase in value that is insubstantial in comparison 686
to the benefits to the public from the abatement of threats to 687
public health or safety or from the abatement or prevention of 688
pollution or contamination, considering the applicant's share of 689
the cleanup cost. 690

All reimbursements and payments shall be credited to the 691
hazardous waste clean-up fund created in section 3734.28 of the 692
Revised Code. 693

(D) The contract shall require the owner to execute an 694
easement whereby the director, an authorized employee of the 695
agency, or a contractor employed by the agency may enter upon the 696
facility to sample, repair, or reconstruct air and water quality 697
monitoring equipment constructed under the contract. Such 698
easements shall be for a specified period of years and may be 699
extinguished by agreement between the owner and the director. When 700
necessary to protect the public health or safety, the contract may 701
require the owner to ~~execute a restrictive covenant to run with~~ 702
~~the land that specifies the uses that may be made of the facility~~ 703
~~after work performed under the grant is completed, specifies the~~ 704
~~period for which the restrictive covenant applies, and provides~~ 705
~~terms whereby modifications to the restrictive covenant, or other~~ 706
~~land uses, may be initiated or proposed to the director by the~~ 707

~~owner or by subsequent owners of the facility. All easements or 708~~
~~covenants required under this section shall be recorded in the 709~~
~~office of the county recorder of the county in which the facility 710~~
~~is located, and the recording fees shall be paid by the owner 711~~
enter into an environmental covenant with the director in 712
accordance with sections 5301.80 to 5301.92 of the Revised Code. 713

(E) As used in this section, "commerce" includes, but is not 714
limited to, agriculture, forestry, and housing. 715

Sec. 3745.01. There is hereby created the environmental 716
protection agency, headed by the director of environmental 717
protection. The agency, under the supervision of the director, 718
shall administer the laws pertaining to chemical emergency 719
planning, community right-to-know, and toxic chemical release 720
reporting; the cessation of chemical handling operations; the 721
prevention, control, and abatement of air and water pollution; 722
public water supply; comprehensive water resource management 723
planning; and the disposal and treatment of solid wastes, 724
infectious wastes, construction and demolition debris, hazardous 725
waste, sewage, industrial waste, and other wastes. The director 726
may do all of the following: 727

(A) Provide such methods of administration, appoint such 728
personnel, make such reports, and take such other action as may be 729
necessary to comply with the requirements of the federal laws and 730
regulations pertaining to chemical emergency planning, community 731
right-to-know, and toxic chemical release reporting; air and water 732
pollution control; public water supply; water resource planning; 733
and waste disposal and treatment; 734

(B) Procure by contract the temporary or intermittent 735
services of experts or consultants, or organizations thereof, when 736
those services are to be performed on a part-time or 737
fee-for-service basis and do not involve the performance of 738

administrative duties;	739
(C) Advise, consult, cooperate, and enter into contracts or agreements with any other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter and Chapters 3704., 3714., 3734., 3751., 3752., 6109., and 6111. of the Revised Code;	740 741 742 743 744 745
(D) Establish advisory boards in accordance with section 121.13 of the Revised Code;	746 747
(E) Accept on behalf of the state any grant, gift, or contribution made for toxic chemical release reporting, air or water pollution control, public water supply, water resource planning, waste disposal or treatment, or related purposes, and expend it for those purposes;	748 749 750 751 752
(F) Make an annual report to the governor and the general assembly on activities and expenditures as well as recommendations for such additional legislation as the director considers appropriate to carry out the director's duties or accomplish the purposes of this section;	753 754 755 756 757
<u>(G) Enter into environmental covenants in accordance with sections 5301.80 to 5301.92 of the Revised Code, and grant or accept easements or sell real property pursuant to section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code, as applicable.</u>	758 759 760 761 762
The agency shall utilize the laboratory facilities of the department of health and other state institutions and agencies to the maximum extent that the utilization is practicable, economical, and technically satisfactory.	763 764 765 766
The director shall maintain and keep available for public inspection, at the director's principal office, a current register of all applications filed for permits, leases, licenses,	767 768 769

variances, certificates, and approval of plans and specifications 770
and of publicly owned treatment works pretreatment programs under 771
the director's jurisdiction, hearings pending, the director's 772
final action thereon, and the dates on which the filings, 773
hearings, and final actions occur. The director shall maintain and 774
keep available for public inspection at the director's principal 775
office all plans, reports, and other documents required to be 776
filed with the emergency response commission under Chapter 3750. 777
of the Revised Code and rules adopted under it, and all reports 778
and other documents required to be filed with the director under 779
Chapter 3751. of the Revised Code and rules adopted under it, 780
subject to the requirements of those chapters and rules adopted 781
under them for the protection of trade secrets and confidential 782
business information from disclosure to persons not authorized 783
under those laws to receive trade secret or confidential business 784
information. 785

Sec. 3746.04. Within one year after September 28, 1994, the 786
director of environmental protection, in accordance with Chapter 787
119. of the Revised Code and with the advice of the 788
multidisciplinary council appointed under section 3746.03 of the 789
Revised Code, shall adopt, and subsequently may amend, suspend, or 790
rescind, rules that do both of the following: 791

(A) Revise the rules adopted under Chapters 3704., 3714., 792
3734., 6109., and 6111. of the Revised Code to incorporate the 793
provisions necessary to conform those rules to the requirements of 794
this chapter. The amended rules adopted under this division also 795
shall establish response times for all submittals to the 796
environmental protection agency required under this chapter or 797
rules adopted under it. 798

(B) Establish requirements and procedures that are reasonably 799
necessary for the implementation and administration of this 800

chapter, including, without limitation, all of the following: 801

(1) Appropriate generic numerical clean-up standards for the 802
treatment or removal of soils, sediments, and water media for 803
hazardous substances and petroleum. The rules shall establish 804
separate generic numerical clean-up standards based upon the 805
intended use of properties after the completion of voluntary 806
actions, including industrial, commercial, and residential uses 807
and such other categories of land use as the director considers to 808
be appropriate. The generic numerical clean-up standards 809
established for each category of land use shall be the 810
concentration of each contaminant that may be present on a 811
property that shall ensure protection of public health and safety 812
and the environment for the reasonable exposure for that category 813
of land use. When developing the standards, the director shall 814
consider such factors as all of the following: 815

(a) Scientific information, including, without limitation, 816
toxicological information and realistic assumptions regarding 817
human and environmental exposure to hazardous substances or 818
petroleum; 819

(b) Climatic factors; 820

(c) Human activity patterns; 821

(d) Current statistical techniques; 822

(e) For petroleum at industrial property, alternatives to the 823
use of total petroleum hydrocarbons. 824

The generic numerical clean-up standards established under 825
division (B)(1) of this section shall be consistent with and 826
equivalent in scope, content, and coverage to any applicable 827
standard established by federal environmental laws and regulations 828
adopted under them, including, without limitation, the "Federal 829
Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 830
U.S.C.A. 1251, as amended; the "Resource Conservation and Recovery 831

Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended; the 832
"Toxic Substances Control Act," 90 Stat. 2003 (1976), 15 U.S.C.A. 833
2601, as amended; the "Comprehensive Environmental Response,
Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 834
U.S.C.A. 9601, as amended; and the "Safe Drinking Water Act," 88 835
Stat. 1660 (1974), 42 U.S.C.A. 300f, as amended. 836
837

In order for the rules adopted under division (B)(1) of this 838
section to require that any such federal environmental standard 839
apply to a property, the property shall meet the requirements of 840
the particular federal statute or regulation involved in the 841
manner specified by the statute or regulation. 842

The generic numerical clean-up standards for petroleum at 843
commercial or residential property shall be the standards 844
established in rules adopted under division (B) of section 845
3737.882 of the Revised Code. 846

(2)(a) Procedures for performing property-specific risk 847
assessments that would be performed at a property to demonstrate 848
that the remedy evaluated in a risk assessment results in 849
protection of public health and safety and the environment instead 850
of complying with the generic numerical clean-up standards 851
established in the rules adopted under division (B)(1) of this 852
section. The risk assessment procedures shall describe a 853
methodology to establish, on a property-specific basis, allowable 854
levels of contamination to remain at a property to ensure 855
protection of public health and safety and the environment on the 856
property and off the property when the contamination is emanating 857
off the property, taking into account all of the following: 858

(i) The implementation of treatment, storage, or disposal, or 859
a combination thereof, of hazardous substances or petroleum; 860

(ii) The existence of institutional controls that eliminate 861
or mitigate exposure to hazardous substances or petroleum through 862

the restriction of access to ~~hazardous substances or petroleum or~~ 863
~~use of a property,~~ including, without limitation, ~~deed and water~~ 864
~~use restrictions~~ activity and use limitations, as defined in 865
section 5301.80 of the Revised Code; 866

(iii) The existence of engineering controls that eliminate or 867
mitigate exposure to hazardous substances or petroleum through 868
containment of, control of, or restrictions of access to hazardous 869
substances or petroleum, including, without limitation, fences, 870
cap systems, cover systems, and landscaping. 871

(b) The risk assessment procedures and levels of acceptable 872
risk set forth in the rules adopted under division (B)(2) of this 873
section shall be based upon all of the following: 874

(i) Scientific information, including, without limitation, 875
toxicological information and actual or proposed human and 876
environmental exposure; 877

(ii) Locational and climatic factors; 878

(iii) Surrounding land use and human activities; 879

(iv) Differing levels of remediation that may be required 880
when an existing land use is continued compared to when a 881
different land use follows the remediation. 882

(c) Any standards established pursuant to rules adopted under 883
division (B)(2) of this section shall be no more stringent than 884
standards established under the environmental statutes of this 885
state and rules adopted under them for the same contaminant in the 886
same environmental medium that are in effect at the time the risk 887
assessment is conducted. 888

(3) Minimum standards for phase I property assessments. The 889
standards shall specify the information needed to demonstrate that 890
there is no reason to believe that contamination exists on a 891
property. The rules adopted under division (B)(3) of this section, 892

at a minimum, shall require that a phase I property assessment 893
include all of the following: 894

(a) A review and analysis of deeds, mortgages, easements of 895
record, and similar documents relating to the chain of title to 896
the property that are publicly available or that are known to and 897
reasonably available to the owner or operator; 898

(b) A review and analysis of any previous environmental 899
assessments, property assessments, environmental studies, or 900
geologic studies of the property and any land within two thousand 901
feet of the boundaries of the property that are publicly available 902
or that are known to and reasonably available to the owner or 903
operator; 904

(c) A review of current and past environmental compliance 905
histories of persons who owned or operated the property; 906

(d) A review of aerial photographs of the property that 907
indicate prior uses of the property; 908

(e) Interviews with managers of activities conducted at the 909
property who have knowledge of environmental conditions at the 910
property; 911

(f) Conducting an inspection of the property consisting of a 912
walkover; 913

(g) Identifying the current and past uses of the property, 914
adjoining tracts of land, and the area surrounding the property, 915
including, without limitation, interviews with persons who reside 916
or have resided, or who are or were employed, within the area 917
surrounding the property regarding the current and past uses of 918
the property and adjacent tracts of land. 919

The rules adopted under division (B)(3) of this section shall 920
establish criteria to determine when a phase II property 921
assessment shall be conducted when a phase I property assessment 922

reveals facts that establish a reason to believe that hazardous 923
substances or petroleum have been treated, stored, managed, or 924
disposed of on the property if the person undertaking the phase I 925
property assessment wishes to obtain a covenant not to sue under 926
section 3746.12 of the Revised Code. 927

(4) Minimum standards for phase II property assessments. The 928
standards shall specify the information needed to demonstrate that 929
any contamination present at the property does not exceed 930
applicable standards or that the remedial activities conducted at 931
the property have achieved compliance with applicable standards. 932
The rules adopted under division (B)(4) of this section, at a 933
minimum, shall require that a phase II property assessment include 934
all of the following: 935

(a) A review and analysis of all documentation prepared in 936
connection with a phase I property assessment conducted within the 937
one hundred eighty days before the phase II property assessment 938
begins. The rules adopted under division (B)(4)(a) of this section 939
shall require that if a period of more than one hundred eighty 940
days has passed between the time that the phase I assessment of 941
the property was completed and the phase II assessment begins, the 942
phase II assessment shall include a reasonable inquiry into the 943
change in the environmental condition of the property during the 944
intervening period. 945

(b) Quality assurance objectives for measurements taken in 946
connection with a phase II assessment; 947

(c) Sampling procedures to ensure the representative sampling 948
of potentially contaminated environmental media; 949

(d) Quality assurance and quality control requirements for 950
samples collected in connection with phase II assessments; 951

(e) Analytical and data assessment procedures; 952

(f) Data objectives to ensure that samples collected in 953

connection with phase II assessments are biased toward areas where 954
information indicates that contamination by hazardous substances 955
or petroleum is likely to exist. 956

(5) Standards governing the conduct of certified 957
professionals, criteria and procedures for the certification of 958
professionals to issue no further action letters under section 959
3746.11 of the Revised Code, and criteria for the suspension and 960
revocation of those certifications. The issuance, denial, 961
suspension, and revocation of those certifications are subject to 962
Chapter 3745. of the Revised Code, and the director shall take any 963
such action regarding a certification as a final action. 964

The rules adopted under division (B)(5) of this section shall 965
do all of the following: 966

(a) Provide for the certification of environmental 967
professionals to issue no further action letters pertaining to 968
investigations and remedies in accordance with the criteria and 969
procedures set forth in the rules. The rules adopted under 970
division (B)(5)(a) of this section shall do at least all of the 971
following: 972

(i) Authorize the director to consider such factors as an 973
environmental professional's previous performance record regarding 974
such investigations and remedies and the environmental 975
professional's environmental compliance history when determining 976
whether to certify the environmental professional; 977

(ii) Ensure that an application for certification is reviewed 978
in a timely manner; 979

(iii) Require the director to certify any environmental 980
professional who the director determines complies with those 981
criteria; 982

(iv) Require the director to deny certification for any 983
environmental professional who does not comply with those 984

criteria.	985
(b) Establish an annual fee to be paid by environmental professionals certified pursuant to the rules adopted under division (B)(5)(a) of this section. The fee shall be established at an amount calculated to defray the costs to the environmental protection agency for the required reviews of the qualifications of environmental professionals for certification and for the issuance of the certifications.	986 987 988 989 990 991 992
(c) Develop a schedule for and establish requirements governing the review by the director of the credentials of environmental professionals who were deemed to be certified professionals under division (D) of section 3746.07 of the Revised Code in order to determine if they comply with the criteria established in rules adopted under division (B)(5) of this section. The rules adopted under division (B)(5)(c) of this section shall do at least all of the following:	993 994 995 996 997 998 999 1000
(i) Ensure that the review is conducted in a timely fashion;	1001
(ii) Require the director to certify any such environmental professional who the director determines complies with those criteria;	1002 1003 1004
(iii) Require any such environmental professional initially to pay the fee established in the rules adopted under division (B)(5)(b) of this section at the time that the environmental professional is so certified by the director;	1005 1006 1007 1008
(iv) Establish a time period within which any such environmental professional who does not comply with those criteria may obtain the credentials that are necessary for certification;	1009 1010 1011
(v) Require the director to deny certification for any such environmental professional who does not comply with those criteria and who fails to obtain the necessary credentials within the established time period.	1012 1013 1014 1015

(d) Require that any information submitted to the director 1016
for the purposes of division (B)(5)(a) or (c) of this section 1017
comply with division (A) of section 3746.20 of the Revised Code; 1018

(e) Authorize the director to suspend or revoke the 1019
certification of an environmental professional if the director 1020
finds that the environmental professional's performance has 1021
resulted in the issuance of no further action letters under 1022
section 3746.11 of the Revised Code that are not consistent with 1023
applicable standards or finds that the certified environmental 1024
professional has not substantially complied with section 3746.31 1025
of the Revised Code; 1026

(f) Authorize the director to suspend for a period of not 1027
more than five years or to permanently revoke a certified 1028
environmental professional's certification for any violation of or 1029
failure to comply with an ethical standard established in rules 1030
adopted under division (B)(5) of this section. 1031

(g) Require the director to revoke the certification of an 1032
environmental professional if the director finds that the 1033
environmental professional falsified any information on the 1034
environmental professional's application for certification 1035
regarding the environmental professional's credentials or 1036
qualifications or any other information generated for the purposes 1037
of or use under this chapter or rules adopted under it; 1038

(h) Require the director permanently to revoke the 1039
certification of an environmental professional who has violated or 1040
is violating division (A) of section 3746.18 of the Revised Code; 1041

(i) Preclude the director from revoking the certification of 1042
an environmental professional who only conducts investigations and 1043
remedies at property contaminated solely with petroleum unless the 1044
director first consults with the director of commerce. 1045

(6) Criteria and procedures for the certification of 1046

laboratories to perform analyses under this chapter and rules 1047
adopted under it. The issuance, denial, suspension, and revocation 1048
of those certifications are subject to Chapter 3745. of the 1049
Revised Code, and the director of environmental protection shall 1050
take any such action regarding a certification as a final action. 1051

The rules adopted under division (B)(6) of this section shall 1052
do all of the following: 1053

(a) Provide for the certification to perform analyses of 1054
laboratories in accordance with the criteria and procedures 1055
established in the rules adopted under division (B)(6)(a) of this 1056
section and establish an annual fee to be paid by those 1057
laboratories. The fee shall be established at an amount calculated 1058
to defray the costs to the agency for the review of the 1059
qualifications of those laboratories for certification and for the 1060
issuance of the certifications. The rules adopted under division 1061
(B)(6)(a) of this section may provide for the certification of 1062
those laboratories to perform only particular types or categories 1063
of analyses, specific test parameters or group of test parameters, 1064
or a specific matrix or matrices under this chapter. 1065

(b) Develop a schedule for and establish requirements 1066
governing the review by the director of the operations of 1067
laboratories that were deemed to be certified laboratories under 1068
division (E) of section 3746.07 of the Revised Code in order to 1069
determine if they comply with the criteria established in rules 1070
adopted under division (B)(6) of this section. The rules adopted 1071
under division (B)(6)(b) of this section shall do at least all of 1072
the following: 1073

(i) Ensure that the review is conducted in a timely fashion; 1074

(ii) Require the director to certify any such laboratory that 1075
the director determines complies with those criteria; 1076

(iii) Require any such laboratory initially to pay the fee 1077

established in the rules adopted under division (B)(6)(a) of this 1078
section at the time that the laboratory is so certified by the 1079
director; 1080

(iv) Establish a time period within which any such laboratory 1081
that does not comply with those criteria may make changes in its 1082
operations necessary for the performance of analyses under this 1083
chapter and rules adopted under it in order to be certified by the 1084
director; 1085

(v) Require the director to deny certification for any such 1086
laboratory that does not comply with those criteria and that fails 1087
to make the necessary changes in its operations within the 1088
established time period. 1089

(c) Require that any information submitted to the director 1090
for the purposes of division (B)(6)(a) or (b) of this section 1091
comply with division (A) of section 3746.20 of the Revised Code; 1092

(d) Authorize the director to suspend or revoke the 1093
certification of a laboratory if the director finds that the 1094
laboratory's performance has resulted in the issuance of no 1095
further action letters under section 3746.11 of the Revised Code 1096
that are not consistent with applicable standards; 1097

(e) Authorize the director to suspend or revoke the 1098
certification of a laboratory if the director finds that the 1099
laboratory falsified any information on its application for 1100
certification regarding its credentials or qualifications; 1101

(f) Require the director permanently to revoke the 1102
certification of a laboratory that has violated or is violating 1103
division (A) of section 3746.18 of the Revised Code. 1104

(7) Information to be included in a no further action letter 1105
prepared under section 3746.11 of the Revised Code, including, 1106
without limitation, all of the following: 1107

(a) A summary of the information required to be submitted to the certified environmental professional preparing the no further action letter under division (C) of section 3746.10 of the Revised Code;	1108 1109 1110 1111
(b) Notification that a risk assessment was performed in accordance with rules adopted under division (B)(2) of this section if such an assessment was used in lieu of generic numerical clean-up standards established in rules adopted under division (B)(1) of this section;	1112 1113 1114 1115 1116
(c) The contaminants addressed at the property, if any, their source, if known, and their levels prior to remediation;	1117 1118
(d) The identity of any other person who performed work to support the request for the no further action letter as provided in division (B)(2) of section 3746.10 of the Revised Code and the nature and scope of the work performed by that person;	1119 1120 1121 1122
(e) A list of the data, information, records, and documents relied upon by the certified environmental professional in preparing the no further action letter.	1123 1124 1125
(8) Methods for determining fees to be paid for the following services provided by the agency under this chapter and rules adopted under it:	1126 1127 1128
(a) Site- or property-specific technical assistance in developing or implementing plans in connection with a voluntary action;	1129 1130 1131
(b) Reviewing applications for and issuing consolidated standards permits under section 3746.15 of the Revised Code and monitoring compliance with those permits;	1132 1133 1134
(c) Negotiating, preparing, and entering into agreements necessary for the implementation and administration of this chapter and rules adopted under it;	1135 1136 1137

(d) Reviewing no further action letters, issuing covenants 1138
not to sue, and monitoring compliance with any terms and 1139
conditions of those covenants and with operation and maintenance 1140
agreements entered into pursuant to those covenants, including, 1141
without limitation, conducting audits of properties where 1142
voluntary actions are being or were conducted under this chapter 1143
and rules adopted under it. 1144

The fees established pursuant to the rules adopted under 1145
division (B)(8) of this section shall be at a level sufficient to 1146
defray the direct and indirect costs incurred by the agency for 1147
the administration and enforcement of this chapter and rules 1148
adopted under it other than the provisions regarding the 1149
certification of professionals and laboratories. 1150

(9) Criteria for selecting the no further action letters 1151
issued under section 3746.11 of the Revised Code that will be 1152
audited under section 3746.17 of the Revised Code, and the scope 1153
and procedures for conducting those audits. The rules adopted 1154
under division (B)(9) of this section, at a minimum, shall require 1155
the director to establish priorities for auditing no further 1156
action letters to which any of the following applies: 1157

(a) The letter was prepared by an environmental professional 1158
who was deemed to be a certified professional under division (D) 1159
of section 3746.07 of the Revised Code, but who does not comply 1160
with the criteria established in rules adopted under division 1161
(B)(5) of this section as determined pursuant to rules adopted 1162
under division (B)(5)(d) of this section~~+~~. 1163

(b) The letter was submitted fraudulently~~+~~. 1164

(c) The letter was prepared by a certified environmental 1165
professional whose certification subsequently was revoked in 1166
accordance with rules adopted under division (B)(5) of this 1167
section, or analyses were performed for the purposes of the no 1168

further action letter by a certified laboratory whose 1169
certification subsequently was revoked in accordance with rules 1170
adopted under division (B)(6) of this section~~+~~. 1171

(d) A covenant not to sue that was issued pursuant to the 1172
letter was revoked under this chapter~~+~~. 1173

(e) The letter was for a voluntary action that was conducted 1174
pursuant to a risk assessment in accordance with rules adopted 1175
under division (B)(2) of this section~~+~~. 1176

(f) The letter was for a voluntary action that included as 1177
remedial activities engineering controls authorized under section 1178
3746.05 of the Revised Code or ~~restrictions on the activity and~~ 1179
~~use of the relevant property identified pursuant to limitations,~~ 1180
as defined in section 5301.80 of the Revised Code, identified in 1181
an environmental covenant that was recorded or entered under 1182
division (C)(3) of section 3746.10 of the Revised Code. 1183

The rules adopted under division (B)(9) of this section shall 1184
provide for random audits of no further action letters to which 1185
the rules adopted under divisions (B)(9)(a) to (f) of this section 1186
do not apply. 1187

(10) A classification system to characterize ground water 1188
according to its capability to be used for human use and its 1189
impact on the environment and a methodology that shall be used to 1190
determine when ground water that has become contaminated from 1191
sources on a property for which a covenant not to sue is requested 1192
under section 3746.11 of the Revised Code shall be remediated to 1193
the standards established under division (B)(1) or (2) of this 1194
section. 1195

(a) In adopting rules under division (B)(10) of this section 1196
to characterize ground water according to its capability for human 1197
use, the director shall consider all of the following: 1198

(i) The presence of legally enforceable, reliable 1199

restrictions on the use of ground water, including, without	1200
limitation, local rules or ordinances;	1201
(ii) The presence of regional commingled contamination from	1202
multiple sources that diminishes the quality of ground water;	1203
(iii) The natural quality of ground water;	1204
(iv) Regional availability of ground water and reasonable	1205
alternative sources of drinking water;	1206
(v) The productivity of the aquifer;	1207
(vi) The presence of restrictions on the use of ground water	1208
implemented under this chapter and rules adopted under it;	1209
(vii) The existing use of ground water.	1210
(b) In adopting rules under division (B)(10) of this section	1211
to characterize ground water according to its impacts on the	1212
environment, the director shall consider both of the following:	1213
(i) The risks posed to humans, fauna, surface water,	1214
sediments, soil, air, and other resources by the continuing	1215
presence of contaminated ground water;	1216
(ii) The availability and feasibility of technology to remedy	1217
ground water contamination.	1218
(11) Governing the application for and issuance of variances	1219
under section 3746.09 of the Revised Code;	1220
(12)(a) In the case of voluntary actions involving	1221
contaminated ground water, specifying the circumstances under	1222
which the generic numerical clean-up standards established in	1223
rules adopted under division (B)(1) of this section and standards	1224
established through a risk assessment conducted pursuant to rules	1225
adopted under division (B)(2) of this section shall be	1226
inapplicable to the remediation of contaminated ground water and	1227
under which the standards for remediating contaminated ground	1228
water shall be established on a case-by-case basis prior to the	1229

commencement of the voluntary action pursuant to rules adopted 1230
under division (B)(12)(b) of this section; 1231

(b) Criteria and procedures for the case-by-case 1232
establishment of standards for the remediation of contaminated 1233
ground water under circumstances in which the use of the generic 1234
numerical clean-up standards and standards established through a 1235
risk assessment are precluded by the rules adopted under division 1236
(B)(12)(a) of this section. The rules governing the procedures for 1237
the case-by-case development of standards for the remediation of 1238
contaminated ground water shall establish application, public 1239
participation, adjudication, and appeals requirements and 1240
procedures that are equivalent to the requirements and procedures 1241
established in section 3746.09 of the Revised Code and rules 1242
adopted under division (B)(11) of this section, except that the 1243
procedural rules shall not require an applicant to make the 1244
demonstrations set forth in divisions (A)(1) to (3) of section 1245
3746.09 of the Revised Code and shall not require the director to 1246
obtain the advice of the property revitalization board created in 1247
section 3746.08 of the Revised Code regarding any application 1248
submitted pursuant to the rules adopted under division (B)(12)(b) 1249
of this section. 1250

(13) A definition of the evidence that constitutes sufficient 1251
evidence for the purpose of division (A)(5) of section 3746.02 of 1252
the Revised Code. 1253

At least thirty days before filing the proposed rules 1254
required to be adopted under this section with the secretary of 1255
state, director of the legislative service commission, and joint 1256
committee on agency rule review in accordance with divisions (B) 1257
and (H) of section 119.03 of the Revised Code, the director of 1258
environmental protection shall hold at least one public meeting on 1259
the proposed rules in each of the five districts into which the 1260
agency has divided the state for administrative purposes. 1261

Sec. 3746.10. (A) Except as otherwise provided in section 1262
3746.02 of the Revised Code, any person may undertake a voluntary 1263
action under this chapter and rules adopted under it to identify 1264
and address potential sources of contamination by hazardous 1265
substances or petroleum of soil, sediments, surface water, or 1266
ground water on or underlying property and to establish that the 1267
property meets applicable standards. The voluntary action may 1268
include any one or more of the following elements: 1269

(1) A phase I property assessment conducted in accordance 1270
with rules adopted under division (B)(3) of section 3746.04 of the 1271
Revised Code or division (B) of section 3746.07 of the Revised 1272
Code, as appropriate; 1273

(2) A phase II property assessment conducted in accordance 1274
with rules adopted under division (B)(4) of section 3746.04 of the 1275
Revised Code or division (C) of section 3746.07 of the Revised 1276
Code, as appropriate; 1277

(3) A sampling plan; 1278

(4) A remediation plan; 1279

(5) Remedial activities; 1280

(6) Such other activities as the person undertaking the 1281
voluntary action considers to be necessary or appropriate to 1282
address the contamination. 1283

When the person undertaking a voluntary action determines 1284
that the property meets applicable standards, ~~he~~ the person may 1285
seek a no further action letter from a certified professional. A 1286
no further action letter may be issued for the property at any 1287
stage of the identification of potential hazardous substance or 1288
petroleum contamination or remedial activities after a phase I or 1289
II property assessment has demonstrated that there is no reason to 1290
believe that there has been a release of hazardous substances or 1291

petroleum at or upon the property, that information indicates that 1292
there has been a release of hazardous substances or petroleum at 1293
or upon the property, but that the release is not in excess of 1294
applicable standards, or that if there has been such a release in 1295
excess of applicable standards, those standards have been achieved 1296
through remedial activities or will be achieved in accordance with 1297
the timeframes established in an operation and maintenance 1298
agreement entered into under division (A)(3) of section 3746.12 of 1299
the Revised Code or in such an agreement and a consolidated 1300
standards permit issued under section 3746.15 of the Revised Code. 1301

(B)(1) A person who is participating in the voluntary action 1302
program under this chapter and rules adopted under it shall do 1303
both of the following: 1304

(a) Utilize the services of a certified laboratory to perform 1305
any analyses that form the basis for the issuance of a no further 1306
action letter for a property and ensure that a laboratory performs 1307
in connection with a voluntary action only those analyses for 1308
which it is certified under rules adopted under division (B)(6) of 1309
section 3746.04 of the Revised Code or for which it is qualified 1310
prior to the adoption of those rules; 1311

(b) Utilize the services of a certified professional to 1312
verify that the property and any remedial activities undertaken at 1313
the property in connection with a voluntary action comply with 1314
applicable standards and, if those standards are met, to issue to 1315
the person a no further action letter for the property. For the 1316
purposes of such a verification, the certified professional shall 1317
perform and review all work that was conducted to support the 1318
request for the no further action letter or shall ensure that the 1319
work has been performed and reviewed by other persons with 1320
expertise and competence in areas other than those of the 1321
certified professional's expertise and competence as necessary for 1322
the issuance of the no further action letter. 1323

(2) No person who is participating in the voluntary action program shall do any of the following:

(a) If the person also is a certified professional, prepare a no further action letter in connection with a voluntary action conducted at a property that ~~he~~ the certified professional owns or operates;

(b) Utilize the services of a certified professional who is employed by, affiliated with, or related to ~~him~~ the participant or who was employed by or affiliated with ~~him~~ the participant during the year preceding the date that ~~he~~ the participant entered into the contract to utilize the services of the certified professional in connection with the voluntary action;

(c) Utilize the services of a certified laboratory that is owned by or affiliated with ~~him~~ the participant, that is owned by a person related to ~~him~~ the participant, or that was owned by or affiliated with ~~him~~ the participant during the year preceding the date that ~~he~~ the participant entered into the contract to utilize the services of the certified laboratory in connection with the voluntary action, to perform any analyses that form the basis for the issuance of a no further action letter in connection with a voluntary action.

A covenant not to sue issued under section 3746.12 of the Revised Code to a person who violated division (B)(2)(a), (b), or (c) of this section with respect to the no further action letter upon which issuance of the covenant was based is void.

Except as otherwise provided in division (B)(2) of this section, a person who is participating in the voluntary action program may utilize an independent contractor to serve as a certified professional or certified laboratory.

(C) In order to obtain a no further action letter, a person undertaking a voluntary action shall submit to a certified

professional all of the following, as applicable: 1355

(1) Information demonstrating that there is no contamination 1356
by hazardous substances or petroleum of soil, sediments, surface 1357
water, or ground water on or underlying the property in 1358
concentrations exceeding applicable standards. The demonstrations 1359
shall be based upon the findings of a phase I or phase II property 1360
assessment. 1361

(2) If remedial activities were conducted in connection with 1362
the voluntary action, data demonstrating that the remedy meets 1363
applicable standards or will achieve applicable standards in 1364
accordance with the timeframes established in an operation and 1365
maintenance agreement entered into under division (A)(3) of 1366
section 3746.12 of the Revised Code or in such an agreement and a 1367
consolidated standards permit issued under section 3746.15 of the 1368
Revised Code; 1369

(3) If the remedy relies on ~~restrictions on the activity and~~ 1370
~~use of the property~~ limitations, as defined in section 5301.80 of 1371
the Revised Code, to achieve applicable standards, a demonstration 1372
that ~~the use restrictions have~~ an environmental covenant, created 1373
in accordance with sections 5301.80 to 5301.92 of the Revised 1374
Code, has been recorded in the office of the county recorder of 1375
the county in which the property is located, or ~~have~~ has been 1376
entered in the appropriate register for registered land as defined 1377
in section 5309.01 of the Revised Code, in compliance with section 1378
3746.14 of the Revised Code; 1379

(4) If the remedy relies on engineering controls that contain 1380
or control the release of hazardous substances or petroleum at or 1381
from the property, a plan for the proper operation and maintenance 1382
of the engineering controls. 1383

(D) Except as otherwise specifically provided in this chapter 1384
and rules adopted under it, voluntary actions under this chapter 1385

and rules adopted under it shall be undertaken in compliance with 1386
all applicable laws of this state and rules adopted under them and 1387
with applicable ordinances, resolutions, and rules of political 1388
subdivisions of this state. 1389

Sec. 3746.14. (A) Except as otherwise provided in division 1390
(B) of this section, a no further action letter issued for a 1391
property under section 3746.11 of the Revised Code, a covenant not 1392
to sue issued for the property under section 3746.12 of the 1393
Revised Code, and any ~~restrictions on the use of such~~ 1394
environmental covenant for the property identified pursuant to 1395
division (C)(3) of section 3746.10 created in accordance with 1396
sections 5301.80 to 5301.92 of the Revised Code shall be filed in 1397
the office of the county recorder of the county in which the 1398
property is located by the person to whom the covenant not to sue 1399
was issued and shall be recorded in the same manner as a deed to 1400
the property. The no further action letter, covenant not to sue, 1401
and ~~use restrictions~~ environmental covenant, if any, shall run 1402
with the property. 1403

No person shall fail to comply with this division. 1404

(B) Pursuant to Chapter 5309. of the Revised Code, a no 1405
further action letter, a covenant not to sue, and, if applicable, 1406
any operation and maintenance agreement and ~~use restrictions~~ 1407
environmental covenant prepared, issued, entered into, or 1408
identified under this chapter and rules adopted under it, or 1409
created under sections 5301.80 to 5301.92 of the Revised Code, as 1410
applicable, in connection with registered land, as defined in 1411
section 5309.01 of the Revised Code, shall be entered as a 1412
memorial on the page of the register where the title of the owner 1413
is registered. 1414

(C) A no further action letter, a covenant not to sue, and 1415
any agreement authorized to be entered into and entered into under 1416

this chapter and rules adopted under it may be transferred by the 1417
recipient to any other person by assignment or in conjunction with 1418
the acquisition of title to the property to which the document 1419
applies. 1420

Sec. 5301.80. As used in sections 5301.80 to 5301.90 of the 1421
Revised Code: 1422

(A) "Activity and use limitations" means restrictions or 1423
obligations created under sections 5301.80 to 5301.92 of the 1424
Revised Code with respect to real property. 1425

(B) "Agency" means the environmental protection agency or any 1426
other state or federal agency that determines or approves the 1427
environmental response project pursuant to which an environmental 1428
covenant is created. 1429

(C) "Common interest community" means a condominium, a 1430
cooperative, or other real property with respect to which a 1431
person, by virtue of the person's ownership of a parcel of real 1432
property, is obligated to pay property taxes or insurance premiums 1433
or to pay for maintenance or improvement of other real property 1434
described in a recorded covenant that creates the common interest 1435
community. 1436

(D) "Environmental covenant" or "covenant" means a servitude 1437
arising under an environmental response project that imposes 1438
activity and use limitations and that meets the requirements 1439
established in section 5301.82 of the Revised Code. 1440

(E) "Environmental response project" means a plan or work 1441
performed for environmental remediation of real property or to 1442
protect ecological features associated with real property and 1443
conducted in accordance with one of the following: 1444

(1) Under a federal or state program governing environmental 1445
remediation of real property; 1446

(2) Pursuant to mitigation requirements associated with the 401 water quality certification program or the isolated wetland program as required by Chapter 6111. of the Revised Code; 1447
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(3) Pursuant to a grant commitment or loan agreement entered into pursuant to section 6111.036 or 6111.037 of the Revised Code. 1450
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(F) "Holder" means an agency or person as specified in division (A) of section 5301.81 of the Revised Code. 1452
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(G) "Person" includes the state, a political subdivision, another state or local entity, the United States and any agency or instrumentality of it, and any legal entity defined as a person under section 1.59 of the Revised Code. 1454
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(H) "Record," when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. 1458
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Sec. 5301.81. (A) An agency may be a holder of an environmental covenant. In addition, any person, including a person that owns an interest in the real property that is the subject of an environmental covenant, may be a holder. An environmental covenant may identify more than one holder. 1461
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(B) The interest of a holder is an interest in real property. However, a right of an agency under sections 5301.80 to 5301.92 of the Revised Code or under an environmental covenant, other than a right as a holder, is not an interest in real property. 1466
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Sec. 5301.82. (A) An environmental covenant shall contain all of the following: 1470
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(1) A statement that the instrument is an environmental covenant executed pursuant to sections 5301.80 to 5301.92 of the Revised Code; 1472
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(2) A legally sufficient description of the real property 1475

<u>that is subject to the covenant;</u>	1476
<u>(3) A description of the activity and use limitations on the real property;</u>	1477
<u>(4) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in the use of, applications for building permits for, or proposals for any site work affecting contamination on, the property that is subject to the covenant;</u>	1478
<u>(5) The name or identity of every holder;</u>	1481
<u>(6) Rights of access to the property granted in connection with implementation or enforcement of the covenant;</u>	1482
<u>(7) The signatures of the applicable agency, every holder, and, unless waived by the agency, every owner of the fee simple of the real property that is subject to the environmental covenant;</u>	1483
<u>(8) An identification of the name and location of any administrative record for the environmental response project reflected in the environmental covenant.</u>	1484
<u>(B) In addition to the information required by division (A) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed the covenant, including any of the following:</u>	1485
<u>(1) Requirements for periodic reporting describing compliance with the covenant;</u>	1486
<u>(2) A brief narrative description of contamination on the property and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;</u>	1487
<u>(3) Limitations on amendment or termination of the covenant in addition to those established in sections 5301.89 and 5301.90 of the Revised Code;</u>	1488
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(4) Rights of the holder in addition to the right to enforce the covenant pursuant to section 5301.91 of the Revised Code. 1506
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(C) In addition to other conditions for an agency's approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property that is the subject of the environmental covenant to sign the covenant. 1508
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Sec. 5301.83. (A) A copy of an environmental covenant shall be provided to all of the following in a manner required by the applicable agency: 1513
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(1) Each person that signed the environmental covenant; 1516

(2) Each person holding a recorded interest in the real property that is subject to the environmental covenant; 1517
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(3) Each person in possession of the real property that is subject to the environmental covenant; 1519
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(4) Each unit of local government in which the real property that is subject to the covenant is located; 1521
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(5) Any other person that the agency requires. 1523

(B) The validity of an environmental covenant is not affected by failure to provide a copy of the environmental covenant as required under this section. 1524
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Sec. 5301.84. An agency is bound by any obligation that it expressly assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations that the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections that are granted or imposed under law other than sections 5301.80 to 5301.92 of the Revised Code, except as 1527
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<u>provided in the covenant.</u>	1535
<u>Sec. 5301.85. (A) An environmental covenant that complies</u>	1536
<u>with sections 5301.80 to 5301.92 of the Revised Code runs with the</u>	1537
<u>land.</u>	1538
<u>(B) An environmental covenant that is otherwise effective is</u>	1539
<u>valid and enforceable even if any of the following limitations on</u>	1540
<u>enforcement of interests applies:</u>	1541
<u>(1) It is not appurtenant to an interest in real property.</u>	1542
<u>(2) It can be or has been assigned to a person other than the</u>	1543
<u>original holder.</u>	1544
<u>(3) It is not of a character that has been recognized</u>	1545
<u>traditionally at common law.</u>	1546
<u>(4) It imposes a negative burden.</u>	1547
<u>(5) It imposes an affirmative obligation on a person having</u>	1548
<u>an interest in the real property or on the holder.</u>	1549
<u>(6) The benefit or burden of the environmental covenant does</u>	1550
<u>not touch or concern real property.</u>	1551
<u>(7) There is no privity of estate or contract.</u>	1552
<u>(8) The holder dies, ceases to exist, resigns, or is</u>	1553
<u>replaced.</u>	1554
<u>(9) The owner of an interest that is subject to the</u>	1555
<u>environmental covenant and the holder are the same person.</u>	1556
<u>(C) An instrument that creates restrictions or obligations</u>	1557
<u>with respect to real property that would qualify as activity and</u>	1558
<u>use limitations except for the fact that the instrument was</u>	1559
<u>recorded before the effective date of sections 5301.80 to 5301.92</u>	1560
<u>of the Revised Code is not invalid or unenforceable because of any</u>	1561
<u>of the limitations on enforcement of interests described in</u>	1562

division (B) of this section or because it was identified as an 1563
easement, servitude, deed restriction, or other interest. Sections 1564
5301.80 to 5301.92 of the Revised Code do not apply in any other 1565
respect to such an instrument. 1566

(D) Sections 5301.80 to 5301.92 of the Revised Code do not 1567
invalidate or render unenforceable any interest, whether 1568
designated as an environmental covenant or other interest, that is 1569
otherwise enforceable under the laws of this state. 1570

Sec. 5301.86. With respect to interests in real property in 1571
existence at the time that an environmental covenant is created or 1572
amended, all of the following apply: 1573

(A) An interest that has priority under other law is not 1574
affected by an environmental covenant unless the person that owns 1575
the interest agrees to subordinate that interest to the covenant. 1576

(B) Sections 5301.80 to 5301.92 of the Revised Code do not 1577
require a person that owns a prior interest to subordinate that 1578
interest to an environmental covenant or to agree to be bound by 1579
the covenant. 1580

(C) A subordination agreement may be contained in an 1581
environmental covenant or in a separate record. If the 1582
environmental covenant covers commonly owned property in a common 1583
interest community, the record may be signed by any person who is 1584
authorized by the governing board of the owners' association of 1585
the common interest community. 1586

(D) An agreement by a person to subordinate a prior interest 1587
to an environmental covenant affects the priority of that 1588
persons's interest, but does not by itself impose any affirmative 1589
obligation on the person with respect to the environmental 1590
covenant. 1591

Sec. 5301.87. Sections 5301.80 to 5301.92 of the Revised Code 1592
do not authorize a use of real property that is otherwise 1593
prohibited by zoning, by law other than sections 5301.80 to 1594
5301.92 of the Revised Code regulating use of real property, or by 1595
a recorded instrument that has priority over an environmental 1596
covenant. An environmental covenant may prohibit or restrict uses 1597
of real property that are authorized by zoning or by law other 1598
than sections 5301.80 to 5301.92 of the Revised Code. 1599

Sec. 5301.88. (A) Except as otherwise provided in division 1600
(B) of this section, an environmental covenant and any amendment 1601
or termination of the covenant shall be filed in the office of the 1602
county recorder of each county in which the real property that is 1603
subject to the covenant is located and shall be recorded in the 1604
same manner as a deed to the property. For purposes of indexing, a 1605
holder shall be treated as a grantee. 1606

(B) Pursuant to Chapter 5309. of the Revised Code, an 1607
environmental covenant and any amendment or termination of the 1608
covenant in connection with registered land, as defined in section 1609
5309.01 of the Revised Code, shall be entered as a memorial on the 1610
page of the register where the title of the owner is registered. 1611

(C) Except as otherwise provided in division (C) of section 1612
5301.89 of the Revised Code, an environmental covenant is subject 1613
to the laws of this state governing recording and priority of 1614
interest in real property. 1615

Sec. 5301.89. (A) An environmental covenant is perpetual 1616
unless any of the following applies: 1617

(1) The environmental covenant is limited by its terms to a 1618
specific duration or is terminated by its terms by the occurrence 1619
of a specific event. 1620

(2) The environmental covenant is terminated by consent 1621
pursuant to section 5301.90 of the Revised Code. 1622

(3) The environmental covenant is terminated pursuant to 1623
division (B) of this section. 1624

(4) The environmental covenant is terminated by foreclosure 1625
of an interest that has priority over the environmental covenant. 1626

(5) The environmental covenant is terminated or modified in 1627
an eminent domain proceeding, but only if all of the following 1628
apply: 1629

(a) The agency that signed the covenant is a party to the 1630
proceeding. 1631

(b) All persons identified in divisions (A) and (B) of 1632
section 5301.90 of the Revised code are given notice of the 1633
pendency of the proceeding. 1634

(c) The court determines, after a hearing, that the 1635
termination or modification will not adversely affect human health 1636
or safety or the environment. 1637

(B) If the agency that signed an environmental covenant has 1638
determined that the intended benefits of the covenant can no 1639
longer be realized, a court, under the doctrine of changed 1640
circumstances, in an action in which all persons identified in 1641
divisions (A) and (B) of section 5301.90 of the Revised Code have 1642
been given notice, may terminate the covenant or reduce its burden 1643
on the real property that is subject to the covenant. 1644

(C) Except as otherwise provided in divisions (A) and (B) of 1645
this section, an environmental covenant may not be extinguished, 1646
limited, or impaired through issuance of a tax deed, foreclosure 1647
of a tax lien, or application of the doctrine of adverse 1648
possession, prescription, abandonment, waiver, lack of 1649
enforcement, or acquiescence or a similar doctrine. 1650

(D) An environmental covenant may not be extinguished, 1651
limited, or impaired by application of sections 5301.47 to 5301.56 1652
of the Revised Code. 1653

Sec. 5301.90. (A) An environmental covenant may be amended or 1654
terminated by consent only if the amendment or termination is 1655
signed by all of the following: 1656

(1) The applicable agency; 1657

(2) Unless waived by that agency, the current owner of the 1658
fee simple of the real property that is subject to the 1659
environmental covenant; 1660

(3) Each person that originally signed the covenant unless 1661
the person waived in a signed record the right to consent or a 1662
court finds that the person no longer exists or cannot be located 1663
or identified with the exercise of reasonable diligence; 1664

(4) Except as otherwise provided in division (D)(2) of this 1665
section, each holder. 1666

(B) If an interest in real property is subject to an 1667
environmental covenant, the interest is not affected by an 1668
amendment of the covenant unless the current owner of the interest 1669
consents in writing to the amendment or has waived in a signed 1670
record the right to consent to amendments. 1671

(C) Except for an assignment undertaken pursuant to a 1672
governmental reorganization, assignment of an environmental 1673
covenant to a new holder is an amendment of the covenant. 1674

(D) Except as otherwise provided in an environmental 1675
covenant, both of the following apply: 1676

(1) A holder may not assign its interest without consent of 1677
the other parties to the covenant. 1678

(2) A holder may be removed and replaced by agreement of the 1679

<u>other parties specified in division (A) of this section.</u>	1680
<u>(E) A court of competent jurisdiction may fill a vacancy in the position of holder.</u>	1681
	1682
<u>Sec. 5301.91. (A) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by any of the following:</u>	1683
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	1685
<u>(1) A party to the covenant;</u>	1686
<u>(2) The environmental protection agency;</u>	1687
<u>(3) The applicable agency if it is other than the environmental protection agency;</u>	1688
	1689
<u>(4) Any person to whom the covenant expressly grants the authority to maintain such an action;</u>	1690
	1691
<u>(5) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant;</u>	1692
	1693
	1694
<u>(6) A unit of local government in which the real property that is subject to the covenant is located.</u>	1695
	1696
<u>(B) Sections 5301.80 to 5301.92 of the Revised Code do not limit the regulatory authority of the applicable agency or the environmental protection agency if it is not the applicable agency under any law other than sections 5301.80 to 5301.92 of the Revised Code with respect to an environmental response project.</u>	1697
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	1699
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	1701
<u>(C) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.</u>	1702
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	1704
<u>Sec. 5301.92. Sections 5301.80 to 5301.92 of the Revised Code modify, limit, or supersede the "Electronic Signatures in Global and National Commerce Act," 114 Stat. 464 (2000), 15 U.S.C. 7001</u>	1705
	1706
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et seq., as amended, except that sections 5301.80 to 5301.92 of 1708
the Revised Code do not modify, limit, or supersede section 101 of 1709
that act, 15 U.S.C. 7001(a), as amended, or authorize electronic 1710
delivery of any of the notices described in section 103 of that 1711
act, 15 U.S.C. 7003(b), as amended. 1712

Section 2. That existing sections 123.01, 317.08, 3734.22, 1713
3734.24, 3734.25, 3734.26, 3745.01, 3746.04, 3746.10, and 3746.14 1714
of the Revised Code are hereby repealed. 1715