

As Reported by the House Civil and Commercial Law Committee

125th General Assembly

Regular Session

2003-2004

Sub. H. B. No. 516

Representatives Seitz, McGregor, Widener, Callender

—

A BILL

To amend sections 123.01, 317.08, 3734.22, 3734.24 to 1
3734.26, 3737.88, 3737.882, 3745.01, 3746.01, 2
3746.04, 3746.05, 3746.10, 3746.11, 3746.13, 3
3746.14, and 3746.171 and to enact sections 4
5301.80 to 5301.88, 5301.881, and 5301.89 to 5
5301.92 of the Revised Code to establish 6
environmental covenants as an interest in real 7
property generally arising under an environmental 8
remediation or mitigation project that imposes 9
activity and use limitations on the property, to 10
require the recording of such covenants, and to 11
establish other requirements regarding 12
environmental covenants. 13

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

Section 1. That sections 123.01, 317.08, 3734.22, 3734.24, 14
3734.25, 3734.26, 3737.88, 3737.882, 3745.01, 3746.01, 3746.04, 15
3746.05, 3746.10, 3746.11, 3746.13, 3746.14, and 3746.171 be 16
amended and sections 5301.80, 5301.81, 5301.82, 5301.83, 5301.84, 17
5301.85, 5301.86, 5301.87, 5301.88, 5301.881, 5301.89, 5301.90, 18
5301.91, and 5301.92 of the Revised Code be enacted to read as 19
follows: 20

Sec. 123.01. (A) The department of administrative services, 21
in addition to those powers enumerated in Chapters 124. and 125. 22
of the Revised Code and provided elsewhere by law, shall exercise 23
the following powers: 24

(1) To prepare, or contract to be prepared, by licensed 25
engineers or architects, surveys, general and detailed plans, 26
specifications, bills of materials, and estimates of cost for any 27
projects, improvements, or public buildings to be constructed by 28
state agencies that may be authorized by legislative 29
appropriations or any other funds made available therefor, 30
provided that the construction of the projects, improvements, or 31
public buildings is a statutory duty of the department. This 32
section does not require the independent employment of an 33
architect or engineer as provided by section 153.01 of the Revised 34
Code in the cases to which that section applies nor affect or 35
alter the existing powers of the director of transportation. 36

(2) To have general supervision over the construction of any 37
projects, improvements, or public buildings constructed for a 38
state agency and over the inspection of materials previous to 39
their incorporation into those projects, improvements, or 40
buildings; 41

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

retardation and developmental disabilities, rehabilitation and 53
correction, and youth services, the administrator of workers' 54
compensation, the rehabilitation services commission, and the 55
boards of trustees of such institutions, respectively. All such 56
contracts may be in whole or in part on unit price basis of 57
maximum estimated cost, with payment computed and made upon actual 58
quantities or units. 59

(4) To prepare and suggest comprehensive plans for the 60
development of grounds and buildings under the control of a state 61
agency; 62

(5) To acquire, by purchase, gift, devise, lease, or grant, 63
all real estate required by a state agency, in the exercise of 64
which power the department may exercise the power of eminent 65
domain, in the manner provided by sections 163.01 to 163.22 of the 66
Revised Code; 67

(6) To make and provide all plans, specifications, and models 68
for the construction and perfection of all systems of sewerage, 69
drainage, and plumbing for the state in connection with buildings 70
and grounds under the control of a state agency; 71

(7) To erect, supervise, and maintain all public monuments 72
and memorials erected by the state, except where the supervision 73
and maintenance is otherwise provided by law; 74

(8) To procure, by lease, storage accommodations for a state 75
agency; 76

(9) To lease or grant easements or licenses for unproductive 77
and unused lands or other property under the control of a state 78
agency. Such leases, easements, or licenses shall be granted for a 79
period not to exceed fifteen years and shall be executed for the 80
state by the director of administrative services and the governor 81
and shall be approved as to form by the attorney general, provided 82
that leases, easements, or licenses may be granted to any county, 83

township, municipal corporation, port authority, water or sewer 84
district, school district, library district, health district, park 85
district, soil and water conservation district, conservancy 86
district, or other political subdivision or taxing district, or 87
any agency of the United States government, for the exclusive use 88
of that agency, political subdivision, or taxing district, without 89
any right of sublease or assignment, for a period not to exceed 90
fifteen years, and provided that the director shall grant leases, 91
easements, or licenses of university land for periods not to 92
exceed twenty-five years for purposes approved by the respective 93
university's board of trustees wherein the uses are compatible 94
with the uses and needs of the university and may grant leases of 95
university land for periods not to exceed forty years for purposes 96
approved by the respective university's board of trustees pursuant 97
to section 123.77 of the Revised Code. 98

(10) To lease office space in buildings for the use of a 99
state agency; 100

(11) To have general supervision and care of the storerooms, 101
offices, and buildings leased for the use of a state agency; 102

(12) To exercise general custodial care of all real property 103
of the state; 104

(13) To assign and group together state offices in any city 105
in the state and to establish, in cooperation with the state 106
agencies involved, rules governing space requirements for office 107
or storage use; 108

(14) To lease for a period not to exceed forty years, 109
pursuant to a contract providing for the construction thereof 110
under a lease-purchase plan, buildings, structures, and other 111
improvements for any public purpose, and, in conjunction 112
therewith, to grant leases, easements, or licenses for lands under 113
the control of a state agency for a period not to exceed forty 114

years. The lease-purchase plan shall provide that at the end of 115
the lease period, the buildings, structures, and related 116
improvements, together with the land on which they are situated, 117
shall become the property of the state without cost. 118

(a) Whenever any building, structure, or other improvement is 119
to be so leased by a state agency, the department shall retain 120
either basic plans, specifications, bills of materials, and 121
estimates of cost with sufficient detail to afford bidders all 122
needed information or, alternatively, all of the following plans, 123
details, bills of materials, and specifications: 124

(i) Full and accurate plans suitable for the use of mechanics 125
and other builders in the improvement; 126

(ii) Details to scale and full sized, so drawn and 127
represented as to be easily understood; 128

(iii) Accurate bills showing the exact quantity of different 129
kinds of material necessary to the construction; 130

(iv) Definite and complete specifications of the work to be 131
performed, together with such directions as will enable a 132
competent mechanic or other builder to carry them out and afford 133
bidders all needed information; 134

(v) A full and accurate estimate of each item of expense and 135
of the aggregate cost thereof. 136

(b) The department shall give public notice, in such 137
newspaper, in such form, and with such phraseology as the director 138
of administrative services prescribes, published once each week 139
for four consecutive weeks, of the time when and place where bids 140
will be received for entering into an agreement to lease to a 141
state agency a building, structure, or other improvement. The last 142
publication shall be at least eight days preceding the day for 143
opening the bids. The bids shall contain the terms upon which the 144

builder would propose to lease the building, structure, or other
improvement to the state agency. The form of the bid approved by
the department shall be used, and a bid is invalid and shall not
be considered unless that form is used without change, alteration,
or addition. Before submitting bids pursuant to this section, any
builder shall comply with Chapter 153. of the Revised Code.

(c) On the day and at the place named for receiving bids for
entering into lease agreements with a state agency, the director
of administrative services shall open the bids and shall publicly
proceed immediately to tabulate the bids upon duplicate sheets. No
lease agreement shall be entered into until the bureau of workers'
compensation has certified that the person to be awarded the lease
agreement has complied with Chapter 4123. of the Revised Code,
until, if the builder submitting the lowest and best bid is a
foreign corporation, the secretary of state has certified that the
corporation is authorized to do business in this state, until, if
the builder submitting the lowest and best bid is a person
nonresident of this state, the person has filed with the secretary
of state a power of attorney designating the secretary of state as
its agent for the purpose of accepting service of summons in any
action brought under Chapter 4123. of the Revised Code, and until
the agreement is submitted to the attorney general and the
attorney general's approval is certified thereon. Within thirty
days after the day on which the bids are received, the department
shall investigate the bids received and shall determine that the
bureau and the secretary of state have made the certifications
required by this section of the builder who has submitted the
lowest and best bid. Within ten days of the completion of the
investigation of the bids, the department shall award the lease
agreement to the builder who has submitted the lowest and best bid
and who has been certified by the bureau and secretary of state as
required by this section. If bidding for the lease agreement has

been conducted upon the basis of basic plans, specifications, 177
bills of materials, and estimates of costs, upon the award to the 178
builder the department, or the builder with the approval of the 179
department, shall appoint an architect or engineer licensed in 180
this state to prepare such further detailed plans, specifications, 181
and bills of materials as are required to construct the building, 182
structure, or improvement. The department shall adopt such rules 183
as are necessary to give effect to this section. The department 184
may reject any bid. Where there is reason to believe there is 185
collusion or combination among bidders, the bids of those 186
concerned therein shall be rejected. 187

(15) To acquire by purchase, gift, devise, or grant and to 188
transfer, lease, or otherwise dispose of all real property 189
required to assist in the development of a conversion facility as 190
defined in section 5709.30 of the Revised Code as that section 191
existed before its repeal by ~~H.B.~~ Amended Substitute House Bill 95 192
of the 125th general assembly; 193

(16) To lease for a period not to exceed forty years, 194
notwithstanding any other division of this section, the 195
state-owned property located at 408-450 East Town Street, 196
Columbus, Ohio, formerly the state school for the deaf, to a 197
developer in accordance with this section. "Developer," as used in 198
this section, has the same meaning as in section 123.77 of the 199
Revised Code. 200

Such a lease shall be for the purpose of development of the 201
land for use by senior citizens by constructing, altering, 202
renovating, repairing, expanding, and improving the site as it 203
existed on June 25, 1982. A developer desiring to lease the land 204
shall prepare for submission to the department a plan for 205
development. Plans shall include provisions for roads, sewers, 206
water lines, waste disposal, water supply, and similar matters to 207
meet the requirements of state and local laws. The plans shall 208

also include provision for protection of the property by insurance 209
or otherwise, and plans for financing the development, and shall 210
set forth details of the developer's financial responsibility. 211

The department may employ, as employees or consultants, 212
persons needed to assist in reviewing the development plans. Those 213
persons may include attorneys, financial experts, engineers, and 214
other necessary experts. The department shall review the 215
development plans and may enter into a lease if it finds all of 216
the following: 217

(a) The best interests of the state will be promoted by 218
entering into a lease with the developer; 219

(b) The development plans are satisfactory; 220

(c) The developer has established the developer's financial 221
responsibility and satisfactory plans for financing the 222
development. 223

The lease shall contain a provision that construction or 224
renovation of the buildings, roads, structures, and other 225
necessary facilities shall begin within one year after the date of 226
the lease and shall proceed according to a schedule agreed to 227
between the department and the developer or the lease will be 228
terminated. The lease shall contain such conditions and 229
stipulations as the director considers necessary to preserve the 230
best interest of the state. Moneys received by the state pursuant 231
to this lease shall be paid into the general revenue fund. The 232
lease shall provide that at the end of the lease period the 233
buildings, structures, and related improvements shall become the 234
property of the state without cost. 235

(17) To lease to any person any tract of land owned by the 236
state and under the control of the department, or any part of such 237
a tract, for the purpose of drilling for or the pooling of oil or 238
gas. Such a lease shall be granted for a period not exceeding 239

forty years, with the full power to contract for, determine the 240
conditions governing, and specify the amount the state shall 241
receive for the purposes specified in the lease, and shall be 242
prepared as in other cases. 243

(18) To manage the use of space owned and controlled by the 244
department, including space in property under the jurisdiction of 245
the Ohio building authority, by doing all of the following: 246

(a) Biennially implementing, by state agency location, a 247
census of agency employees assigned space; 248

(b) Periodically in the discretion of the director of 249
administrative services: 250

(i) Requiring each state agency to categorize the use of 251
space allotted to the agency between office space, common areas, 252
storage space, and other uses, and to report its findings to the 253
department; 254

(ii) Creating and updating a master space utilization plan 255
for all space allotted to state agencies. The plan shall 256
incorporate space utilization metrics. 257

(iii) Conducting a cost-benefit analysis to determine the 258
effectiveness of state-owned buildings; 259

(iv) Assessing the alternatives associated with consolidating 260
the commercial leases for buildings located in Columbus. 261

(c) Commissioning a comprehensive space utilization and 262
capacity study in order to determine the feasibility of 263
consolidating existing commercially leased space used by state 264
agencies into a new state-owned facility. 265

(B) This section and section 125.02 of the Revised Code shall 266
not interfere with any of the following: 267

(1) The power of the adjutant general to purchase military 268
supplies, or with the custody of the adjutant general of property 269

leased, purchased, or constructed by the state and used for 270
military purposes, or with the functions of the adjutant general 271
as director of state armories; 272

(2) The power of the director of transportation in acquiring 273
rights-of-way for the state highway system, or the leasing of 274
lands for division or resident district offices, or the leasing of 275
lands or buildings required in the maintenance operations of the 276
department of transportation, or the purchase of real property for 277
garage sites or division or resident district offices, or in 278
preparing plans and specifications for and constructing such 279
buildings as the director may require in the administration of the 280
department; 281

(3) The power of the director of public safety and the 282
registrar of motor vehicles to purchase or lease real property and 283
buildings to be used solely as locations to which a deputy 284
registrar is assigned pursuant to division (B) of section 4507.011 285
of the Revised Code and from which the deputy registrar is to 286
conduct the deputy registrar's business, the power of the director 287
of public safety to purchase or lease real property and buildings 288
to be used as locations for division or district offices as 289
required in the maintenance of operations of the department of 290
public safety, and the power of the superintendent of the state 291
highway patrol in the purchase or leasing of real property and 292
buildings needed by the patrol, to negotiate the sale of real 293
property owned by the patrol, to rent or lease real property owned 294
or leased by the patrol, and to make or cause to be made repairs 295
to all property owned or under the control of the patrol; 296

(4) The power of the division of liquor control in the 297
leasing or purchasing of retail outlets and warehouse facilities 298
for the use of the division; 299

(5) The power of the director of development to enter into 300

leases of real property, buildings, and office space to be used 301
solely as locations for the state's foreign offices to carry out 302
the purposes of section 122.05 of the Revised Code; 303

(6) The power of the director of environmental protection to 304
enter into environmental covenants, to grant and accept easements, 305
or to sell property pursuant to division (G) of section 3745.01 of 306
the Revised Code. 307

(C) Purchases for, and the custody and repair of, buildings 308
under the management and control of the capitol square review and 309
advisory board, the rehabilitation services commission, the bureau 310
of workers' compensation, or the departments of public safety, job 311
and family services, mental health, mental retardation and 312
developmental disabilities, and rehabilitation and correction, and 313
buildings of educational and benevolent institutions under the 314
management and control of boards of trustees, are not subject to 315
the control and jurisdiction of the department of administrative 316
services. 317

(D) Any instrument by which real property is acquired 318
pursuant to this section shall identify the agency of the state 319
that has the use and benefit of the real property as specified in 320
section 5301.012 of the Revised Code. 321

Sec. 317.08. (A) Except as provided in divisions (C) and (D) 322
of this section, the county recorder shall keep six separate sets 323
of records as follows: 324

(1) A record of deeds, in which shall be recorded all deeds 325
and other instruments of writing for the absolute and 326
unconditional sale or conveyance of lands, tenements, and 327
hereditaments; all notices as provided in sections 5301.47 to 328
5301.56 of the Revised Code; all judgments or decrees in actions 329
brought under section 5303.01 of the Revised Code; all 330

declarations and bylaws, and all amendments to declarations and 331
bylaws, as provided in Chapter 5311. of the Revised Code; 332
affidavits as provided in section 5301.252 of the Revised Code; 333
all certificates as provided in section 5311.17 of the Revised 334
Code; all articles dedicating archaeological preserves accepted by 335
the director of the Ohio historical society under section 149.52 336
of the Revised Code; all articles dedicating nature preserves 337
accepted by the director of natural resources under section 338
1517.05 of the Revised Code; all agreements for the registration 339
of lands as archaeological or historic landmarks under section 340
149.51 or 149.55 of the Revised Code; all conveyances of 341
conservation easements and agricultural easements under section 342
5301.68 of the Revised Code; all instruments extinguishing 343
agricultural easements under section 901.21 or 5301.691 of the 344
Revised Code or pursuant to terms of such an easement granted to a 345
charitable organization under section 5301.68 of the Revised Code; 346
all instruments or orders described in division (B)(1)(c)(ii) of 347
section 5301.56 of the Revised Code; all no further action letters 348
issued under section 122.654 or 3746.11 of the Revised Code; all 349
covenants not to sue issued under section 3746.12 of the Revised 350
Code, including all covenants not to sue issued pursuant to 351
section 122.654 of the Revised Code; any restrictions on the use 352
of property contained in a no further action letter issued under 353
section 122.654 of the Revised Code, any restrictions on the use 354
of property identified pursuant to division (C)(3)(a) of section 355
3746.10 of the Revised Code, and any restrictions on the use of 356
property contained in a deed or other instrument as provided in 357
division (E) or (F) of section 3737.882 of the Revised Code; any 358
easement executed or granted under section 3734.22, 3734.24, 359
3734.25, or 3734.26 of the Revised Code; any environmental 360
covenant entered into in accordance with sections 5301.80 to 361
5301.92 of the Revised Code; all memoranda of trust, as described 362
in division (A) of section 5301.255 of the Revised Code, that 363

describe specific real property; and all agreements entered into 364
under division (A) of section 1521.26 of the Revised Code; 365

(2) A record of mortgages, in which shall be recorded all of 366
the following: 367

(a) All mortgages, including amendments, supplements, 368
modifications, and extensions of mortgages, or other instruments 369
of writing by which lands, tenements, or hereditaments are or may 370
be mortgaged or otherwise conditionally sold, conveyed, affected, 371
or encumbered; 372

(b) All executory installment contracts for the sale of land 373
executed after September 29, 1961, that by their terms are not 374
required to be fully performed by one or more of the parties to 375
them within one year of the date of the contracts; 376

(c) All options to purchase real estate, including 377
supplements, modifications, and amendments of the options, but no 378
option of that nature shall be recorded if it does not state a 379
specific day and year of expiration of its validity; 380

(d) Any tax certificate sold under section 5721.33 of the 381
Revised Code, or memorandum of it, that is presented for filing of 382
record. 383

(3) A record of powers of attorney, including all memoranda 384
of trust, as described in division (A) of section 5301.255 of the 385
Revised Code, that do not describe specific real property; 386

(4) A record of plats, in which shall be recorded all plats 387
and maps of town lots, of the subdivision of town lots, and of 388
other divisions or surveys of lands, any center line survey of a 389
highway located within the county, the plat of which shall be 390
furnished by the director of transportation or county engineer, 391
and all drawings and amendments to drawings, as provided in 392
Chapter 5311. of the Revised Code; 393

(5) A record of leases, in which shall be recorded all 394
leases, memoranda of leases, and supplements, modifications, and 395
amendments of leases and memoranda of leases; 396

(6) A record of declarations executed pursuant to section 397
2133.02 of the Revised Code and durable powers of attorney for 398
health care executed pursuant to section 1337.12 of the Revised 399
Code. 400

(B) All instruments or memoranda of instruments entitled to 401
record shall be recorded in the proper record in the order in 402
which they are presented for record. The recorder may index, keep, 403
and record in one volume unemployment compensation liens, internal 404
revenue tax liens and other liens in favor of the United States as 405
described in division (A) of section 317.09 of the Revised Code, 406
personal tax liens, mechanic's liens, agricultural product liens, 407
notices of liens, certificates of satisfaction or partial release 408
of estate tax liens, discharges of recognizances, excise and 409
franchise tax liens on corporations, broker's liens, and liens 410
provided for in sections 1513.33, 1513.37, 3752.13, 5111.021, and 411
5311.18 of the Revised Code. 412

The recording of an option to purchase real estate, including 413
any supplement, modification, and amendment of the option, under 414
this section shall serve as notice to any purchaser of an interest 415
in the real estate covered by the option only during the period of 416
the validity of the option as stated in the option. 417

(C) In lieu of keeping the six separate sets of records 418
required in divisions (A)(1) to (6) of this section and the 419
records required in division (D) of this section, a county 420
recorder may record all the instruments required to be recorded by 421
this section in two separate sets of record books. One set shall 422
be called the "official records" and shall contain the instruments 423
listed in divisions (A)(1), (2), (3), (5), and (6) and (D) of this 424

section. The second set of records shall contain the instruments 425
listed in division (A)(4) of this section. 426

(D) Except as provided in division (C) of this section, the 427
county recorder shall keep a separate set of records containing 428
all corrupt activity lien notices filed with the recorder pursuant 429
to section 2923.36 of the Revised Code and a separate set of 430
records containing all medicaid fraud lien notices filed with the 431
recorder pursuant to section 2933.75 of the Revised Code. 432

Sec. 3734.22. Before beginning to clean up any facility under 433
section 3734.21 of the Revised Code, the director of environmental 434
protection shall endeavor to enter into an agreement with the 435
owner of the land on which the facility is located, or with the 436
owner of the facility, specifying the measures to be performed and 437
authorizing the director, employees of the agency, or contractors 438
retained by the director to enter upon the land and perform the 439
specified measures. 440

Each agreement shall contain provisions for the reimbursement 441
of the state for the costs of the cleanup. 442

All reimbursements and payments shall be credited to the 443
hazardous waste clean-up fund created in section 3734.28 of the 444
Revised Code. 445

The agreement may require the owner to execute an easement 446
whereby the director, an authorized employee of the agency, or a 447
contractor employed by the agency in accordance with the bidding 448
procedure established in division (C) of section 3734.23 of the 449
Revised Code may enter upon the facility to sample, repair, or 450
reconstruct air and water quality monitoring equipment constructed 451
under the agreement. Such easements shall be for a specified 452
period of years and may be extinguished by agreement between the 453
owner and the director. When necessary to protect the public 454

health or safety, the agreement may require the owner to ~~execute a~~ 455
~~restrictive covenant to run with the land that specifies the uses~~ 456
~~that may be made of the facility after work performed is~~ 457
~~completed, specifies the period for which the restrictive covenant~~ 458
~~applies, and provides terms whereby modifications to the~~ 459
~~restrictive covenant, or other land uses, may be initiated or~~ 460
~~proposed to the director by the owner or by subsequent owners of~~ 461
~~the facility. All easements or covenants required under this~~ 462
~~section shall be recorded in the office of the county recorder of~~ 463
~~the county in which the facility is located, and the recording~~ 464
~~fees shall be paid by the director enter into an environmental~~ 465
~~covenant with the director in accordance with sections 5301.80 to~~ 466
~~5301.92 of the Revised Code.~~ 467

Upon a breach of the reimbursement provisions of the 468
agreement by the owner of the land or facility, or upon 469
notification to the director by the owner that the owner is unable 470
to perform the duties under the reimbursement provisions of the 471
agreement, the director shall record the unreimbursed portion of 472
the costs of cleanup at the office of the county recorder of the 473
county in which the facility is located. The costs so recorded 474
constitute a lien against the property on which the facility is 475
located until discharged. Upon written request of the director, 476
the attorney general shall institute a civil action to recover the 477
unreimbursed portion of the costs of cleanup. Any moneys so 478
recovered shall be credited to the hazardous waste clean-up fund. 479

Sec. 3734.24. After the cleanup of a solid waste facility or 480
a hazardous waste facility acquired and cleaned up under section 481
3734.23 of the Revised Code, the director of environmental 482
protection may, if the facility is suitable for use by any other 483
state department, agency, office, or institution and if the 484
proposed use of the facility is compatible with the condition of 485

the facility as cleaned up, transfer the facility to that state 486
department, agency, office, or institution. The director shall 487
continue to provide for the post-closure care, maintenance, and 488
monitoring of any such cleaned-up facility as required by section 489
3734.23 of the Revised Code. 490

If the director determines that any facility so cleaned up is 491
suitable, because of its condition as cleaned up, for restricted 492
or unrestricted use, ~~he~~ the director may, with the approval of the 493
attorney general, sell the facility if the sale is advantageous to 494
the state. Prior to selling the cleaned-up facility, the director 495
shall, when necessary to protect public health or safety, ~~execute~~ 496
~~a restrictive covenant to run with the land that specifies the~~ 497
~~uses that may be made of the facility, specifies the period for~~ 498
~~which the restrictive covenant applies, and provides terms whereby~~ 499
~~modifications to the restrictive covenant, or other land uses, may~~ 500
~~be initiated or proposed to the director by subsequent owners of~~ 501
~~the facility~~ enter into an environmental covenant in accordance 502
with sections 5301.80 to 5301.92 of the Revised Code. When selling 503
any such cleaned-up facility, the director shall retain the right 504
to enter upon the facility, in person or by ~~his~~ an authorized 505
agent, to provide for the post-closure care, maintenance, and 506
monitoring of the facility. The director shall provide for the 507
post-closure care, maintenance, and monitoring of any such 508
facility sold as required by section 3734.23 of the Revised Code. 509

With the approval of the attorney general, the director may 510
grant easements or leases on any such cleaned-up facility if ~~he~~ 511
the director determines that the use of the facility under the 512
easement or lease is compatible with its condition as cleaned up. 513

Any moneys derived from the sale of such cleaned-up 514
facilities or from payments from easements or leases shall be 515
credited to the hazardous waste clean-up fund created in section 516
3734.28 of the Revised Code. 517

Sec. 3734.25. (A) The director of environmental protection 518
may make grants of moneys from the hazardous waste clean-up fund 519
created in section 3734.28 of the Revised Code for payment by the 520
state of up to two-thirds of the reasonable and necessary expenses 521
incurred by a municipal corporation, county, or township for the 522
proper closure of or abatement of air or water pollution or soil 523
contamination from a solid waste facility in which significant 524
quantities of hazardous waste were disposed of and that the 525
political subdivision owns and once operated. 526

(B) A municipal corporation, county, or township shall submit 527
an application for a grant on forms provided by the director, 528
together with detail plans and specifications indicating the 529
measures to be performed, an itemized estimate of the project's 530
cost, a description of the project's benefits, and such other 531
information as the director prescribes. The plan for closure or 532
abatement of air or water pollution or soil contamination may be 533
prepared in consultation with the director or the board of health 534
of the city or general health district in which the facility is 535
located. The director may award the applicant a grant only if ~~he~~ 536
the director finds that the proposed measures will provide for the 537
proper closure of the facility and will abate or prevent air or 538
water pollution or soil contamination, including, but not limited 539
to, those measures necessary or desirable to: 540

(1) In the case of a facility at which land burial of 541
hazardous waste occurred, establish and maintain a suitable cover 542
of soil and vegetation over the cells in which waste is buried in 543
order to minimize erosion, the infiltration of surface water into 544
the cells, the production of leachate, and the accumulation or 545
runoff of contaminated surface waters and to prevent air emissions 546
of hazardous waste from the facility; 547

(2) Collect and treat contaminated surface water runoff from 548

the facility; 549

(3) Collect and treat leachate produced at the facility; 550

(4) Install test wells and other equipment or facilities to 551
monitor the quality of surface waters receiving runoff from the 552
facility or to monitor air emissions of hazardous waste from the 553
facility; 554

(5) Regularly monitor and analyze surface water runoff from 555
the facility, the quality of waters receiving the runoff, and 556
~~groundwater~~ ground water quality in the vicinity of the facility, 557
and regularly monitor leachate collection and treatment systems 558
installed under the grant and analyze samples from them; 559

(6) Remove and dispose of hazardous waste from the facility 560
at a suitable hazardous waste disposal facility where necessary to 561
protect public health or safety or to prevent or abate air or 562
water pollution or soil contamination. 563

(C) The director shall determine the amount of the grant 564
based upon ~~his~~ the director's determination of what constitutes 565
reasonable and necessary expenses for the proper closure of the 566
facility or for the prevention or elimination of air or water 567
pollution or soil contamination from the facility. In making a 568
grant, the director shall enter into a contract with the municipal 569
corporation, county, or township that owns the facility to ensure 570
that the moneys granted are used for the purposes of this section 571
and that measures performed are properly done. The final payment 572
under a grant may not be made until the director inspects and 573
approves the completed cleanup. 574

The contract shall require the municipal corporation, county, 575
or township to execute an easement whereby the director, an 576
authorized employee of the agency, or a contractor employed by the 577
director may enter upon the facility to sample, repair, or 578
reconstruct air and water quality monitoring equipment constructed 579

under the contract. Such easements shall be for a specified period
of years and may be extinguished by agreement between the
political subdivision and the director.

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When necessary to protect public health or safety, the
contract may require the municipal corporation, county, or
township to ~~execute a restrictive covenant to run with the land
that specifies the uses that may be made of the facility after
work performed under the contract is completed, specifies the
period for which the restrictive covenant applies, and provides
terms whereby modifications to the restrictive covenant, or other
land uses, may be initiated or proposed to the director by the
political subdivision or by subsequent owners of the facility. Any
easements or covenants required under this section shall be
recorded in the office of the county recorder of the county in
which the facility is located, and the recording fees shall be
paid by the recipient of the grant enter into an environmental
covenant with the director in accordance with sections 5301.80 to
5301.92 of the Revised Code.~~

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

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The director shall not make grants to the owner of any land
on which such facilities are located if the owner at any time

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owned or operated the facility located thereon for profit or in 611
conjunction with any profit-making enterprise located in this 612
state or to any person who at any time owned or operated a 613
facility concerning which the director has taken action under 614
section 3734.20, 3734.22, or 3734.23 of the Revised Code. However, 615
the director may make grants under this section to any subsequent 616
owner of the land, provided that the person has no affiliation 617
with any person who owned or operated the facility located on the 618
land for profit or in conjunction with any profit-making 619
enterprise located in this state or who owned or operated a 620
facility concerning which the director has taken action under 621
section 3734.20, 3734.22, or 3734.23 of the Revised Code. 622

(B) The owner shall submit an application for a grant on 623
forms furnished by the director, together with detail plans and 624
specifications for the measures to be performed to close the 625
facility properly or to abate or prevent air or water pollution or 626
soil contamination from the facility, an itemized estimate of the 627
project's cost, a description of the project's estimated benefits, 628
and such other information as the director prescribes. The plan 629
may be prepared in consultation with the director or with the 630
board of health of the city or general health district in which 631
the facility is located. The director may award the applicant a 632
grant only ~~if he finds~~ after finding that the proposed measures 633
will provide for the proper closure of the facility or will abate 634
or prevent air or water pollution or soil contamination from the 635
facility, including, but not limited to, those measures necessary 636
or desirable to: 637

(1) In the case of a facility for the land burial of 638
hazardous waste, establish and maintain a suitable cover of soil 639
and vegetation over the cells in which waste is buried in order to 640
minimize erosion, the infiltration of surface water into the 641
cells, the production of leachate, and the accumulation or runoff 642

of contaminated surface water and to prevent air emissions of
hazardous waste from the facility;

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

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

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

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

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

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

In making a grant, the director shall enter into a contract
for funding with each applicant awarded a grant to ensure that the

moneys granted are used for the purpose of this section and that 673
the measures performed are properly performed. The final payment 674
under a grant may not be made until the director inspects and 675
approves the completed cleanup and the plans for developing the 676
land for use in industry, commerce, distribution, or research. 677

Each contract for funding shall contain provisions for the 678
reimbursement of the state of a portion of the costs of the 679
cleanup that is commensurate with the increase in the market value 680
of the property attributable to the cleanup thereon, as determined 681
by appraisals made before and after cleanup in the manner stated 682
in the contract. For reimbursement of that portion, the contract 683
may include provisions for: 684

(1) Payment to the state of the share of the income derived 685
from the productive use of the land; 686

(2) Imposition of a lien in the amount of the increase in 687
fair market value payable upon the transfer or conveyance to a new 688
owner; 689

(3) Waiver of all reimbursement if the determination 690
discloses an increase in value that is insubstantial in comparison 691
to the benefits to the public from the abatement of threats to 692
public health or safety or from the abatement or prevention of 693
pollution or contamination, considering the applicant's share of 694
the cleanup cost. 695

All reimbursements and payments shall be credited to the 696
hazardous waste clean-up fund created in section 3734.28 of the 697
Revised Code. 698

(D) The contract shall require the owner to execute an 699
easement whereby the director, an authorized employee of the 700
agency, or a contractor employed by the agency may enter upon the 701
facility to sample, repair, or reconstruct air and water quality 702
monitoring equipment constructed under the contract. Such 703

easements shall be for a specified period of years and may be
extinguished by agreement between the owner and the director. When
necessary to protect the public health or safety, the contract may
require the owner to ~~execute a restrictive covenant to run with
the land that specifies the uses that may be made of the facility
after work performed under the grant is completed, specifies the
period for which the restrictive covenant applies, and provides
terms whereby modifications to the restrictive covenant, or other
land uses, may be initiated or proposed to the director by the
owner or by subsequent owners of the facility. All easements or
covenants required under this section shall be recorded in the
office of the county recorder of the county in which the facility
is located, and the recording fees shall be paid by the owner~~
enter into an environmental covenant with the director in
accordance with sections 5301.80 to 5301.92 of the Revised Code.

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

Sec. 3737.88. (A)(1) The fire marshal shall have
responsibility for implementation of the underground storage tank
program and corrective action program for releases from
underground petroleum storage tanks established by the "Resource
Conservation and Recovery Act of 1976," 90 Stat. 2795, 42 U.S.C.A.
6901, as amended. To implement the program, the fire marshal may
adopt, amend, and rescind such rules, conduct such inspections,
require annual registration of underground storage tanks, issue
such citations and orders to enforce those rules, enter into
environmental covenants in accordance with sections 5301.80 to
5301.92 of the Revised Code, and perform such other duties, as are
consistent with those programs. The fire marshal, by rule, may
delegate the authority to conduct inspections of underground
storage tanks to certified fire safety inspectors.

(2) In the place of any rules regarding release containment 735
and release detection for underground storage tanks adopted under 736
division (A)(1) of this section, the fire marshal, by rule, shall 737
designate areas as being sensitive for the protection of human 738
health and the environment and adopt alternative rules regarding 739
release containment and release detection methods for new and 740
upgraded ~~underground~~ underground storage tank systems located in 741
those areas. In designating such areas, the fire marshal shall 742
take into consideration such factors as soil conditions, 743
hydrogeology, water use, and the location of public and private 744
water supplies. Not later than July 11, 1990, the fire marshal 745
shall file the rules required under this division with the 746
secretary of state, director of the legislative service 747
commission, and joint committee on agency rule review in 748
accordance with divisions (B) and (H) of section 119.03 of the 749
Revised Code. 750

(B) Before adopting any rule under this section or section 751
3737.881 or 3737.882 of the Revised Code, the fire marshal shall 752
file written notice of ~~his~~ the proposed rule with the ~~chairman~~ 753
chairperson of the state fire commission, and, within sixty days 754
after notice is filed, the commission may file responses to or 755
comments on and may recommend alternative or supplementary rules 756
to the fire marshal. At the end of the sixty-day period or upon 757
the filing of responses, comments, or recommendations by the 758
commission, the fire marshal may adopt the rule filed with the 759
commission or any alternative or supplementary rule recommended by 760
the commission. 761

(C) The fire commission may recommend courses of action to be 762
taken by the fire marshal in carrying out ~~his~~ the fire marshal's 763
duties under this section. The commission shall file its 764
recommendations in the office of the fire marshal, and, within 765
sixty days after the recommendations are filed, the fire marshal 766

shall file with the ~~chairman~~ chairperson of the commission ~~his~~ 767
comments on, and proposed action in response to, the 768
recommendations. 769

(D) For the purpose of sections 3737.87 to 3737.89 of the 770
Revised Code, the fire marshal shall adopt, and may amend and 771
rescind, rules identifying or listing hazardous substances. The 772
rules shall be consistent with and equivalent in scope, coverage, 773
and content to regulations identifying or listing hazardous 774
substances adopted under the "Comprehensive Environmental 775
Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 776
42 U.S.C.A. 9602, as amended, except that the fire marshal shall 777
not identify or list as a hazardous substance any hazardous waste 778
identified or listed in rules adopted under division (A) of 779
section 3734.12 of the Revised Code. 780

(E) Notwithstanding any provision of the laws of this state 781
to the contrary, the fire marshal has exclusive jurisdiction to 782
regulate the storage, treatment, and disposal of petroleum 783
contaminated soil generated from corrective actions undertaken in 784
response to releases of petroleum. The fire marshal may adopt, 785
amend, or rescind such rules as ~~he~~ the fire marshal considers to 786
be necessary or appropriate to regulate the storage, treatment, or 787
disposal of petroleum contaminated soil so generated. 788

(F) The fire marshal shall adopt, amend, and rescind rules 789
under sections 3737.88 to 3737.882 of the Revised Code in 790
accordance with Chapter 119. of the Revised Code. 791

Sec. 3737.882. (A) If, after an examination or inspection, 792
the fire marshal or an assistant fire marshal finds that a release 793
of petroleum is suspected, the fire marshal shall take such action 794
as the fire marshal considers necessary to ensure that a suspected 795
release is confirmed or disproved and, if the occurrence of a 796
release is confirmed, to correct the release. These actions may 797

include one or more of the following: 798

(1) Issuance of a citation and order requiring the 799
responsible person to undertake, in a manner consistent with the 800
requirements of section 9003 of the "Resource Conservation and 801
Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, as 802
amended, applicable regulations adopted thereunder, and rules 803
adopted under division (B) of this section, such actions as are 804
necessary to protect human health and the environment, including, 805
without limitation, the investigation of a suspected release;i 806

(2) Requesting the attorney general to bring a civil action 807
for appropriate relief, including a temporary restraining order or 808
preliminary or permanent injunction, in the court of common pleas 809
of the county in which a suspected release is located or in which 810
the release occurred, to obtain the corrective action necessary to 811
protect human health and the environment. In granting any such 812
relief, the court shall ensure that the terms of the temporary 813
restraining order or injunction are sufficient to provide 814
comprehensive corrective action to protect human health and the 815
environment. 816

(3) Entry onto premises and undertaking corrective action 817
with respect to a release of petroleum if, in the fire marshal's 818
judgment, such action is necessary to protect human health and the 819
environment. Any corrective action undertaken by the fire marshal 820
or assistant fire marshal under division (A)(3) of this section 821
shall be consistent with the requirements of sections 9003 and 822
9005 of the "Resource Conservation and Recovery Act of 1976," 98 823
Stat. 3279, 42 U.S.C.A. 6991b, and 98 Stat. 3284, 42 U.S.C.A. 824
6991e, respectively, as amended, applicable regulations adopted 825
thereunder, and rules adopted under division (B) of this section. 826

(B) The fire marshal shall adopt, and may amend and rescind, 827
such rules as the fire marshal considers necessary to establish 828
standards for corrective actions for suspected and confirmed 829

releases of petroleum and standards for the recovery of costs 830
incurred for undertaking corrective or enforcement actions with 831
respect to such releases. The rules also shall include 832
requirements for financial responsibility for the cost of 833
corrective actions for and compensation of bodily injury and 834
property damage incurred by third parties that are caused by 835
releases of petroleum. Rules regarding financial responsibility 836
shall, without limitation, require responsible persons to provide 837
evidence that the parties guaranteeing payment of the deductible 838
amount established under division (E) or (F) of section 3737.91 of 839
the Revised Code are, at a minimum, secondarily liable for all 840
corrective action and third-party liability costs incurred within 841
the scope of the deductible amount. The rules shall be consistent 842
with sections 9003 and 9005 of the "Resource Conservation and 843
Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, and 98 844
Stat. 3284, 42 U.S.C.A. 6991e, respectively, as amended, and 845
applicable regulations adopted thereunder. 846

(C)(1) No person shall violate or fail to comply with a rule 847
adopted under division (A) of section 3737.88 of the Revised Code 848
or division (B) of this section, and no person shall violate or 849
fail to comply with the terms of any order issued under division 850
(A) of section 3737.88 of the Revised Code or division (A)(1) of 851
this section. 852

(2) Whoever violates division (C)(1) of this section or 853
division (F) of section 3737.881 of the Revised Code shall pay a 854
civil penalty of not more than ten thousand dollars for each day 855
that the violation continues. The fire marshal may, by order, 856
assess a civil penalty under this division, or the fire marshal 857
may request the attorney general to bring a civil action for 858
imposition of the civil penalty in the court of common pleas of 859
the county in which the violation occurred. If the fire marshal 860
determines that a responsible person is in violation of division 861

(C)(1) of this section or division (F) of section 3737.881 of the Revised Code, the fire marshal may request the attorney general to bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction, in the court of common pleas of the county in which the underground storage tank or, in the case of a violation of division (F)(3) of section 3737.881 of the Revised Code, the training program that is the subject of the violation is located. The court shall issue a temporary restraining order or an injunction upon a demonstration that a violation of division (C)(1) of this section or division (F) of section 3737.881 of the Revised Code has occurred or is occurring.

Any action brought by the attorney general under this division is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

(D) Orders issued under division (A) of section 3737.88 of the Revised Code and divisions (A)(1) and (C) of this section, and appeals thereof, are subject to and governed by Chapter 3745. of the Revised Code. Such orders shall be issued without the necessity for issuance of a proposed action under that chapter. For purposes of appeals of any such orders, the term "director" as used in Chapter 3745. of the Revised Code includes the fire marshal and an assistant fire marshal.

(E) Any restrictions on the use of real property for the purpose of ~~achieving~~ the achievement by an owner or operator of applicable standards pursuant to rules adopted under division (B) of this section shall be contained in a deed or in another instrument that is signed and acknowledged by the property owner in the same manner as a deed or an environmental covenant that is entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code. The deed ~~or,~~ other instrument containing the

restrictions, or environmental covenant shall be filed and 894
recorded in the office of the county recorder of the county in 895
which the property is located. Pursuant to Chapter 5309. of the 896
Revised Code, ~~such if the~~ use restrictions ~~in connection or~~ 897
environmental covenant are connected with registered land, as 898
defined in section 5309.01 of the Revised Code, the restrictions 899
or environmental covenant shall be entered as a memorial on the 900
page of the register where the title of the owner is registered. 901

(F) Any restrictions on the use of real property for the 902
purpose of the achievement by a person that is not a responsible 903
person, or by a person undertaking a voluntary action of 904
applicable standards pursuant to rules adopted under division (B) 905
of this section shall be contained in an environmental covenant 906
that is entered into in accordance with sections 5301.80 to 907
5301.92 of the Revised Code. The environmental covenant shall be 908
filed and recorded in the office of the county recorder of the 909
county in which the property is located. Pursuant to Chapter 5309. 910
of the Revised Code, if the environmental covenant is connected 911
with registered land, as defined in section 5309.01 of the Revised 912
Code, the environmental covenant shall be entered as a memorial on 913
the page of the register where the title of the owner is 914
registered. 915

Sec. 3745.01. There is hereby created the environmental 916
protection agency, headed by the director of environmental 917
protection. The agency, under the supervision of the director, 918
shall administer the laws pertaining to chemical emergency 919
planning, community right-to-know, and toxic chemical release 920
reporting; the cessation of chemical handling operations; the 921
prevention, control, and abatement of air and water pollution; 922
public water supply; comprehensive water resource management 923
planning; and the disposal and treatment of solid wastes, 924
infectious wastes, construction and demolition debris, hazardous 925

waste, sewage, industrial waste, and other wastes. The director 926
may do all of the following: 927

(A) Provide such methods of administration, appoint such 928
personnel, make such reports, and take such other action as may be 929
necessary to comply with the requirements of the federal laws and 930
regulations pertaining to chemical emergency planning, community 931
right-to-know, and toxic chemical release reporting; air and water 932
pollution control; public water supply; water resource planning; 933
and waste disposal and treatment; 934

(B) Procure by contract the temporary or intermittent 935
services of experts or consultants, or organizations thereof, when 936
those services are to be performed on a part-time or 937
fee-for-service basis and do not involve the performance of 938
administrative duties; 939

(C) Advise, consult, cooperate, and enter into contracts or 940
agreements with any other agencies of the state, the federal 941
government, other states, and interstate agencies and with 942
affected groups, political subdivisions, and industries in 943
furtherance of the purposes of this chapter and Chapters 3704., 944
3714., 3734., 3751., 3752., 6109., and 6111. of the Revised Code; 945

(D) Establish advisory boards in accordance with section 946
121.13 of the Revised Code; 947

(E) Accept on behalf of the state any grant, gift, or 948
contribution made for toxic chemical release reporting, air or 949
water pollution control, public water supply, water resource 950
planning, waste disposal or treatment, or related purposes, and 951
expend it for those purposes; 952

(F) Make an annual report to the governor and the general 953
assembly on activities and expenditures as well as recommendations 954
for such additional legislation as the director considers 955
appropriate to carry out the director's duties or accomplish the 956

purposes of this section; 957

(G) Enter into environmental covenants in accordance with 958
sections 5301.80 to 5301.92 of the Revised Code, and grant or 959
accept easements or sell real property pursuant to section 960
3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code, as 961
applicable. 962

The agency shall utilize the laboratory facilities of the 963
department of health and other state institutions and agencies to 964
the maximum extent that the utilization is practicable, 965
economical, and technically satisfactory. 966

The director shall maintain and keep available for public 967
inspection, at the director's principal office, a current register 968
of all applications filed for permits, leases, licenses, 969
variances, certificates, and approval of plans and specifications 970
and of publicly owned treatment works pretreatment programs under 971
the director's jurisdiction, hearings pending, the director's 972
final action thereon, and the dates on which the filings, 973
hearings, and final actions occur. The director shall maintain and 974
keep available for public inspection at the director's principal 975
office all plans, reports, and other documents required to be 976
filed with the emergency response commission under Chapter 3750. 977
of the Revised Code and rules adopted under it, and all reports 978
and other documents required to be filed with the director under 979
Chapter 3751. of the Revised Code and rules adopted under it, 980
subject to the requirements of those chapters and rules adopted 981
under them for the protection of trade secrets and confidential 982
business information from disclosure to persons not authorized 983
under those laws to receive trade secret or confidential business 984
information. 985

Sec. 3746.01. As used in this chapter: 986

(A) <u>"Activity and use limitations" has the same meaning as in section 5301.80 of the Revised Code.</u>	987 988
<u>(B)</u> "Affiliated" means under common ownership or control.	989
(B) <u>(C)</u> "Applicable standards," unless the context indicates otherwise, means standards established in or pursuant to sections 3746.05, 3746.06, and 3746.07 of the Revised Code, in or pursuant to rules adopted under division (B)(1) or (2) of section 3746.04 of the Revised Code, pursuant to rules adopted under division (B)(12)(b) of section 3746.04 of the Revised Code, or alternative standards and terms and conditions set forth in a variance issued under section 3746.09 of the Revised Code, as applicable.	990 991 992 993 994 995 996 997
(C) <u>(D)</u> "Background level" means the conditions at a property and areas surrounding a property that are unaffected by any current or past activities involving treatment, storage, or disposal of hazardous substances or petroleum. "Background level" includes naturally occurring substances.	998 999 1000 1001 1002
(D) <u>(E)</u> "Certified laboratory" means a laboratory certified by the director of environmental protection pursuant to rules adopted under division (B)(6) of section 3746.04 of the Revised Code, or deemed to be certified under division (E) of section 3746.07 of the Revised Code, to perform analyses in connection with voluntary actions.	1003 1004 1005 1006 1007 1008
(E) <u>(F)</u> "Certified professional" means a person certified by the director pursuant to rules adopted under division (B)(5) of section 3746.04 of the Revised Code, or deemed to be certified under division (D) of section 3746.07 of the Revised Code, to issue no further action letters under section 3746.11 of the Revised Code.	1009 1010 1011 1012 1013 1014
(F) <u>(G)</u> <u>"Covenant not to sue" means a release from liability that is issued by the director under section 3746.12 of the Revised Code.</u>	1015 1016 1017

<u>(H) "Environmental covenant" has the same meaning as in</u>	1018
<u>section 5301.80 of the Revised Code.</u>	1019
<u>(I) "Hazardous substance" includes all of the following:</u>	1020
(1) Any substance identified or listed in rules adopted under	1021
division (B)(1)(c) of section 3750.02 of the Revised Code;	1022
(2) Any product registered as a pesticide under section	1023
921.02 of the Revised Code when the product is used in a manner	1024
inconsistent with its required labeling;	1025
(3) Any product formerly registered as a pesticide under that	1026
section for which the registration was suspended or canceled under	1027
section 921.05 of the Revised Code;	1028
(4) Any mixture of a substance described in divisions	1029
(F) <u>(I)</u> (1) to (3) of this section with a radioactive material.	1030
(G) <u>(J)</u> "Owner or operator" includes both of the following:	1031
(1) Any person owning or holding a legal, equitable, or	1032
possessory interest in or having responsibility for the daily	1033
activities on a property;	1034
(2) In the case of property title or control of which was	1035
conveyed due to bankruptcy, foreclosure, tax delinquency,	1036
abandonment, or similar means to this state or a political	1037
subdivision of this state, any person who owned, operated, or	1038
otherwise controlled activities occurring on the property before	1039
the conveyance.	1040
(H) <u>(K)</u> "Person" means any person as defined in section 1.59	1041
of the Revised Code and also includes this state, any political	1042
subdivision of this state, any other body of this state or of a	1043
political subdivision of this state, the board of directors of a	1044
nonprofit corporation governing a special improvement district	1045
created under Chapter 1710. of the Revised Code, and the United	1046
States and any agency or instrumentality thereof.	1047

~~(I)~~(L) "Petroleum" means oil or petroleum of any kind and in 1048
any form, including, without limitation, crude oil or any fraction 1049
thereof, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil 1050
refuse, used oil, substances or additives utilized in the refining 1051
or blending of crude petroleum or petroleum stock, natural gas, 1052
natural gas liquids, liquefied natural gas, synthetic gas usable 1053
for fuel, and mixtures of natural gas and synthetic gas. 1054

~~(J)~~(M) "Property," except for the purposes of sections 1055
3746.02, 3746.26, and 3746.27 of the Revised Code, means any 1056
parcel of real property, or portion thereof, and any improvements 1057
thereto, the limits of which have been described in writing by the 1058
owner of record or a legally appointed representative of the owner 1059
and that is or has been the subject of a voluntary action under 1060
this chapter and rules adopted under it. 1061

~~(K)~~(N) "Radioactive material" means a substance that 1062
spontaneously emits ionizing radiation. 1063

~~(L)~~(O) "Related" means the persons are related by 1064
consanguinity or marriage. 1065

~~(M)~~(P) "Release" means any spilling, leaking, pumping, 1066
pouring, emitting, emptying, discharging, injecting, escaping, 1067
leaching, migrating, dumping, or disposing of any hazardous 1068
substance or petroleum into the environment, including, without 1069
limitation, the abandonment or discarding of barrels, containers, 1070
or any other closed receptacle containing any hazardous substance, 1071
petroleum, or pollutant or contaminant. "Release" does not include 1072
any of the following: 1073

(1) Any release that results solely in the exposure of 1074
individuals to hazardous substances or petroleum in the workplace 1075
with respect to which those individuals may assert a claim against 1076
their employer and that is regulated under the "Occupational 1077
Health and Safety Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, as 1078

amended, and regulations adopted under that act, or under Chapter 1079
4167. of the Revised Code and rules adopted under it; 1080

(2) Emissions from the engine exhaust of a motor vehicle, 1081
rolling stock, aircraft, vessel, or pipeline pumping station 1082
engine; 1083

(3) Any release of a source, byproduct, or special nuclear 1084
material from a nuclear incident, as "source material," "byproduct 1085
material," "special nuclear material," and "nuclear incident" are 1086
defined in the "Atomic Energy Act of 1954," 68 Stat. 919, 42 1087
U.S.C.A. 2011, as amended, if the release is subject to financial 1088
protection requirements under section 170 of that act unless any 1089
such material is mixed with a hazardous substance or petroleum; 1090

(4) Any federally permitted release as defined in section 1091
101(10) of the "Comprehensive Environmental Response, 1092
Compensation, and Liability Act of 1980," 94 Stat. 3300, 42 1093
U.S.C.A. 9601, as amended; 1094

(5) The normal application of a fertilizer material that is 1095
intended to improve the quality or quantity of plant growth. 1096

~~(N)~~(O) "Remedy" or "remedial activities" means actions that 1097
are taken at a property to treat, remove, transport for treatment 1098
or disposal, dispose of, contain, or control hazardous substances 1099
or petroleum, are protective of public health and safety and the 1100
environment, and are consistent with a permanent remedy, 1101
including, without limitation, excavation, treatment, off-site 1102
disposal, the use of engineering or institutional controls or 1103
~~measures~~ activity and use limitations, the issuance and 1104
implementation of a consolidated standards permit under section 1105
3746.15 of the Revised Code, and the entering into and 1106
implementation of an operation and maintenance agreement pursuant 1107
to section 3746.12 of the Revised Code. 1108

~~(O)~~(R) "Voluntary action" means a series of measures that may 1109

be undertaken to identify and address potential sources of 1110
contamination of property by hazardous substances or petroleum and 1111
to establish that the property complies with applicable standards. 1112
"Voluntary action" may include, without limitation, a phase I 1113
property assessment conducted in accordance with rules adopted 1114
under division (B)(3) of section 3746.04 of the Revised Code or 1115
division (B) of section 3746.07 of the Revised Code, as 1116
appropriate, a phase II property assessment conducted in 1117
accordance with rules adopted under division (B)(4) of section 1118
3746.04 of the Revised Code or division (C) of section 3746.07 of 1119
the Revised Code, as appropriate, a sampling plan, a remedial 1120
plan, or remedial activities followed by the issuance of a no 1121
further action letter under section 3746.11 of the Revised Code 1122
indicating that the property meets applicable standards upon 1123
demonstration by the person undertaking the measures either that 1124
there is no information indicating that there has been a release 1125
of hazardous substances or petroleum at or upon the property or 1126
that there has been a release of hazardous substances or petroleum 1127
at or upon the property and that applicable standards were not 1128
exceeded or have been or will be achieved in accordance with this 1129
chapter and rules adopted under it. 1130

Sec. 3746.04. Within one year after September 28, 1994, the 1131
director of environmental protection, in accordance with Chapter 1132
119. of the Revised Code and with the advice of the 1133
multidisciplinary council appointed under section 3746.03 of the 1134
Revised Code, shall adopt, and subsequently may amend, suspend, or 1135
rescind, rules that do both of the following: 1136

(A) Revise the rules adopted under Chapters 3704., 3714., 1137
3734., 6109., and 6111. of the Revised Code to incorporate the 1138
provisions necessary to conform those rules to the requirements of 1139
this chapter. The amended rules adopted under this division also 1140
shall establish response times for all submittals to the 1141

environmental protection agency required under this chapter or 1142
rules adopted under it. 1143

(B) Establish requirements and procedures that are reasonably 1144
necessary for the implementation and administration of this 1145
chapter, including, without limitation, all of the following: 1146

(1) Appropriate generic numerical clean-up standards for the 1147
treatment or removal of soils, sediments, and water media for 1148
hazardous substances and petroleum. The rules shall establish 1149
separate generic numerical clean-up standards based upon the 1150
intended use of properties after the completion of voluntary 1151
actions, including industrial, commercial, and residential uses 1152
and such other categories of land use as the director considers to 1153
be appropriate. The generic numerical clean-up standards 1154
established for each category of land use shall be the 1155
concentration of each contaminant that may be present on a 1156
property that shall ensure protection of public health and safety 1157
and the environment for the reasonable exposure for that category 1158
of land use. When developing the standards, the director shall 1159
consider such factors as all of the following: 1160

(a) Scientific information, including, without limitation, 1161
toxicological information and realistic assumptions regarding 1162
human and environmental exposure to hazardous substances or 1163
petroleum; 1164

(b) Climatic factors; 1165

(c) Human activity patterns; 1166

(d) Current statistical techniques; 1167

(e) For petroleum at industrial property, alternatives to the 1168
use of total petroleum hydrocarbons. 1169

The generic numerical clean-up standards established under 1170
division (B)(1) of this section shall be consistent with and 1171

equivalent in scope, content, and coverage to any applicable 1172
standard established by federal environmental laws and regulations 1173
adopted under them, including, without limitation, the "Federal 1174
Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 1175
U.S.C.A. 1251, as amended; the "Resource Conservation and Recovery 1176
Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended; the 1177
"Toxic Substances Control Act," 90 Stat. 2003 (1976), 15 U.S.C.A. 1178
2601, as amended; the "Comprehensive Environmental Response, 1179
Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 1180
U.S.C.A. 9601, as amended; and the "Safe Drinking Water Act," 88 1181
Stat. 1660 (1974), 42 U.S.C.A. 300f, as amended. 1182

In order for the rules adopted under division (B)(1) of this 1183
section to require that any such federal environmental standard 1184
apply to a property, the property shall meet the requirements of 1185
the particular federal statute or regulation involved in the 1186
manner specified by the statute or regulation. 1187

The generic numerical clean-up standards for petroleum at 1188
commercial or residential property shall be the standards 1189
established in rules adopted under division (B) of section 1190
3737.882 of the Revised Code. 1191

(2)(a) Procedures for performing property-specific risk 1192
assessments that would be performed at a property to demonstrate 1193
that the remedy evaluated in a risk assessment results in 1194
protection of public health and safety and the environment instead 1195
of complying with the generic numerical clean-up standards 1196
established in the rules adopted under division (B)(1) of this 1197
section. The risk assessment procedures shall describe a 1198
methodology to establish, on a property-specific basis, allowable 1199
levels of contamination to remain at a property to ensure 1200
protection of public health and safety and the environment on the 1201
property and off the property when the contamination is emanating 1202
off the property, taking into account all of the following: 1203

- (i) The implementation of treatment, storage, or disposal, or a combination thereof, of hazardous substances or petroleum; 1204
1205
- (ii) The existence of institutional controls or activity and use limitations that eliminate or mitigate exposure to hazardous substances or petroleum through the restriction of access to hazardous substances or petroleum, ~~including, without limitation, deed and water use restrictions;~~ 1206
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- (iii) The existence of engineering controls that eliminate or mitigate exposure to hazardous substances or petroleum through containment of, control of, or restrictions of access to hazardous substances or petroleum, including, without limitation, fences, cap systems, cover systems, and landscaping. 1211
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- (b) The risk assessment procedures and levels of acceptable risk set forth in the rules adopted under division (B)(2) of this section shall be based upon all of the following: 1216
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- (i) Scientific information, including, without limitation, toxicological information and actual or proposed human and environmental exposure; 1219
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- (ii) Locational and climatic factors; 1222
- (iii) Surrounding land use and human activities; 1223
- (iv) Differing levels of remediation that may be required when an existing land use is continued compared to when a different land use follows the remediation. 1224
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1226
- (c) Any standards established pursuant to rules adopted under division (B)(2) of this section shall be no more stringent than standards established under the environmental statutes of this state and rules adopted under them for the same contaminant in the same environmental medium that are in effect at the time the risk assessment is conducted. 1227
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- (3) Minimum standards for phase I property assessments. The 1233

standards shall specify the information needed to demonstrate that
there is no reason to believe that contamination exists on a
property. The rules adopted under division (B)(3) of this section,
at a minimum, shall require that a phase I property assessment
include all of the following:

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

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

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

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

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

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

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

The rules adopted under division (B)(3) of this section shall 1264
establish criteria to determine when a phase II property 1265
assessment shall be conducted when a phase I property assessment 1266
reveals facts that establish a reason to believe that hazardous 1267
substances or petroleum have been treated, stored, managed, or 1268
disposed of on the property if the person undertaking the phase I 1269
property assessment wishes to obtain a covenant not to sue under 1270
section 3746.12 of the Revised Code. 1271

(4) Minimum standards for phase II property assessments. The 1272
standards shall specify the information needed to demonstrate that 1273
any contamination present at the property does not exceed 1274
applicable standards or that the remedial activities conducted at 1275
the property have achieved compliance with applicable standards. 1276
The rules adopted under division (B)(4) of this section, at a 1277
minimum, shall require that a phase II property assessment include 1278
all of the following: 1279

(a) A review and analysis of all documentation prepared in 1280
connection with a phase I property assessment conducted within the 1281
one hundred eighty days before the phase II property assessment 1282
begins. The rules adopted under division (B)(4)(a) of this section 1283
shall require that if a period of more than one hundred eighty 1284
days has passed between the time that the phase I assessment of 1285
the property was completed and the phase II assessment begins, the 1286
phase II assessment shall include a reasonable inquiry into the 1287
change in the environmental condition of the property during the 1288
intervening period. 1289

(b) Quality assurance objectives for measurements taken in 1290
connection with a phase II assessment; 1291

(c) Sampling procedures to ensure the representative sampling 1292
of potentially contaminated environmental media; 1293

(d) Quality assurance and quality control requirements for 1294

samples collected in connection with phase II assessments;	1295
(e) Analytical and data assessment procedures;	1296
(f) Data objectives to ensure that samples collected in connection with phase II assessments are biased toward areas where information indicates that contamination by hazardous substances or petroleum is likely to exist.	1297 1298 1299 1300
(5) Standards governing the conduct of certified professionals, criteria and procedures for the certification of professionals to issue no further action letters under section 3746.11 of the Revised Code, and criteria for the suspension and revocation of those certifications. The issuance, denial, suspension, and revocation of those certifications are subject to Chapter 3745. of the Revised Code, and the director shall take any such action regarding a certification as a final action.	1301 1302 1303 1304 1305 1306 1307 1308
The rules adopted under division (B)(5) of this section shall do all of the following:	1309 1310
(a) Provide for the certification of environmental professionals to issue no further action letters pertaining to investigations and remedies in accordance with the criteria and procedures set forth in the rules. The rules adopted under division (B)(5)(a) of this section shall do at least all of the following:	1311 1312 1313 1314 1315 1316
(i) Authorize the director to consider such factors as an environmental professional's previous performance record regarding such investigations and remedies and the environmental professional's environmental compliance history when determining whether to certify the environmental professional;	1317 1318 1319 1320 1321
(ii) Ensure that an application for certification is reviewed in a timely manner;	1322 1323
(iii) Require the director to certify any environmental	1324

professional who the director determines complies with those	1325
criteria;	1326
(iv) Require the director to deny certification for any	1327
environmental professional who does not comply with those	1328
criteria.	1329
(b) Establish an annual fee to be paid by environmental	1330
professionals certified pursuant to the rules adopted under	1331
division (B)(5)(a) of this section. The fee shall be established	1332
at an amount calculated to defray the costs to the environmental	1333
protection agency for the required reviews of the qualifications	1334
of environmental professionals for certification and for the	1335
issuance of the certifications.	1336
(c) Develop a schedule for and establish requirements	1337
governing the review by the director of the credentials of	1338
environmental professionals who were deemed to be certified	1339
professionals under division (D) of section 3746.07 of the Revised	1340
Code in order to determine if they comply with the criteria	1341
established in rules adopted under division (B)(5) of this	1342
section. The rules adopted under division (B)(5)(c) of this	1343
section shall do at least all of the following:	1344
(i) Ensure that the review is conducted in a timely fashion;	1345
(ii) Require the director to certify any such environmental	1346
professional who the director determines complies with those	1347
criteria;	1348
(iii) Require any such environmental professional initially	1349
to pay the fee established in the rules adopted under division	1350
(B)(5)(b) of this section at the time that the environmental	1351
professional is so certified by the director;	1352
(iv) Establish a time period within which any such	1353
environmental professional who does not comply with those criteria	1354

may obtain the credentials that are necessary for certification; 1355

(v) Require the director to deny certification for any such 1356
environmental professional who does not comply with those criteria 1357
and who fails to obtain the necessary credentials within the 1358
established time period. 1359

(d) Require that any information submitted to the director 1360
for the purposes of division (B)(5)(a) or (c) of this section 1361
comply with division (A) of section 3746.20 of the Revised Code; 1362

(e) Authorize the director to suspend or revoke the 1363
certification of an environmental professional if the director 1364
finds that the environmental professional's performance has 1365
resulted in the issuance of no further action letters under 1366
section 3746.11 of the Revised Code that are not consistent with 1367
applicable standards or finds that the certified environmental 1368
professional has not substantially complied with section 3746.31 1369
of the Revised Code; 1370

(f) Authorize the director to suspend for a period of not 1371
more than five years or to permanently revoke a certified 1372
environmental professional's certification for any violation of or 1373
failure to comply with an ethical standard established in rules 1374
adopted under division (B)(5) of this section. 1375

(g) Require the director to revoke the certification of an 1376
environmental professional if the director finds that the 1377
environmental professional falsified any information on the 1378
environmental professional's application for certification 1379
regarding the environmental professional's credentials or 1380
qualifications or any other information generated for the purposes 1381
of or use under this chapter or rules adopted under it; 1382

(h) Require the director permanently to revoke the 1383
certification of an environmental professional who has violated or 1384
is violating division (A) of section 3746.18 of the Revised Code; 1385

(i) Preclude the director from revoking the certification of 1386
an environmental professional who only conducts investigations and 1387
remedies at property contaminated solely with petroleum unless the 1388
director first consults with the director of commerce. 1389

(6) Criteria and procedures for the certification of 1390
laboratories to perform analyses under this chapter and rules 1391
adopted under it. The issuance, denial, suspension, and revocation 1392
of those certifications are subject to Chapter 3745. of the 1393
Revised Code, and the director of environmental protection shall 1394
take any such action regarding a certification as a final action. 1395

The rules adopted under division (B)(6) of this section shall 1396
do all of the following: 1397

(a) Provide for the certification to perform analyses of 1398
laboratories in accordance with the criteria and procedures 1399
established in the rules adopted under division (B)(6)(a) of this 1400
section and establish an annual fee to be paid by those 1401
laboratories. The fee shall be established at an amount calculated 1402
to defray the costs to the agency for the review of the 1403
qualifications of those laboratories for certification and for the 1404
issuance of the certifications. The rules adopted under division 1405
(B)(6)(a) of this section may provide for the certification of 1406
those laboratories to perform only particular types or categories 1407
of analyses, specific test parameters or group of test parameters, 1408
or a specific matrix or matrices under this chapter. 1409

(b) Develop a schedule for and establish requirements 1410
governing the review by the director of the operations of 1411
laboratories that were deemed to be certified laboratories under 1412
division (E) of section 3746.07 of the Revised Code in order to 1413
determine if they comply with the criteria established in rules 1414
adopted under division (B)(6) of this section. The rules adopted 1415
under division (B)(6)(b) of this section shall do at least all of 1416

the following:	1417
(i) Ensure that the review is conducted in a timely fashion;	1418
(ii) Require the director to certify any such laboratory that the director determines complies with those criteria;	1419 1420
(iii) Require any such laboratory initially to pay the fee established in the rules adopted under division (B)(6)(a) of this section at the time that the laboratory is so certified by the director;	1421 1422 1423 1424
(iv) Establish a time period within which any such laboratory that does not comply with those criteria may make changes in its operations necessary for the performance of analyses under this chapter and rules adopted under it in order to be certified by the director;	1425 1426 1427 1428 1429
(v) Require the director to deny certification for any such laboratory that does not comply with those criteria and that fails to make the necessary changes in its operations within the established time period.	1430 1431 1432 1433
(c) Require that any information submitted to the director for the purposes of division (B)(6)(a) or (b) of this section comply with division (A) of section 3746.20 of the Revised Code;	1434 1435 1436
(d) Authorize the director to suspend or revoke the certification of a laboratory if the director finds that the laboratory's performance has resulted in the issuance of no further action letters under section 3746.11 of the Revised Code that are not consistent with applicable standards;	1437 1438 1439 1440 1441
(e) Authorize the director to suspend or revoke the certification of a laboratory if the director finds that the laboratory falsified any information on its application for certification regarding its credentials or qualifications;	1442 1443 1444 1445
(f) Require the director permanently to revoke the	1446

certification of a laboratory that has violated or is violating 1447
division (A) of section 3746.18 of the Revised Code. 1448

(7) Information to be included in a no further action letter 1449
prepared under section 3746.11 of the Revised Code, including, 1450
without limitation, all of the following: 1451

(a) A summary of the information required to be submitted to 1452
the certified environmental professional preparing the no further 1453
action letter under division (C) of section 3746.10 of the Revised 1454
Code; 1455

(b) Notification that a risk assessment was performed in 1456
accordance with rules adopted under division (B)(2) of this 1457
section if such an assessment was used in lieu of generic 1458
numerical clean-up standards established in rules adopted under 1459
division (B)(1) of this section; 1460

(c) The contaminants addressed at the property, if any, their 1461
source, if known, and their levels prior to remediation; 1462

(d) The identity of any other person who performed work to 1463
support the request for the no further action letter as provided 1464
in division (B)(2) of section 3746.10 of the Revised Code and the 1465
nature and scope of the work performed by that person; 1466

(e) A list of the data, information, records, and documents 1467
relied upon by the certified environmental professional in 1468
preparing the no further action letter. 1469

(8) Methods for determining fees to be paid for the following 1470
services provided by the agency under this chapter and rules 1471
adopted under it: 1472

(a) Site- or property-specific technical assistance in 1473
developing or implementing plans in connection with a voluntary 1474
action; 1475

(b) Reviewing applications for and issuing consolidated 1476

standards permits under section 3746.15 of the Revised Code and	1477
monitoring compliance with those permits;	1478
(c) Negotiating, preparing, and entering into agreements	1479
necessary for the implementation and administration of this	1480
chapter and rules adopted under it;	1481
(d) Reviewing no further action letters, issuing covenants	1482
not to sue, and monitoring compliance with any terms and	1483
conditions of those covenants and with operation and maintenance	1484
agreements entered into pursuant to those covenants, including,	1485
without limitation, conducting audits of properties where	1486
voluntary actions are being or were conducted under this chapter	1487
and rules adopted under it.	1488
The fees established pursuant to the rules adopted under	1489
division (B)(8) of this section shall be at a level sufficient to	1490
defray the direct and indirect costs incurred by the agency for	1491
the administration and enforcement of this chapter and rules	1492
adopted under it other than the provisions regarding the	1493
certification of professionals and laboratories.	1494
(9) Criteria for selecting the no further action letters	1495
issued under section 3746.11 of the Revised Code that will be	1496
audited under section 3746.17 of the Revised Code, and the scope	1497
and procedures for conducting those audits. The rules adopted	1498
under division (B)(9) of this section, at a minimum, shall require	1499
the director to establish priorities for auditing no further	1500
action letters to which any of the following applies:	1501
(a) The letter was prepared by an environmental professional	1502
who was deemed to be a certified professional under division (D)	1503
of section 3746.07 of the Revised Code, but who does not comply	1504
with the criteria established in rules adopted under division	1505
(B)(5) of this section as determined pursuant to rules adopted	1506
under division (B)(5)(d) of this section+.	1507

(b) The letter was submitted fraudulently+.	1508
(c) The letter was prepared by a certified environmental professional whose certification subsequently was revoked in accordance with rules adopted under division (B)(5) of this section, or analyses were performed for the purposes of the no further action letter by a certified laboratory whose certification subsequently was revoked in accordance with rules adopted under division (B)(6) of this section+.	1509 1510 1511 1512 1513 1514 1515
(d) A covenant not to sue that was issued pursuant to the letter was revoked under this chapter+.	1516 1517
(e) The letter was for a voluntary action that was conducted pursuant to a risk assessment in accordance with rules adopted under division (B)(2) of this section+.	1518 1519 1520
(f) The letter was for a voluntary action that included as remedial activities engineering controls <u>or institutional controls or activity and use limitations</u> authorized under section 3746.05 of the Revised Code or restrictions on the use of the relevant property identified pursuant to division (C)(3) of section 3746.10 of the Revised Code.	1521 1522 1523 1524 1525 1526
The rules adopted under division (B)(9) of this section shall provide for random audits of no further action letters to which the rules adopted under divisions (B)(9)(a) to (f) of this section do not apply.	1527 1528 1529 1530
(10) A classification system to characterize ground water according to its capability to be used for human use and its impact on the environment and a methodology that shall be used to determine when ground water that has become contaminated from sources on a property for which a covenant not to sue is requested under section 3746.11 of the Revised Code shall be remediated to the standards established under division (B)(1) or (2) of this section.	1531 1532 1533 1534 1535 1536 1537 1538

(a) In adopting rules under division (B)(10) of this section	1539
to characterize ground water according to its capability for human	1540
use, the director shall consider all of the following:	1541
(i) The presence of legally enforceable, reliable	1542
restrictions on the use of ground water, including, without	1543
limitation, local rules or ordinances;	1544
(ii) The presence of regional commingled contamination from	1545
multiple sources that diminishes the quality of ground water;	1546
(iii) The natural quality of ground water;	1547
(iv) Regional availability of ground water and reasonable	1548
alternative sources of drinking water;	1549
(v) The productivity of the aquifer;	1550
(vi) The presence of restrictions on the use of ground water	1551
implemented under this chapter and rules adopted under it;	1552
(vii) The existing use of ground water.	1553
(b) In adopting rules under division (B)(10) of this section	1554
to characterize ground water according to its impacts on the	1555
environment, the director shall consider both of the following:	1556
(i) The risks posed to humans, fauna, surface water,	1557
sediments, soil, air, and other resources by the continuing	1558
presence of contaminated ground water;	1559
(ii) The availability and feasibility of technology to remedy	1560
ground water contamination.	1561
(11) Governing the application for and issuance of variances	1562
under section 3746.09 of the Revised Code;	1563
(12)(a) In the case of voluntary actions involving	1564
contaminated ground water, specifying the circumstances under	1565
which the generic numerical clean-up standards established in	1566
rules adopted under division (B)(1) of this section and standards	1567

established through a risk assessment conducted pursuant to rules 1568
adopted under division (B)(2) of this section shall be 1569
inapplicable to the remediation of contaminated ground water and 1570
under which the standards for remediating contaminated ground 1571
water shall be established on a case-by-case basis prior to the 1572
commencement of the voluntary action pursuant to rules adopted 1573
under division (B)(12)(b) of this section; 1574

(b) Criteria and procedures for the case-by-case 1575
establishment of standards for the remediation of contaminated 1576
ground water under circumstances in which the use of the generic 1577
numerical clean-up standards and standards established through a 1578
risk assessment are precluded by the rules adopted under division 1579
(B)(12)(a) of this section. The rules governing the procedures for 1580
the case-by-case development of standards for the remediation of 1581
contaminated ground water shall establish application, public 1582
participation, adjudication, and appeals requirements and 1583
procedures that are equivalent to the requirements and procedures 1584
established in section 3746.09 of the Revised Code and rules 1585
adopted under division (B)(11) of this section, except that the 1586
procedural rules shall not require an applicant to make the 1587
demonstrations set forth in divisions (A)(1) to (3) of section 1588
3746.09 of the Revised Code and shall not require the director to 1589
obtain the advice of the property revitalization board created in 1590
section 3746.08 of the Revised Code regarding any application 1591
submitted pursuant to the rules adopted under division (B)(12)(b) 1592
of this section. 1593

(13) A definition of the evidence that constitutes sufficient 1594
evidence for the purpose of division (A)(5) of section 3746.02 of 1595
the Revised Code. 1596

At least thirty days before filing the proposed rules 1597
required to be adopted under this section with the secretary of 1598
state, director of the legislative service commission, and joint 1599

committee on agency rule review in accordance with divisions (B) 1600
and (H) of section 119.03 of the Revised Code, the director of 1601
environmental protection shall hold at least one public meeting on 1602
the proposed rules in each of the five districts into which the 1603
agency has divided the state for administrative purposes. 1604

Sec. 3746.05. A remedy or remedial activity conducted under 1605
this chapter may attain applicable standards otherwise established 1606
in this chapter and rules adopted under it through the use of 1607
institutional controls or activity and use limitations that 1608
restrict the ~~access to or~~ use of a property or through the removal 1609
of, treatment of, transportation for treatment or disposal of, 1610
disposal of, or use of engineering controls that contain or 1611
control the release of hazardous substances or petroleum at or 1612
from a property. Any such institutional controls or activity and 1613
use limitations that restrict the use of a property shall ensure 1614
that the property is used only for purposes that comply with the 1615
applicable standards established in this chapter and rules adopted 1616
under it pertaining to the intended use of the property after the 1617
completion of the voluntary action, as the intended use is 1618
specified in the documents establishing the institutional controls 1619
or activity and use limitations. If a property is subject to 1620
institutional controls ~~that restrict its use~~ or activity and use 1621
limitations and is put to a use that does not comply with the 1622
institutional controls or activity and use restrictions 1623
limitations specified in the documents establishing the 1624
institutional controls or activity and use limitations, the 1625
covenant not to sue issued under section 3746.12 of the Revised 1626
Code for the property in connection with the voluntary action for 1627
which the institutional controls or activity and use limitations 1628
were established is hereby declared to be void on and after the 1629
date of the commencement of the noncomplying use. 1630

Sec. 3746.10. (A) Except as otherwise provided in section 1631
3746.02 of the Revised Code, any person may undertake a voluntary 1632
action under this chapter and rules adopted under it to identify 1633
and address potential sources of contamination by hazardous 1634
substances or petroleum of soil, sediments, surface water, or 1635
ground water on or underlying property and to establish that the 1636
property meets applicable standards. The voluntary action may 1637
include any one or more of the following elements: 1638

(1) A phase I property assessment conducted in accordance 1639
with rules adopted under division (B)(3) of section 3746.04 of the 1640
Revised Code or division (B) of section 3746.07 of the Revised 1641
Code, as appropriate; 1642

(2) A phase II property assessment conducted in accordance 1643
with rules adopted under division (B)(4) of section 3746.04 of the 1644
Revised Code or division (C) of section 3746.07 of the Revised 1645
Code, as appropriate; 1646

(3) A sampling plan; 1647

(4) A remediation plan; 1648

(5) Remedial activities; 1649

(6) Such other activities as the person undertaking the 1650
voluntary action considers to be necessary or appropriate to 1651
address the contamination. 1652

When the person undertaking a voluntary action determines 1653
that the property meets applicable standards, ~~he~~ the person may 1654
seek a no further action letter from a certified professional. A 1655
no further action letter may be issued for the property at any 1656
stage of the identification of potential hazardous substance or 1657
petroleum contamination or remedial activities after a phase I or 1658
II property assessment has demonstrated that there is no reason to 1659
believe that there has been a release of hazardous substances or 1660

petroleum at or upon the property, that information indicates that 1661
there has been a release of hazardous substances or petroleum at 1662
or upon the property, but that the release is not in excess of 1663
applicable standards, or that if there has been such a release in 1664
excess of applicable standards, those standards have been achieved 1665
through remedial activities or will be achieved in accordance with 1666
the timeframes established in an operation and maintenance 1667
agreement entered into under division (A)(3) of section 3746.12 of 1668
the Revised Code or in such an agreement and a consolidated 1669
standards permit issued under section 3746.15 of the Revised Code. 1670

(B)(1) A person who is participating in the voluntary action 1671
program under this chapter and rules adopted under it shall do 1672
both of the following: 1673

(a) Utilize the services of a certified laboratory to perform 1674
any analyses that form the basis for the issuance of a no further 1675
action letter for a property and ensure that a laboratory performs 1676
in connection with a voluntary action only those analyses for 1677
which it is certified under rules adopted under division (B)(6) of 1678
section 3746.04 of the Revised Code or for which it is qualified 1679
prior to the adoption of those rules; 1680

(b) Utilize the services of a certified professional to 1681
verify that the property and any remedial activities undertaken at 1682
the property in connection with a voluntary action comply with 1683
applicable standards and, if those standards are met, to issue to 1684
the person a no further action letter for the property. For the 1685
purposes of such a verification, the certified professional shall 1686
perform and review all work that was conducted to support the 1687
request for the no further action letter or shall ensure that the 1688
work has been performed and reviewed by other persons with 1689
expertise and competence in areas other than those of the 1690
certified professional's expertise and competence as necessary for 1691
the issuance of the no further action letter. 1692

(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: 1724

(1) Information demonstrating that there is no contamination 1725
by hazardous substances or petroleum of soil, sediments, surface 1726
water, or ground water on or underlying the property in 1727
concentrations exceeding applicable standards. The demonstrations 1728
shall be based upon the findings of a phase I or phase II property 1729
assessment. 1730

(2) If remedial activities were conducted in connection with 1731
the voluntary action, data demonstrating that the remedy meets 1732
applicable standards or will achieve applicable standards in 1733
accordance with the timeframes established in an operation and 1734
maintenance agreement entered into under division (A)(3) of 1735
section 3746.12 of the Revised Code or in such an agreement and a 1736
consolidated standards permit issued under section 3746.15 of the 1737
Revised Code; 1738

(3)(a) If the remedy relies on institutional controls or 1739
restrictions on the use of the property to achieve applicable 1740
standards, a demonstration that the institutional controls or the 1741
use restrictions have been recorded in the office of the county 1742
recorder of the county in which the property is located, or have 1743
been entered in the appropriate register for registered land as 1744
defined in section 5309.01 of the Revised Code, in compliance with 1745
section 3746.14 of the Revised Code; 1746

(b) If the person undertaking a voluntary action seeks to 1747
obtain a covenant not to sue and if the remedy relies on activity 1748
and use limitations to achieve applicable standards, a 1749
demonstration that the activity and use limitations have been 1750
developed in accordance with this chapter and rules adopted under 1751
it and are contained in a proposed environmental covenant that 1752
meets the requirements established in section 5301.82 of the 1753
Revised Code. 1754

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

(D) Except as otherwise specifically provided in this chapter and rules adopted under it, voluntary actions under this chapter and rules adopted under it shall be undertaken in compliance with all applicable laws of this state and rules adopted under them and with applicable ordinances, resolutions, and rules of political subdivisions of this state.

Sec. 3746.11. (A) After receiving the demonstrations and operation and maintenance plan, if any, required to be submitted to ~~him~~ a certified professional under division (C) of section 3746.10 of the Revised Code, ~~a~~ the certified professional shall review them to verify whether the property where the voluntary action was undertaken complies with applicable standards or shall ensure that they have been reviewed by another person or persons 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. If, on the basis of the best knowledge, information, and belief of the certified professional, the certified professional concludes that the property meets applicable standards, ~~he~~ the certified professional shall prepare a no further action letter for the property. The no further action letter shall contain all the information specified in rules adopted under division (B)(7) of section 3746.04 of the Revised Code or in division (E) of section 3746.07 of the Revised Code, as applicable.

Upon completion of a no further action letter, the certified professional shall send a copy of the letter to the person who undertook the voluntary action. The letter shall be accompanied by

a written request that the person notify the certified professional as to whether the person wishes to submit the no further action letter to the director of environmental protection and by a written notice informing the person that the original letter may be submitted to the director only by a certified professional and that the person may receive a covenant not to sue from the director in connection with the voluntary action only if the no further action letter for the voluntary action is submitted to the director on ~~his~~ the person's behalf by the certified professional.

Promptly after receipt of the letter and request, the person who undertook the voluntary action shall send written notice to the certified professional informing ~~him~~ the certified professional as to whether the person wishes to submit the letter to the director and shall send a copy of the notice to the director. If the person's notice indicates that ~~he~~ the person wishes to have the no further action letter submitted to the director, promptly after receipt of the notice, the certified professional shall submit the original no further action letter, together with a proposed environmental covenant, if applicable, and a proposed operation and maintenance agreement, if applicable, to the director by certified mail on behalf of the person who undertook the voluntary action. If the person who undertook the voluntary action notifies the certified professional that ~~he~~ the person does not wish to submit the no further action letter to the director, the certified professional shall send the original letter to the person promptly after receiving the notice.

(B) If after reviewing the demonstrations required to be submitted to ~~him~~ the certified professional under division (C) of section 3746.10 of the Revised Code, the certified professional finds that the property where the voluntary action was undertaken does not comply with applicable standards, the certified

professional shall send to the person who undertook the voluntary 1818
action written notice of that fact and of the certified 1819
professional's inability to issue a no further action letter for 1820
the property. 1821

(C) A certified professional shall prepare a summary report 1822
detailing ~~his~~ the certified professional's findings and 1823
conclusions about the environmental conditions at the property 1824
concerning which the professional was requested to prepare a no 1825
further action letter and the remedial activities undertaken to 1826
mitigate or abate any threat to public health and safety and the 1827
environment, including, without limitation, all of the following: 1828

(1) A description of the nature and extent of contamination 1829
emanating from sources on the property; 1830

(2) A risk assessment performed in accordance with rules 1831
adopted under division (B)(2) of section 3746.04 of the Revised 1832
Code if such an assessment was used in lieu of generic numerical 1833
clean-up standards established in rules adopted under division 1834
(B)(1) of that section; 1835

(3) A description of any remedy conducted at the property and 1836
how the remedy complies with applicable standards; 1837

(4) A description of any plan for the proper operation and 1838
maintenance of engineering controls identified under division 1839
(C)(4) of section 3746.10 of the Revised Code; 1840

(5) Any documents prepared by any other person who performed 1841
work to support the request for the no further action letter as 1842
provided in division (B)(2) of section 3746.10 of the Revised 1843
Code. 1844

(D) A certified professional shall maintain all documents and 1845
data prepared or acquired by ~~him~~ the certified professional in 1846
connection with a no further action letter for not less than ten 1847
years after the date of issuance of the letter or after the notice 1848

required under division (B) of this section has been sent, as 1849
applicable, or for a longer period as determined in rules adopted 1850
under section 3746.04 of the Revised Code. The director shall have 1851
access to those documents and data in accordance with section 1852
3746.18 or 3746.31 of the Revised Code. 1853

Sec. 3746.13. (A) For property that does not involve the 1854
issuance of a consolidated standards permit under section 3746.15 1855
of the Revised Code and where no ~~engineering or institutional~~ 1856
~~controls~~ remedial activities for which there is a required 1857
operation and maintenance agreement or an environmental covenant 1858
under this chapter or sections 5301.80 to 5301.92 of the Revised 1859
Code, as applicable, are used to comply with applicable standards, 1860
the director of environmental protection shall issue a covenant 1861
not to sue pursuant to section 3746.12 of the Revised Code by 1862
issuance of an order and as a final action under Chapter 3745. of 1863
the Revised Code within thirty days after the director receives 1864
the no further action letter for the property ~~and accompanying~~ 1865
~~verification~~ from the certified professional who prepared the 1866
letter under section 3746.11 of the Revised Code. 1867

(B) For property that involves the issuance of a consolidated 1868
standards permit under section 3746.15 of the Revised Code or 1869
where ~~engineering or institutional controls~~ remedial activities 1870
for which there is a required operation and maintenance agreement 1871
or an environmental covenant under this chapter or sections 1872
5301.80 to 5301.92 of the Revised Code, as applicable, are used to 1873
comply with applicable standards, the director shall issue a 1874
covenant not to sue pursuant to section 3746.12 of the Revised 1875
Code by issuance of an order and as a final action under Chapter 1876
3745. of the Revised Code within ninety days after the director 1877
receives the no further action letter for the property ~~and~~ 1878
~~accompanying verification~~ from the certified professional who 1879
prepared the letter and enters into an environmental covenant 1880

regarding the property, if applicable. 1881

(C) Except as provided in division (D) of this section, each 1882
person who is issued a covenant not to sue under this section 1883
shall pay the fee established pursuant to rules adopted under 1884
division (B)(8) of section 3746.04 of the Revised Code. Until 1885
those rules become effective, each person who is issued a covenant 1886
not to sue shall pay a fee of two thousand dollars. The fee shall 1887
be paid to the director at the time that the no further action 1888
letter and accompanying verification are submitted to the 1889
director. 1890

(D) An applicant, as defined in section 122.65 of the Revised 1891
Code, who has entered into an agreement under section 122.653 of 1892
the Revised Code and who is issued a covenant not to sue under 1893
this section shall not be required to pay the fee for the issuance 1894
of a covenant not to sue established in rules adopted under 1895
division (B)(8) of section 3746.04 of the Revised Code. 1896

Sec. 3746.14. (A) Except as otherwise provided in division 1897
(B) of this section, ~~a no further action letter issued for a~~ 1898
~~property under section 3746.11 of the Revised Code, a covenant not~~ 1899
~~to sue issued for the property under section 3746.12 of the~~ 1900
~~Revised Code, and any restrictions on the use of such property~~ 1901
~~identified pursuant to division (C)(3) of section 3746.10 of the~~ 1902
~~Revised Code shall be filed in the office of the county recorder~~ 1903
~~of the county in which the property is located by the person to~~ 1904
~~whom the covenant not to sue was issued and shall be recorded in~~ 1905
~~the same manner as a deed to the property. The no further action~~ 1906
~~letter, covenant not to sue, and use restrictions, if any, shall~~ 1907
~~run with the property~~ the person to whom a covenant not to sue for 1908
a property has been issued under section 3746.12 of the Revised 1909
Code shall file for recording in the office of the county recorder 1910
of the county in which the property is located a true and accurate 1911

<u>copy of all of the following:</u>	1912
<u>(1) The no further action letter issued under section 3746.11</u>	1913
<u>of the Revised Code or an executive summary of it;</u>	1914
<u>(2) The covenant not to sue issued for the property under</u>	1915
<u>section 3746.12 of the Revised Code;</u>	1916
<u>(3) The environmental covenant for the property, if any,</u>	1917
<u>proposed pursuant to division (C)(3)(b) of section 3746.10 of the</u>	1918
<u>Revised Code and executed under section 5301.82 of the Revised</u>	1919
<u>Code.</u>	1920
<u>The documents specified in divisions (A)(1) to (3) of this</u>	1921
<u>section shall be recorded in the same manner as a deed to the</u>	1922
<u>property. The no further action letter, covenant not to sue, and</u>	1923
<u>environmental covenant, if any, shall run with the property.</u>	1924
No person shall fail to comply with this division.	1925
(B) Pursuant to Chapter 5309. of the Revised Code, a no	1926
further action letter, a covenant not to sue, and, if applicable,	1927
any operation and maintenance agreement and use restrictions	1928
<u>environmental covenant</u> prepared, issued, entered into, or	1929
identified under this chapter and rules adopted under it <u>or under</u>	1930
<u>sections 5301.80 to 5301.92 of the Revised Code, as applicable, in</u>	1931
connection with registered land, as defined in section 5309.01 of	1932
the Revised Code, shall be entered as a memorial on the page of	1933
the register where the title of the owner is registered.	1934
(C) A no further action letter, a covenant not to sue, and	1935
any agreement authorized to be entered into and entered into under	1936
this chapter and rules adopted under it may be transferred by the	1937
recipient to any other person by assignment or in conjunction with	1938
the acquisition of title to the property to which the document	1939
applies.	1940
Sec. 3746.171. The director of environmental protection shall	1941

maintain a record of the properties for which covenants not to sue 1942
were issued under section 3746.12 of the Revised Code that involve 1943
institutional controls or activity and use limitations that 1944
restrict the use of the properties in order to comply with 1945
applicable standards. The records pertaining to those properties 1946
shall indicate the use restrictions or activity and use 1947
limitations applicable to each of them. At least once every five 1948
years, the director or ~~his~~ an authorized representative of the 1949
director shall visually inspect each such property to determine 1950
whether the property is being used in compliance with the 1951
applicable institutional controls or activity and use limitations. 1952

Sec. 5301.80. As used in sections 5301.80 to 5301.92 of the 1953
Revised Code: 1954

(A) "Activity and use limitations" means restrictions or 1955
obligations created under sections 5301.80 to 5301.92 of the 1956
Revised Code with respect to real property. 1957

(B) "Agency" means the environmental protection agency or any 1958
other state or federal agency that determines or approves the 1959
environmental response project pursuant to which an environmental 1960
covenant is created. 1961

(C) "Common interest community" means a condominium, a 1962
cooperative, or other real property with respect to which a 1963
person, by virtue of the person's ownership of a parcel of real 1964
property, is obligated to pay property taxes or insurance premiums 1965
or to pay for maintenance or improvement of other real property 1966
described in a recorded covenant that creates the common interest 1967
community. 1968

(D) "Environmental covenant" means a servitude arising under 1969
an environmental response project that imposes activity and use 1970
limitations and that meets the requirements established in section 1971
5301.82 of the Revised Code. 1972

(E) "Environmental response project" means a plan or work performed for environmental remediation of real property or for protection of ecological features associated with real property and conducted as follows: 1973
1974
1975
1976

(1) Under a federal or state program governing environmental remediation of real property that is subject to agency review or approval, including, but not limited to, property that is the subject of any of the following: 1977
1978
1979
1980

(a) A corrective action, closure, or post-closure pursuant to the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, et seq., as amended, or any regulation adopted under that act, or Chapter 3734. of the Revised Code or any rule adopted under it; 1981
1982
1983
1984
1985

(b) A removal or remedial action pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2767, 42 U.S.C.A. 9601, et seq., as amended, or any regulation adopted under that act, or Chapter 3734. or 6111. of the Revised Code or any rule adopted under those chapters; 1986
1987
1988
1989
1990
1991

(c) A no further action letter submitted with a request for a covenant not to sue pursuant to section 3746.11 of the Revised Code; 1992
1993
1994

(d) A no further action letter prepared pursuant to section 122.654 of the Revised Code; 1995
1996

(e) A corrective action pursuant to section 3737.88, 3737.882, or 3737.89 of the Revised Code or any rule adopted under those sections. 1997
1998
1999

(2) Pursuant to a mitigation requirement associated with the section 401 water quality certification program or the isolated wetland program as required by Chapter 6111. of the Revised Code; 2000
2001
2002

<u>(3) Pursuant to a grant commitment or loan agreement entered</u>	2003
<u>into pursuant to section 6111.036 or 6111.037 of the Revised Code;</u>	2004
<u>(4) Pursuant to a supplemental environmental project embodied</u>	2005
<u>in orders issued by the director of environmental protection</u>	2006
<u>pursuant to Chapter 6111. of the Revised Code.</u>	2007
<u>(F) "Federal property" means property that is governed by the</u>	2008
<u>"Federal Property and Administrative Services Act of 1949," 63</u>	2009
<u>Stat. 378, 40 U.S.C.A. 101 et seq., as amended.</u>	2010
<u>(G) "Holder" means a grantee of an environmental covenant as</u>	2011
<u>specified in division (A) of section 5301.81 of the Revised Code.</u>	2012
<u>(H) "Person" includes the state, a political subdivision,</u>	2013
<u>another state or local entity, the United States and any agency or</u>	2014
<u>instrumentality of it, and any legal entity defined as a person</u>	2015
<u>under section 1.59 of the Revised Code.</u>	2016
<u>(I) "Record," when used as a noun, means information that is</u>	2017
<u>inscribed on a tangible medium or that is stored in an electronic</u>	2018
<u>or other medium and is retrievable in perceivable form.</u>	2019
<u>Sec. 5301.81. (A) Any person, including a person that owns an</u>	2020
<u>interest in the real property that is the subject of an</u>	2021
<u>environmental covenant, may be a holder. An environmental covenant</u>	2022
<u>may identify more than one holder.</u>	2023
<u>(B) The interest of a holder is an interest in real property.</u>	2024
<u>However, a right of an agency under sections 5301.80 to 5301.92 of</u>	2025
<u>the Revised Code or under an environmental covenant, other than a</u>	2026
<u>right as a holder, is not an interest in real property.</u>	2027
<u>Sec. 5301.82. (A) An environmental covenant shall contain all</u>	2028
<u>of the following:</u>	2029
<u>(1) A statement that the instrument is an environmental</u>	2030
<u>covenant executed pursuant to sections 5301.80 to 5301.92 of the</u>	2031

<u>Revised Code;</u>	2032
<u>(2) A legally sufficient description of the real property that is subject to the environmental covenant;</u>	2033 2034
<u>(3) A description of the activity and use limitations on the real property;</u>	2035 2036
<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 environmental covenant;</u>	2037 2038 2039 2040 2041
<u>(5) The name or identity of every holder;</u>	2042
<u>(6) Rights of access to the property granted in connection with implementation or enforcement of the environmental covenant;</u>	2043 2044
<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>	2045 2046 2047
<u>(8) An identification of the name and location of any administrative record for the environmental response project pursuant to which the environmental covenant is created.</u>	2048 2049 2050
<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 environmental covenant, including any of the following:</u>	2051 2052 2053 2054 2055
<u>(1) Requirements for periodic reporting describing compliance with the environmental covenant;</u>	2056 2057
<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>	2058 2059 2060 2061

(3) Limitations on amendment or termination of the environmental covenant in addition to those established in sections 5301.89 and 5301.90 of the Revised Code; 2062
2063
2064

(4) Rights of the holder in addition to the right to enforce the environmental covenant pursuant to section 5301.91 of the Revised Code. 2065
2066
2067

(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. 2068
2069
2070
2071
2072

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: 2073
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2075

(1) Each person that signed the environmental covenant; 2076

(2) Each person holding a recorded interest in the real property that is subject to the environmental covenant; 2077
2078

(3) Each person in possession of the real property that is subject to the environmental covenant; 2079
2080

(4) Each unit of local government in which the real property that is subject to the environmental covenant is located; 2081
2082

(5) Any other person that the agency requires. 2083

(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. 2084
2085
2086

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 2087
2088
2089

covenant. Any other person that signs an environmental covenant is 2090
bound by the obligations that the person assumes in the 2091
environmental covenant, but signing the environmental covenant 2092
does not change obligations, rights, or protections that are 2093
granted or imposed under law other than sections 5301.80 to 2094
5301.92 of the Revised Code, except as provided in the 2095
environmental covenant. 2096

Sec. 5301.85. (A) An environmental covenant that complies 2097
with sections 5301.80 to 5301.92 of the Revised Code runs with the 2098
land. 2099

(B) An environmental covenant that is otherwise effective is 2100
valid and enforceable even if any of the following limitations on 2101
enforcement of interests applies: 2102

(1) It is not appurtenant to an interest in real property. 2103

(2) It can be or has been assigned to a person other than the 2104
original holder. 2105

(3) It is not of a character that has been recognized 2106
traditionally at common law. 2107

(4) It imposes a negative burden. 2108

(5) It imposes an affirmative obligation on a person having 2109
an interest in the real property or on the holder. 2110

(6) The benefit or burden of the environmental covenant does 2111
not touch or concern real property. 2112

(7) There is no privity of estate or contract. 2113

(8) The holder dies, ceases to exist, resigns, or is 2114
replaced. 2115

(9) The owner of an interest that is subject to the 2116
environmental covenant and the holder are the same person. 2117

(C) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of sections 5301.80 to 5301.92 of the Revised Code is not invalid or unenforceable because of any of the limitations on enforcement of interests described in division (B) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. Sections 5301.80 to 5301.92 of the Revised Code do not apply in any other respect to such an instrument.

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

(E) Nothing in sections 5301.80 to 5301.92 of the Revised Code shall be construed to restrict, affect, or impair the rights of any person under the Revised Code or common law to enter into or record a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property that does not satisfy the requirements of division (A) of section 5301.82 of the Revised Code and does not have the permission, approval, or consent of an agency, political subdivision, regulatory body, or other unit of government. However, a restrictive covenant, institutional control, easement, servitude, or other restriction on the use of property entered into or recorded without such permission, approval, or consent is not an environmental covenant and is not binding on an agency, political subdivision, regulatory body, or other unit of government.

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

(A) An interest that has priority under other law is not 2149
affected by an environmental covenant unless the person that owns 2150
the interest agrees to subordinate that interest to the 2151
environmental covenant. 2152

(B) Sections 5301.80 to 5301.92 of the Revised Code do not 2153
require a person that owns a prior interest to subordinate that 2154
interest to an environmental covenant or to agree to be bound by 2155
the covenant. 2156

(C) A subordination agreement may be contained in an 2157
environmental covenant or in a separate record. If the 2158
environmental covenant covers commonly owned property in a common 2159
interest community, the record may be signed by any person who is 2160
authorized by the common interest community. 2161

(D) An agreement by a person to subordinate a prior interest 2162
to an environmental covenant affects the priority of that 2163
persons's interest, but does not by itself impose any affirmative 2164
obligation on the person with respect to the environmental 2165
covenant. 2166

Sec. 5301.87. Sections 5301.80 to 5301.92 of the Revised Code 2167
do not authorize a use of real property that is otherwise 2168
prohibited by zoning, by law other than sections 5301.80 to 2169
5301.92 of the Revised Code regulating use of real property, or by 2170
a recorded instrument that has priority over an environmental 2171
covenant. An environmental covenant may prohibit or restrict uses 2172
of real property that are authorized by zoning or by law other 2173
than sections 5301.80 to 5301.92 of the Revised Code. 2174

Sec. 5301.88. (A) Except as otherwise provided in division 2175
(B) of this section, an environmental covenant and any amendment 2176
or termination of the environmental covenant shall be filed in the 2177
office of the county recorder of each county in which the real 2178

property that is subject to the environmental covenant is located 2179
and shall be recorded in the same manner as a deed to the 2180
property. For purposes of indexing, a holder shall be treated as a 2181
grantee. 2182

(B) Pursuant to Chapter 5309. of the Revised Code, an 2183
environmental covenant and any amendment or termination of the 2184
environmental covenant in connection with registered land, as 2185
defined in section 5309.01 of the Revised Code, shall be entered 2186
as a memorial on the page of the register where the title of the 2187
owner is registered. 2188

(C) Except as otherwise provided in division (C) of section 2189
5301.89 of the Revised Code, an environmental covenant is subject 2190
to the laws of this state governing recording and priority of 2191
interest in real property. 2192

Sec. 5301.881. If it is not feasible under sections 5301.80 2193
to 5301.92 of the Revised Code to enter into an environmental 2194
covenant for federal property, including, but not limited to, a 2195
federal property that remains an active military installation or 2196
is transferred from one federal agency to another federal agency, 2197
the federal government may use any other mechanism to ensure that 2198
future land use of the property will be compatible with the levels 2199
of hazardous materials, hazardous wastes or constituents, or 2200
hazardous substances that remain on the property. A mechanism that 2201
the federal government may use under this section includes, but is 2202
not limited to, amendments to the federal government facility 2203
master plan, building physical monuments, agreements between 2204
federal agencies, and agreements between the federal government 2205
facility and the Ohio environmental protection agency. The 2206
applicable federal agency that uses the particular mechanism shall 2207
file a notice of that mechanism in the office of the county 2208

<u>recorder of the county in which the federal property is located.</u>	2209
<u>Sec. 5301.89. (A) An environmental covenant is perpetual</u>	2210
<u>unless any of the following applies:</u>	2211
<u>(1) The environmental covenant is limited by its terms to a</u>	2212
<u>specific duration or is terminated by its terms by the occurrence</u>	2213
<u>of a specific event.</u>	2214
<u>(2) The environmental covenant is terminated by consent</u>	2215
<u>pursuant to section 5301.90 of the Revised Code.</u>	2216
<u>(3) The environmental covenant is terminated pursuant to</u>	2217
<u>division (B) of this section.</u>	2218
<u>(4) The environmental covenant is terminated by foreclosure</u>	2219
<u>of an interest that has priority over the environmental covenant.</u>	2220
<u>(5) The environmental covenant is terminated or modified in</u>	2221
<u>an eminent domain proceeding, but only if all of the following</u>	2222
<u>apply:</u>	2223
<u>(a) The agency that signed the environmental covenant is a</u>	2224
<u>party to the proceeding.</u>	2225
<u>(b) All persons identified in divisions (A) and (B) of</u>	2226
<u>section 5301.90 of the Revised code are given notice of the</u>	2227
<u>pendency of the proceeding.</u>	2228
<u>(c) The court determines, after a hearing, that the</u>	2229
<u>termination or modification will not adversely affect human health</u>	2230
<u>or safety or the environment.</u>	2231
<u>(B) If the agency that signed an environmental covenant has</u>	2232
<u>determined that the intended benefits of the environmental</u>	2233
<u>covenant can no longer be realized, a court, under the doctrine of</u>	2234
<u>changed circumstances, in an action in which all persons</u>	2235
<u>identified in divisions (A) and (B) of section 5301.90 of the</u>	2236
<u>Revised Code have been given notice, may terminate the</u>	2237

environmental covenant or reduce its burden on the real property 2238
that is subject to the environmental covenant. 2239

(C) Except as otherwise provided in divisions (A) and (B) of 2240
this section, an environmental covenant may not be extinguished, 2241
limited, or impaired through issuance of a tax deed, foreclosure 2242
of a tax lien, or application of the doctrine of adverse 2243
possession, prescription, abandonment, waiver, lack of 2244
enforcement, or acquiescence or a similar doctrine. 2245

(D) An environmental covenant may not be extinguished, 2246
limited, or impaired by application of sections 5301.47 to 5301.56 2247
of the Revised Code. 2248

Sec. 5301.90. (A) An environmental covenant may be amended or 2249
terminated by consent only if the amendment or termination is 2250
signed by all of the following: 2251

(1) The applicable agency; 2252

(2) Unless waived by that agency, the current owner of the 2253
fee simple of the real property that is subject to the 2254
environmental covenant; 2255

(3) Each person that originally signed the environmental 2256
covenant unless the person waived in a signed record the right to 2257
consent or a court finds that the person no longer exists or 2258
cannot be located or identified with the exercise of reasonable 2259
diligence; 2260

(4) Except as otherwise provided in division (D)(2) of this 2261
section, each holder. 2262

(B) If an interest in real property is subject to an 2263
environmental covenant, the interest is not affected by an 2264
amendment of the environmental covenant unless the current owner 2265
of the interest consents in writing to the amendment or has waived 2266
in a signed record the right to consent to amendments. 2267

<u>(C) Except for an assignment undertaken pursuant to a</u>	2268
<u>governmental reorganization, assignment of an environmental</u>	2269
<u>covenant to a new holder is an amendment of the environmental</u>	2270
<u>covenant.</u>	2271
<u>(D) Except as otherwise provided in an environmental</u>	2272
<u>covenant, both of the following apply:</u>	2273
<u>(1) A holder may not assign its interest without consent of</u>	2274
<u>the other parties to the environmental covenant specified in</u>	2275
<u>division (A) of this section.</u>	2276
<u>(2) A holder may be removed and replaced by agreement of the</u>	2277
<u>other parties specified in division (A) of this section.</u>	2278
<u>(E) A court of competent jurisdiction may fill a vacancy in</u>	2279
<u>the position of holder.</u>	2280
<u>Sec. 5301.91. (A) A civil action for injunctive or other</u>	2281
<u>equitable relief for violation of an environmental covenant may be</u>	2282
<u>maintained by any of the following:</u>	2283
<u>(1) A party to the environmental covenant specified in</u>	2284
<u>division (A) of section 5301.90 of the Revised Code that is not</u>	2285
<u>otherwise specified in divisions (A)(2) to (6) of this section;</u>	2286
<u>(2) The environmental protection agency;</u>	2287
<u>(3) The applicable agency if it is other than the</u>	2288
<u>environmental protection agency;</u>	2289
<u>(4) Any person to whom the environmental covenant expressly</u>	2290
<u>grants the authority to maintain such an action;</u>	2291
<u>(5) A person whose interest in the real property or whose</u>	2292
<u>collateral or liability may be affected by the alleged violation</u>	2293
<u>of the environmental covenant;</u>	2294
<u>(6) A unit of local government in which the real property</u>	2295
<u>that is subject to the environmental covenant is located.</u>	2296

(B) Sections 5301.80 to 5301.92 of the Revised Code do not 2297
limit the regulatory authority of the applicable agency or the 2298
environmental protection agency if it is not the applicable agency 2299
under any law other than sections 5301.80 to 5301.92 of the 2300
Revised Code with respect to an environmental response project. 2301

(C) A person is not responsible for or subject to liability 2302
for environmental remediation solely because it has the right to 2303
enforce an environmental covenant. 2304

Sec. 5301.92. Sections 5301.80 to 5301.92 of the Revised Code 2305
modify, limit, or supersede the "Electronic Signatures in Global 2306
and National Commerce Act," 114 Stat. 464 (2000), 15 U.S.C. 7001 2307
et seq., as amended, except that sections 5301.80 to 5301.92 of 2308
the Revised Code do not modify, limit, or supersede section 101 of 2309
that act, 15 U.S.C. 7001(a), as amended, or authorize electronic 2310
delivery of any of the notices described in section 103 of that 2311
act, 15 U.S.C. 7003(b), as amended. 2312

Section 2. That existing sections 123.01, 317.08, 3734.22, 2313
3734.24, 3734.25, 3734.26, 3737.88, 3737.882, 3745.01, 3746.01, 2314
3746.04, 3746.05, 3746.10, 3746.11, 3746.13, 3746.14, and 3746.171 2315
of the Revised Code are hereby repealed. 2316