

**As Introduced**

**126th General Assembly  
Regular Session  
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**S. B. No. 265**

**Senators Spada, Carey, Mumper, Niehaus, Amstutz, Fedor, Armbruster,  
Clancy, Stivers**

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**A B I L L**

To amend sections 3704.02, 3704.03, and 3704.09 of 1  
the Revised Code to make changes in the Air 2  
Pollution Control Law regarding statutory 3  
construction, the costs of compliance with rules, 4  
permits to install, air quality monitoring, best 5  
available technology, and affirmative defenses in 6  
private civil actions. 7

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

**Section 1.** That sections 3704.02, 3704.03, and 3704.09 of the 8  
Revised Code be amended to read as follows: 9

**Sec. 3704.02.** (A) The purposes of this chapter are the 10  
following: 11

(1) To protect and enhance the quality of the state's air 12  
resources so as to promote the public health, welfare, economic 13  
vitality, and productive capacity of the people of the state; 14

(2) To enable the state, through the director of 15  
environmental protection, to adopt and maintain a program for the 16  
prevention, control, and abatement of air pollution that is 17  
consistent with the federal Clean Air Act; 18

(3) To authorize the state to obtain financial assistance and 19  
delegation of powers from the federal government for purposes of 20  
the prevention, control, and abatement of air pollution. 21

(B) This chapter, all rules adopted under it, and all 22  
permits, variances, and orders issued under it shall be construed, 23  
to the extent reasonably possible, to be consistent with the 24  
federal Clean Air Act and to promote the purposes of this chapter. 25  
If ambiguity exists as to whether a rule, permit, variance, or 26  
order adopted or issued under this chapter is more stringent than 27  
the federal Clean Air Act, the rule, permit, variance, or order 28  
shall be construed to be no more stringent than the federal Clean 29  
Air Act. 30

**Sec. 3704.03.** The director of environmental protection may do 31  
any of the following: 32

(A) Develop programs for the prevention, control, and 33  
abatement of air pollution; 34

(B) Advise, consult, contract, and cooperate with any 35  
governmental or private agency in the furtherance of the purposes 36  
of this chapter; 37

(C) Encourage, participate in, or conduct studies, 38  
investigations, and research relating to air pollution, collect 39  
and disseminate information, and conduct education and training 40  
programs relating to the causes, prevention, control, and 41  
abatement of air pollution; 42

(D) Adopt, modify, and rescind rules prescribing ambient air 43  
quality standards for the state as a whole or for various areas of 44  
the state that are consistent with and no more stringent than the 45  
national ambient air quality standards in effect under the federal 46  
Clean Air Act; 47

(E) Adopt, modify, suspend, and rescind rules for the 48

prevention, control, and abatement of air pollution, including  
rules prescribing for the state as a whole or for various areas of  
the state emission standards for air contaminants, and other  
necessary rules for the purpose of achieving and maintaining  
compliance with ambient air quality standards in all areas within  
the state as expeditiously as practicable, but not later than any  
deadlines applicable under the federal Clean Air Act; rules for  
the prevention or control of the emission of hazardous or toxic  
air contaminants; rules prescribing fugitive dust limitations and  
standards that are related, on an areawide basis, to attainment  
and maintenance of ambient air quality standards; rules  
prescribing shade, density, or opacity limitations and standards  
for emissions, provided that with regard to air contaminant  
sources for which there are particulate matter emission standards  
in addition to a shade, density, or opacity rule, upon  
demonstration by such a source of compliance with those other  
standards, the shade, density, or opacity rule shall provide for  
establishment of a shade, density, or opacity limitation for that  
source that does not require the source to reduce emissions below  
the level specified by those other standards; rules for the  
prevention or control of odors and air pollution nuisances; rules  
that prevent significant deterioration of air quality to the  
extent required by the federal Clean Air Act; rules for the  
protection of visibility as required by the federal Clean Air Act;  
and rules prescribing open burning limitations and standards. In  
adopting, modifying, suspending, or rescinding any such rules, the  
director, to the extent consistent with the federal Clean Air Act,  
shall hear and give consideration to evidence relating to all of  
the following:

(1) Conditions calculated to result from compliance with the  
rules, the overall cost within this state of compliance with the  
rules, and their relation to benefits to the people of the state

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to be derived from that compliance; 81

(2) The quantity and characteristics of air contaminants, the 82  
frequency and duration of their presence in the ambient air, and 83  
the dispersion and dilution of those contaminants; 84

(3) Topography, prevailing wind directions and velocities, 85  
physical conditions, and other factors that may or may combine to 86  
affect air pollution. 87

Consistent with division (K) of section 3704.036 of the 88  
Revised Code, the director shall consider alternative emission 89  
limits proposed by the owner or operator of an air contaminant 90  
source that is subject to an emission limit established in rules 91  
adopted under this division and shall accept those alternative 92  
emission limits that the director determines to be equivalent to 93  
emission limits established in rules adopted under this division. 94

(F) Adopt, modify, suspend, and rescind rules consistent with 95  
the purposes of this chapter prohibiting the location, 96  
installation, construction, or modification of any air contaminant 97  
source or any machine, equipment, device, apparatus, or physical 98  
facility intended primarily to prevent or control the emission of 99  
air contaminants unless an installation permit therefor has been 100  
obtained from the director or ~~his~~ the director's authorized 101  
representative. Applications for installation permits shall be 102  
accompanied by plans, specifications, construction schedules, and 103  
such other pertinent information and data, including data on 104  
ambient air quality impact and a demonstration of best available 105  
technology, as the director may require. Installation permits 106  
shall be issued for a period specified by the director and are 107  
transferable. The director shall specify in each permit the 108  
applicable emission standards and that the permit is conditioned 109  
upon payment of the applicable fees as required by section 3745.11 110  
of the Revised Code and upon the right of ~~his~~ the director's 111  
authorized representatives to enter upon the premises of the 112

person to whom the permit has been issued, at any reasonable time 113  
and subject to safety requirements of the person in control of the 114  
premises, for the purpose of determining compliance with such 115  
standards, this chapter, the rules adopted thereunder, and the 116  
conditions of any permit, variance, or order issued thereunder. 117  
Each proposed new or modified air contaminant source shall provide 118  
such notice of its proposed installation or modification to other 119  
states as is required under the federal Clean Air Act. 120  
Installation permits shall include the authorization to operate 121  
sources installed and operated in accordance with terms and 122  
conditions of the installation permits for a period not to exceed 123  
one year from commencement of operation, which authorization shall 124  
constitute an operating permit under division (G) of this section 125  
and rules adopted under it. 126

No installation permit shall be issued except in accordance 127  
with all requirements of this chapter and rules adopted 128  
thereunder. No application shall be denied or permit revoked or 129  
modified without a written order stating the findings upon which 130  
denial, revocation, or modification is based. A copy of the order 131  
shall be sent to the applicant or permit holder by certified mail. 132

In addition to adopting rules governing installation permits 133  
under this division, not later than January 1, 2008, the director 134  
shall adopt a rule in accordance with Chapter 119. of the Revised 135  
Code specifying that a permit to install is required only for new 136  
or modified air contaminant sources that emit any of the following 137  
air contaminants: 138

(1) An air contaminant or precursor of an air contaminant for 139  
which a national ambient air quality standard has been adopted 140  
under the federal Clean Air Act; 141

(2) An air contaminant for which the air contaminant source 142  
is regulated under the federal Clean Air Act; 143

(3) An air contaminant that presents, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects, including, but not limited to, substances that are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, or neurotoxic, that cause reproductive dysfunction, or that are acutely or chronically toxic, or a threat of adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, and that is identified in the rule by chemical name and chemical abstract service number.

The director may modify the rule adopted under division (F)(3) of this section for the purpose of adding or deleting air contaminants. For each air contaminant that is contained in or deleted from the rule adopted under division (F)(3) of this section, the director shall include in a notice accompanying any proposed or final rule an explanation of the director's determination that the air contaminant meets the criteria established in that division and should be added to, or no longer meets the criteria and should be deleted from, the list of air contaminants. The explanation shall include an identification of the scientific evidence on which the director relied in making the determination. Until adoption of the rule under division (F)(3) of this section, nothing shall affect the director's authority to issue, deny, modify, or revoke permits to install under this chapter and rules adopted under it.

Not later than January 1, 2007, the director shall adopt rules in accordance with Chapter 119. of the Revised Code specifying activities that do not, by themselves, constitute beginning actual construction activities related to the installation or modification of an air contaminant source for which a permit to install is required such as the grading and clearing of land, on-site storage of portable parts and equipment,

and the construction of foundations or buildings that do not 176  
themselves emit air contaminants. The rules also shall allow 177  
specified initial activities that are part of the installation or 178  
modification of an air contaminant source, such as the 179  
installation of electrical and other utilities for the source, 180  
prior to issuance of a permit to install, provided that the owner 181  
or operator of the source has filed a complete application for a 182  
permit to install, the director or the director's designee has 183  
determined that the application is complete, and the owner or 184  
operator of the source has notified the director that this 185  
activity will be undertaken prior to the issuance of a permit to 186  
install. Any activity that is undertaken by the source under those 187  
rules shall be at the risk of the owner or operator. The rules 188  
shall not apply to activities that are precluded prior to permit 189  
issuance under section 111, section 112, Part C of Title I, and 190  
Part D of Title I of the federal Clean Air Act. 191

(G) Adopt, modify, suspend, and rescind rules prohibiting the 192  
operation or other use of any new, modified, or existing air 193  
contaminant source unless an operating permit has been obtained 194  
from the director or ~~his~~ the director's authorized representative, 195  
or the air contaminant source is being operated in compliance with 196  
the conditions of a variance issued pursuant to division (H) of 197  
this section. Applications for operating permits shall be 198  
accompanied by such plans, specifications, and other pertinent 199  
information as the director may require. Operating permits may be 200  
issued for a period determined by the director not to exceed five 201  
years, are renewable, and are transferable. The director shall 202  
specify in each operating permit that the permit is conditioned 203  
upon payment of the applicable fees as required by section 3745.11 204  
of the Revised Code and upon the right of ~~his~~ the director's 205  
authorized representatives to enter upon the premises of the 206  
person to whom the permit has been issued, at any reasonable time 207

and subject to safety requirements of the person in control of the 208  
premises, for the purpose of determining compliance with this 209  
chapter, the rules adopted thereunder, and the conditions of any 210  
permit, variance, or order issued thereunder. Operating permits 211  
may be denied or revoked for failure to comply with this chapter 212  
or the rules adopted thereunder. An operating permit shall be 213  
issued only upon a showing satisfactory to the director or ~~his~~ the 214  
director's representative that the air contaminant source is being 215  
operated in compliance with applicable emission standards and 216  
other rules or upon submission of a schedule of compliance 217  
satisfactory to the director for a source that is not in 218  
compliance with all applicable requirements at the time of permit 219  
issuance, provided that the compliance schedule shall be 220  
consistent with and at least as stringent as that contained in any 221  
judicial consent decree or administrative order to which the air 222  
contaminant source is subject. The rules shall provide for the 223  
issuance of conditional operating permits for such reasonable 224  
periods as the director may determine to allow the holder of an 225  
installation permit, who has constructed, installed, located, or 226  
modified a new air contaminant source in accordance with the 227  
provisions of an installation permit, to make adjustments or 228  
modifications necessary to enable the new air contaminant source 229  
to comply with applicable emission standards and other rules. 230  
Terms and conditions of operating permits issued pursuant to this 231  
division shall be federally enforceable for the purpose of 232  
establishing the potential to emit of a stationary source and 233  
shall be expressly designated as federally enforceable. Any such 234  
federally enforceable restrictions on a source's potential to emit 235  
shall include both an annual limit and a short-term limit of not 236  
more than thirty days for each pollutant to be restricted together 237  
with adequate methods for establishing compliance with the 238  
restrictions. In other respects, operating permits issued pursuant 239  
to this division are enforceable as state law only. No application 240



shall be denied or permit revoked or modified without a written 241  
order stating the findings upon which denial, revocation, or 242  
modification is based. A copy of the order shall be sent to the 243  
applicant or permit holder by certified mail. 244

(H) Adopt, modify, and rescind rules governing the issuance, 245  
revocation, modification, or denial of variances that authorize 246  
emissions in excess of the applicable emission standards. 247

No variance shall be issued except pursuant to those rules. 248  
The rules shall prescribe conditions and criteria in furtherance 249  
of the purposes of this chapter and consistent with the federal 250  
Clean Air Act governing eligibility for issuance of variances, 251  
which shall include all of the following: 252

(1) Provisions requiring consistency of emissions authorized 253  
by a variance with timely attainment and maintenance of ambient 254  
air quality standards; 255

(2) Provisions prescribing the classes and categories of air 256  
contaminants and air contaminant sources for which variances may 257  
be issued; 258

(3) Provisions defining the circumstances under which an 259  
applicant shall demonstrate that compliance with applicable 260  
emission standards is technically infeasible, economically 261  
unreasonable, or impossible because of conditions beyond the 262  
control of the applicant; 263

(4) Other provisions prescribed in furtherance of the goals 264  
of this chapter. 265

The rules shall prohibit the issuance of variances from any 266  
emission limitation that was applicable to a source pursuant to an 267  
installation permit and shall prohibit issuance of variances that 268  
conflict with the federal Clean Air Act. 269

Applications for variances shall be accompanied by such 270

information as the director may require. In issuing variances, the 271  
director may order the person to whom a variance is issued to 272  
furnish plans and specifications and such other information and 273  
data, including interim reports, as the director may require and 274  
to proceed to take such action within such time as the director 275  
may determine to be appropriate and reasonable to prevent, 276  
control, or abate ~~his~~ the person's existing emissions of air 277  
contaminants. The director shall specify in each variance that the 278  
variance is conditioned upon payment of the applicable fees as 279  
required by section 3745.11 of the Revised Code and upon the right 280  
of ~~his~~ the director's authorized representatives to enter upon the 281  
premises of the person to whom the variance has been issued, at 282  
any reasonable time and subject to safety requirements of the 283  
person in control of the premises, for the purpose of determining 284  
compliance with this chapter, the rules adopted thereunder, and 285  
the conditions of any permit, variance, or order issued 286  
thereunder. 287

The director may hold a public hearing on an application for 288  
a variance or renewal thereof at a location in the county where 289  
the variance is sought. The director shall give not less than 290  
twenty days' notice of the hearing to the applicant by certified 291  
mail and cause at least one publication of notice in a newspaper 292  
with general circulation in the county where the variance is 293  
sought. The director shall keep available for public inspection at 294  
the principal office of the environmental protection agency a 295  
current schedule of pending applications for variances and a 296  
current schedule of pending variance hearings. The director shall 297  
make a complete stenographic record of testimony and other 298  
evidence submitted at the hearing. The director shall make a 299  
written determination to issue, renew, or deny the variance and 300  
shall enter ~~his~~ the determination and the basis therefor into the 301  
record of the hearing. The director shall issue, renew, or deny an 302

application for a variance or renewal thereof, or issue a proposed 303  
action upon the application pursuant to section 3745.07 of the 304  
Revised Code, within six months of the date upon which the 305  
director receives a complete application with all pertinent 306  
information and data required by the director. 307

Any variance granted pursuant to rules adopted under this 308  
division shall be for a period specified by the director, not to 309  
exceed three years, and may be renewed from time to time on such 310  
terms and for such periods, not to exceed three years each, as the 311  
director determines to be appropriate. A variance may be revoked, 312  
or renewal denied, for failure to comply with conditions specified 313  
in the variance. No variance shall be issued, denied, revoked, or 314  
modified without a written order stating the findings upon which 315  
the issuance, denial, revocation, or modification is based. A copy 316  
of the order shall be sent to the applicant or variance holder by 317  
certified mail. 318

(I) Require the person responsible for any air contaminant 319  
source to install, employ, maintain, and operate such emissions, 320  
ambient air quality, meteorological, or other monitoring devices 321  
or methods as the director shall prescribe; to sample those 322  
emissions at such locations, at such intervals, and in such manner 323  
as the director prescribes; to maintain records and file periodic 324  
reports with the director containing information as to location, 325  
size, and height of emission outlets, rate, duration, and 326  
composition of emissions, and any other pertinent information the 327  
director prescribes; and to provide such written notice to other 328  
states as the director shall prescribe. In requiring monitoring 329  
devices, records, and reports, the director, to the extent 330  
consistent with the federal Clean Air Act, shall give 331  
consideration to technical feasibility and economic reasonableness 332  
and allow reasonable time for compliance, and, for sources where a 333  
specific monitoring, record-keeping, or reporting requirement is 334

specified for a particular air contaminant in an applicable 335  
regulation adopted by the United States environmental protection 336  
agency under the federal Clean Air Act, the director shall not 337  
impose an additional requirement other than the requirement 338  
specified in that applicable regulation for that air contaminant. 339  
To the extent consistent with the federal Clean Air Act, the 340  
director shall not require an operating restriction that has the 341  
practical effect of increasing the stringency of an existing 342  
applicable emission limitation or standard. 343

(J) Establish, operate, and maintain monitoring stations and 344  
other devices designed to measure air pollution and ~~to~~ enter into 345  
contracts with any public or private agency for the establishment, 346  
operation, or maintenance of such stations and devices; 347

(K) By rule adopt procedures for giving reasonable public 348  
notice and conducting public hearings on any plans for the 349  
prevention, control, and abatement of air pollution that the 350  
director is required to submit to the federal government; 351

(L) Through any employee, agent, or authorized representative 352  
of the director or the environmental protection agency, enter upon 353  
private or public property, including improvements thereon, at any 354  
reasonable time, to make inspections, take samples, conduct tests, 355  
and examine records or reports pertaining to any emission of air 356  
contaminants and any monitoring equipment or methods and to 357  
determine if there are any actual or potential emissions from such 358  
premises and, if so, to determine the sources, amounts, contents, 359  
and extent of those emissions, or to ascertain whether there is 360  
compliance with this chapter, any orders issued or rules adopted 361  
thereunder, or any other determination of the director. The 362  
director, at reasonable times, may have access to and copy any 363  
such records. If entry or inspection authorized by this division 364  
is refused, hindered, or thwarted, the director or ~~his~~ the 365  
director's authorized representative may by affidavit apply for, 366

and any judge of a court of record may issue, an appropriate 367  
inspection warrant necessary to achieve the purposes of this 368  
chapter within the court's territorial jurisdiction. 369

(M) Accept and administer gifts or grants from the federal 370  
government and from any other source, public or private, for 371  
carrying out any of the functions under this chapter; 372

(N) Obtain necessary scientific, technical, and laboratory 373  
services; 374

(O) Establish advisory boards in accordance with section 375  
121.13 of the Revised Code; 376

(P) Delegate to any city or general health district or 377  
political subdivision of the state any of ~~his~~ the director's 378  
enforcement and monitoring powers and duties, other than 379  
rule-making powers, as the director elects to delegate, and in 380  
addition employ, compensate, and prescribe the powers and duties 381  
of such officers, employees, and consultants as are necessary to 382  
enable the director to exercise ~~his~~ the authority and perform 383  
duties imposed upon ~~him~~ the director by law. Technical and other 384  
services shall be performed, insofar as practical, by personnel of 385  
the environmental protection agency. 386

(Q) Certify to the government of the United States or any 387  
agency thereof that an industrial air pollution facility is in 388  
conformity with the state program or requirements for control of 389  
air pollution whenever such certificate is required for a taxpayer 390  
pursuant to any federal law or requirements; 391

(R) Issue, modify, or revoke orders requiring abatement of or 392  
prohibiting emissions ~~which~~ that violate applicable emission 393  
standards or other requirements of this chapter and rules adopted 394  
thereunder, or requiring emission control devices or measures in 395  
order to comply with applicable emission standards or other 396  
requirements of this chapter and rules adopted thereunder. Any 397

such order shall require compliance with applicable emission 398  
standards by a specified date and shall not conflict with any 399  
requirement of the federal Clean Air Act. In the making of such 400  
orders, the director, to the extent consistent with the federal 401  
Clean Air Act, shall give consideration to, and base ~~his~~ the 402  
determination on, evidence relating to the technical feasibility 403  
and economic reasonableness of compliance with such orders and 404  
their relation to benefits to the people of the state to be 405  
derived from such compliance. If, under the federal Clean Air Act, 406  
any such order shall provide for the posting of a bond or surety 407  
to secure compliance with the order as a condition of issuance of 408  
the order, the order shall so provide, but only to the extent 409  
required by the federal Clean Air Act. 410

(S) To the extent provided by the federal Clean Air Act, 411  
adopt, modify, and rescind rules providing for the administrative 412  
assessment and collection of monetary penalties, not in excess of 413  
those required pursuant to the federal Clean Air Act, for failure 414  
to comply with any emission limitation or standard, compliance 415  
schedule, or other requirement of any rule, order, permit, or 416  
variance issued or adopted under this chapter or required under 417  
the applicable implementation plan whether or not the source is 418  
subject to a federal or state consent decree. The director may 419  
require the submission of compliance schedules, calculations of 420  
penalties for noncompliance, and related information. Any orders, 421  
payments, sanctions, or other requirements imposed pursuant to 422  
rules adopted under this division shall be in addition to any 423  
other permits, orders, payments, sanctions, or other requirements 424  
established under this chapter and shall not affect any civil or 425  
criminal enforcement proceedings brought under any provision of 426  
this chapter or any other provision of state or local law. This 427  
division does not apply to any requirement of this chapter 428  
regarding the prevention or abatement of odors. 429

(T) ~~Adopt procedures under which the director shall consider~~ 430  
~~best available technology for the pollutants regulated by the new~~ 431  
~~source performance standards established pursuant to the federal~~ 432  
~~Clean Air Act in order to establish emission limits in~~ 433  
~~installation permits issued pursuant to division (F) of this~~ 434  
~~section. The emission limits shall be equivalent to those new~~ 435  
~~source performance standards unless the standards are more than~~ 436  
~~five years old or have not been reviewed by the United States~~ 437  
~~environmental protection agency for more than five years. In~~ 438  
~~determining what technology is best for a specific source~~ 439  
~~application, the director may consider the extent to which a~~ 440  
~~technology generates pollution or waste other than air emissions~~ 441  
~~and shall approve the most cost effective among essentially~~ 442  
~~similar efficient control technologies as demonstrated by the~~ 443  
~~permit applicant to the satisfaction of the director. Any facility~~ 444  
~~that is subject to the federal prevention of significant~~ 445  
~~deterioration regulations and major new source review shall comply~~ 446  
~~with those regulations Require new or modified air contaminant~~ 447  
~~sources to install best available technology, but only in~~ 448  
~~accordance with this division. With respect to permits issued~~ 449  
~~pursuant to division (F) of this section on or after January 1,~~ 450  
~~2008, best available technology for air contaminant sources and~~ 451  
~~air contaminants emitted by those sources that are subject to~~ 452  
~~standards adopted under section 112, Part C of Title I, and Part D~~ 453  
~~of Title I of the federal Clean Air Act shall be equivalent to and~~ 454  
~~no more stringent than those standards. For an air contaminant or~~ 455  
~~precursor of an air contaminant for which a national ambient air~~ 456  
~~quality standard has been adopted under the federal Clean Air Act,~~ 457  
~~best available technology only shall be required to the extent~~ 458  
~~required by rules adopted under Chapter 119. of the Revised Code~~ 459  
~~for permit to install applications filed on or after January 1,~~ 460  
~~2008.~~ 461

Best available technology requirements established in rules 462  
adopted under this division shall be expressed only in one of the 463  
following ways that is most appropriate for the applicable source 464  
or source categories: 465

(1) Work practices; 466

(2) Source design characteristics or design efficiency of 467  
applicable air contaminant control devices; 468

(3) Raw material specifications or throughput limitations 469  
averaged over a twelve-month rolling period; 470

(4) Monthly allowable emissions averaged over a twelve-month 471  
rolling period. 472

The rules shall not apply to an air contaminant source that 473  
has the potential to emit, taking into account air pollution 474  
controls installed on the source, less than ten tons of emissions 475  
of an air contaminant or precursor of an air contaminant for which 476  
a national ambient air quality standard has been adopted under the 477  
federal Clean Air Act. Best available technology requirements 478  
established in rules adopted under this division shall not apply 479  
to any existing, new, or modified air contaminant source that is 480  
subject to a plantwide applicability limit that has been approved 481  
by the director. 482

(U) Consistent with section 507 of the federal Clean Air Act, 483  
adopt, modify, suspend, and rescind rules for the establishment of 484  
a small business stationary source technical and environmental 485  
compliance assistance program as provided in section 3704.18 of 486  
the Revised Code; 487

(V) Provide for emissions trading, marketable permits, 488  
auctions of emission rights, and economic incentives that would 489  
reduce the cost or increase the efficiency of achieving a 490  
specified level of environmental protection; 491



(W) Provide for the construction of an air contaminant source 492  
prior to obtaining a permit to install pursuant to division (F) of 493  
this section if the applicant demonstrates that the source will be 494  
installed to comply with all applicable emission limits and will 495  
not adversely affect public health or safety or the environment 496  
and if the director determines that such an action will avoid an 497  
unreasonable hardship on the owner or operator of the source. Any 498  
such determination shall be consistent with the federal Clean Air 499  
Act. 500

(X) Exercise all incidental powers, including adoption of 501  
rules, required to carry out this chapter. 502

The environmental protection agency shall develop a plan to 503  
control air pollution resulting from state-operated facilities and 504  
property. 505

**Sec. 3704.09.** Determinations made by the director of 506  
environmental protection or other persons acting under sections 507  
3704.03 and 3704.04 of the Revised Code shall not be used as 508  
evidence in civil actions nor create any presumption of law or 509  
finding of fact ~~which~~ that shall inure to or be for the benefit of 510  
any person other than the state, and sections 3704.01 to 3704.07 511  
of the Revised Code do not create, or enlarge, ~~or abrogate~~ 512  
existing private rights. ~~Nothing~~ In a private civil action for an 513  
alleged nuisance related to the installation or operation of an 514  
air contaminant source, it is an affirmative defense if the air 515  
contaminant source is in compliance with the terms and conditions 516  
of any permit or applicable rules authorizing the installation or 517  
operation of the air contaminant source. Except as provided in 518  
this section, nothing in Chapter 3704. of the Revised Code this 519  
chapter shall be construed to abridge, limit, or otherwise impair 520  
the right of any person to damages or other relief on account of 521  
injury to persons or property and to maintain any action or other 522

appropriate proceedings therefor. 523

**Section 2.** That existing sections 3704.02, 3704.03, and 524  
3704.09 of the Revised Code are hereby repealed. 525