

AN ACT

To amend sections 903.25, 905.31, 905.32, 905.34, 905.36, 905.39, 905.41, 905.45, 905.46, 905.47, 905.48, 905.49, 905.50, 905.99, 907.111, 1511.01, 1511.02, 1511.021, 1511.07, 1511.071, 1515.01, 1515.02, 1515.08, 3717.53, 6111.03, 6111.04, and 6111.44; to amend for the purpose of adopting a new section number as indicated in parentheses section 905.501 (905.503); and to enact new section 905.501 and sections 905.321, 905.322, 905.323, 905.324, 905.325, 905.502, and 1511.023 of the Revised Code to revise the law governing the abatement of agricultural pollution, to require a person that applies fertilizer for the purposes of agricultural production to be certified to do so by the Director of Agriculture, to make other changes to the Agricultural Additives, Lime, and Fertilizer Law.

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

SECTION 1. That sections 903.25, 905.31, 905.32, 905.34, 905.36, 905.39, 905.41, 905.45, 905.46, 905.47, 905.48, 905.49, 905.50, 905.99, 907.111, 1511.01, 1511.02, 1511.021, 1511.07, 1511.071, 1515.01, 1515.02, 1515.08, 3717.53, 6111.03, 6111.04, and 6111.44 be amended, section 905.501 (905.503) be amended for the purpose of adopting a new section number as indicated in parentheses, and new section 905.501 and sections 905.321, 905.322, 905.323, 905.324, 905.325, 905.502, and 1511.023 of the Revised Code be enacted to read as follows:

Sec. 903.25. An owner or operator of an animal feeding facility who holds a permit to install, a permit to operate, a review compliance certificate, or a NPDES permit or who is operating under an operation and management plan, as defined in section 1511.01 of the Revised Code, developed or approved by the chief of the division of soil and water resources in the

department of natural resources under section 1511.02 of the Revised Code or by the supervisors of the appropriate soil and water conservation district under section 1515.08 of the Revised Code shall not be required by any political subdivision of the state or any officer, employee, agency, board, commission, department, or other instrumentality of a political subdivision to obtain a license, permit, or other approval pertaining to manure, insects or rodents, odor, or siting requirements for installation of an animal feeding facility.

Sec. 905.31. As used in sections 905.31 to ~~905.501~~ 905.503 of the Revised Code:

~~(A)~~ "Applicant" means the person who applies for the license or requests registration of a fertilizer.

~~(B)~~ "Brand name" means a name or expression, design, or trademark used in connection with one or several grades of any type of fertilizer.

~~(C)~~ (B) "Bulk fertilizer" means any type of fertilizer in solid, liquid, or gaseous state, or any combination thereof, in a nonpackaged form.

~~(D)~~ (C) "Distribute" means to offer for sale, sell, barter, or otherwise supply fertilizer for other than manufacturing purposes.

~~(E)~~ (D) "Fertilizer" means any substance containing nitrogen, phosphorus, or potassium or any recognized plant nutrient element or compound that is used for its plant nutrient content or for compounding mixed fertilizers. ~~Lime~~ "Fertilizer" does not include lime, limestone, marl, unground bone, water, residual farm products, and ~~unmanipulated~~ animal and vegetable manures ~~are excepted~~ unless mixed with fertilizer materials or distributed with a guaranteed analysis.

~~(F)~~ (E) "Grade" means the percentages of total nitrogen, available phosphorus or available phosphate (P_2O_5), and soluble potassium or soluble potash (K₂O) stated in the same terms, order, and percentage as in guaranteed analysis.

~~(G)~~ (F) "Guaranteed analysis" means:

(1) The minimum percentages of plant nutrients claimed in the following order and form:

Total Nitrogen (N)	per cent
Available phosphate (P_2O_5)	per cent
Soluble Potash (K ₂ O)	per cent

(2) Guaranteed analysis includes, in the following order:

(a) For bone and tankage, total phosphorus (P) or phosphate (P_2O_5);

(b) For basic slag and unacidulated phosphatic materials, available and total phosphorus (P) or phosphate (P_2O_5) and the degree of fineness;

(c) Additional plant nutrients guaranteed expressed as percentage of

elements in the order and form as prescribed by rules adopted by the director of agriculture.

~~(H)~~(G) "Label" means any written or printed matter on the package or tag attached to it or on the pertinent delivery and billing invoice.

~~(H)~~(H) "Manufacture" means to process, granulate, blend, mix, or alter the composition of fertilizers for distribution.

~~(J)~~(I) "Mixed fertilizer" means any combination or mixture of fertilizer designed for use, or claimed to have value, in promoting plant growth, including fertilizer pesticide mixtures.

~~(K)~~(J) "Net weight" means the weight of a commodity excluding any packaging in pounds or metric equivalent, as determined by a sealed weighing device or other means prescribed by rules adopted by the director.

~~(L)~~(K) "Packaged fertilizer" means any type of fertilizer in closed containers of not over one hundred pounds or metric equivalent.

~~(M)~~(L) "Per cent" or "percentage" means the percentage of weight.

~~(N)~~(M) "Person" includes any partnership, association, firm, corporation, company, society, individual or combination of individuals, institution, park, or public agency administered by the state or any subdivision of the state.

~~(O)~~(N) "Product name" means a coined or specific designation applied to an individual fertilizer material or mixture of a fixed composition and derivation.

~~(P)~~(O) "Sale" means exchange of ownership or transfer of custody.

~~(Q)~~(P) "Official sample" means the sample of fertilizer taken and designated as official by the director.

~~(R)~~(Q) "Specialty fertilizer" means any fertilizer designed, labeled, and distributed for uses other than the production of commercial crops.

~~(S)~~(R) "Ton" means a net weight of two thousand pounds.

~~(T)~~ "Unmanipulated manure" means any substance composed primarily of excreta, plant remains, or mixtures of such substances that have not been processed in any manner.

~~(U)~~(S) "Fertilizer material" includes any of the following:

(1) A material containing not more than one of the following primary plant nutrients:

- (a) Nitrogen (N);
- (b) Phosphorus (P);
- (c) Potassium (K).

(2) A material that has not less than eighty-five per cent of its plant nutrient content composed of a single chemical compound;

(3) A material that is derived from a residue or by-product of a plant or

animal or a natural material deposit and has been processed in such a way that its plant nutrients content has not been materially changed except by purification and concentration.

~~(V)~~(T) "Custom mixed fertilizer" means a fertilizer that is not premixed, but that is blended specifically to meet the nutrient needs of one specific customer.

~~(W)~~(U) "Director" or "director of agriculture" means the director of agriculture or the director's designee.

~~(X)~~(V) "Lot" means an identifiable quantity of fertilizer that may be used as an official sample.

~~(Y)~~(W) "Unit" means twenty pounds of fertilizer or one per cent of a ton.

~~(Z)~~ "Metric ton" means a measure of weight equal to one thousand kilograms.

~~(AA)~~(X) "Anhydrous ammonia equipment" means, with regard to the handling or storage of anhydrous ammonia, a container or containers with a maximum capacity of not more than four thousand nine hundred ninety-nine gallons or any appurtenances, pumps, compressors, or interconnecting pipes associated with such a container or containers. "Anhydrous ammonia equipment" does not include equipment for the manufacture of anhydrous ammonia or the storage of anhydrous ammonia either underground or in refrigerated structures.

~~(BB)~~(Y) "Anhydrous ammonia system" or "system" means, with regard to the handling or storage of anhydrous ammonia, a container or containers with a minimum capacity of not less than five thousand gallons or any appurtenances, pumps, compressors, or interconnecting pipes associated with such a container or containers. "Anhydrous ammonia system" does not include equipment for the manufacture of anhydrous ammonia or the storage of anhydrous ammonia either underground or in refrigerated structures.

(Z) "Agricultural production" means the cultivation, primarily for sale, of plants or any parts of plants on more than fifty acres. "Agricultural production" does not include the use of start-up fertilizer applied through a planter.

(AA) "Rule" means a rule adopted under section 905.322, 905.40, or 905.44 of the Revised Code, as applicable.

(BB) "Certificate holder" means a person who has been certified to apply fertilizer under section 905.321 of the Revised Code and rules adopted under section 905.322 of the Revised Code.

(CC) "Residual farm products" has the same meaning as in section 1511.01 of the Revised Code.

(DD) "Voluntary nutrient management plan" means any of the following:

(1) A nutrient management plan that is in the form of the Ohio nutrient management workbook made available by the Ohio state university;

(2) A comprehensive nutrient management plan developed by the United States department of agriculture natural resources conservation service, a technical service provider certified by the conservation service, or a person authorized by the conservation service to develop a plan;

(3) A document that is equivalent to a plan specified in division (DD)(1) or (2) of this section, that is in a form approved by the director or the director's designee, and that contains at least all of the following information:

(a) Results of soil tests conducted on land subject to the plan that comply with the field office technical guide established by the conservation service and adopted by the chief of the division of soil and water resources in the department of natural resources in rules adopted under division (E) of section 1511.02 of the Revised Code and that are not older than three years;

(b) Documentation of the method and seasonal time of utilization and application of nutrients;

(c) Identification of all nutrients applied, including manure, fertilizer, sewage sludge, and biodigester residue;

(d) Field information regarding land subject to the plan, including the location, spreadable acreage, crops grown, and actual and projected yields.

Sec. 905.32. (A) No person shall manufacture or distribute in this state any type of fertilizer until a license to manufacture or distribute has been obtained by the manufacturer or distributor from the department of agriculture upon payment of a five-dollar fee:

(1) For each fixed (permanent) location at which fertilizer is manufactured in this state;

(2) For each mobile unit used to manufacture fertilizer in this state;

(3) For each location out of the state from which fertilizer is distributed ~~in~~ into this state ~~to nonlicensees~~;

(4) For each location in this state from which fertilizer is distributed in this state.

All licenses shall be valid for one year beginning on the first day of December of a calendar year through the thirtieth day of November of the following calendar year. A renewal application for a license shall be submitted no later than the thirtieth day of November each year. A person who submits a renewal application for a license after the thirtieth day of November shall include with the application a late filing fee of ten dollars.

(B) An application for a license shall include:

(1) The name and address of the licensee;

(2) The name and address of each bulk distribution point in the state, not licensed for fertilizer manufacture and distribution.

The name and address shown on the license shall be shown on all labels, pertinent invoices, and bulk storage for fertilizers distributed by the licensee in this state.

(C) The licensee shall inform the director of agriculture in writing of additional distribution points established during the period of the license.

(D) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Sec. 905.321. (A) Beginning September thirtieth of the third year after the effective date of this section, no person shall apply fertilizer for the purposes of agricultural production unless that person has been certified to do so by the director of agriculture under this section and rules or is acting under the instructions and control of a person who is so certified.

(B) A person shall be certified to apply fertilizer for purposes of agricultural production in accordance with rules. A person that has been so certified shall comply with requirements and procedures established in those rules.

(C) A person that has been licensed as a commercial applicator under section 921.06 of the Revised Code or as a private applicator under section 921.11 of the Revised Code may apply to be certified under this section, but shall not be required to pay the application fee for certification established in rules adopted under section 905.322 of the Revised Code.

Sec. 905.322. (A) The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Create a fertilizer applicator certification program pursuant to section 905.321 of the Revised Code that does all of the following:

(a) Educates an applicant for certification on the time, place, form, amount, handling, and application of fertilizer;

(b) Serves as a component of a comprehensive state nutrient reduction strategy addressing all sources of relevant nutrients;

(c) Supports generally practical and economically feasible best management practices.

(2) Establish all of the following concerning certifications that are required by section 905.321 of the Revised Code:

(a) The amount of the fee that must be submitted with an application for

certification, if applicable, provided that the fee shall not exceed the fee established in rules adopted under section 921.16 of the Revised Code for a private pesticide applicator license issued under section 921.11 of the Revised Code;

(b) Information that must be included with an application for certification;

(c) Procedures for the issuance, renewal, and denial of certifications;

(d) Grounds for the denial of certifications;

(e) Requirements and procedures governing training that must be successfully completed in order for a person to be certified;

(f) Requirements for the maintenance of records by a person that is certified, including, but not limited to, the date of application of fertilizer, the place of application of fertilizer, the rate of application of fertilizer, an analysis of the fertilizer, and the name of the person applying the fertilizer. The rules shall stipulate that the records shall be maintained for not more than three years from the date of the fertilizer application and shall not be required to be submitted to the director or the director's designee, but shall be made available to the director or the director's designee for review upon request.

(3) Establish requirements and procedures with which a licensee or registrant must comply when filing an annual tonnage report under section 905.36 of the Revised Code, including the date on which the report must be filed.

(B) The director may adopt rules in accordance with Chapter 119. of the Revised Code that do all of the following:

(1) Establish criteria in accordance with which a person may be exempt from any training that is required in order to be certified under section 905.321 of the Revised Code;

(2) Specify any type of cultivation that is to be excluded from the definition of "agricultural production";

(3) Define "under the instructions and control" for the purpose of section 905.321 of the Revised Code.

Sec. 905.323. (A)(1) A person who owns or operates agricultural land may do any of the following:

(a) Develop a voluntary nutrient management plan;

(b) Request any person to develop a voluntary nutrient management plan on behalf of the person who owns or operates the agricultural land;

(c) Request the supervisors of the applicable soil and water conservation district organized in accordance with Chapter 1515. of the Revised Code to develop a voluntary nutrient management plan on the person's behalf.

(2) A person who owns or operates agricultural land and who has developed or has had developed a voluntary nutrient management plan under division (A)(1)(a) or (b) of this section, as applicable, may request the supervisors of the applicable soil and water conservation district, the director of agriculture, or the director's designee to approve the plan. The supervisors, director, or director's designee shall approve or disapprove the plan.

(B) If a voluntary nutrient management plan is disapproved under this section, the person who developed the plan or had it developed may request an adjudication hearing in accordance with Chapter 119. of the Revised Code.

(C) A person whose voluntary nutrient management plan is disapproved may appeal to the court of common pleas of Franklin county.

(D) After a voluntary nutrient management plan has been approved under this section, the person who developed the plan or had it developed shall submit the plan once every five years to the supervisors of the applicable soil and water conservation district or the director for review. If after the review the supervisors or the director determines that the plan needs to be modified, the supervisors or director shall notify the person who submitted the plan. The person then shall provide for the modification of the plan. The procedures and requirements established in divisions (A) to (C) of this section apply to a modification of the plan.

Sec. 905.324. (A) Except as provided in division (B) of this section, the director of agriculture, an employee of the department of agriculture, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the department or a district shall not disclose information, including data from geographic information systems and global positioning systems, used in the development or approval of or contained in a voluntary nutrient management plan.

(B) The director or the supervisors of a district may release or disclose information specified in division (A) of this section to a person or a federal, state, or local agency working in cooperation with the director or the supervisors in the development or approval of a voluntary nutrient management plan if the director or supervisors determine that the person or federal, state, or local agency will not subsequently disclose the information to another person who is not authorized by the person who owns or operates agricultural land to receive the information. The director or the supervisors of a district may release or disclose information specified in division (A) of this section to the extent required by the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code.

Sec. 905.325. In a private civil action for claims involving or resulting from the application of fertilizer, it is an affirmative defense if all of the following apply:

(A) The person applying the fertilizer is certified or is applying fertilizer under the instruction and control of a person who is certified under section 905.321 of the Revised Code and rules.

(B) Records have been properly maintained for the application of fertilizer as required by rules adopted under division (A)(2)(f) of section 905.322 of the Revised Code.

(C) The fertilizer has been applied according to and in substantial compliance with a voluntary nutrient management plan developed under section 905.323 of the Revised Code, provided that the plan has been approved under that section or developed by the supervisors of the applicable soil and water conservation district under that section.

Sec. 905.34. No distributor shall be required to obtain a license ~~if the manufacturer is licensed~~ under division (A) of section 905.32 of the Revised Code; ~~or to distribute fertilizer if the manufacturer or distributor~~ fertilizer is registered under division (A) of section 905.33 of the Revised Code.

Sec. 905.36. (A) A licensee or registrant, ~~except registrants who package specialty fertilizers only in containers of ten pounds or less,~~ shall pay the director of agriculture ~~for all fertilizers distributed in this state~~ an inspection fee ~~at the rate of twenty-five cents per ton or twenty-eight cents per metric ton. Licensees and registrants shall specify on an invoice whether the per ton inspection fee has been paid or whether payment of the fee is the responsibility of the purchaser of the fertilizer. The payment of this inspection fee by a licensee or registrant shall exempt all other persons from the payment of this fee~~ for all of the following, as applicable:

(1) All fertilizer that the licensee distributes in this state to a person that has not been issued a license under section 905.32 of the Revised Code;

(2) All fertilizer that the licensee applies in this state for purposes of agricultural production and all fertilizer that is applied in this state on behalf of the licensee by an employee or contractor who is certified under section 905.321 of the Revised Code;

(3) All fertilizer that the registrant distributes in this state.

However, the inspection fee does not apply to packaged fertilizers that are in containers of ten pounds or less.

(B) Every licensee or registrant shall file with the director an annual tonnage report ~~that includes the number of net tons or metric tons of fertilizer distributed to nonlicensees or nonregistrants in this state by grade; packaged; bulk, dry or liquid~~ in accordance with rules. The report shall be

filed on or before the ~~thirtieth day of November of each calendar year and shall include data from the period beginning on the first day of November of the year preceding the year in which the report is due through the thirty first day of October of the year in which the report is due~~ date specified in rules. The licensee or registrant, ~~except registrants who package specialty fertilizers only in containers of ten pounds or less,~~ shall include with ~~this statement~~ the report the inspection fee at the rate stated in division (A) of this section. For a tonnage report that is not filed or payment of inspection fees that is not made on or before the ~~thirtieth day of November of the applicable calendar year~~ date specified in rules, a penalty of fifty dollars or ten per cent of the amount due, whichever is greater, shall be assessed against the licensee or registrant. The amount of fees due, plus penalty, shall constitute a debt and become the basis of a judgment against the licensee or registrant. For tonnage reports found to be incorrect, a penalty of fifteen per cent of the amount due shall be assessed against the licensee or registrant and shall constitute a debt and become the basis of a judgment against the licensee or registrant.

(C) No information furnished under this section shall be disclosed by any employee of the department of agriculture in such a way as to divulge the operation of any person required to make such a report. The filing by a licensee or registrant of a ~~sales volume tonnage statement~~ report required by division (B) of this section thereby grants permission to the director to verify the same with the records of the licensee or registrant.

(D) All money collected under this section shall be credited to the pesticide, fertilizer, and lime program fund created in section 921.22 of the Revised Code.

Sec. 905.39. (A) The director of agriculture shall inspect and sample any fertilizer within the state to such an extent as the director considers necessary and make an analysis where need is indicated to determine whether the fertilizer is in compliance with sections 905.31 to ~~905.50~~ 905.503 of the Revised Code and ~~the rules adopted under those sections~~. The director may enter upon any public or private premises or conveyances during regular business hours in order to have access to fertilizer subject to sections 905.31 to ~~905.50~~ 905.503 of the Revised Code and ~~the rules adopted under those sections~~.

(B) The director shall maintain the services necessary to effectively administer and enforce sections 905.31 to ~~905.50~~ 905.503 of the Revised Code and ~~the rules adopted under those sections~~. The methods of sampling and analysis shall be those adopted by the association of official analytical chemists or other sources prescribed by the director.

(C) The results of official analysis of any sample of fertilizer found to be in violation of any provisions of sections 905.31 to ~~905.50~~ 905.503 of the Revised Code or any rule ~~adopted under those sections~~, shall be forwarded to the licensee or registrant. A licensee or registrant may request a portion of any such sample, provided that the request is made not more than thirty days after the date of the analysis report.

(D) Analytical tolerances shall be governed by rules ~~adopted by the director~~.

(E) If the director is denied access to any premises where access is sought for the purpose of inspection and sampling, the director may apply to any court of competent jurisdiction for a search warrant authorizing access to the premises for that purpose. The court, upon application, may issue the search warrant for the purpose requested.

Sec. 905.41. (A) A storage facility for anhydrous ammonia that is used for agricultural purposes shall be designed and constructed in accordance with rules ~~adopted under section 905.40 of the Revised Code~~. On and after ~~the effective date of this section~~ September 10, 2012, no person shall construct a storage facility for anhydrous ammonia that is used for agricultural purposes without applying for and receiving approval of the design of the facility and approval to construct the facility from the director of agriculture in accordance with ~~those~~ rules.

(B) Upon the submission of an application to the director for the approval of the design and construction of a storage facility for anhydrous ammonia that is used for agricultural purposes in accordance with rules ~~adopted under section 905.40 of the Revised Code~~, the applicant shall submit written notification of the application to all of the following:

(1) The board of township trustees of the township or the legislative authority of the municipal corporation, as applicable, in which the storage facility is proposed to be located;

(2) The county sheriff, or the police chief of the police department of a municipal corporation, township, or township or joint township police district, as applicable, with jurisdiction over the location where the storage facility is proposed to be located;

(3) The fire chief of the fire department with jurisdiction over the location where the storage facility is proposed to be located.

(C) Prior to approving or disapproving a storage facility for anhydrous ammonia that is used for agricultural purposes, the director may take into consideration any past violations of an applicable state or federal law pertaining to environmental protection or the environmental laws of another country or any conviction of or guilty plea to a violation of section 901.511

of the Revised Code or a felony drug offense as defined in section 2925.01 of the Revised Code related to the use and storage of chemicals used for agriculture by the owner of the storage facility.

Sec. 905.45. ~~(A) The director of agriculture may revoke the registration of any grade and brand name of fertilizer or any license, or may suspend any registration or license, or may refuse to register any grade and brand name of fertilizer, or to license any applicant, upon a finding supported by substantial evidence that the registrant, licensee, or applicant has violated any provision of sections 905.31 to 905.50 of the Revised Code, or any rules adopted under those sections. No registration or license shall be refused, suspended, or revoked until the~~ do any of the following upon a finding that a registrant, licensee, certificate holder, or applicant has violated any provision of sections 905.31 to 905.503 of the Revised Code or any rules:

- (1) Revoke the registration of any grade and brand name of fertilizer;
- (2) Revoke any license or certificate;
- (3) Suspend any registration, license, or certificate;
- (4) Refuse to register any grade and brand name of fertilizer;
- (5) Refuse to license or certify any applicant.

A registrant, licensee, certificate holder, or applicant ~~has been~~ shall be given an opportunity to appear at an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code.

(B) The director, prior to a hearing, may deny, suspend, revoke, refuse to renew, or modify any provision of a fertilizer applicator certificate issued under section 905.321 of the Revised Code and rules if the director has substantial reason to believe the certificate holder has recklessly applied fertilizer in such a manner that an emergency exists that presents a clear and present danger to human or animal health.

The director shall provide an opportunity for a hearing without delay after such a denial, suspension, revocation, refusal to renew, or modification.

Sec. 905.46. The director of agriculture may issue an order to the owner or custodian of any lot of fertilizer requiring it to be held at a designated place when the director has found the fertilizer to have been offered or exposed for sale in violation of sections 905.31 to ~~905.50~~ 905.503 of the Revised Code; or any rule ~~adopted under those sections~~. A fertilizer shall be held until a release in writing is issued by the director. A release shall not be issued until sections 905.31 to ~~905.50~~ 905.503 of the Revised Code; and ~~the rules adopted under those sections~~, are complied with and until all costs and expenses incurred in connection with the violation have been paid by the manufacturer, distributor, licensee, or registrant.

Sec. 905.47. Any lot of fertilizer not in compliance with sections 905.31 to ~~905.50~~ 905.503 of the Revised Code, or any rule ~~adopted under those sections~~, is subject to seizure on complaint of the director of agriculture to a court of competent jurisdiction in the county in which the fertilizer is located. The court upon a finding that the fertilizer is in violation of sections 905.31 to ~~905.50~~ 905.503 of the Revised Code, or any rule ~~adopted under those sections~~, shall order the condemnation of the fertilizer, and it shall be disposed of in a manner consistent with the laws of this state. The court shall not order the condemnation of the fertilizer without first giving the manufacturer or distributor an opportunity to reprocess or relabel the fertilizer to bring it into compliance with sections 905.31 to ~~905.50~~ 905.503 of the Revised Code, and the rules ~~adopted under those sections~~.

Sec. 905.48. In addition to the remedies provided and irrespective of whether or not there exists any adequate remedy at law, the director of agriculture may apply to the court of common pleas in the county wherein any of the provisions of sections 905.31 to ~~905.50~~ 905.503 of the Revised Code, are being violated for a temporary or permanent injunction restraining any person from ~~such~~ the violation.

Sec. 905.49. Nothing in sections 905.31 to ~~905.50~~ 905.503 of the Revised Code, shall be considered either to restrict the distribution of fertilizers to each other by importers or manufacturers, who mix fertilizer materials for distribution, or to prevent the free and unrestricted shipment of fertilizer to manufacturers who are licensed or have registered their specialty fertilizer grades and brand names as required by sections 905.31 to ~~905.50~~ 905.503 of the Revised Code.

Sec. 905.50. If the director of agriculture has taken an official sample of a fertilizer or mixed fertilizer and determined that it constitutes mislabeled fertilizer pursuant to rules ~~adopted under section 905.40 or 905.44 of the Revised Code, as applicable~~, the person who labeled the fertilizer or mixed fertilizer shall pay a penalty to the consumer of the mislabeled fertilizer or, if the consumer cannot be determined with reasonable diligence or is not available, to the director to be credited to the pesticide, fertilizer, and lime program fund created under section 921.22 of the Revised Code. The amount of the penalty shall be calculated in accordance with either division (A) or (B) of this section, whichever method of calculation yields the largest amount.

(A)(1) A penalty required to be paid under this section may be calculated as follows:

(a) Five dollars for each percentage point of total nitrogen or phosphorus in the fertilizer that is below the percentage of nitrogen or

phosphorus guaranteed on the label, multiplied by the number of tons of mislabeled fertilizer that have been sold to the consumer;

(b) Three dollars for each percentage point of potash in the fertilizer that is below the percentage of potash guaranteed on the label, multiplied by the number of tons of mislabeled fertilizer that have been sold to the consumer.

(2) In the case of a fertilizer that contains a quantity of nitrogen, phosphorus, or potash that is more than five percentage points below the percentages guaranteed on the label, the penalties calculated under division (A)(1) of this section shall be tripled.

(3) No penalty calculated under division (A) of this section shall be less than twenty-five dollars.

(B) A penalty required to be paid under this section may be calculated by multiplying the market value of one unit of the mislabeled fertilizer by the number of units of the mislabeled fertilizer that have been sold to the consumer.

(C) Upon making a determination under this section that a person has mislabeled fertilizer or mixed fertilizer, the director shall determine the parties to whom the penalty imposed by this section is required to be paid and, in accordance with division (A) or (B) of this section, as applicable, shall calculate the amount of the penalty required to be paid to each such party. After completing those determinations and calculations, the director shall issue to the person who allegedly mislabeled the fertilizer or mixed fertilizer a notice of violation. The notice shall be accompanied by an order requiring, and specifying the manner of, payment of the penalty imposed by this section to the parties in the amounts set forth in the determinations and calculations required by this division. The order shall be issued in accordance with Chapter 119. of the Revised Code.

No person shall violate a term or condition of an order issued under this division.

Sec. 905.501. (A) Except as provided in division (B) of this section, whenever the director of agriculture has cause to believe that a person has violated, or is violating, sections 905.31 to 905.503 of the Revised Code or rules or an order issued under those sections or rules, the director may conduct a hearing in accordance with Chapter 119. of the Revised Code to determine whether a violation has occurred. If the director determines that a violation has occurred, the director may require the violator to pay a civil penalty in accordance with the schedule of civil penalties established in rules. Each day of violation constitutes a separate violation.

(B) A person who fails to comply with rules adopted under division (A)(2)(f) of section 905.322 of the Revised Code is not subject to division

(A) of this section.

Sec. 905.502. Nothing in sections 905.31 to 905.502 of the Revised Code or rules shall be construed to require the director of agriculture to report any findings to the appropriate prosecuting authority for proceedings in the prosecution of, or issue any order or institute any enforcement procedure for, a violation of sections 905.31 to 905.502 of the Revised Code or rules when the director believes that the public interest will be best served by a suitable written notice of warning. A person who receives a written notice of warning may respond in writing to the notice.

~~Sec. 905.501~~ 905.503. (A) As used in this section:

(1) "Political subdivision" means a county, township, or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(2) "Local legislation" includes, but is not limited to, an ordinance, resolution, regulation, rule, motion, or amendment that is enacted or adopted by a political subdivision.

(B)(1) No political subdivision shall regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizer, or require a person licensed or registered under sections 905.31 to 905.99 of the Revised Code to obtain a license or permit to operate in a manner described in those sections, or to satisfy any other condition except as provided by a statute or rule of this state or of the United States.

(2) No political subdivision shall enact, adopt, or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizers.

~~Sec. 905.99. Whoever~~ (A) Except as provided in division (B) of this section, whoever violates ~~section 905.02, 905.04, 905.08, 905.11, 905.32, 905.33, 905.331, 905.35, 905.36, 905.40, 905.42, 905.43, 905.44, 905.45, 905.50, 905.52, 905.54, 905.55, 905.59, 905.60, or 905.61 of the Revised Code~~ this chapter or rules adopted under it is guilty of a misdemeanor of the ~~second~~ third degree ~~for~~ on a first offense. ~~On each subsequent offense the offender is guilty of, a misdemeanor of the second degree on a second offense, and a misdemeanor of the first degree on a third or subsequent offense.~~

(B) A person who fails to comply with rules adopted under division (A)(2)(f) of section 905.322 of the Revised Code is not subject to division (A) of this section.

Sec. 907.111. (A) The department of agriculture has sole and exclusive authority to regulate the registration, labeling, sale, storage, transportation, distribution, notification of use, use, and planting of seed within the state.

The regulation of seed is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the regulation of seed within this state.

(B) No political subdivision shall do any of the following:

(1) Regulate the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed;

(2) Require a person who has been issued a permit or license under this chapter to obtain a permit or license to operate in a manner described in this chapter or to satisfy any other condition except as provided by a statute or rule of this state or of the United States;

(3) Require a person who has registered a legume inoculant under this chapter to register that inoculant in a manner described in this chapter or to satisfy any other condition except as provided by a statute or rule of this state or of the United States.

(C) No political subdivision shall enact, adopt, or continue in effect local legislation relating to the permitting or licensure of any person who is required to obtain a permit or license under this chapter or to the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed.

(D) As used in this section, "political subdivision" and "local legislation" have the same meanings as in section ~~905.501~~ 905.503 of the Revised Code.

Sec. 1511.01. ~~For the purposes of~~ As used in this chapter:

(A) "Conservation" means the wise use and management of natural resources.

(B) "Critical natural resource area" means an area identified by the director of natural resources in which occurs a natural resource that requires special management because of its importance to the well-being of the surrounding communities, the region, or the state.

(C) "Pollution abatement practice" means any erosion control ~~or animal waste, residual farm products, or manure~~ pollution abatement facility, structure, or procedure and the operation and management associated with it as contained in operation and management plans developed or approved by the chief of the division of soil and water resources or by boards of supervisors of soil and water conservation districts established under Chapter 1515. of the Revised Code.

(D) "Agricultural pollution" means failure to use management or conservation practices in farming or silvicultural operations to abate wind or water erosion of the soil or to abate the degradation of the waters of the state

by ~~animal waste~~ residual farm products, manure, or soil sediment, including substances attached thereto.

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

(F) "Operation and management plan" means a written record, developed or approved by the ~~district~~ board of supervisors of a soil and water conservation district or the chief, for the owner or operator of agricultural land or ~~a concentrated~~ an animal feeding operation that contains implementation schedules and operational procedures for a level of management and pollution abatement practices that will abate the degradation of the waters of the state by ~~animal waste residual farm products, manure,~~ and by soil sediment, including attached pollutants.

(G) "~~Animal waste~~ Residual farm products" means ~~animal excreta, discarded products,~~ bedding, wash waters, waste feed, and silage drainage. "Animal waste Residual farm products" also includes the compost products resulting from the composting of dead animals in operations subject to section 1511.022 of the Revised Code when either of the following applies:

(1) The composting is conducted by the person who raises the animals and the compost product is used in agricultural operations owned or operated by that person, regardless of whether the person owns the animals;

(2) The composting is conducted by the person who owns the animals, but does not raise them and the compost product is used in agricultural operations either by a person who raises the animals or by a person who raises grain that is used to feed them and that is supplied by the owner of the animals.

(H) "Composting" means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material.

(I) "Manure" means animal excreta.

(J) "Animal feeding operation" means the production area, as defined in section 903.01 of the Revised Code, of an agricultural operation where agricultural animals are kept and raised in confined areas. "Animal feeding operation" does not include a facility that possesses a permit issued under Chapter 903. or division (J) of section 6111.03 of the Revised Code.

(K) "Soil and water conservation district" has the same meaning as in section 1515.01 of the Revised Code.

Sec. 1511.02. The chief of the division of soil and water resources, subject to the approval of the director of natural resources, shall do all of the following:

(A) Provide administrative leadership to ~~local~~ soil and water conservation districts in planning, budgeting, staffing, and administering district programs and the training of district supervisors and personnel in their duties, responsibilities, and authorities as prescribed in this chapter and Chapter 1515. of the Revised Code;

(B) Administer this chapter and Chapter 1515. of the Revised Code pertaining to state responsibilities and provide staff assistance to the Ohio soil and water conservation commission in exercising its statutory responsibilities;

(C) Assist in expediting state responsibilities for watershed development and other natural resource conservation works of improvement;

(D) Coordinate the development and implementation of cooperative programs and working agreements between ~~local~~ soil and water conservation districts and divisions or sections of the department of natural resources, or other agencies of local, state, and federal government;

(E) Subject to the approval of the Ohio soil and water conservation commission, adopt, amend, or rescind rules pursuant to Chapter 119. of the Revised Code. Rules adopted pursuant to this section:

(1) Shall establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming or silvicultural operations that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by ~~animal waste~~ residual farm products, manure, or by soil sediment, including substances attached thereto, and establish criteria for determination of the acceptability of such management and conservation practices;

(2) Shall establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment in conjunction with land grading, excavating, filling, or other soil-disturbing activities on land used or being developed for nonfarm commercial, industrial, residential, or other nonfarm purposes, and establish criteria for determination of the acceptability of such management and conservation practices. The standards shall be designed to implement applicable areawide waste treatment management plans prepared under section 208 of the "Federal Water Pollution Control Act," 86 Stat. 816

(1972), 33 U.S.C.A. 1288, as amended. The standards and criteria shall not apply in any municipal corporation or county that adopts ordinances or rules pertaining to sediment control, nor to lands being used in a strip mine operation as defined in section 1513.01 of the Revised Code, nor to lands being used in a surface mining operation as defined in section 1514.01 of the Revised Code.

(3) May recommend criteria and procedures for the approval of urban sediment pollution abatement plans and issuance of permits prior to any grading, excavating, filling, or other whole or partial disturbance of five or more contiguous acres of land owned by one person or operated as one development unit and require implementation of such a plan. Areas of less than five contiguous acres are not exempt from compliance with other provisions of this chapter and rules adopted under them.

(4) Shall establish procedures for administration of rules for agricultural pollution abatement and urban sediment pollution abatement and for enforcement of rules for agricultural pollution abatement;

(5) Shall specify the pollution abatement practices eligible for state cost sharing and determine the conditions for eligibility, the construction standards and specifications, the useful life, the maintenance requirements, and the limits of cost sharing for those practices. Eligible practices shall be limited to practices that address agricultural or silvicultural operations and that require expenditures that are likely to exceed the economic returns to the owner or operator and that abate soil erosion or degradation of the waters of the state by ~~animal waste~~ residual farm products, manure, or soil sediment, including pollutants attached thereto.

(6) Shall establish procedures for administering grants to owners or operators of agricultural land or ~~concentrated~~ animal feeding operations for the implementation of operation and management plans;

(7) Shall establish procedures for administering grants to soil and water conservation districts for urban sediment pollution abatement programs, specify the types of projects eligible for grants, establish limits on the availability of grants, and establish requirements governing the execution of projects to encourage the reduction of erosion and sedimentation associated with soil-disturbing activities;

(8) Shall do all of the following with regard to composting conducted in conjunction with agricultural operations:

(a) Provide for the distribution of educational material concerning composting to the offices of OSU extension for the purposes of section 1511.022 of the Revised Code;

(b) Establish methods, techniques, or practices for composting dead

animals, or particular types of dead animals, that are to be used at such operations, as the chief considers to be necessary or appropriate;

(c) Establish requirements and procedures governing the review and approval or disapproval of composting plans by the supervisors of soil and water conservation districts under division (Q) of section 1515.08 of the Revised Code.

(9) Shall be adopted, amended, or rescinded after the chief does all of the following:

(a) Mails notice to each statewide organization that the chief determines represents persons or local governmental agencies who would be affected by the proposed rule, amendment thereto, or rescission thereof at least thirty-five days before any public hearing thereon;

(b) Mails a copy of each proposed rule, amendment thereto, or rescission thereof to any person who requests a copy, within five days after receipt of the request;

(c) Consults with appropriate state and local governmental agencies or their representatives, including statewide organizations of local governmental officials, industrial representatives, and other interested persons;

(d) If the rule relates to agricultural pollution abatement, develops an economic impact statement concerning the effect of the proposed rule or amendment.

(10) Shall not conflict with air or water quality standards adopted pursuant to section 3704.03 or 6111.041 of the Revised Code. Compliance with rules adopted pursuant to this section does not affect liability for noncompliance with air or water quality standards adopted pursuant to section 3704.03 or 6111.041 of the Revised Code. The application of a level of management and conservation practices recommended under this section to control windblown soil from farming operations creates a presumption of compliance with section 3704.03 of the Revised Code as that section applies to windblown soil.

(11) Insofar as the rules relate to urban sediment pollution, shall not be applicable in a municipal corporation or county that adopts ordinances or rules for urban sediment control, except that a municipal corporation or county that adopts such ordinances or rules may receive moneys for urban sediment control that are disbursed by the board of supervisors of the applicable soil and water conservation district under division (N) of section 1515.08 of the Revised Code. The rules shall not exempt any person from compliance with municipal ordinances enacted pursuant to Section 3 of Article XVIII, Ohio Constitution.

(F) Cost share with landowners on practices established pursuant to division (E)(5) of this section as moneys are appropriated and available for that purpose. Any practice for which cost share is provided shall be maintained for its useful life. Failure to maintain a cost share practice for its useful life shall subject the landowner to full repayment to the division.

(G) Issue orders requiring compliance with any rule adopted under division (E)(1) of this section or with section 1511.022 of the Revised Code. Before the chief issues an order, the chief shall afford each person allegedly liable an adjudication hearing under Chapter 119. of the Revised Code. The chief may require in an order that a person who has caused agricultural pollution by failure to comply with the standards established under division (E)(1) of this section operate under an operation and management plan approved by the chief under this section. The chief shall require in an order that a person who has failed to comply with division (A) of section 1511.022 of the Revised Code prepare a composting plan in accordance with rules adopted under division (E)(4)(8)(c) of this section and operate in accordance with that plan or that a person who has failed to operate in accordance with such a plan begin to operate in accordance with it. Each order shall be issued in writing and contain a finding by the chief of the facts upon which the order is based and the standard that is not being met.

(H) Employ field assistants and such other employees as are necessary for the performance of the work prescribed by Chapter 1515. of the Revised Code, for performance of work of the division, and as agreed to under working agreements or contractual arrangements with ~~local~~ soil and water conservation districts, prescribe their duties, and fix their compensation in accordance with such schedules as are provided by law for the compensation of state employees.

All employees of the division, unless specifically exempted by law, shall be employed subject to the classified civil service laws in force at the time of employment.

(I) In connection with new or relocated projects involving highways, underground cables, pipelines, railroads, and other improvements affecting soil and water resources, including surface and subsurface drainage:

(1) Provide engineering service as is mutually agreeable to the Ohio soil and water conservation commission and the director to aid in the design and installation of soil and water conservation practices as a necessary component of such projects;

(2) Maintain close liaison between the owners of lands on which the projects are executed, ~~local~~ soil and water conservation districts, and authorities responsible for such projects;

(3) Review plans for such projects to ensure their compliance with standards developed under division (E) of this section in cooperation with the department of transportation or with any other interested agency that is engaged in soil or water conservation projects in the state in order to minimize adverse impacts on soil and water resources adjacent to or otherwise affected by these projects;

(4) Recommend measures to retard erosion and protect soil and water resources through the installation of water impoundment or other soil and water conservation practices;

(5) Cooperate with other agencies and subdivisions of the state to protect the agricultural status of rural lands adjacent to such projects and control adverse impacts on soil and water resources.

(J) Collect, analyze, inventory, and interpret all available information pertaining to the origin, distribution, extent, use, and conservation of the soil resources of the state;

(K) Prepare and maintain up-to-date reports, maps, and other materials pertaining to the soil resources of the state and their use and make that information available to governmental agencies, public officials, conservation entities, and the public;

(L) Provide soil and water conservation districts with technical assistance including on-site soil investigations and soil interpretation reports on the suitability or limitations of soil to support a particular use or to plan soil conservation measures. The assistance shall be upon such terms as are mutually agreeable to the districts and the department of natural resources.

(M) Assist local government officials in utilizing land use planning and zoning, current agricultural use value assessment, development reviews, and land management activities;

(N) When necessary for the purposes of this chapter or Chapter 1515. of the Revised Code, develop or approve operation and management plans.

This section does not restrict the ~~excrement~~ manure of domestic or farm animals defecated on land outside a ~~concentrated~~ an animal feeding operation or runoff therefrom into the waters of the state.

Sec. 1511.021. (A) Any person who owns or operates agricultural land or a ~~concentrated~~ an animal feeding operation may develop and operate under an operation and management plan approved by the chief of the division of soil and water resources under section 1511.02 of the Revised Code or by the supervisors of the ~~local~~ applicable soil and water conservation district under section 1515.08 of the Revised Code.

(B) Any person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written,

signed, and dated complaint to the chief or to the chief's designee. After receiving an oral complaint, the chief or the chief's designee may cause an investigation to be conducted to determine whether agricultural pollution has occurred or is imminent. After receiving a written, signed, and dated complaint, the chief or the chief's designee shall cause such an investigation to be conducted.

(C) In a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or ~~a concentrated~~ an animal feeding operation is operating under and in substantial compliance with an approved operation and management plan developed under division (A) of this section, with an operation and management plan developed by the chief under section 1511.02 of the Revised Code or by the supervisors of the ~~local~~ applicable soil and water conservation district under section 1515.08 of the Revised Code, or with an operation and management plan required by an order issued by the chief under division (G) of section 1511.02 of the Revised Code. Nothing in this section is in derogation of the authority granted to the chief in division (E) of section 1511.02 and in section 1511.07 of the Revised Code.

Sec. 1511.023. (A) Except as provided in division (B) of this section, the director of natural resources, an employee of the department of natural resources, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the department or a district shall not disclose either of the following:

(1) Information, including data from geographic information systems and global positioning systems, provided by a person who owns or operates agricultural land or an animal feeding operation and operates under an operation and management plan;

(2) Information gathered as a result of an inspection of agricultural land or an animal feeding operation to determine whether the person who owns or operates the land or operation is in compliance with an operation and management plan.

(B) The director or the supervisors of a district may release or disclose information specified in division (A)(1) or (2) of this section to a person or a federal, state, or local agency working in cooperation with the chief of the division of soil and water resources or the supervisors in the development of an operation and management plan or an inspection to determine compliance with such a plan if the director or supervisors determine that the person or federal, state, or local agency will not subsequently disclose the information to another person.

Sec. 1511.07. (A)(1) No person shall fail to comply with an order of the chief of the division of soil and water resources issued pursuant to division (G) of section 1511.02 of the Revised Code.

(2) In addition to the remedies provided and irrespective of whether an adequate remedy at law exists, the chief may apply to the court of common pleas in the county where a violation of a standard established under division (E)(1) or (8)(b) of section 1511.02 of the Revised Code causes pollution of the waters of the state for an order to compel the violator to cease the violation and to remove the agricultural pollutant or to comply with the rules adopted under division (E)(8)(b) of that section, as appropriate.

(3) In addition to the remedies provided and irrespective of whether an adequate remedy at law exists, whenever the chief officially determines that an emergency exists because of agricultural pollution or an unauthorized release, spill, or discharge of animal waste manure, or a violation of a rule adopted under division (E)(8)(b) of section 1511.02 of the Revised Code, that causes pollution of the waters of the state, the chief may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that necessary action be taken to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but on application to the chief shall be afforded a hearing as soon as possible, but not later than twenty days after making the application. On the basis of the hearing, the chief shall continue the order in effect, revoke it, or modify it. No emergency order shall remain in effect for more than sixty days after its issuance. If a person to whom an order is issued does not comply with the order within a reasonable period, as determined by the chief, the chief or the chief's designee may enter upon private or public lands and take action to mitigate, minimize, remove, or abate the agricultural pollution, release, spill, discharge, or conditions caused by the violation of the rule.

(B) The attorney general, upon the written request of the chief, shall bring appropriate legal action in Franklin county against any person who fails to comply with an order of the chief issued pursuant to division (G) of section 1511.02 of the Revised Code.

Sec. 1511.071. There is hereby created in the state treasury the agricultural pollution abatement fund, which shall be administered by the chief of the division of soil and water resources. The fund may be used to pay costs incurred by the division under division (A)(3) of section 1511.07 of the Revised Code in investigating, mitigating, minimizing, removing, or abating any pollution of the waters of the state caused by agricultural

pollution or an unauthorized release, spill, or discharge of ~~animal waste~~ manure into or upon the environment that requires emergency action to protect the public health.

Any person responsible for causing or allowing agricultural pollution or an unauthorized release, spill, or discharge is liable to the chief for any costs incurred by the division and soil and water conservation districts in investigating, mitigating, minimizing, removing, or abating the agricultural pollution or release, spill, or discharge, regardless of whether those costs were paid out of the agricultural pollution abatement fund or any other fund of the division or a district. Upon the request of the chief, the attorney general shall bring a civil action against the responsible person to recover those costs. Moneys recovered under this section shall be paid into the agricultural pollution abatement fund.

Sec. 1515.01. As used in this chapter:

(A) "Soil and water conservation district" means a district organized in accordance with this chapter.

(B) "Supervisor" means one of the members of the governing body of a district.

(C) "Landowner," "owner," or "owner of land" means an owner of record as shown by the records in the office of the county recorder. With respect to an improvement or a proposed improvement, "landowner," "owner," or "owner of land" also includes any public corporation and the director of any department, office, or institution of the state that is affected by the improvement or that would be affected by the proposed improvement, but that does not own any right, title, estate, or interest in or to any real property.

(D) "Land occupier" or "occupier of land" means any person, firm, or corporation that controls the use of land whether as landowner, lessee, renter, or tenant.

(E) "Due notice" means notice published at least twice, stating time and place, with an interval of at least thirteen days between the two publication dates, in a newspaper of general circulation within a soil and water conservation district.

(F) "Agricultural pollution" means failure to use management or conservation practices in farming or silvicultural operations to abate wind or water erosion of the soil or to abate the degradation of the waters of the state by ~~animal waste~~ residual farm products, manure, or soil sediment, including substances attached thereto.

(G) "Urban sediment pollution" means failure to use management or conservation practices to abate wind or water erosion of the soil or to abate

the degradation of the waters of the state by soil sediment in conjunction with land grading, excavating, filling, or other soil disturbing activities on land used or being developed for nonfarm commercial, industrial, residential, or other nonfarm purposes, except lands being used in a strip mine operation as defined in section 1513.01 of the Revised Code and except lands being used in a surface mining operation as defined in section 1514.01 of the Revised Code.

(H) "Uniform assessment" means an assessment that is both of the following:

(1) Based upon a complete appraisal of each parcel of land, together with all improvements thereon, within a project area and of the benefits or damages brought about as a result of the project that is determined by criteria applied equally to all parcels within the project area;

(2) Levied upon the parcels at a uniform rate on the basis of the appraisal.

(I) "Varied assessment" means any assessment that does not meet the criteria established in division (H) of this section.

(J) "Project area" means an area determined and certified by the supervisors of a soil and water conservation district under section 1515.19 of the Revised Code.

(K) "Benefit" or "benefits" means advantages to land and owners, to public corporations, and to the state resulting from drainage, conservation, control, and management of water and from environmental, wildlife, and recreational improvements. "Benefit" or "benefits" includes, but is not limited to, any of the following factors:

(1) Elimination or reduction of damage from flooding;

(2) Removal of water conditions that jeopardize public health, safety, or welfare;

(3) Increased value of land resulting from an improvement;

(4) Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other incidental purpose;

(5) Providing an outlet for the accelerated runoff from artificial drainage if a stream, watercourse, channel, or ditch that is under improvement is called upon to discharge functions for which it was not designed. Uplands that have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other human methods shall be considered to be benefited by an improvement that is required to dispose of the accelerated flow of water from the uplands.

(L) "Improvement" or "conservation works of improvement" means an improvement that is made under the authority established in division (C) of

section 1515.08 of the Revised Code.

(M) "Land" has the same meaning as in section 6131.01 of the Revised Code.

(N) "Manure," "operation and management plan," and "residual farm products" have the same meanings as in section 1511.01 of the Revised Code.

(O) "Voluntary nutrient management plan" has the same meaning as in section 905.31 of the Revised Code.

Sec. 1515.02. There is hereby established in the department of natural resources the Ohio soil and water conservation commission. The commission shall consist of seven members of equal status and authority, ~~four~~ six of whom shall be appointed by the governor with the advice and consent of the senate, and one of whom shall be designated by resolution of the board of directors of the Ohio federation of soil and water conservation districts. ~~The other two members shall be the director~~ directors of agriculture ~~and~~ environmental protection, and natural resources, the vice-president for agricultural administration of the Ohio state university-~~The director of natural resources may participate in the deliberations, and an officer of the Ohio federation of soil and water conservation districts, or their designees, may serve as ex officio members~~ of the commission, but without the power to vote. A vacancy in the office of an appointed member shall be filled by the governor, with the advice and consent of the senate. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. Of the appointed members, ~~two shall be farmers and all~~ four shall be persons who have a knowledge of or interest in agricultural production and the natural resources of the state. One member shall represent rural interests and one member shall represent urban interests. Not more than ~~two~~ three of the appointed members shall be members of the same political party.

Terms of office of the member designated by the board of directors of the federation and the members appointed by the governor shall be for four years, commencing on the first day of July and ending on the thirtieth day of June.

Each appointed member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any appointed member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

The commission shall organize by selecting from its members a

chairperson and a vice-chairperson. The commission shall hold at least one regular meeting in each quarter of each calendar year and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairperson and shall be called by the chairperson upon receipt of a written request signed by two or more members of the commission. Written notice of the time and place of each meeting shall be sent to each member of the commission. A majority of the commission shall constitute a quorum.

The commission may adopt rules as necessary to carry out the purposes of this chapter, subject to Chapter 119. of the Revised Code.

The governor may remove any appointed member of the commission at any time for inefficiency, neglect of duty, or malfeasance in office, after giving to the member a copy of the charges against the member and an opportunity to be heard publicly in person or by counsel in the member's defense. Any such act of removal by the governor is final. A statement of the findings of the governor, the reason for the governor's action, and the answer, if any, of the member shall be filed by the governor with the secretary of state and shall be open to public inspection.

All members of the commission shall be reimbursed for the necessary expenses incurred by them in the performance of their duties as members.

Upon recommendation by the commission, the director of natural resources shall designate an executive secretary and provide staff necessary to carry out the powers and duties of the commission. ~~The commission may utilize the services of such staff members in the college of agriculture of the Ohio state university as may be agreed upon by the commission and the college.~~

The commission shall do all of the following:

(A) Determine distribution of funds under section 1515.14 of the Revised Code, recommend to the director of natural resources and other agencies the levels of appropriations to special funds established to assist soil and water conservation districts, and recommend the amount of federal funds to be requested and policies for the use of such funds in support of soil and water conservation district programs;

(B) Assist in keeping the supervisors of soil and water conservation districts informed of their powers and duties, program opportunities, and the activities and experience of all other districts, and facilitate the interchange of advice, experience, and cooperation between the districts;

(C) Seek the cooperation and assistance of the federal government or any of its agencies, and of agencies of this state, in the work of the districts;

(D) Adopt appropriate rules governing the conduct of elections provided

for in this chapter, subject to Chapter 119. of the Revised Code, provided that only owners and occupiers of lands situated within the boundaries of the districts or proposed districts to which the elections apply shall be eligible to vote in the elections;

(E) Recommend to the director priorities for planning and construction of small watershed projects, and make recommendations to the director concerning coordination of programs as proposed and implemented in agreements with soil and water conservation districts;

(F) Recommend to the director, the governor, and the general assembly programs and legislation with respect to the operations of soil and water conservation districts that will encourage proper soil, water, and other natural resource management and promote the economic and social development of the state.

Sec. 1515.08. The supervisors of a soil and water conservation district have the following powers in addition to their other powers:

(A) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and the preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water needed within the district, and to publish the results of those surveys, investigations, or research, provided that no district shall initiate any research program except in cooperation or after consultation with the Ohio agricultural research and development center;

(B) To develop plans for the conservation of soil resources, for the control and prevention of soil erosion, and for works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, and to publish those plans and information;

(C) To implement, construct, repair, maintain, and operate preventive and control measures and other works of improvement for natural resource conservation and development and flood prevention, and the conservation, development, utilization, and disposal of water within the district on lands owned or controlled by this state or any of its agencies and on any other lands within the district, which works may include any facilities authorized under state or federal programs, and to acquire, by purchase or gift, to hold, encumber, or dispose of, and to lease real and personal property or interests in such property for those purposes;

(D) To cooperate or enter into agreements with any occupier of lands within the district in the carrying on of natural resource conservation operations and works of improvement for flood prevention and the

conservation, development, utilization, and management of natural resources within the district, subject to such conditions as the supervisors consider necessary;

(E) To accept donations, gifts, grants, and contributions in money, service, materials, or otherwise, and to use or expend them according to their terms;

(F) To adopt, amend, and rescind rules to carry into effect the purposes and powers of the district;

(G) To sue and plead in the name of the district, and be sued and impleaded in the name of the district, with respect to its contracts and, as indicated in section 1515.081 of the Revised Code, certain torts of its officers, employees, or agents acting within the scope of their employment or official responsibilities, or with respect to the enforcement of its obligations and covenants made under this chapter;

(H) To make and enter into all contracts, leases, and agreements and execute all instruments necessary or incidental to the performance of the duties and the execution of the powers of the district under this chapter, provided that all of the following apply:

(1) Except as provided in section 307.86 of the Revised Code regarding expenditures by boards of county commissioners, when the cost under any such contract, lease, or agreement, other than compensation for personal services or rental of office space, involves an expenditure of more than the amount established in that section regarding expenditures by boards of county commissioners, the supervisors shall make a written contract with the lowest and best bidder after advertisement, for not less than two nor more than four consecutive weeks preceding the day of the opening of bids, in a newspaper of general circulation within the district or as provided in section 7.16 of the Revised Code and in such other publications as the supervisors determine. The notice shall state the general character of the work and materials to be furnished, the place where plans and specifications may be examined, and the time and place of receiving bids.

(2) Each bid for a contract shall contain the full name of every person interested in it.

(3) Each bid for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement shall meet the requirements of section 153.54 of the Revised Code.

(4) Each bid for a contract, other than a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement, at the discretion of the supervisors, may be accompanied by a bond or certified check on a solvent bank in an amount not to exceed five per cent of the bid,

conditioned that, if the bid is accepted, a contract shall be entered into.

(5) The supervisors may reject any and all bids.

(I) To make agreements with the department of natural resources giving it control over lands of the district for the purpose of construction of improvements by the department under section 1501.011 of the Revised Code;

(J) To charge, alter, and collect rentals and other charges for the use or services of any works of the district;

(K) To enter, either in person or by designated representatives, upon lands, private or public, in the necessary discharge of their duties;

(L) To enter into agreements or contracts with the department for the determination, implementation, inspection, and funding of agricultural pollution abatement and urban sediment pollution abatement measures whereby landowners, operators, managers, and developers may meet adopted state standards for a quality environment, except that failure of a district board of supervisors to negotiate an agreement or contract with the department shall authorize the division of soil and water resources to implement the required program;

(M) To conduct demonstrations and provide information to the public regarding practices and methods for natural resource conservation, development, and utilization;

(N) To enter into contracts or agreements with the chief of the division of soil and water resources to implement and administer a program for urban sediment pollution abatement and to receive and expend moneys provided by the chief for that purpose;

(O) To develop operation and management plans, ~~as defined in section 1511.01 of the Revised Code~~, as necessary;

(P) To determine whether operation and management plans developed under division (A) of section 1511.021 of the Revised Code comply with the standards established under division (E)(1) of section 1511.02 of the Revised Code and to approve or disapprove the plans, based on such compliance. If an operation and management plan is disapproved, the board shall provide a written explanation to the person who submitted the plan. The person may appeal the plan disapproval to the chief, who shall afford the person a hearing. Following the hearing, the chief shall uphold the plan disapproval or reverse it. If the chief reverses the plan disapproval, the plan shall be deemed approved under this division. In the event that any person operating or owning agricultural land or ~~a concentrated~~ an animal feeding operation in accordance with an approved operation and management plan who, in good faith, is following that plan, causes agricultural pollution, the

plan shall be revised in a fashion necessary to mitigate the agricultural pollution, as determined and approved by the board of supervisors of the soil and water conservation district.

(Q) With regard to composting conducted in conjunction with agricultural operations, to do all of the following:

(1) Upon request or upon their own initiative, inspect composting at any such operation to determine whether the composting is being conducted in accordance with section 1511.022 of the Revised Code;

(2) If the board determines that composting is not being so conducted, request the chief to issue an order under division (G) of section 1511.02 of the Revised Code requiring the person who is conducting the composting to prepare a composting plan in accordance with rules adopted under division (E)(8)(c) of that section and to operate in accordance with that plan or to operate in accordance with a previously prepared plan, as applicable;

(3) In accordance with rules adopted under division (E)(8)(c) of section 1511.02 of the Revised Code, review and approve or disapprove any such composting plan. If a plan is disapproved, the board shall provide a written explanation to the person who submitted the plan.

As used in division (Q) of this section, "composting" has the same meaning as in section 1511.01 of the Revised Code.

(R) With regard to conservation activities that are conducted in conjunction with agricultural operations, to assist the county auditor, upon request, in determining whether a conservation activity is a conservation practice for purposes of Chapter 929. or sections 5713.30 to 5713.37 and 5715.01 of the Revised Code.

As used in this division, "conservation practice" has the same meaning as in section 5713.30 of the Revised Code.

(S) To develop and approve or disapprove voluntary nutrient management plans in accordance with section 905.323 of the Revised Code;

(T) To do all acts necessary or proper to carry out the powers granted in this chapter.

The director of natural resources shall make recommendations to reduce the adverse environmental effects of each project that a soil and water conservation district plans to undertake under division (A), (B), (C), or (D) of this section and that will be funded in whole or in part by moneys authorized under section 1515.16 of the Revised Code and shall disapprove any such project that the director finds will adversely affect the environment without equal or greater benefit to the public. The director's disapproval or recommendations, upon the request of the district filed in accordance with rules adopted by the Ohio soil and water conservation commission, shall be

reviewed by the commission, which may confirm the director's decision, modify it, or add recommendations to or approve a project the director has disapproved.

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

Sec. 3717.53. (A) As used in this section:

(1) "Food nutrition information" includes, but is not limited to, the caloric, fat, carbohydrate, cholesterol, fiber, sugar, potassium, protein, vitamin, mineral, allergen, and sodium content of food. "Food nutrition information" also includes the designation of food as healthy or unhealthy.

(2) "Political subdivision" and "local legislation" have the same meanings as in section ~~905.501~~ 905.503 of the Revised Code.

(3) "Consumer incentive item" means any licensed media character, toy, game, trading card, contest, point accumulation, club membership, admission ticket, token, code or password for digital access, coupon, voucher, incentive, crayons, coloring placemat, or other premium, prize, or consumer product that is associated with a meal served by or acquired from a food service operation.

(B) The director of agriculture has sole and exclusive authority in this state to regulate the provision of food nutrition information and consumer incentive items at food service operations. The director may adopt rules for that purpose in accordance with Chapter 119. of the Revised Code, including rules that establish a schedule of civil penalties for violations of this section and rules adopted under it. Subject to the approval of the joint committee on agency rule review, portions of the rules may be adopted by referencing all or any part of any federal regulations pertaining to the provision of food nutrition information and consumer incentive items.

The regulation of the provision of food nutrition information and consumer incentive items at food service operations and how food service operations are characterized are matters of general statewide interest that require statewide regulation, and rules adopted under this section constitute a comprehensive plan with respect to all aspects of the regulation of the provision of food nutrition information and consumer incentive items at food service operations in this state. Rules adopted under this section shall be applied uniformly throughout this state.

(C) No political subdivision shall do any of the following:

(1) Enact, adopt, or continue in effect local legislation relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(2) Condition a license, a permit, or regulatory approval on the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(3) Ban, prohibit, or otherwise restrict food at food service operations based on the food nutrition information or on the provision or nonprovision of consumer incentive items;

(4) Condition a license, a permit, or regulatory approval for a food service operation on the existence or nonexistence of food-based health disparities;

(5) Where food service operations are permitted to operate, ban, prohibit, or otherwise restrict a food service operation based on the existence or nonexistence of food-based health disparities as recognized by the department of health, the national institute of health, or the centers for disease control.

Sec. 6111.03. The director of environmental protection may do any of the following:

(A) Develop plans and programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(B) Advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter. Before adopting, amending, or rescinding a standard or rule pursuant to division (G) of this section or section 6111.041 or 6111.042 of the Revised Code, the director shall do all of the following:

(1) Mail notice to each statewide organization that the director determines represents persons who would be affected by the proposed standard or rule, amendment thereto, or rescission thereof at least thirty-five days before any public hearing thereon;

(2) Mail a copy of each proposed standard or rule, amendment thereto, or rescission thereof to any person who requests a copy, within five days after receipt of the request therefor;

(3) Consult with appropriate state and local government agencies or their representatives, including statewide organizations of local government officials, industrial representatives, and other interested persons.

Although the director is expected to discharge these duties diligently, failure to mail any such notice or copy or to so consult with any person shall not invalidate any proceeding or action of the director.

(C) Administer grants from the federal government and from other sources, public or private, for carrying out any of its functions, all such moneys to be deposited in the state treasury and kept by the treasurer of

state in a separate fund subject to the lawful orders of the director;

(D) Administer state grants for the construction of sewage and waste collection and treatment works;

(E) Encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution, and the causes, prevention, control, and abatement thereof, that are advisable and necessary for the discharge of the director's duties under this chapter;

(F) Collect and disseminate information relating to water pollution and prevention, control, and abatement thereof;

(G) Adopt, amend, and rescind rules in accordance with Chapter 119. of the Revised Code governing the procedure for hearings, the filing of reports, the issuance of permits, the issuance of industrial water pollution control certificates, and all other matters relating to procedure;

(H) Issue, modify, or revoke orders to prevent, control, or abate water pollution by such means as the following:

(1) Prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state;

(2) Requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof;

(3) Prohibiting additional connections to or extensions of a sewerage system when the connections or extensions would result in an increase in the polluting properties of the effluent from the system when discharged into any waters of the state;

(4) Requiring compliance with any standard or rule adopted under sections 6111.01 to 6111.05 of the Revised Code or term or condition of a permit.

In the making of those orders, wherever compliance with a rule adopted under section 6111.042 of the Revised Code is not involved, consistent with the Federal Water Pollution Control Act, the director shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of this chapter.

(I) Review plans, specifications, or other data relative to disposal systems or any part thereof in connection with the issuance of orders, permits, and industrial water pollution control certificates under this chapter;

(J)(1) Issue, revoke, modify, or deny sludge management permits and

permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state, and for the installation or modification of disposal systems or any parts thereof in compliance with all requirements of the Federal Water Pollution Control Act and mandatory regulations adopted thereunder, including regulations adopted under section 405 of the Federal Water Pollution Control Act, and set terms and conditions of permits, including schedules of compliance, where necessary. Any person who discharges, transports, or handles storm water from an animal feeding facility, as defined in section 903.01 of the Revised Code, or pollutants from a concentrated animal feeding operation, as both terms are defined in that section, is not required to obtain a permit under division (J)(1) of this section for the installation or modification of a disposal system involving pollutants or storm water or any parts of such a system on and after the date on which the director of agriculture has finalized the program required under division (A)(1) of section 903.02 of the Revised Code. In addition, any person who discharges, transports, or handles storm water from an animal feeding facility, as defined in section 903.01 of the Revised Code, or pollutants from a concentrated animal feeding operation, as both terms are defined in that section, is not required to obtain a permit under division (J)(1) of this section for the discharge of storm water from an animal feeding facility or pollutants from a concentrated animal feeding operation on and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code.

Any permit terms and conditions set by the director shall be designed to achieve and maintain full compliance with the national effluent limitations, national standards of performance for new sources, and national toxic and pretreatment effluent standards set under that act, and any other mandatory requirements of that act that are imposed by regulation of the administrator of the United States environmental protection agency. If an applicant for a sludge management permit also applies for a related permit for the discharge of sewage, industrial waste, or other wastes into the waters of the state, the director may combine the two permits and issue one permit to the applicant.

A sludge management permit is not required for an entity that treats or transports sewage sludge or for a sanitary landfill when all of the following apply:

- (a) The entity or sanitary landfill does not generate the sewage sludge.
- (b) Prior to receipt at the sanitary landfill, the entity has ensured that the sewage sludge meets the requirements established in rules adopted by the director under section 3734.02 of the Revised Code concerning disposal of

municipal solid waste in a sanitary landfill.

(c) Disposal of the sewage sludge occurs at a sanitary landfill that complies with rules adopted by the director under section 3734.02 of the Revised Code.

As used in division (J)(1) of this section, "sanitary landfill" means a sanitary landfill facility, as defined in rules adopted under section 3734.02 of the Revised Code, that is licensed as a solid waste facility under section 3734.05 of the Revised Code.

(2) An application for a permit or renewal thereof shall be denied if any of the following applies:

(a) The secretary of the army determines in writing that anchorage or navigation would be substantially impaired thereby;

(b) The director determines that the proposed discharge or source would conflict with an areawide waste treatment management plan adopted in accordance with section 208 of the Federal Water Pollution Control Act;

(c) The administrator of the United States environmental protection agency objects in writing to the issuance or renewal of the permit in accordance with section 402 (d) of the Federal Water Pollution Control Act;

(d) The application is for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into the waters of the United States.

(3) To achieve and maintain applicable standards of quality for the waters of the state adopted pursuant to section 6111.041 of the Revised Code, the director shall impose, where necessary and appropriate, as conditions of each permit, water quality related effluent limitations in accordance with sections 301, 302, 306, 307, and 405 of the Federal Water Pollution Control Act and, to the extent consistent with that act, shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of removing the polluting properties from those wastes and to evidence relating to conditions calculated to result from that action and their relation to benefits to the people of the state and to accomplishment of the purposes of this chapter.

(4) Where a discharge having a thermal component from a source that is constructed or modified on or after October 18, 1972, meets national or state effluent limitations or more stringent permit conditions designed to achieve and maintain compliance with applicable standards of quality for the waters of the state, which limitations or conditions will ensure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the body of water into which the discharge is made, taking into account the interaction of the thermal component with sewage,

industrial waste, or other wastes, the director shall not impose any more stringent limitation on the thermal component of the discharge, as a condition of a permit or renewal thereof for the discharge, during a ten-year period beginning on the date of completion of the construction or modification of the source, or during the period of depreciation or amortization of the source for the purpose of section 167 or 169 of the Internal Revenue Code of 1954, whichever period ends first.

(5) The director shall specify in permits for the discharge of sewage, industrial waste, and other wastes, the net volume, net weight, duration, frequency, and, where necessary, concentration of the sewage, industrial waste, and other wastes that may be discharged into the waters of the state. The director shall specify in those permits and in sludge management permits that the permit is conditioned upon payment of applicable fees as required by section 3745.11 of the Revised Code and upon the right of the director's authorized representatives to enter upon the premises of the person to whom the permit has been issued for the purpose of determining compliance with this chapter, rules adopted thereunder, or the terms and conditions of a permit, order, or other determination. The director shall issue or deny an application for a sludge management permit or a permit for a new discharge, for the installation or modification of a disposal system, or for the renewal of a permit, within one hundred eighty days of the date on which a complete application with all plans, specifications, construction schedules, and other pertinent information required by the director is received.

(6) The director may condition permits upon the installation of discharge or water quality monitoring equipment or devices and the filing of periodic reports on the amounts and contents of discharges and the quality of receiving waters that the director prescribes. The director shall condition each permit for a government-owned disposal system or any other "treatment works" as defined in the Federal Water Pollution Control Act upon the reporting of new introductions of industrial waste or other wastes and substantial changes in volume or character thereof being introduced into those systems or works from "industrial users" as defined in section 502 of that act, as necessary to comply with section 402(b)(8) of that act; upon the identification of the character and volume of pollutants subject to pretreatment standards being introduced into the system or works; and upon the existence of a program to ensure compliance with pretreatment standards by "industrial users" of the system or works. In requiring monitoring devices and reports, the director, to the extent consistent with the Federal Water Pollution Control Act, shall give consideration to technical feasibility and

economic reasonableness and shall allow reasonable time for compliance.

(7) A permit may be issued for a period not to exceed five years and may be renewed upon application for renewal. In renewing a permit, the director shall consider the compliance history of the permit holder and may deny the renewal if the director determines that the permit holder has not complied with the terms and conditions of the existing permit. A permit may be modified, suspended, or revoked for cause, including, but not limited to, violation of any condition of the permit, obtaining a permit by misrepresentation or failure to disclose fully all relevant facts of the permitted discharge or of the sludge use, storage, treatment, or disposal practice, or changes in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity. No application shall be denied or permit revoked or modified without a written order stating the findings upon which the denial, revocation, or modification is based. A copy of the order shall be sent to the applicant or permit holder by certified mail.

(K) Institute or cause to be instituted in any court of competent jurisdiction proceedings to compel compliance with this chapter or with the orders of the director issued under this chapter, or to ensure compliance with sections 204(b), 307, 308, and 405 of the Federal Water Pollution Control Act;

(L) Issue, deny, revoke, or modify industrial water pollution control certificates;

(M) Certify to the government of the United States or any agency thereof that an industrial water pollution control facility is in conformity with the state program or requirements for the control of water pollution whenever the certification may be required for a taxpayer under the Internal Revenue Code of the United States, as amended;

(N) Issue, modify, and revoke orders requiring any "industrial user" of any publicly owned "treatment works" as defined in sections 212(2) and 502(18) of the Federal Water Pollution Control Act to comply with pretreatment standards; establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods; sample discharges in accordance with methods, at locations, at intervals, and in a manner that the director determines; and provide other information that is necessary to ascertain whether or not there is compliance with toxic and pretreatment effluent standards. In issuing, modifying, and revoking those orders, the director, to the extent consistent with the Federal Water Pollution Control Act, shall give consideration to technical feasibility and economic

reasonableness and shall allow reasonable time for compliance.

(O) Exercise all incidental powers necessary to carry out the purposes of this chapter;

(P) Certify or deny certification to any applicant for a federal license or permit to conduct any activity that may result in any discharge into the waters of the state that the discharge will comply with the Federal Water Pollution Control Act;

(Q) Administer and enforce the publicly owned treatment works pretreatment program in accordance with the Federal Water Pollution Control Act. In the administration of that program, the director may do any of the following:

(1) Apply and enforce pretreatment standards;

(2) Approve and deny requests for approval of publicly owned treatment works pretreatment programs, oversee those programs, and implement, in whole or in part, those programs under any of the following conditions:

(a) The director has denied a request for approval of the publicly owned treatment works pretreatment program;

(b) The director has revoked the publicly owned treatment works pretreatment program;

(c) There is no pretreatment program currently being implemented by the publicly owned treatment works;

(d) The publicly owned treatment works has requested the director to implement, in whole or in part, the pretreatment program.

(3) Require that a publicly owned treatment works pretreatment program be incorporated in a permit issued to a publicly owned treatment works as required by the Federal Water Pollution Control Act, require compliance by publicly owned treatment works with those programs, and require compliance by industrial users with pretreatment standards;

(4) Approve and deny requests for authority to modify categorical pretreatment standards to reflect removal of pollutants achieved by publicly owned treatment works;

(5) Deny and recommend approval of requests for fundamentally different factors variances submitted by industrial users;

(6) Make determinations on categorization of industrial users;

(7) Adopt, amend, or rescind rules and issue, modify, or revoke orders necessary for the administration and enforcement of the publicly owned treatment works pretreatment program.

Any approval of a publicly owned treatment works pretreatment program may contain any terms and conditions, including schedules of compliance, that are necessary to achieve compliance with this chapter.

(R) Except as otherwise provided in this division, adopt rules in accordance with Chapter 119. of the Revised Code establishing procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and hazardous substances into the waters of the state. The rules shall be consistent with and equivalent in scope, content, and coverage to section 311(j)(1)(c) of the Federal Water Pollution Control Act and regulations adopted under it. The director shall not adopt rules under this division relating to discharges of oil from oil production facilities and oil drilling and workover facilities as those terms are defined in that act and regulations adopted under it.

(S)(1) Administer and enforce a program for the regulation of sludge management in this state. In administering the program, the director, in addition to exercising the authority provided in any other applicable sections of this chapter, may do any of the following:

(a) Develop plans and programs for the disposal and utilization of sludge and sludge materials;

(b) Encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to the disposal and use of sludge and sludge materials and the impact of sludge and sludge materials on land located in the state and on the air and waters of the state;

(c) Collect and disseminate information relating to the disposal and use of sludge and sludge materials and the impact of sludge and sludge materials on land located in the state and on the air and waters of the state;

(d) Issue, modify, or revoke orders to prevent, control, or abate the use and disposal of sludge and sludge materials or the effects of the use of sludge and sludge materials on land located in the state and on the air and waters of the state;

(e) Adopt and enforce, modify, or rescind rules necessary for the implementation of division (S) of this section. The rules reasonably shall protect public health and the environment, encourage the beneficial reuse of sludge and sludge materials, and minimize the creation of nuisance odors.

The director may specify in sludge management permits the net volume, net weight, quality, and pollutant concentration of the sludge or sludge materials that may be used, stored, treated, or disposed of, and the manner and frequency of the use, storage, treatment, or disposal, to protect public health and the environment from adverse effects relating to those activities. The director shall impose other terms and conditions to protect public health and the environment, minimize the creation of nuisance odors, and achieve compliance with this chapter and rules adopted under it and, in doing so, shall consider whether the terms and conditions are consistent with the goal

of encouraging the beneficial reuse of sludge and sludge materials.

The director may condition permits on the implementation of treatment, storage, disposal, distribution, or application management methods and the filing of periodic reports on the amounts, composition, and quality of sludge and sludge materials that are disposed of, used, treated, or stored.

An approval of a treatment works sludge disposal program may contain any terms and conditions, including schedules of compliance, necessary to achieve compliance with this chapter and rules adopted under it.

(2) As a part of the program established under division (S)(1) of this section, the director has exclusive authority to regulate sewage sludge management in this state. For purposes of division (S)(2) of this section, that program shall be consistent with section 405 of the Federal Water Pollution Control Act and regulations adopted under it and with this section, except that the director may adopt rules under division (S) of this section that establish requirements that are more stringent than section 405 of the Federal Water Pollution Control Act and regulations adopted under it with regard to monitoring sewage sludge and sewage sludge materials and establishing acceptable sewage sludge management practices and pollutant levels in sewage sludge and sewage sludge materials.

This chapter authorizes the state to participate in any national sludge management program and the national pollutant discharge elimination system, to administer and enforce the publicly owned treatment works pretreatment program, and to issue permits for the discharge of dredged or fill materials, in accordance with the Federal Water Pollution Control Act. This chapter shall be administered, consistent with the laws of this state and federal law, in the same manner that the Federal Water Pollution Control Act is required to be administered.

This section does not apply to ~~animal waste~~ residual farm products and manure disposal systems and related management and conservation practices subject to rules adopted pursuant to division (E)~~(4)~~(1) of section 1511.02 of the Revised Code. For purposes of this exclusion, "residual farm products" and "manure" have the same meanings as in section 1511.01 of the Revised Code. However, until the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, this exclusion does not apply to animal waste treatment works having a controlled direct discharge to the waters of the state or any concentrated animal feeding operation, as defined in 40 C.F.R. 122.23(b)(2). On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under

section 903.08 of the Revised Code, this section does not apply to storm water from an animal feeding facility, as defined in section 903.01 of the Revised Code, or to pollutants discharged from a concentrated animal feeding operation, as both terms are defined in that section. Neither of these exclusions applies to the discharge of animal waste into a publicly owned treatment works.

Sec. 6111.04. (A) Both of the following apply except as otherwise provided in division (A) or (F) of this section:

(1) No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

(2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.

Divisions (A)(1) and (2) of this section do not apply if the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending.

(B) If the director of environmental protection administers a sludge management program pursuant to division (S) of section 6111.03 of the Revised Code, both of the following apply except as otherwise provided in division (B) or (F) of this section:

(1) No person, in the course of sludge management, shall place on land located in the state or release into the air of the state any sludge or sludge materials.

(2) An action prohibited under division (B)(1) of this section is hereby declared to be a public nuisance.

Divisions (B)(1) and (2) of this section do not apply if the person placing or releasing the sludge or sludge materials holds a valid, unexpired permit, or renewal of a permit, governing the placement or release as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending.

(C) No person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.

(D) No person to whom a sludge management permit has been issued shall place on the land or release into the air of the state any sludge or

sludge materials in excess of the permissive amounts specified under the existing sludge management permit without first receiving a modification of the existing sludge management permit or a new sludge management permit to do so from the director.

(E) The director may require the submission of plans, specifications, and other information that the director considers relevant in connection with the issuance of permits.

(F) This section does not apply to any of the following:

(1) Waters used in washing sand, gravel, other aggregates, or mineral products when the washing and the ultimate disposal of the water used in the washing, including any sewage, industrial waste, or other wastes contained in the waters, are entirely confined to the land under the control of the person engaged in the recovery and processing of the sand, gravel, other aggregates, or mineral products and do not result in the pollution of waters of the state;

(2) Water, gas, or other material injected into a well to facilitate, or that is incidental to, the production of oil, gas, artificial brine, or water derived in association with oil or gas production and disposed of in a well, in compliance with a permit issued under Chapter 1509. of the Revised Code, or sewage, industrial waste, or other wastes injected into a well in compliance with an injection well operating permit. Division (F)(2) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States environmental protection agency.

(3) Application of any materials to land for agricultural purposes or runoff of the materials from that application or pollution by ~~animal waste~~ residual farm products, manure, or soil sediment, including attached substances, resulting from farming, silvicultural, or earthmoving activities regulated by Chapter 307. or 1511. of the Revised Code. Division (F)(3) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it. As used in division (F)(3) of this section, "residual farm products" and "manure" have the same meanings as in section 1511.01 of the Revised Code.

(4) The excrement of domestic and farm animals defecated on land or runoff therefrom into any waters of the state. Division (F)(4) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Federal Water Pollution Control Act or regulations adopted under it.

(5) On and after the date on which the United States environmental

protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture;

(6) The discharge of sewage, industrial waste, or other wastes into a sewerage system tributary to a treatment works. Division (F)(6) of this section does not authorize any discharge into a publicly owned treatment works in violation of a pretreatment program applicable to the publicly owned treatment works.

(7) A household sewage treatment system or a small flow on-site sewage treatment system, as applicable, as defined in section 3718.01 of the Revised Code that is installed in compliance with Chapter 3718. of the Revised Code and rules adopted under it. Division (F)(7) of this section does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, regulation of the United States environmental protection agency.

(8) Exceptional quality sludge generated outside of this state and contained in bags or other containers not greater than one hundred pounds in capacity. As used in division (F)(8) of this section, "exceptional quality sludge" has the same meaning as in division (Y) of section 3745.11 of the Revised Code.

(G) The holder of a permit issued under section 402 (a) of the Federal Water Pollution Control Act need not obtain a permit for a discharge authorized by the permit until its expiration date. Except as otherwise provided in this division, the director of environmental protection shall administer and enforce those permits within this state and may modify their terms and conditions in accordance with division (J) of section 6111.03 of the Revised Code. On and after the date on which the United States environmental protection agency approves the NPDES program submitted by the director of agriculture under section 903.08 of the Revised Code, the director of agriculture shall administer and enforce those permits within this state that are issued for any discharge that is within the scope of the approved NPDES program submitted by the director of agriculture.

Sec. 6111.44. (A) Except as otherwise provided in division (B) of this section, in section 6111.14 of the Revised Code, or in rules adopted under division (G) of section 6111.03 of the Revised Code, no municipal corporation, county, public institution, corporation, or officer or employee thereof or other person shall provide or install sewerage or treatment works for sewage, sludge, or sludge materials disposal or treatment or make a change in any sewerage or treatment works until the plans therefor have

been submitted to and approved by the director of environmental protection. Sections 6111.44 to 6111.46 of the Revised Code apply to sewerage and treatment works of a municipal corporation or part thereof, an unincorporated community, a county sewer district, or other land outside of a municipal corporation or any publicly or privately owned building or group of buildings or place, used for the assemblage, entertainment, recreation, education, correction, hospitalization, housing, or employment of persons.

In granting an approval, the director may stipulate modifications, conditions, and rules that the public health and prevention of pollution may require. Any action taken by the director shall be a matter of public record and shall be entered in the director's journal. Each period of thirty days that a violation of this section continues, after a conviction for the violation, constitutes a separate offense.

(B) Sections 6111.45 and 6111.46 of the Revised Code and division (A) of this section do not apply to any of the following:

(1) Sewerage or treatment works for sewage installed or to be installed for the use of a private residence or dwelling;

(2) Sewerage systems, treatment works, or disposal systems for storm water from an animal feeding facility or manure, as "animal feeding facility" and "manure" are defined in section 903.01 of the Revised Code;

(3) ~~Animal waste~~ Residual farm products and manure treatment or disposal works and related management and conservation practices that are subject to rules adopted under division (E)(2)(1) of section 1511.02 of the Revised Code; As used in division (B)(3) of this section, "residual farm products" and "manure" have the same meanings as in section 1511.01 of the Revised Code.

(4) Sewerage or treatment works for the on-lot disposal or treatment of sewage from a small flow on-site sewage treatment system, as defined in section 3718.01 of the Revised Code, if the board of health of a city or general health district has notified the director of health and the director of environmental protection under section 3718.021 of the Revised Code that the board has chosen to regulate the system, provided that the board remains in compliance with the rules adopted under division (A)(13) of section 3718.02 of the Revised Code.

The exclusions established in divisions (B)(2) and (3) of this section do not apply to the construction or installation of disposal systems, as defined in section 6111.01 of the Revised Code, that are located at an animal feeding facility and that store, treat, or discharge wastewaters that do not include storm water or manure or that discharge to a publicly owned treatment

works.

SECTION 2. That existing sections 903.25, 905.31, 905.32, 905.34, 905.36, 905.39, 905.41, 905.45, 905.46, 905.47, 905.48, 905.49, 905.50, 905.501, 905.99, 907.111, 1511.01, 1511.02, 1511.021, 1511.07, 1511.071, 1515.01, 1515.02, 1515.08, 3717.53, 6111.03, 6111.04, and 6111.44 of the Revised Code are hereby repealed.

SECTION 3. (A) In accordance with the amendment of section 1515.02 of the Revised Code by this act, the Governor shall appoint two additional members to the Ohio Soil and Water Conservation Commission established in that section, as amended by this act, not later than thirty days after the effective date of this section as follows:

- (1) One member shall be appointed for a term ending June 30, 2015.
- (2) One member shall be appointed for a term ending June 30, 2016.

Thereafter, terms of office for the additional members shall be for four years, each term ending on the same day of the same month of the year as did the term that it succeeds. Those additional members may be reappointed in accordance with section 1515.02 of the Revised Code, as amended by this act.

(B) The Soil and Water Conservation Commission established in section 1515.02 of the Revised Code, as amended by this act, is a continuation of the Soil and Water Conservation Commission established in that section prior to its amendment by this act.

SECTION 4. Until such time as rules adopted under section 905.322 of the Revised Code as enacted by this act are final, the Director of Agriculture shall authorize applicants for commercial and private pesticide applicator licenses to obtain additional training and temporary certification in fertilizer application simultaneously with pesticide application training at no additional cost.

SECTION 5. The Director of Natural Resources shall identify any unexpended funds previously appropriated to soil and water conservation districts that are related to the Conservation Reserve Enhancement Program. The Director shall determine the amount of such funds necessary for programs, practices, and other activities, other than permitting, related to nutrient reduction in Lake Erie, including nutrients associated with open

lake disposal of dredge material. The amounts so identified by the Director shall be retained by the districts for the purposes stated above. Upon the effective date of this section, soil and water conservation districts shall remit to the Director any amounts of the unexpended funds that are not retained by the districts under this section. Upon receipt, the Director shall deposit these funds into the Healthy Lake Erie Fund, which is hereby created in the state treasury. These funds shall be used by the Director for the purposes of that fund related to open lake disposal of dredge material in Lake Erie.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. S. B. No. 150

130th G.A.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____