

soil sediment, including attached substances, from silvicultural operations.

(C) "Pollution abatement practice" means any erosion control practice or timber harvest best management practice or procedure and the operation and management associated with it as contained in a timber harvest plan.

(D) "Soil and water conservation district" has the same meaning as in section 940.01 of the Revised Code.

(E) "Timber harvest plan" means a written record, developed or approved by the chief of the division of forestry or the chief's designee that contains implementation schedules and operational procedures for a level of land and water management that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment, including attached substances, from silvicultural operations.

(F) "Waters of the state" has the same meaning as in section 903.01 of the Revised Code.

Sec. 1503.51. (A) The chief of the division of forestry shall adopt rules in accordance with Chapter 119. of the Revised Code that do or comply with all of the following:

(1) Establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in silvicultural operations that will abate wind or water erosion of the soil or abate the degradation of the waters of the state by soil sediment, including attached substances, from silvicultural operations and establish criteria for determination of the acceptability of such management and conservation practices;

(2) Establish procedures for administration of the rules;

(3) 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 silvicultural operations, that require expenditures that are likely to exceed the economic returns to the owner or operator of a silvicultural operation, and that abate soil erosion or degradation of the waters of the state by soil sediment, including attached substances, from silvicultural operations.

(B) The chief or the chief's designee shall do all of the following:

(1) Issue orders requiring compliance with a rule adopted under this section. Before the chief or the chief's designee issues an order, the chief or the chief's designee shall afford the person an adjudication hearing under Chapter 119. of the Revised Code. The chief or the chief's designee may require in an order that a person who has caused forestry pollution by failure

to comply with the standards established in rules adopted under this section operate under a timber harvest plan approved by the chief or the chief's designee under this section. An order shall be issued in writing and contain a finding by the chief or the chief's designee of the facts on which the order is based and the standard that is not being met.

(2) Periodically monitor the use and effectiveness of management and conservation practices conducted in accordance with standards established in rules adopted under division (A)(1) of this section;

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

(4) When necessary for the purposes of sections 1503.50 to 1503.55 of the Revised Code, develop or approve timber harvest plans.

Sec. 1503.52. (A) A person who owns or operates a silviculture operation may develop and operate under a timber harvest plan approved by the chief of the division of forestry or the chief's designee under section 1503.51 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code.

(B) Any person who wishes to make a complaint regarding nuisances involving forestry pollution may do so orally or by submitting a written, signed, and dated complaint to the chief or 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 forestry 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 forestry pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for a silvicultural operation is operating under and in substantial compliance with an approved timber harvest plan developed under division (A) of this section, with a timber harvest plan developed by the chief or the chief's designee under section 1503.51 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code, or with a timber harvest plan required by an order issued by the chief or the chief's designee under division (B)(1) of section 1503.51 of the Revised Code. Nothing in this section is in derogation of the authority granted to the chief or the chief's designee in 1503.51 of the Revised Code.

Sec. 1503.53. (A) Except as provided in division (B) of this section, the chief of the division of forestry, an employee of the division of forestry, the supervisors of a soil and water conservation district, an employee of a

district, and a contractor of the division 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 a silvicultural operation that is operated under a timber harvest plan;

(2) Information gathered as a result of an inspection to determine whether the person who owns or operates the operation is in compliance with a timber harvest plan.

(B) The chief 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 or the supervisors in the development of a timber harvest plan or an inspection to determine compliance with such a plan if the chief or supervisors determine that the person or federal, state, or local agency will not subsequently disclose the information to another person.

Sec. 1503.54. (A)(1) No person shall recklessly fail to comply with an order of the chief of the division of forestry or the chief's designee issued under section 1503.51 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 in rules adopted under section 1503.51 of the Revised Code causes forestry pollution for an order to compel the violator to cease the violation and to remove the pollutant or to comply with the rules adopted under 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 forestry pollution, the chief may issue an order, without notice or hearing, stating the existence of the emergency and requiring that action be taken that is necessary to address the emergency. The order shall be effective immediately.

A person to whom the order is issued shall comply with the order immediately, but on application to the chief shall be afforded an adjudication hearing in accordance with Chapter 119, of the Revised Code as soon as possible, but not later than twenty days after the chief's receipt of the application. Following the hearing, the chief shall continue the order in effect, revoke it, or modify it. The order may be appealed in accordance with section 119.12 of the Revised Code. An emergency order shall not 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 of time as determined by the chief, the chief or the chief's designee may enter on private or public lands to investigate and take action to mitigate, minimize, remove, or abate the conditions that are the subject of the order.

(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 or the chief's designee issued under section 1503.51 of the Revised Code.

Sec. 1503.55. (A) There is hereby created in the state treasury the forestry pollution abatement fund, which shall be administered by the chief of the division of forestry.

(B) The fund may be used to pay costs incurred under all of the following:

(1) Rules adopted under division (A)(3) of section 1503.51 of the Revised Code;

(2) Division (B)(2) of section 1503.51 of the Revised Code;

(3) Division (A)(3) of section 1503.54 of the Revised Code in investigating, mitigating, minimizing, removing, or abating any pollution of the waters of the state caused by forestry pollution that requires emergency action to protect public health.

(C) Any person responsible for causing or allowing forestry pollution or an unauthorized release, spill, or discharge is liable to the chief for any costs incurred by the chief in investigating, mitigating, minimizing, removing, or abating the forestry pollution or release, spill, or discharge regardless of whether those costs were paid from the forestry pollution abatement fund or any other fund of the division. Upon the request of the chief, the attorney general shall bring a civil action against the responsible person to recover those costs. Money recovered under this section shall be credited to the forestry pollution abatement fund.

Sec. 1503.99. (A) Whoever violates section 1503.01 or 1503.12 of the Revised Code is guilty of a minor misdemeanor.

(B) Whoever violates section 1503.18 or 1503.43 of the Revised Code is guilty of a misdemeanor of the third degree.

(C) Whoever violates division (A) of section 1503.54 of the Revised Code is guilty of a misdemeanor of the first degree. Each day of violation is a separate offense. In addition to the penalty provided in this division, the sentencing court may assess damages in an amount equal to the costs of reclaiming, restoring, or otherwise repairing any damage to public or private property caused by any violation of division (A) of section 1503.54 of the Revised Code. All fines and moneys assessed as damages under this section

shall be credited to the forestry pollution abatement fund created in section 1503.55 of the Revised Code.

Sec. 1505.10. ~~The chief of the division of geological survey~~ director of natural resources or the director's designee shall prepare and publish for public distribution annual reports that shall include all of the following:

(A) A list of the operators of mines, quarries, pits, or other mineral resource extraction operations in this state;

(B) Information on the location of and commodity extracted at each operation;

(C) Information on the employment at each operation;

(D) Information on the tonnage of coal or other minerals extracted at each operation along with the method of extraction;

(E) Information on the production, use, distribution, value, and other facts relative to the mineral resources of the state that may be of public interest.

The director or the director's designee may require the division of mineral resources management to perform the duties required by this section.

Each operator engaged in the extraction of minerals shall submit an accurate and complete annual report, on or before the last day of January each year, to the ~~chief of the division of geological survey~~ director or the director's designee on forms provided by the ~~chief~~ director or the director's designee and containing the information specified in divisions (A) to (E) of this section for the immediately preceding calendar year. The ~~chief of the division of mineral resources management~~ director or the director's designee may use all or portions of the information collected pursuant to this section in preparing the annual report required by section 1561.04 of the Revised Code.

No person shall fail to comply with this section.

Sec. 1506.01. As used in this chapter:

(A) "Coastal area" means the waters of Lake Erie, the islands in the lake, and the lands under and adjacent to the lake, including transitional areas, wetlands, and beaches. The coastal area extends in Lake Erie to the international boundary line between the United States and Canada and landward only to the extent necessary to include shorelands, the uses of which have a direct and significant impact on coastal waters as determined by the director of natural resources.

(B) "Coastal management program" means the comprehensive action of the state and its political subdivisions cooperatively to preserve, protect, develop, restore, or enhance the resources of the coastal area and to ensure

wise use of the land and water resources of the coastal area, giving attention to natural, cultural, historic, and aesthetic values; agricultural, recreational, energy, and economic needs; and the national interest. "Coastal management program" includes the establishment of objectives, policies, standards, and criteria concerning, without limitation, protection of air, water, wildlife, rare and endangered species, wetlands and natural areas, and other natural resources in the coastal area; management of coastal development and redevelopment; preservation and restoration of historic, cultural, and aesthetic coastal features; and public access to the coastal area for recreation purposes.

(C) "Coastal management program document" means a comprehensive statement consisting of, without limitation, text, maps, and illustrations that is adopted by the director in accordance with this chapter, describes the objectives, policies, standards, and criteria of the coastal management program for guiding public and private uses of lands and waters in the coastal area, lists the governmental agencies, including, without limitation, state agencies, involved in implementing the coastal management program, describes their applicable policies and programs, and cites the statutes and rules under which they may adopt and implement those policies and programs.

(D) "Person" means any agency of this state, any political subdivision of this state or of the United States, and any legal entity defined as a person under section 1.59 of the Revised Code.

(E) "Director" means the director of natural resources or the director's designee.

(F) "Permanent structure" means any residential, commercial, industrial, institutional, or agricultural building, any mobile home as defined in division (O) of section 4501.01 of the Revised Code, any manufactured home as defined in division (C)(4) of section 3781.06 of the Revised Code, and any septic system that receives sewage from a single-family, two-family, or three-family dwelling, but does not include any recreational vehicle as defined in section 4501.01 of the Revised Code.

(G) "State agency" or "agency of the state" has the same meaning as "agency" as defined in section 111.15 of the Revised Code.

(H) "Coastal flood hazard area" means any territory within the coastal area that has been identified as a flood hazard area under the "Flood Disaster Protection Act of 1973," 87 Stat. 975, 42 U.S.C.A. 4002, as amended.

(I) "Coastal erosion area" means any territory included in Lake Erie coastal erosion areas identified by the director under section 1506.06 of the Revised Code.

(J) "Conservancy district" means a conservancy district that is established under Chapter 6101. of the Revised Code.

(K) "Park board" means the board of park commissioners of a park district that is created under Chapter 1545. of the Revised Code.

(L) "Erosion control structure" means a structure that is designed solely and specifically to reduce or control erosion of the shore along or near Lake Erie, including, without limitation, revetments, seawalls, bulkheads, certain breakwaters, and similar structures.

(M) "Shore structure" includes, but is not limited to, beaches; groins; revetments; bulkheads; seawalls; breakwaters; certain dikes designated by the chief of the division of ~~soil and~~ water resources; piers; docks; jetties; wharves; marinas; boat ramps; any associated fill or debris used as part of the construction of shore structures that may affect shore erosion, wave action, or inundation; and fill or debris that is placed along or near the shore, including bluffs, banks, or beach ridges, for the purpose of stabilizing slopes.

Sec. 1509.01. As used in this chapter:

(A) "Well" means any borehole, whether drilled or bored, within the state for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters.

(B) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include hydrocarbons that were originally in a gaseous phase in the reservoir.

(C) "Gas" means all natural gas and all other fluid hydrocarbons that are not oil, including condensate.

(D) "Condensate" means liquid hydrocarbons separated at or near the well pad or along the gas production or gathering system prior to gas processing.

(E) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both, but does not include a gas storage reservoir. Each zone of a geological structure that is completely separated from any other zone in the same structure may contain a separate pool.

(F) "Field" means the general area underlaid by one or more pools.

(G) "Drilling unit" means the minimum acreage on which one well may be drilled, but does not apply to a well for injecting gas into or removing gas from a gas storage reservoir.

(H) "Waste" includes all of the following:

(1) Physical waste, as that term generally is understood in the oil and

gas industry;

(2) Inefficient, excessive, or improper use, or the unnecessary dissipation, of reservoir energy;

(3) Inefficient storing of oil or gas;

(4) Locating, drilling, equipping, operating, or producing an oil or gas well in a manner that reduces or tends to reduce the quantity of oil or gas ultimately recoverable under prudent and proper operations from the pool into which it is drilled or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

(5) Other underground or surface waste in the production or storage of oil, gas, or condensate, however caused.

(I) "Correlative rights" means the reasonable opportunity to every person entitled thereto to recover and receive the oil and gas in and under the person's tract or tracts, or the equivalent thereof, without having to drill unnecessary wells or incur other unnecessary expense.

(J) "Tract" means a single, ~~individually-taxed~~ individual parcel of land ~~appearing on the tax list or a portion of a single, individual parcel of land.~~

(K) "Owner," unless referring to a mine, means the person who has the right to drill on a tract or drilling unit, to drill into and produce from a pool, and to appropriate the oil or gas produced therefrom either for the person or for others, except that a person ceases to be an owner with respect to a well when the well has been plugged in accordance with applicable rules adopted and orders issued under this chapter. "Owner" does not include a person who obtains a lease of the mineral rights for oil and gas on a parcel of land if the person does not attempt to produce or produce oil or gas from a well or obtain a permit under this chapter for a well or if the entire interest of a well is transferred to the person in accordance with division (B) of section 1509.31 of the Revised Code.

(L) "Royalty interest" means the fee holder's share in the production from a well.

(M) "Discovery well" means the first well capable of producing oil or gas in commercial quantities from a pool.

(N) "Prepared clay" means a clay that is plastic and is thoroughly saturated with fresh water to a weight and consistency great enough to settle through saltwater in the well in which it is to be used, except as otherwise approved by the chief of the division of oil and gas resources management.

(O) "Rock sediment" means the combined cutting and residue from drilling sedimentary rocks and formation.

(P) "Excavations and workings," "mine," and "pillar" have the same meanings as in section 1561.01 of the Revised Code.

(Q) "Coal bearing township" means a township designated as such by the chief of the division of mineral resources management under section 1561.06 of the Revised Code.

(R) "Gas storage reservoir" means a continuous area of a subterranean porous sand or rock stratum or strata into which gas is or may be injected for the purpose of storing it therein and removing it therefrom and includes a gas storage reservoir as defined in section 1571.01 of the Revised Code.

(S) "Safe Drinking Water Act" means the "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended by the "Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 U.S.C.A. 300(f), the "Safe Drinking Water Act Amendments of 1986," 100 Stat. 642, 42 U.S.C.A. 300(f), and the "Safe Drinking Water Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C.A. 300(f), and regulations adopted under those acts.

(T) "Person" includes any political subdivision, department, agency, or instrumentality of this state; the United States and any department, agency, or instrumentality thereof; ~~and any legal entity defined as a person under section 1.59 of the Revised Code; and any other form of business organization or entity recognized by the laws of this state.~~

(U) "Brine" means all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas, or plugging of a well.

(V) "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, springs, irrigation systems, drainage systems, and other bodies of water, surface or underground, natural or artificial, that are situated wholly or partially within this state or within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

(W) "Exempt Mississippian well" means a well that meets all of the following criteria:

(1) Was drilled and completed before January 1, 1980;

(2) Is located in an unglaciated part of the state;

(3) Was completed in a reservoir no deeper than the Mississippian Big Injun sandstone in areas underlain by Pennsylvanian or Permian stratigraphy, or the Mississippian Berea sandstone in areas directly underlain by Permian stratigraphy;

(4) Is used primarily to provide oil or gas for domestic use.

(X) "Exempt domestic well" means a well that meets all of the following criteria:

(1) Is owned by the owner of the surface estate of the tract on which the well is located;

(2) Is used primarily to provide gas for the owner's domestic use;

(3) Is located more than two hundred feet horizontal distance from any inhabited private dwelling house other than an inhabited private dwelling house located on the tract on which the well is located;

(4) Is located more than two hundred feet horizontal distance from any public building that may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public.

(Y) "Urbanized area" means an area where a well or production facilities of a well are located within a municipal corporation or within a township that has an unincorporated population of more than five thousand in the most recent federal decennial census prior to the issuance of the permit for the well or production facilities.

(Z) "Well stimulation" or "stimulation of a well" means the process of enhancing well productivity, including hydraulic fracturing operations.

(AA) "Production operation" means all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under this chapter, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging. "Production operation" also includes all of the following:

(1) The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities;

(3) The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities;

(4) Equipment and facilities at a wellpad or other location that are used for the transportation, handling, recycling, temporary storage, management, processing, or treatment of any equipment, material, and by-products or other substances from an operation at a wellpad that may be used or reused at the same or another operation at a wellpad or that will be disposed of in

accordance with applicable laws and rules adopted under them.

(BB) "Annular overpressurization" means the accumulation of fluids within an annulus with sufficient pressure to allow migration of annular fluids into underground sources of drinking water.

(CC) "Idle and orphaned well" means a well for which a bond has been forfeited or an abandoned well for which no money is available to plug the well in accordance with this chapter and rules adopted under it.

(DD) "Temporarily inactive well" means a well that has been granted temporary inactive status under section 1509.062 of the Revised Code.

(EE) "Material and substantial violation" means any of the following:

(1) Failure to obtain a permit to drill, reopen, convert, plugback, or plug a well under this chapter;

(2) Failure to obtain, maintain, update, or submit proof of insurance coverage that is required under this chapter;

(3) Failure to obtain, maintain, update, or submit proof of a surety bond that is required under this chapter;

(4) Failure to plug an abandoned well or idle and orphaned well unless the well has been granted temporary inactive status under section 1509.062 of the Revised Code or the chief of the division of oil and gas resources management has approved another option concerning the abandoned well or idle and orphaned well;

(5) Failure to restore a disturbed land surface as required by section 1509.072 of the Revised Code;

(6) Failure to reimburse the oil and gas well fund pursuant to a final order issued under section 1509.071 of the Revised Code;

(7) Failure to comply with a final nonappealable order of the chief issued under section 1509.04 of the Revised Code;

(8) Failure to submit a report, test result, fee, or document that is required in this chapter or rules adopted under it.

(FF) "Severer" has the same meaning as in section 5749.01 of the Revised Code.

(GG) "Horizontal well" means a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.

(HH) "Well pad" means the area that is cleared or prepared for the drilling of one or more horizontal wells.

Sec. 1509.06. (A) An application for a permit to drill a new well, drill an existing well deeper, reopen a well, convert a well to any use other than its original purpose, or plug back a well to a different source of supply,

including associated production operations, shall be filed with the chief of the division of oil and gas resources management upon such form as the chief prescribes and shall contain each of the following that is applicable:

(1) The name and address of the owner and, if a corporation, the name and address of the statutory agent;

(2) The signature of the owner or the owner's authorized agent. When an authorized agent signs an application, it shall be accompanied by a certified copy of the appointment as such agent.

(3) The names and addresses of all persons holding the royalty interest in the tract upon which the well is located or is to be drilled or within a proposed drilling unit;

(4) The location of the tract or drilling unit on which the well is located or is to be drilled identified by section or lot number, city, village, township, and county;

(5) Designation of the well by name and number;

(6)(a) The geological formation to be tested or used and the proposed total depth of the well;

(b) If the well is for the injection of a liquid, identity of the geological formation to be used as the injection zone and the composition of the liquid to be injected.

(7) The type of drilling equipment to be used;

(8)(a) An identification, to the best of the owner's knowledge, of each proposed source of ground water and surface water that will be used in the production operations of the well. The identification of each proposed source of water shall indicate if the water will be withdrawn from the Lake Erie watershed or the Ohio river watershed. In addition, the owner shall provide, to the best of the owner's knowledge, the proposed estimated rate and volume of the water withdrawal for the production operations. If recycled water will be used in the production operations, the owner shall provide the estimated volume of recycled water to be used. The owner shall submit to the chief an update of any of the information that is required by division (A)(8)(a) of this section if any of that information changes before the chief issues a permit for the application.

(b) Except as provided in division (A)(8)(c) of this section, for an application for a permit to drill a new well within an urbanized area, the results of sampling of water wells within three hundred feet of the proposed well prior to commencement of drilling. In addition, the owner shall include a list that identifies the location of each water well where the owner of the property on which the water well is located denied the owner access to sample the water well. The sampling shall be conducted in accordance with

the guidelines established in "Best Management Practices For Pre-drilling Water Sampling" in effect at the time that the application is submitted. The division shall furnish those guidelines upon request and shall make them available on the division's web site. If the chief determines that conditions at the proposed well site warrant a revision, the chief may revise the distance established in this division for purposes of pre-drilling water sampling.

(c) For an application for a permit to drill a new horizontal well, the results of sampling of water wells within one thousand five hundred feet of the proposed horizontal wellhead prior to commencement of drilling. In addition, the owner shall include a list that identifies the location of each water well where the owner of the property on which the water well is located denied the owner access to sample the water well. The sampling shall be conducted in accordance with the guidelines established in "Best Management Practices For Pre-drilling Water Sampling" in effect at the time that the application is submitted. The division shall furnish those guidelines upon request and shall make them available on the division's web site. If the chief determines that conditions at the proposed well site warrant a revision, the chief may revise the distance established in this division for purposes of pre-drilling water sampling.

(9) For an application for a permit to drill a new well within an urbanized area, a sworn statement that the applicant has provided notice by regular mail of the application to the owner of each parcel of real property that is located within five hundred feet of the surface location of the well and to the executive authority of the municipal corporation or the board of township trustees of the township, as applicable, in which the well is to be located. In addition, the notice shall contain a statement that informs an owner of real property who is required to receive the notice under division (A)(9) of this section that within five days of receipt of the notice, the owner is required to provide notice under section 1509.60 of the Revised Code to each residence in an occupied dwelling that is located on the owner's parcel of real property. The notice shall contain a statement that an application has been filed with the division of oil and gas resources management, identify the name of the applicant and the proposed well location, include the name and address of the division, and contain a statement that comments regarding the application may be sent to the division. The notice may be provided by hand delivery or regular mail. The identity of the owners of parcels of real property shall be determined using the tax records of the municipal corporation or county in which a parcel of real property is located as of the date of the notice.

(10) A plan for restoration of the land surface disturbed by drilling

operations. The plan shall provide for compliance with the restoration requirements of division (A) of section 1509.072 of the Revised Code and any rules adopted by the chief pertaining to that restoration.

(11)(a) A description by name or number of the county, township, and municipal corporation roads, streets, and highways that the applicant anticipates will be used for access to and egress from the well site;

(b) For an application for a permit for a horizontal well, a copy of an agreement concerning maintenance and safe use of the roads, streets, and highways described in division (A)(11)(a) of this section entered into on reasonable terms with the public official that has the legal authority to enter into such maintenance and use agreements for each county, township, and municipal corporation, as applicable, in which any such road, street, or highway is located or an affidavit on a form prescribed by the chief attesting that the owner attempted in good faith to enter into an agreement under division (A)(11)(b) of this section with the applicable public official of each such county, township, or municipal corporation, but that no agreement was executed.

(12) Such other relevant information as the chief prescribes by rule.

Each application shall be accompanied by a map, on a scale not smaller than four hundred feet to the inch, prepared by an Ohio registered surveyor, showing the location of the well and containing such other data as may be prescribed by the chief. If the well is or is to be located within the excavations and workings of a mine, the map also shall include the location of the mine, the name of the mine, and the name of the person operating the mine.

(B) The chief shall cause a copy of the weekly circular prepared by the division to be provided to the county engineer of each county that contains active or proposed drilling activity. The weekly circular shall contain, in the manner prescribed by the chief, the names of all applicants for permits, the location of each well or proposed well, the information required by division (A)(11) of this section, and any additional information the chief prescribes. In addition, the chief promptly shall transfer an electronic copy or facsimile, or if those methods are not available to a municipal corporation or township, a copy via regular mail, of a drilling permit application to the clerk of the legislative authority of the municipal corporation or to the clerk of the township in which the well or proposed well is or is to be located if the legislative authority of the municipal corporation or the board of township trustees has asked to receive copies of such applications and the appropriate clerk has provided the chief an accurate, current electronic mailing address or facsimile number, as applicable.

(C)(1) Except as provided in division (C)(2) of this section, the chief shall not issue a permit for at least ten days after the date of filing of the application for the permit unless, upon reasonable cause shown, the chief waives that period or a request for expedited review is filed under this section. However, the chief shall issue a permit within twenty-one days of the filing of the application unless the chief denies the application by order.

(2) If the location of a well or proposed well will be or is within an urbanized area, the chief shall not issue a permit for at least eighteen days after the date of filing of the application for the permit unless, upon reasonable cause shown, the chief waives that period or the chief at the chief's discretion grants a request for an expedited review. However, the chief shall issue a permit for a well or proposed well within an urbanized area within thirty days of the filing of the application unless the chief denies the application by order.

(D) An applicant may file a request with the chief for expedited review of a permit application if the well is not or is not to be located in a gas storage reservoir or reservoir protective area, as "reservoir protective area" is defined in section 1571.01 of the Revised Code. If the well is or is to be located in a coal bearing township, the application shall be accompanied by the affidavit of the landowner prescribed in section 1509.08 of the Revised Code.

In addition to a complete application for a permit that meets the requirements of this section and the permit fee prescribed by this section, a request for expedited review shall be accompanied by a separate nonrefundable filing fee of two hundred fifty dollars. Upon the filing of a request for expedited review, the chief shall cause the county engineer of the county in which the well is or is to be located to be notified of the filing of the permit application and the request for expedited review by telephone or other means that in the judgment of the chief will provide timely notice of the application and request. The chief shall issue a permit within seven days of the filing of the request unless the chief denies the application by order. Notwithstanding the provisions of this section governing expedited review of permit applications, the chief may refuse to accept requests for expedited review if, in the chief's judgment, the acceptance of the requests would prevent the issuance, within twenty-one days of their filing, of permits for which applications are pending.

(E) A well shall be drilled and operated in accordance with the plans, sworn statements, and other information submitted in the approved application.

(F) The chief shall issue an order denying a permit if the chief finds that

there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, including, if applicable, terms and conditions regarding subjects identified in rules adopted under section 1509.03 of the Revised Code. The issuance of a permit shall not be considered an order of the chief.

The chief shall post notice of each permit that has been approved under this section on the division's web site not later than two business days after the application for a permit has been approved.

(G) Each application for a permit required by section 1509.05 of the Revised Code, except an application ~~to plug back an existing well that is required by that section and an application~~ for a well drilled or reopened for purposes of section 1509.22 of the Revised Code, also shall be accompanied by a nonrefundable fee as follows:

(1) Five hundred dollars for a permit to conduct activities in a township with a population of fewer than ten thousand;

(2) Seven hundred fifty dollars for a permit to conduct activities in a township with a population of ten thousand or more, but fewer than fifteen thousand;

(3) One thousand dollars for a permit to conduct activities in either of the following:

(a) A township with a population of fifteen thousand or more;

(b) A municipal corporation regardless of population.

(4) If the application is for a permit that requires mandatory pooling, an additional five thousand dollars.

For purposes of calculating fee amounts, populations shall be determined using the most recent federal decennial census.

Each application for the revision or reissuance of a permit shall be accompanied by a nonrefundable fee of two hundred fifty dollars.

(H)(1) Prior to the commencement of well pad construction and prior to the issuance of a permit to drill a proposed horizontal well or a proposed well that is to be located in an urbanized area, the division shall conduct a site review to identify and evaluate any site-specific terms and conditions that may be attached to the permit. At the site review, a representative of the division shall consider fencing, screening, and landscaping requirements, if any, for similar structures in the community in which the well is proposed to be located. The terms and conditions that are attached to the permit shall

include the establishment of fencing, screening, and landscaping requirements for the surface facilities of the proposed well, including a tank battery of the well.

(2) Prior to the issuance of a permit to drill a proposed well, the division shall conduct a review to identify and evaluate any site-specific terms and conditions that may be attached to the permit if the proposed well will be located in a one-hundred-year floodplain or within the five-year time of travel associated with a public drinking water supply.

(I) A permit shall be issued by the chief in accordance with this chapter. A permit issued under this section for a well that is or is to be located in an urbanized area shall be valid for twelve months, and all other permits issued under this section shall be valid for twenty-four months.

(J) An applicant or a permittee, as applicable, shall submit to the chief an update of the information that is required under division (A)(8)(a) of this section if any of that information changes prior to commencement of production operations.

(K) A permittee or a permittee's authorized representative shall notify an inspector from the division at least twenty-four hours, or another time period agreed to by the chief's authorized representative, prior to the commencement of well pad construction and of drilling, reopening, converting, well stimulation, or plugback operations.

Sec. 1509.11. (A)(1) The owner of any well, except a horizontal well, that is producing or capable of producing oil or gas shall file with the chief of the division of oil and gas resources management, on or before the thirty-first day of March, a statement of production of oil, gas, and brine for the last preceding calendar year in such form as the chief may prescribe. An owner that has more than one hundred such wells in this state shall submit electronically the statement of production in a format that is approved by the chief. ~~The chief shall include on the form, at the minimum, a request for the submittal of the information that a person who is regulated under this chapter is required to submit under the "Emergency Planning and Community Right To Know Act of 1986," 100 Stat. 1728, 42 U.S.C.A. 11001, and regulations adopted under it, and that the division of oil and gas resources management does not obtain through other reporting mechanisms.~~

(2) The owner of any horizontal well that is producing or capable of producing oil or gas shall file with the chief, on the forty-fifth day following the close of each calendar quarter, a statement of production of oil, gas, and brine for the preceding calendar quarter in a form that the chief prescribes. An owner that has more than one hundred horizontal wells in this state shall submit electronically the statement of production in a format that is

approved by the chief. ~~The chief shall include on the form, at a minimum, a request for the submittal of the information that a person who is regulated under this chapter is required to submit under the "Emergency Planning and Community Right To Know Act of 1986," 100 Stat. 1728, 42 U.S.C. 11001, and regulations adopted under it, and that the division does not obtain through other reporting mechanisms.~~

(B) The chief shall not disclose information received from the department of taxation under division (C)(12) of section 5703.21 of the Revised Code until the related statement of production required by division (A) of this section is filed with the chief.

Sec. 1509.23. ~~(A)~~ Rules of the chief of the division of oil and gas resources management may specify practices to be followed in the drilling and treatment of wells, production of oil and gas, and plugging of wells for protection of public health or safety or to prevent damage to natural resources, including specification of the following:

~~(1)(A)~~ Appropriate devices;

~~(2)(B)~~ Minimum distances that wells and other excavations, structures, and equipment shall be located from water wells, streets, roads, highways, rivers, lakes, streams, ponds, other bodies of water, railroad tracks, public or private recreational areas, zoning districts, and buildings or other structures. Rules adopted under this division ~~(A)(2) of this section~~ shall not conflict with section 1509.021 of the Revised Code.

~~(3)(C)~~ Other methods of operation;

~~(4)(D)~~ Procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and brine from oil production facilities and oil drilling and workover facilities consistent with and equivalent in scope, content, and coverage to section 311(j)(1)(c) of the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended, and regulations adopted under it. In addition, the rules may specify procedures, methods, and equipment and other requirements for equipment to prevent and contain surface and subsurface discharges of fluids, condensates, and gases.

~~(5)(E)~~ Notifications;

~~(6)(F)~~ Requirements governing the location and construction of fresh water impoundments that are part of a production operation.

~~(B) The chief, in consultation with the emergency response commission created in section 3750.02 of the Revised Code, shall adopt rules in accordance with Chapter 119. of the Revised Code that specify the information that shall be included in an electronic database that the chief shall create and host. The information shall be that which the chief considers~~

~~to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment. At the minimum, the information shall include that which a person who is regulated under this chapter is required to submit under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C.A. 11001, and regulations adopted under it.~~

~~In addition, the rules shall specify whether and to what extent the database and the information that it contains will be made accessible to the public. The rules shall ensure that the database will be made available via the internet or a system of computer disks to the emergency response commission and to every local emergency planning committee and fire department in this state.~~

Sec. 1509.231. (A) A person that is regulated under this chapter and rules adopted under it and that is required to submit information under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C. 11022, and regulations adopted under it shall submit the information to the chief of the division of oil and gas resources management on or before the first day of March of each calendar year. The person shall submit the information in accordance with rules adopted under division (B) of this section.

(B) The chief, in consultation with the emergency response commission created in section 3750.02 of the Revised Code, shall adopt rules in accordance with Chapter 119. of the Revised Code that specify the information that shall be included in an electronic database that the chief shall create and host. The information shall be information that the chief considers to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment. The rules shall require that the information be consistent with the information that a person that is regulated under this chapter is required to submit under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1728, 42 U.S.C. 11022, and regulations adopted under it.

In addition, the rules shall do all of the following:

(1) Specify whether and to what extent the database and the information that it contains will be made accessible to the public;

(2) Ensure that the information submitted for the database will be made immediately available to the emergency response commission, the local emergency planning committee of the emergency planning district in which a facility is located, and the fire department having jurisdiction over a facility;

(3) Ensure that the information submitted for the database includes the information required to be reported under section 3750.08 of the Revised Code and rules adopted under section 3750.02 of the Revised Code.

(C) As used in this section, "emergency planning district," "facility," and "fire department" have the same meanings as in section 3750.01 of the Revised Code.

Sec. 1509.232. (A) An owner, a person to whom an order is issued under this chapter or rules adopted under it, a person to whom a registration certificate is issued under section 1509.222 of the Revised Code, or a person engaged in an activity pursuant to section 1509.226 of the Revised Code shall notify the division of oil and gas resources management by means of a toll free telephone number designated by the chief of the division of oil and gas resources management or by electronic means designated by the chief within thirty minutes after becoming aware of the occurrence of any of the following unless notification within that time is impracticable under the circumstances:

(1) An uncontrolled or unplanned release of gas associated with a production operation or other activity regulated under this chapter or rules adopted under it in an amount determined, in good faith, to equal or exceed one hundred MCF as defined in section 5727.80 of the Revised Code;

(2) A release of oil outside a containment area associated with a production operation or other activity regulated under this chapter or rules adopted under it if the release is in an amount determined, in good faith, to exceed two hundred ten United States gallons or as specified by rule adopted by the chief in accordance with Chapter 119. of the Revised Code;

(3) A release of brine, drill cuttings, or other drilling wastes regulated under this chapter or rules adopted under it outside the boundary of a site or facility regulated under this chapter or rules adopted under it;

(4) A release of hydrogen sulfide associated with a production operation or other activity regulated under this chapter or rules adopted under it in an amount determined, in good faith, to exceed twenty parts per million;

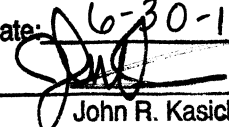
(5) A discharge or spill of a liquid, solid, or semisolid substance or material associated with a production operation or other activity regulated under this chapter or rules adopted under it in an amount determined, in good faith, to exceed a reportable quantity as defined in rules adopted under section 3750.02 of the Revised Code, excluding a discharge or spill consisting solely of fresh water or storm water;

(6) A fire or explosion associated with a production operation or other activity regulated under this chapter or rules adopted under it, excluding flaring or controlled burns authorized under this chapter or rules adopted

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Date: 6-30-15



John R. Kasich, Governor

under it or by the terms and conditions of a permit issued under this chapter:

(7) The response by a fire department as defined in section 742.01 of the Revised Code or a person providing emergency medical services as defined in section 4765.01 of the Revised Code to the location of, and for the purpose of responding to, an occurrence specified in division (A)(1), (2), (3), (4), (5), or (6) of this section.

(B) If a contractor performs services on behalf of a person specified in division (A) of this section, the contractor shall notify that person within thirty minutes after the contractor becomes aware of any occurrence specified in that division unless notification within that time is impracticable under the circumstances.

(C) The chief may adopt rules in accordance with Chapter 119. of the Revised Code that are necessary for the administration of this section.

(D) No person shall fail to comply with this section.

(E)(1) Section 1509.33 of the Revised Code applies to this section.

(2) Section 1509.99 of the Revised Code does not apply to this section.

Sec. 1509.27. If a tract ~~of land is~~ or tracts are of insufficient size or shape to meet the requirements for drilling a proposed well thereon as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable, and the owner ~~of the tract who also is the owner of the mineral interest~~ has been unable to form a drilling unit under agreement as provided in section 1509.26 of the Revised Code, on a just and equitable basis, ~~such an~~ the owner may make application to the division of oil and gas resources management for a mandatory pooling order.

The application shall include information as shall be reasonably required by the chief of the division of oil and gas resources management and shall be accompanied by an application for a permit as required by section 1509.05 of the Revised Code. The chief shall notify all mineral rights owners of ~~land tracts~~ within the area proposed to be pooled by an order and included within the drilling unit of the filing of the application and of their right to a hearing. After the hearing or after the expiration of thirty days from the date notice of application was mailed to such owners, the chief, if satisfied that the application is proper in form and that mandatory pooling is necessary to protect correlative rights and to provide effective development, use, and conservation of oil and gas, shall issue a drilling permit and a mandatory pooling order complying with the requirements for drilling a well as provided in section 1509.24 or 1509.25 of the Revised Code, whichever is applicable. The mandatory pooling order shall:

(A) Designate the boundaries of the drilling unit within which the well shall be drilled;

The above boxed and initialed text was disapproved.

Date:

6-30-15

John R. Kasich, Governor

(B) Designate the proposed production site;

(C) Describe each separately owned tract or part thereof pooled by the order;

(D) Allocate on a surface acreage basis a pro rata portion of the production to ~~the owner of~~ each tract pooled by the order. The pro rata portion shall be in the same proportion that the percentage of the ~~owner's tract's~~ tract's acreage is to the state minimum acreage requirements established in rules adopted under this chapter for a drilling unit unless the applicant demonstrates to the chief using geological evidence that the geologic structure containing the oil or gas is larger than the minimum acreage requirement in which case the pro rata portion shall be in the same proportion that the percentage of the ~~owner's~~ tract's acreage is to the geologic structure.

(E) Specify the basis upon which each mineral rights owner of a tract pooled by the order shall share all reasonable costs and expenses of drilling and producing if the mineral rights owner elects to participate in the drilling and operation of the well;

(F) Designate the person to whom the permit shall be issued.

A person shall not submit more than five applications for mandatory pooling orders per year under this section unless otherwise approved by the chief.

No surface operations or disturbances to the surface of the land shall occur on a tract pooled by an order without the written consent of or a written agreement with the surface rights owner of the tract that approves the operations or disturbances.

If ~~an~~ a mineral rights owner of a tract pooled by the order does not elect to participate in the risk and cost of the drilling and operation of a well, the mineral rights owner shall be designated as a nonparticipating owner in the drilling and operation of the well on a limited or carried basis and is subject to terms and conditions determined by the chief to be just and reasonable. In addition, if ~~an~~ a mineral rights owner is designated as a nonparticipating owner, the mineral rights owner is not liable for actions or conditions associated with the drilling or operation of the well. If the applicant bears the costs of drilling, equipping, and operating a well for the benefit of a nonparticipating owner, as provided for in the pooling order, then the applicant shall be entitled to the share of production from the drilling unit accruing to the interest of that nonparticipating owner, exclusive of the nonparticipating owner's proportionate share of the royalty interest until there has been received the share of costs charged to that nonparticipating owner plus such additional percentage of the share of costs as the chief shall

determine. The total amount receivable hereunder shall in no event exceed two hundred per cent of the share of costs charged to that nonparticipating owner. After receipt of that share of costs by such an applicant, a nonparticipating owner shall receive a proportionate share of the working interest in the well in addition to a proportionate share of the royalty interest, if any.

If there is a dispute as to costs of drilling, equipping, or operating a well, the chief shall determine those costs.

Sec. 1509.28. (A) The chief of the division of oil and gas resources management, upon the chief's own motion or upon application by the owners of sixty-five per cent of the land area overlying the pool, shall hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof. An application by owners shall be accompanied by a nonrefundable fee of ten thousand dollars and by such information as the chief may request.

The chief shall make an order providing for the unit operation of a pool or part thereof if the chief finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting the operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

- (1) A description of the unitized area, termed the unit area;
- (2) A statement of the nature of the operations contemplated;
- (3) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the chief shall determine the value, from the evidence introduced at the hearing, of each separately owned tract in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the value of each tract so determined bears to the value of all tracts in the unit area.
- (4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;
- (5) A provision providing how the expenses of unit operations, including capital investment, shall be determined and charged to the

separately owned tracts and how the expenses shall be paid;

(6) A provision, if necessary, for carrying or otherwise financing any person who is unable to meet the person's financial obligations in connection with the unit, allowing a reasonable interest charge for such service;

(7) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of that person;

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate;

(9) Such additional provisions as are found to be appropriate for carrying on the unit operations, and for the protection or adjustment of correlative rights.

(B) No order of the chief providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the chief has been approved in writing by those owners who, under the chief's order, will be required to pay at least sixty-five per cent of the costs of the unit operation, and also by the royalty or, with respect to unleased acreage, fee owners of sixty-five per cent of the acreage to be included in the unit. If the plan for unit operations has not been so approved by owners and royalty owners at the time the order providing for unit operations is made, the chief shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the owners and royalty owners, or either, owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, the order shall cease to be of force and shall be revoked by the chief.

An order providing for unit operations may be amended by an order made by the chief, in the same manner and subject to the same conditions as an original order providing for unit operations, provided that:

(1) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners shall not be required.

(2) No such order of amendment shall change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning interest in the tract.

The chief, by an order, may provide for the unit operation of a pool or a part thereof that embraces a unit area established by a previous order of the chief. Such an order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

Oil and gas allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from the tract, and all operations, including, but not limited to, the commencement, drilling, operation of, or production from a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations and production from any lease or contract for lands any portion of which is included in the unit area. The operations conducted pursuant to the order of the chief shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the chief.

Oil and gas allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

No order of the chief or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions thereof.

Notwithstanding divisions (A) to (H) of section 1509.73 of the Revised Code and rules adopted under it, the chief shall issue an order for the unit operation of a pool or a part of a pool that encompasses a unit area for which all or a portion of the mineral rights are owned by the department of transportation.

Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired for the account of the owners within the unit area shall be the property of such owners in the proportion that the expenses of unit operations are charged.

Sec. 1509.33. (A) Whoever violates sections 1509.01 to 1509.31 of the Revised Code, or any rules adopted or orders or terms or conditions of a

permit or registration certificate issued pursuant to these sections for which no specific penalty is provided in this section, shall pay a civil penalty of not more than ~~four~~ ten thousand dollars for each offense.

(B) Whoever violates section 1509.221 of the Revised Code or any rules adopted or orders or terms or conditions of a permit issued thereunder shall pay a civil penalty of not more than ~~two~~ ten thousand ~~five hundred~~ dollars for each violation.

(C) Whoever violates division (D) of section 1509.22 or division (A)(1) of section 1509.222 of the Revised Code shall pay a civil penalty of not less than two thousand five hundred dollars nor more than twenty thousand dollars for each violation.

(D) Whoever violates division (A) of section 1509.22 of the Revised Code shall pay a civil penalty of not less than two thousand five hundred dollars nor more than ten thousand dollars for each violation.

(E) Whoever violates division (A) of section 1509.223 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each violation.

(F) Whoever violates section 1509.072 of the Revised Code or any rules adopted or orders issued to administer, implement, or enforce that section shall pay a civil penalty of not more than five thousand dollars for each violation.

(G) In addition to any other penalties provided in this chapter, whoever violates section 1509.05, section 1509.21, division (B) of section 1509.22, or division (A)(1) of section 1509.222 of the Revised Code or a term or condition of a permit or an order issued by the chief of the division of oil and gas resources management under this chapter or knowingly violates division (A) of section 1509.223 of the Revised Code is liable for any damage or injury caused by the violation and for the actual cost of rectifying the violation and conditions caused by the violation. If two or more persons knowingly violate one or more of those divisions in connection with the same event, activity, or transaction, they are jointly and severally liable under this division.

(H) The attorney general, upon the request of the chief of the division of oil and gas resources management, shall commence an action under this section against any person who violates sections 1509.01 to 1509.31 of the Revised Code, or any rules adopted or orders or terms or conditions of a permit or registration certificate issued pursuant to these sections. Any action under this section is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions. The remedy provided in this division is cumulative and concurrent

with any other remedy provided in this chapter, and the existence or exercise of one remedy does not prevent the exercise of any other, except that no person shall be subject to both a civil penalty under division (A), (B), (C), or (D) of this section and a ~~criminal penalty under~~ fine established in section 1509.99 of the Revised Code for the same offense.

(I) For purposes of this section, each day of violation constitutes a separate offense.

Sec. 1513.07. (A)(1) No operator shall conduct a coal mining operation without a permit for the operation issued by the chief of the division of mineral resources management.

(2) All permits issued pursuant to this chapter shall be issued for a term not to exceed five years, except that, if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the chief may grant a permit for the longer term. A successor in interest to a permittee who applies for a new permit within thirty days after succeeding to the interest and who is able to obtain the performance security of the original permittee may continue coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(3) A permit shall terminate if the permittee has not commenced the coal mining operations covered by the permit within three years after the issuance of the permit, except that the chief may grant reasonable extensions of the time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee, and except that with respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced coal mining operations at the time construction of the synthetic fuel or generating facility is initiated.

(4)(a) Any permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the permit. The holders of the permit may apply for renewal and the renewal shall be issued unless the chief determines by written findings, subsequent to fulfillment of the public notice requirements of this section and section 1513.071 of the Revised Code through demonstrations by opponents of renewal or otherwise, that one or more of the following circumstances exists:

(i) The terms and conditions of the existing permit are not being satisfactorily met.

(ii) The present coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter.

(iii) The renewal requested substantially jeopardizes the operator's continuing responsibilities on existing permit areas.

(iv) The applicant has not provided evidence that the performance security in effect for the operation will continue in effect for any renewal requested in the application.

(v) Any additional, revised, or updated information required by the chief has not been provided. Prior to the approval of any renewal of a permit, the chief shall provide notice to the appropriate public authorities as prescribed by rule of the chief.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter.

(c) A permit renewal shall be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

(5) A permit issued pursuant to this chapter does not eliminate the requirements for obtaining a permit to install or modify a disposal system or any part thereof or to discharge sewage, industrial waste, or other wastes into the waters of the state in accordance with Chapter 6111. of the Revised Code.

(B)(1) The permit application shall be submitted in a manner satisfactory to the chief and shall contain, among other things, all of the following:

(a) The names and addresses of all of the following:

(i) The permit applicant;

(ii) Every legal owner of record of the property, surface and mineral, to be mined;

(iii) The holders of record of any leasehold interest in the property;

(iv) Any purchaser of record of the property under a real estate contract;

(v) The operator if different from the applicant;

(vi) If any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and statutory agent for service of process.

(b) The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area;

(c) A statement of any current or previous coal mining permits in the United States held by the applicant, the permit identification, and any pending applications;

(d) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, the name and address of any person owning, of record, ten per cent or more of any class of voting stock of the applicant, a list of all names under which the applicant, partner, or principal shareholder previously operated a coal mining operation within the United States within the five-year period preceding the date of submission of the application, and a list of the person or persons primarily responsible for ensuring that the applicant complies with the requirements of this chapter and rules adopted pursuant thereto while mining and reclaiming under the permit;

(e) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, any partner if the applicant is a partnership, any officer, principal shareholder, or director if the applicant is a corporation, or any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant:

(i) Has ever held a federal or state coal mining permit that in the five-year period prior to the date of submission of the application has been suspended or revoked or has had a coal mining bond, performance security, or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(ii) Has been an officer, partner, director, principal shareholder, or person having the right to control or has in fact controlled the management of or the selection of officers, directors, or managers of a business entity that has had a coal mining or surface mining permit that in the five-year period prior to the date of submission of the application has been suspended or revoked or has had a coal mining or surface mining bond, performance security, or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.

(f) A copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, which shall include the ownership of the proposed mine, a description of the exact location and boundaries of the proposed site sufficient to make the proposed operation readily identifiable

by local residents, and the location where the application is available for public inspection;

(g) A description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(h) The anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(i) An accurate map or plan, to an appropriate scale, clearly showing the land to be affected ~~and~~, the land upon which the applicant has the legal right to enter and commence coal mining operations, and the land for which the applicant will acquire the legal right to enter and commence coal mining operations during the term of the permit, copies of those documents upon which is based the applicant's legal right to enter and commence coal mining operations or a notarized statement describing the applicant's legal right to enter and commence coal mining operations, and a statement whether that right is the subject of pending litigation. This chapter does not authorize the chief to adjudicate property title disputes.

(j) The name of the watershed and location of the surface stream or tributary into which drainage from the operation will be discharged;

(k) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, providing information on the quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the chief of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability, but this determination shall not be required until hydrologic information of the general area prior to mining is made available from an appropriate federal or state agency; however, the permit shall not be approved until the information is available and is incorporated into the application;

(l) When requested by the chief, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(m) Accurate maps prepared by or under the direction of and certified by a qualified registered professional engineer, registered surveyor, or licensed landscape architect to an appropriate scale clearly showing all types of information set forth on topographical maps of the United States

geological survey of a scale of not more than four hundred feet to the inch, including all artificial features and significant known archeological sites. The map, among other things specified by the chief, shall show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area.

(n)(i) Cross-section maps or plans of the land to be affected including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields such as hydrology, hydrogeology, geology, and landscape architecture, showing pertinent elevations and locations of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined within the area to be affected; existing or previous coal mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the land to be affected or adjacent thereto; profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan; the location of subsurface water, if encountered; the location and quality of aquifers; and the estimated elevation of the water table. Registered surveyors shall be allowed to perform all plans, maps, and certifications under this chapter as they are authorized under Chapter 4733. of the Revised Code.

(ii) A statement of the quality and locations of subsurface water. The chief shall provide by rule the number of locations to be sampled, frequency of collection, and parameters to be analyzed to obtain the statement required.

(o) A statement of the results of test borings or core samplings from the permit area, including logs of the drill holes, the thickness of the coal seam found, an analysis of the chemical properties of the coal, the sulfur content of any coal seam, chemical analysis of potentially acid or toxic forming sections of the overburden, and chemical analysis of the stratum lying immediately underneath the coal to be mined, except that this division may

be waived by the chief with respect to the specific application by a written determination that its requirements are unnecessary. If the test borings or core samplings from the permit area indicate the existence of potentially acid forming or toxic forming quantities of sulfur in the coal or overburden to be disturbed by mining, the application also shall include a statement of the acid generating potential and the acid neutralizing potential of the rock strata to be disturbed as calculated in accordance with the calculation method established under section 1513.075 of the Revised Code or with another calculation method.

(p) For those lands in the permit application that a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the secretary of the United States department of agriculture in order to confirm the exact location of the prime farmlands, if any;

(q) A certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for the coal mining and reclamation operations for which the permit is sought or evidence that the applicant has satisfied other state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of coal mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in effect during the term of the permit or any renewal, including the length of all reclamation operations. The insurance company shall give prompt notice to the permittee and the chief if the public liability insurance policy lapses for any reason including the nonpayment of insurance premiums. Upon the lapse of the policy, the chief may suspend the permit and all other outstanding permits until proper insurance coverage is obtained.

(r) The business telephone number of the applicant;

(s) If the applicant seeks an authorization under division (E)(7) of this section to conduct coal mining and reclamation operations on areas to be covered by the permit that were affected by coal mining operations before August 3, 1977, that have resulted in continuing water pollution from or on the previously mined areas, such additional information pertaining to those previously mined areas as may be required by the chief, including, without limitation, maps, plans, cross sections, data necessary to determine existing water quality from or on those areas with respect to pH, iron, and manganese, and a pollution abatement plan that may improve water quality from or on those areas with respect to pH, iron, and manganese.

(2) Information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available by the chief to any person with an interest that is or may be adversely affected, except that information that pertains only to the analysis of the chemical and physical properties of the coal, excluding information regarding mineral or elemental content that is potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

(3)(a) If the chief finds that the probable total annual production at all locations of any operator will not exceed three hundred thousand tons, the following activities, upon the written request of the operator in connection with a permit application, shall be performed by a qualified public or private laboratory or another public or private qualified entity designated by the chief, and the cost of the activities shall be assumed by the chief, provided that sufficient moneys for such assistance are available:

(i) The determination of probable hydrologic consequences required under division (B)(1)(k) of this section;

(ii) The development of cross-section maps and plans required under division (B)(1)(n)(i) of this section;

(iii) The geologic drilling and statement of results of test borings and core samplings required under division (B)(1)(o) of this section;

(iv) The collection of archaeological information required under division (B)(1)(m) of this section and any other archaeological and historical information required by the chief, and the preparation of plans necessitated thereby;

(v) Pre-blast surveys required under division (E) of section 1513.161 of the Revised Code;

(vi) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the chief under this chapter.

(b) A coal operator that has received assistance under division (B)(3)(a) of this section shall reimburse the chief for the cost of the services rendered if the chief finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand tons during the twelve months immediately following the date on which the operator was issued a coal mining and reclamation permit.

(4) Each applicant for a permit shall submit to the chief as part of the permit application a reclamation plan that meets the requirements of this chapter.

(5) Each applicant for a coal mining and reclamation permit shall file a copy of the application for a permit, excluding that information pertaining to

the coal seam itself, for public inspection with the county recorder or an appropriate public office approved by the chief in the county where the mining is proposed to occur.

(6) Each applicant for a coal mining and reclamation permit shall submit to the chief as part of the permit application a blasting plan that describes the procedures and standards by which the operator will comply with section 1513.161 of the Revised Code.

(C) Each reclamation plan submitted as part of a permit application shall include, in the detail necessary to demonstrate that reclamation required by this chapter can be accomplished and in the detail necessary for the chief to determine the estimated cost of reclamation if the reclamation has to be performed by the division of mineral resources management in the event of forfeiture of the performance security by the applicant, a statement of:

(1) The identification of the lands subject to coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including all of the following:

(a) The uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(b) The capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover and, if applicable, a soil survey prepared pursuant to division (B)(1)(p) of this section;

(c) The productivity of the land prior to mining, including appropriate classification as prime farmlands as well as the average yield of food, fiber, forage, or wood products obtained from the land under high levels of management.

(3) The use that is proposed to be made of the land following reclamation, including information regarding the utility and capacity of the reclaimed land to support a variety of alternative uses, the relationship of the proposed use to existing land use policies and plans, and the comments of any owner of the land and state and local governments or agencies thereof that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation;

(4) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and

reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 1513.16 of the Revised Code, for those food, forage, and forest lands identified in that section; and a statement as to how the permittee plans to comply with each of the requirements set out in section 1513.16 of the Revised Code;

(6) A description of the means by which the utilization and conservation of the solid fuel resource being recovered will be maximized so that re-affecting the land in the future can be minimized;

(7) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) A description of the degree to which the coal mining and reclamation operations are consistent with surface owner plans and applicable state and local land use plans and programs;

(9) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) A description of the degree to which the reclamation plan is consistent with local physical, environmental, and climatological conditions;

(11) A description of all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) The results of test borings that the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the chief, including the location of subsurface water, and an analysis of the chemical properties, including acid forming properties of the mineral and overburden; except that information that pertains only to the analysis of the chemical and physical properties of the coal, excluding information regarding mineral or elemental contents that are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) A detailed description of the measures to be taken during the mining and reclamation process to ensure the protection of all of the following:

(a) The quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(b) The rights of present users to such water;

(c) The quantity of surface and ground water systems, both on- and

off-site, from adverse effects of the mining and reclamation process or, where such protection of quantity cannot be assured, provision of alternative sources of water.

(14) Any other requirements the chief prescribes by rule.

(D)(1) Any information required by division (C) of this section that is not on public file pursuant to this chapter shall be held in confidence by the chief.

(2) With regard to requests for an exemption from the requirements of this chapter for coal extraction incidental to the extraction of other minerals, as described in division (H)(1)(a) of section 1513.01 of the Revised Code, confidential information includes and is limited to information concerning trade secrets or privileged commercial or financial information relating to the competitive rights of the persons intending to conduct the extraction of minerals.

(E)(1) Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by this chapter, and information obtained as a result of public notification and public hearing, if any, as provided by section 1513.071 of the Revised Code, the chief shall grant, require modification of, or deny the application for a permit and notify the applicant in writing in accordance with division (I)(3) of this section. An application is deemed to be complete as submitted to the chief unless the chief, within fourteen days of the submission, identifies deficiencies in the application in writing and subsequently submits a copy of a written list of deficiencies to the applicant. An application shall not be considered incomplete or denied by reason of right of entry documentation, provided that the applicant documents the applicant's legal right to enter and mine at least sixty-seven per cent of the total area for which coal mining operations are proposed.

A decision of the chief denying a permit shall state in writing the specific reasons for the denial.

The applicant for a permit or revision of a permit has the burden of establishing that the application is in compliance with all the requirements of this chapter. Within ten days after the granting of a permit, the chief shall notify the boards of township trustees and county commissioners, the mayor, and the legislative authority in the township, county, and municipal corporation in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land. However, failure of the chief to notify the local officials shall not affect the status of the permit.

(2) No permit application or application for revision of an existing

permit shall be approved unless the application affirmatively demonstrates and the chief finds in writing on the basis of the information set forth in the application or from information otherwise available, which shall be documented in the approval and made available to the applicant, all of the following:

(a) The application is accurate and complete and all the requirements of this chapter have been complied with.

(b) The applicant has demonstrated that the reclamation required by this chapter can be accomplished under the reclamation plan contained in the application.

(c)(i) Assessment of the probable cumulative impact of all anticipated mining in the general and adjacent area on the hydrologic balance specified in division (B)(1)(k) of this section has been made by the chief, and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area.

(ii) There shall be an ongoing process conducted by the chief in cooperation with other state and federal agencies to review all assessments of probable cumulative impact of coal mining in light of post-mining data and any other hydrologic information as it becomes available to determine if the assessments were realistic. The chief shall take appropriate action as indicated in the review process.

(d) The area proposed to be mined is not included within an area designated unsuitable for coal mining pursuant to section 1513.073 of the Revised Code or is not within an area under study for such designation in an administrative proceeding commenced pursuant to division (A)(3)(c) or (B) of section 1513.073 of the Revised Code unless in an area as to which an administrative proceeding has commenced pursuant to division (A)(3)(c) or (B) of section 1513.073 of the Revised Code, the operator making the permit application demonstrates that, prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which a permit is sought.

(e) In cases where the private mineral estate has been severed from the private surface estate and surface disturbance will result from the applicant's proposed use of a strip mining method, the applicant has submitted to the chief one of the following:

(i) The written consent of the surface owner to the surface disturbance that will result from the extraction of coal by the applicant's proposed strip mining method;

(ii) A conveyance that expressly grants or reserves the right to extract the coal by strip mining methods that cause surface disturbance;

(iii) If the conveyance does not expressly grant the right to extract coal by strip mining methods that cause surface disturbance, the surface-subsurface legal relationship concerning surface disturbance shall be determined under the law of this state. This chapter does not authorize the chief to adjudicate property rights disputes.

(3)(a) The applicant shall file with the permit application a schedule listing all notices of violations of any law, rule, or regulation of the United States or of any department or agency thereof or of any state pertaining to air or water environmental protection incurred by the applicant in connection with any coal mining operation during the three-year period prior to the date of application. The schedule also shall indicate the final resolution of such a notice of violation. Upon receipt of an application, the chief shall provide a schedule listing all notices of violations of this chapter pertaining to air or water environmental protection incurred by the applicant during the three-year period prior to receipt of the application and the final resolution of all such notices of violation. The chief shall provide this schedule to the applicant for filing by the applicant with the application filed for public review, as required by division (B)(5) of this section. When the schedule or other information available to the chief indicates that any coal mining operation owned or controlled by the applicant is currently in violation of such laws, the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency that has jurisdiction over the violation and that any civil penalties owed to the state for a violation and not the subject of an appeal have been paid. No permit shall be issued to an applicant after a finding by the chief that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter of a nature and duration to result in irreparable damage to the environment as to indicate an intent not to comply with or a disregard of this chapter.

(b) For the purposes of division (E)(3)(a) of this section, any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person submitting an application for a coal mining permit under this section shall not prevent issuance of that permit. As used in this division, "unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.

(4)(a) In addition to finding the application in compliance with division

(E)(2) of this section, if the area proposed to be mined contains prime farmland as determined pursuant to division (B)(1)(p) of this section, the chief, after consultation with the secretary of the United States department of agriculture and pursuant to regulations issued by the secretary of the interior with the concurrence of the secretary of agriculture, may grant a permit to mine on prime farmland if the chief finds in writing that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in section 1513.16 of the Revised Code.

(b) Division (E)(4)(a) of this section does not apply to a permit issued prior to August 3, 1977, or revisions or renewals thereof.

(5) The chief shall issue an order denying a permit after finding that the applicant has misrepresented or omitted any material fact in the application for the permit.

(6) The chief may issue an order denying a permit after finding that the applicant, any partner, if the applicant is a partnership, any officer, principal shareholder, or director, if the applicant is a corporation, or any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant has been a sole proprietor or partner, officer, director, principal shareholder, or person having the right to control or has in fact controlled the management of or the selection of officers, directors, or managers of a business entity that ever has had a coal mining license or permit issued by this or any other state or the United States suspended or revoked, ever has forfeited a coal or surface mining bond, performance security, or similar security deposited in lieu of bond in this or any other state or with the United States, or ever has substantially or materially failed to comply with this chapter.

(7) When issuing a permit under this section, the chief may authorize an applicant to conduct coal mining and reclamation operations on areas to be covered by the permit that were affected by coal mining operations before August 3, 1977, that have resulted in continuing water pollution from or on the previously mined areas for the purpose of potentially reducing the pollution loadings of pH, iron, and manganese from discharges from or on the previously mined areas. Following the chief's authorization to conduct such operations on those areas, the areas shall be designated as pollution abatement areas for the purposes of this chapter.

The chief shall not grant an authorization under division (E)(7) of this

section to conduct coal mining and reclamation operations on any such previously mined areas unless the applicant demonstrates to the chief's satisfaction that all of the following conditions are met:

(a) The applicant's pollution abatement plan for mining and reclaiming the previously mined areas represents the best available technology economically achievable.

(b) Implementation of the plan will potentially reduce pollutant loadings of pH, iron, and manganese resulting from discharges of surface waters or ground water from or on the previously mined areas within the permit area.

(c) Implementation of the plan will not cause any additional degradation of surface water quality off the permit area with respect to pH, iron, and manganese.

(d) Implementation of the plan will not cause any additional degradation of ground water.

(e) The plan meets the requirements governing mining and reclamation of such previously mined pollution abatement areas established by the chief in rules adopted under section 1513.02 of the Revised Code.

(f) Neither the applicant; any partner, if the applicant is a partnership; any officer, principal shareholder, or director, if the applicant is a corporation; any other person who has a right to control or in fact controls the management of the applicant or the selection of officers, directors, or managers of the applicant; nor any contractor or subcontractor of the applicant, has any of the following:

(i) Responsibility or liability under this chapter or rules adopted under it as an operator for treating the discharges of water pollutants from or on the previously mined areas for which the authorization is sought;

(ii) Any responsibility or liability under this chapter or rules adopted under it for reclaiming the previously mined areas for which the authorization is sought;

(iii) During the eighteen months prior to submitting the permit application requesting an authorization under division (E)(7) of this section, had a coal mining and reclamation permit suspended or revoked under division (D)(3) of section 1513.02 of the Revised Code for violating this chapter or Chapter 6111. of the Revised Code or rules adopted under them with respect to water quality, effluent limitations, or surface or ground water monitoring;

(iv) Ever forfeited a coal or surface mining bond, performance security, or similar security deposited in lieu of a bond in this or any other state or with the United States.

(8) In the case of the issuance of a permit that involves a conflict of

results between various methods of calculating potential acidity and neutralization potential for purposes of assessing the potential for acid mine drainage to occur at a mine site, the permit shall include provisions for monitoring and record keeping to identify the creation of unanticipated acid water at the mine site. If the monitoring detects the creation of acid water at the site, the permit shall impose on the permittee additional requirements regarding mining practices and site reclamation to prevent the discharge of acid mine drainage from the mine site. As used in division (E)(8) of this section, "potential acidity" and "neutralization potential" have the same meanings as in section 1513.075 of the Revised Code.

(F)(1) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the chief.

(2) An application for a revision of a permit shall not be approved unless the chief finds that reclamation required by this chapter can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within ninety days after receipt of a complete revision application. The chief shall establish, by rule, criteria for determining the extent to which all permit application information requirements and procedures, including notice and hearings, shall apply to the revision request, except that any revisions that propose significant alterations in the reclamation plan, at a minimum, shall be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions shall be made by application for a permit.

(4) Documents or a notarized statement that form the basis of the applicant's legal right to enter and commence coal mining operations on land that is located within an area covered by the permit and that was legally acquired subsequent to the issuance of the permit for the area shall be submitted with an application for a revision of the permit.

(G) No transfer, assignment, or sale of the rights granted under a permit issued pursuant to this chapter shall be made without the written approval of the chief.

(H) The chief, within a time limit prescribed in the chief's rules, shall review outstanding permits and may require reasonable revision or modification of a permit. A revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by rule of the chief.

(I)(1) If an informal conference has been held pursuant to section 1513.071 of the Revised Code, the chief shall issue and furnish the applicant

for a permit, persons who participated in the informal conference, and persons who filed written objections pursuant to division (B) of section 1513.071 of the Revised Code, with the written finding of the chief granting or denying the permit in whole or in part and stating the reasons therefor within sixty days of the conference, provided that the chief shall comply with the time frames established in division (I)(3) of this section.

(2) If there has been no informal conference held pursuant to section 1513.071 of the Revised Code, the chief shall submit to the applicant for a permit the written finding of the chief granting or denying the permit in whole or in part and stating the reasons therefor within the time frames established in division (I)(3) of this section.

(3) The chief shall grant or deny a permit not later than two hundred forty days after the submission of a complete application for the permit. Any time during which the applicant is making revisions to an application or providing additional information requested by the chief regarding an application shall not be included in the two hundred forty days. If the chief determines that a permit cannot be granted or denied within the two-hundred-forty-day time frame, the chief, not later than two hundred ten days after the submission of a complete application for the permit, shall provide the applicant with written notice of the expected delay.

(4) If the application is approved, the permit shall be issued. However, the permit shall prohibit the commencement of coal mining operations on any land that is located within an area covered by the permit if the permittee has not provided to the chief documents that form the basis of the permittee's legal right to enter and conduct coal mining operations on that land. If the application is disapproved, specific reasons therefor shall be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the chief on the permit application, the applicant or any person with an interest that is or may be adversely affected may appeal the decision to the reclamation commission pursuant to section 1513.13 of the Revised Code.

(5) Any applicant or any person with an interest that is or may be adversely affected who has participated in the administrative proceedings as an objector and is aggrieved by the decision of the reclamation commission, or if the commission fails to act within the time limits specified in this chapter, may appeal in accordance with section 1513.14 of the Revised Code.

Sec. 1513.16. (A) Any permit issued under this chapter to conduct coal mining operations shall require that the operations meet all applicable performance standards of this chapter and such other requirements as the

chief of the division of mineral resources management shall adopt by rule. General performance standards shall apply to all coal mining and reclamation operations and shall require the operator at a minimum to do all of the following:

(1) Conduct coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through coal mining can be minimized;

(2) Restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of diminution or pollution of the waters of the state, and the permit applicants' declared proposed land uses following reclamation are not considered to be impractical or unreasonable, to be inconsistent with applicable land use policies and plans, to involve unreasonable delay in implementation, or to violate federal, state, or local law;

(3) Except as provided in division (B) of this section, with respect to all coal mining operations, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter, provided that if the operator demonstrates that due to volumetric expansion the amount of overburden and the spoil and waste materials removed in the course of the mining operation are more than sufficient to restore the approximate original contour, the operator shall backfill, grade, and compact the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region in accordance with the approved mining plan. The overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and shall be revegetated in accordance with this chapter.

(4) Stabilize and protect all surface areas, including spoil piles affected by the coal mining and reclamation operation, to control erosion and attendant air and water pollution effectively;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or, if not utilized immediately, segregate it in a separate pile from the spoil, and when the topsoil is not replaced on a backfill area

within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick-growing plants or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation. If the topsoil is of insufficient quantity or of poor quality for sustaining vegetation or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in a like manner such other strata as are best able to support vegetation.

(6) Restore the topsoil or the best available subsoil that is best able to support vegetation;

(7) For all prime farmlands as identified in division (B)(1)(p) of section 1513.07 of the Revised Code to be mined and reclaimed, perform soil removal, storage, replacement, and reconstruction in accordance with specifications established by the secretary of the United States department of agriculture under the "Surface Mining Control and Reclamation Act of 1977," 91 Stat. 445, 30 U.S.C.A. 1201. The operator, at a minimum, shall be required to do all of the following:

(a) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and, if not utilized immediately, stockpile this material separately from the spoil and provide needed protection from wind and water erosion or contamination by acid or other toxic material;

(b) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and, if not utilized immediately, stockpile this material separately from the spoil and provide needed protection from wind and water erosion or contamination by acid or other toxic material;

(c) Replace and regrade the root zone material described in division (A)(7)(b) of this section with proper compaction and uniform depth over the regraded spoil material;

(d) Redistribute and grade in a uniform manner the surface soil horizon described in division (A)(7)(a) of this section.

(8) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated by the

operator that all of the following conditions will be met:

- (a) The size of the impoundment is adequate for its intended purposes.
- (b) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the "Watershed Protection and Flood Prevention Act," 68 Stat. 666 (1954), 16 U.S.C. 1001, as amended.
- (c) The quality of impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream.
- (d) The level of water will be reasonably stable.
- (e) Final grading will provide adequate safety and access for proposed water users.
- (f) The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
- (9) Conduct any augering operation associated with strip mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage, except where the chief determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety. The chief may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts.
- (10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after coal mining operations and during reclamation by doing all of the following:
 - (a) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:
 - (i) Preventing or removing water from contact with toxic producing deposits;
 - (ii) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to water courses in accordance with rules adopted by the chief in accordance with section 1513.02 of the Revised Code;
 - (iii) Casing, sealing, or otherwise managing boreholes, shafts, and wells, and keeping acid or other toxic drainage from entering ground and surface waters.

(b)(i) Conducting coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal laws;

(ii) Constructing any siltation structures pursuant to division (A)(10)(b)(i) of this section prior to commencement of coal mining operations. The structures shall be certified by persons approved by the chief to be constructed as designed and as approved in the reclamation plan.

(c) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the chief;

(d) Restoring recharge capacity of the mined area to approximate premining conditions;

(e) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(f) Such other actions as the chief may prescribe.

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working areas or excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and ensure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this chapter;

(12) Refrain from coal mining within five hundred feet of active and abandoned underground mines in order to prevent breakthroughs and to protect the health or safety of miners. The chief shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer than five hundred feet to an active underground mine if both of the following conditions are met:

(a) The nature, timing, and sequencing of the approximate coincidence of specific strip mine activities with specific underground mine activities are approved by the chief.

(b) The operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(13) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to rules adopted by the chief, all existing and new coal mine waste

piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

(15) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the coal mining operations, except that where the applicant proposes to combine strip mining operations with underground mining operations to ensure maximum practical recovery of the mineral resources, the chief may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation if:

(a) The chief finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations.

(ii) The proposed underground mining operations are necessary or desirable to ensure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface.

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in this state and that permits necessary for the underground mining operations have been issued by the appropriate authority.

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations.

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this chapter.

(vi) Provisions for the off-site storage of spoil will comply with division (A)(21) of this section.

(b) The chief has adopted specific rules to govern the granting of such variances in accordance with this division and has imposed such additional requirements as the chief considers necessary.

(c) Variances granted under this division shall be reviewed by the chief not more than three years from the date of issuance of the permit.

(d) Liability under the performance security filed by the applicant with

the chief pursuant to section 1513.08 of the Revised Code shall be for the duration of the underground mining operations and until the requirements of this section and section 1513.08 of the Revised Code have been fully complied with.

(16) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, and damage to fish or wildlife or their habitat, or to public or private property;

(17) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to seriously alter the normal flow of water;

(18) Establish, on the regraded areas and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(19)(a) Assume the responsibility for successful revegetation, as required by division (A)(18) of this section, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to ensure compliance with that division, except that when the chief approves a long-term intensive agricultural postmining land use, the applicable five-year period of responsibility for revegetation shall commence at the date of initial planting for that long-term intensive agricultural postmining land use, and except that when the chief issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan, the chief may grant an exception to division (A)(18) of this section;

(b) On lands eligible for remining, assume the responsibility for successful revegetation, as required by division (A)(18) of this section, for a period of two full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to ensure compliance with that division.

(20) Protect off-site areas from slides or damage occurring during the coal mining and reclamation operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(21) Place all excess spoil material resulting from coal mining and reclamation operations in such a manner that all of the following apply:

(a) Spoil is transported and placed in a controlled manner in position for

concurrent compaction and in such a way as to ensure mass stability and to prevent mass movement.

(b) The areas of disposal are within the permit areas for which performance security has been provided. All organic matter shall be removed immediately prior to spoil placement except in the zoned concept method.

(c) Appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and mass movement.

(d) The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented unless the zoned concept method is used.

(e) If placed on a slope, the spoil is placed upon the most moderate slope among those slopes upon which, in the judgment of the chief, the spoil could be placed in compliance with all the requirements of this chapter and is placed, where possible, upon, or above, a natural terrace, bench, or berm if that placement provides additional stability and prevents mass movement.

(f) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed.

(g) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(h) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards.

(i) All other provisions of this chapter are met.

(22) Meet such other criteria as are necessary to achieve reclamation in accordance with the purpose of this chapter, taking into consideration the physical, climatological, and other characteristics of the site;

(23) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

(24) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the chief shall determine to be retained in place as a barrier to slides and erosion;

(25) Restore on the permit area streams and wetlands affected by mining operations unless the chief approves restoration off the permit area without a permit required by section 1513.07 or 1513.074 of the Revised Code, instead of restoration on the permit area, of a stream or wetland or a portion of a stream or wetland, provided that the chief first makes all of the

following written determinations:

(a) A hydrologic and engineering assessment of the affected lands, submitted by the operator, demonstrates that restoration on the permit area is not possible.

(b) The proposed mitigation plan under which mitigation activities described in division (A)(25)(c) of this section will be conducted is limited to a stream or wetland, or a portion of a stream or wetland, for which restoration on the permit area is not possible.

(c) Mitigation activities off the permit area, including mitigation banking and payment of in-lieu mitigation fees, will be performed pursuant to a permit issued under sections 401 and 404 of the "Federal Water Pollution Control Act" as defined in section 6111.01 of the Revised Code or an isolated wetland permit issued under Chapter 6111. of the Revised Code or pursuant to a no-cost reclamation contract for the restoration of water resources affected by past mining activities pursuant to section 1513.37 of the Revised Code.

(d) The proposed mitigation plan and mitigation activities comply with the standards established in this section.

If the chief approves restoration off the permit area in accordance with this division, the operator shall complete all mitigation construction or other activities required by the mitigation plan.

Performance security for reclamation activities on the permit area shall be released pursuant to division (F) of this section, except that the release of the remaining portion of performance security under division (F)(3)(c) of this section shall not be approved prior to the construction of required mitigation activities off the permit area.

(B)(1) The chief may permit mining operations for the purposes set forth in division (B)(3) of this section.

(2) When an applicant meets the requirements of divisions (B)(3) and (4) of this section, a permit without regard to the requirement to restore to approximate original contour known as mountain top removal set forth in divisions (A)(3) or (C)(2) and (3) of this section may be granted for the mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided in division (B)(4)(a) of this section, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with this division.

(3) In cases where an industrial, commercial, agricultural, residential, or public facility use, including recreational facilities, is proposed for the

postmining use of the affected land, the chief may grant a permit for a mining operation of the nature described in division (B)(2) of this section when all of the following apply:

(a) After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is considered to constitute an equal or better economic or public use of the affected land, as compared with premining use.

(b) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be all of the following:

(i) Compatible with adjacent land uses;

(ii) Obtainable according to data regarding expected need and market;

(iii) Assured of investment in necessary public facilities;

(iv) Supported by commitments from public agencies where appropriate;

(v) Practicable with respect to private financial capability for completion of the proposed use;

(vi) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use;

(vii) Designed by a registered engineer in conformity with professional standards established to ensure the stability, drainage, and configuration necessary for the intended use of the site.

(c) The proposed use is consistent with adjacent land uses and existing state and local land use plans and programs.

(d) The chief provides the governing body of the unit of general-purpose local government in which the land is located, and any state or federal agency that the chief, in the chief's discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use.

(e) All other requirements of this chapter will be met.

(4) In granting a permit pursuant to this division, the chief shall require that each of the following is met:

(a) The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion.

(b) The reclaimed area is stable.

(c) The resulting plateau or rolling contour drains inward from the out slopes except at specified points.

(d) No damage will be done to natural watercourses.

(e) Spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use, except that all excess spoil

material not retained on the mountaintop bench shall be placed in accordance with division (A)(21) of this section.

(f) Stability of the spoil retained on the mountaintop bench is ensured and the other requirements of this chapter are met.

(5) The chief shall adopt specific rules to govern the granting of permits in accordance with divisions (B)(1) to (4) of this section and may impose such additional requirements as the chief considers necessary.

(6) All permits granted under divisions (B)(1) to (4) of this section shall be reviewed not more than three years from the date of issuance of the permit unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(C) All of the following performance standards apply to steep-slope coal mining and are in addition to those general performance standards required by this section, except that this division does not apply to those situations in which an operator is mining on flat or gently rolling terrain on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area, or where an operator is in compliance with division (B) of this section:

(1) The operator shall ensure that when performing coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter is placed on the downslope below the bench or mining cut. Spoil material in excess of that required for the reconstruction of the approximate original contour under division (A)(3) or (C)(2) of this section shall be permanently stored pursuant to division (A)(21) of this section.

(2) The operator shall complete backfilling with spoil material to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation.

(3) The operator shall not disturb land above the top of the highwall unless the chief finds that the disturbance will facilitate compliance with the environmental protection standards of this section, except that any such disturbance involving land above the highwall shall be limited to that amount of land necessary to facilitate compliance.

(D)(1) The chief may permit variances for the purposes set forth in division (D)(3) of this section, provided that the watershed control of the area is improved and that complete backfilling with spoil material shall be required to cover completely the highwall, which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of divisions (D)(3) and

(4) of this section, a variance from the requirement to restore to approximate original contour set forth in division (C)(2) of this section may be granted for the mining of coal when the owner of the surface knowingly requests in writing, as a part of the permit application, that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities, in accordance with divisions (D)(3) and (4) of this section.

(3) A variance pursuant to division (D)(2) of this section may be granted if:

(a) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is considered to constitute an equal or better economic or public use.

(b) The postmining land condition is designed and certified by a registered professional engineer in conformity with professional standards established to ensure the stability, drainage, and configuration necessary for the intended use of the site.

(c) After approval of the appropriate state environmental agencies, the watershed of the affected land is considered to be improved.

(4) In granting a variance pursuant to division (D) of this section, the chief shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, ensure stability of the spoil retained on the bench, and meet all other requirements of this chapter. All spoil placement off the mine bench shall comply with division (A)(21) of this section.

(5) The chief shall adopt specific rules to govern the granting of variances under division (D) of this section and may impose such additional requirements as the chief considers necessary.

(6) All variances granted under division (D) of this section shall be reviewed not more than three years from the date of issuance of the permit unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(E) The chief shall establish standards and criteria regulating the design, location, construction, operation, maintenance, enlargement, modification, removal, and abandonment of new and existing coal mine waste piles referred to in division (A)(13) of this section and division (A)(5) of section 1513.35 of the Revised Code. The standards and criteria shall conform to the standards and criteria used by the chief of the United States army corps of engineers to ensure that flood control structures are safe and effectively perform their intended function. In addition to engineering and other

technical specifications, the standards and criteria developed pursuant to this division shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal, or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices for required remedial or maintenance work.

(F)(1) The permittee may file a request with the chief for release of a part of a performance security under division (F)(3) of this section. Within thirty days after any request for performance security release under this section has been filed with the chief, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the coal mining operation. The advertisement shall be considered part of any performance security release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit number and the date approved, the amount of the performance security filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan and, if applicable, the operator's pollution abatement plan. In addition, as part of any performance security release application, the applicant shall submit copies of the letters sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the coal mining and reclamation activities took place, notifying them of the applicant's intention to seek release from the performance security.

(2) Upon receipt of a copy of the advertisement and request for release of a performance security under division (F)(3)(c) of this section, the chief, within thirty days, shall conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuation or future occurrence of the pollution, and the estimated cost of abating the pollution. The chief shall notify the permittee in writing of the decision to release or not to release all or part of the performance security within sixty days after the filing of the request if no public hearing is held pursuant to division (F)(6) of this section or, if there has been a public hearing held pursuant to division (F)(6) of this section, within thirty days thereafter.

(3) The chief may release the performance security if the reclamation covered by the performance security or portion thereof has been accomplished as required by this chapter and rules adopted under it according to the following schedule:

(a) When the operator completes the backfilling, regrading, and drainage control of an area for which performance security has been provided in accordance with the approved reclamation plan, and, if the area covered by the performance security is one for which an authorization was made under division (E)(7) of section 1513.07 of the Revised Code, the operator has complied with the approved pollution abatement plan and all additional requirements established by the chief in rules adopted under section 1513.02 of the Revised Code governing coal mining and reclamation operations on pollution abatement areas, the chief shall grant a release of fifty per cent of the performance security for the applicable permit area.

(b) After resoiling and revegetation have been established on the regraded mined lands in accordance with the approved reclamation plan, the chief shall grant a release in an amount not exceeding thirty-five per cent of the original performance security for all or part of the affected area under the permit. When determining the amount of performance security to be released after successful revegetation has been established, the chief shall retain that amount of performance security for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation for the period specified for operator responsibility in this section for reestablishing revegetation. No part of the performance security shall be released under this division so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of this section or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 1513.07 of the Revised Code. If the area covered by the performance security is one for which an authorization was made under division (E)(7) of section 1513.07 of the Revised Code, no part of the performance security shall be released under this division until the operator has complied with the approved pollution abatement plan and all additional requirements established by the chief in rules adopted under section 1513.02 of the Revised Code governing coal mining and reclamation operations on pollution abatement areas. Where a silt dam is to be retained as a permanent impoundment pursuant to division (A)(10) of this section, the portion of performance security may be released under this division so

long as provisions for sound future maintenance by the operator or the landowner have been made with the chief.

(c) When the operator has completed successfully all coal mining and reclamation activities, including, if applicable, all additional requirements established in the pollution abatement plan approved under division (E)(7) of section 1513.07 of the Revised Code and all additional requirements established by the chief in rules adopted under section 1513.02 of the Revised Code governing coal mining and reclamation operations on pollution abatement areas, the chief shall release all or any of the remaining portion of the performance security for all or part of the affected area under a permit, but not before the expiration of the period specified for operator responsibility in this section, except that the chief may adopt rules for a variance to the operator period of responsibility considering vegetation success and probability of continued growth and consent of the landowner, provided that no performance security shall be fully released until all reclamation requirements of this chapter are fully met.

(4) If the chief disapproves the application for release of the performance security or portion thereof, the chief shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release, and allowing the opportunity for a public adjudicatory hearing.

(5) When any application for total or partial performance security release is filed with the chief under this section, the chief shall notify the municipal corporation in which the coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the performance security.

(6) A person with a valid legal interest that might be adversely affected by release of a performance security under this section or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations may file written objections to the proposed release from the performance security with the chief within thirty days after the last publication of the notice required by division (F)(1) of this section. If written objections are filed and an informal conference is requested, the chief shall inform all interested parties of the time and place of the conference. The date, time, and location of the informal conference shall be advertised by the chief in a newspaper of general circulation in the locality of the coal mining operation proposed for performance security release for

at least once a week for two consecutive weeks. The informal conference shall be held in the locality of the coal mining operation proposed for performance security release or in Franklin county, at the option of the objector, within thirty days after the request for the conference. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. The record shall be maintained and shall be accessible to the parties until final release of the performance security at issue. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, the informal conference need not be held.

(7) If an informal conference has been held pursuant to division (F)(6) of this section, the chief shall issue and furnish the applicant and persons who participated in the conference with the written decision regarding the release within sixty days after the conference. Within thirty days after notification of the final decision of the chief regarding the performance security release, the applicant or any person with an interest that is or may be adversely affected by the decision may appeal the decision to the reclamation commission pursuant to section 1513.13 of the Revised Code.

(8)(a) If the chief determines that a permittee is responsible for mine drainage that requires water treatment after reclamation is completed under the terms of the permit or that a permittee must provide an alternative water supply after reclamation is completed under the terms of the permit, the permittee shall provide alternative financial security in an amount determined by the chief prior to the release of the remaining portion of performance security under division (F)(3)(c) of this section. The alternative financial security shall be in an amount that is equal to or greater than the present value of the estimated cost over time to develop and implement mine drainage plans and provide water treatment or in an amount that is necessary to provide and maintain an alternative water supply, as applicable. The alternative financial security shall include a contract, trust, or other agreement or mechanism that is enforceable under law to provide long-term water treatment or a long-term alternative water supply, or both. The contract, trust, or other agreement or mechanism included with the alternative financial security may provide for the funding of the alternative financial security incrementally over a period of time, not to exceed five years, with reliance on guarantees or other collateral provided by the permittee and approved by the chief for the balance of the alternative financial security required until the alternative financial security has been fully funded by the permittee.

(b) The chief shall adopt rules in accordance with Chapter 119. of the

Revised Code that are necessary for the administration of division (F)(8)(a) of this section.

(c) If the chief determines that a permittee must provide alternative financial security under division (F)(8)(a) of this section and the performance security for the permit was provided under division (C)(2) of section 1513.08 of the Revised Code, the permittee may fund the alternative financial security incrementally over a period of time, not to exceed five years, with reliance on the reclamation forfeiture fund created in section 1513.18 of the Revised Code for the balance of the alternative financial security required until the alternative financial security has been fully funded by the permittee. The permittee semiannually shall pay to the division of mineral resources management a fee that is equal to seven and one-half per cent of the average balance of the alternative financial security that is being provided by reliance on the reclamation forfeiture fund over the previous six months. All money received from the fee shall be credited to the reclamation forfeiture fund.

(9) Final release of the performance security in accordance with division (F)(3)(c) of this section terminates the jurisdiction of the chief under this chapter over the reclaimed site of a surface coal mining and reclamation operation or applicable portion of an operation. However, the chief shall reassert jurisdiction over such a site if the release was based on fraud, collusion, or misrepresentation of a material fact and the chief, in writing, demonstrates evidence of the fraud, collusion, or misrepresentation. Any person with an interest that is or may be adversely affected by the chief's determination may appeal the determination to the reclamation commission in accordance with section 1513.13 of the Revised Code.

(G) The chief shall adopt rules governing the criteria for forfeiture of performance security, the method of determining the forfeited amount, and the procedures to be followed in the event of forfeiture. Cash received as the result of such forfeiture is the property of the state.

Sec. 1514.06. (A) There is hereby created in the state treasury the surface mining fund consisting of all money that becomes the property of the state pursuant to sections 1514.05 and 1514.051 of the Revised Code, money credited to the fund under divisions (C)(1) and (2) of section 1514.071, and other money specified in section 1514.11 of the Revised Code. All investment earnings of the fund shall be credited to the fund. Expenditures from the fund shall be made by the chief of the division of mineral resources management for the purpose of reclaiming areas of land affected by surface or in-stream mining under a permit issued under this chapter that the operator has failed to reclaim ~~and~~. Provided that the chief

maintains a balance in the fund that is sufficient to achieve that purpose and, in doing so, considers the timeliness of reclamation activity, the chief may use the fund for other purposes specified in section 1514.11 of the Revised Code.

(B) Expenditures of moneys from the fund, except as otherwise provided by this section, shall be made pursuant to contracts entered into by the chief with persons who agree to furnish all of the materials, equipment, work, and labor, as specified and provided in the contracts, for the prices stipulated therein. With the approval of the director of natural resources, the chief may reclaim the land in the same manner as the chief required of the operator who failed to reclaim the land. Each contract awarded by the chief shall be awarded to the lowest responsive and responsible bidder, in accordance with section 9.312 of the Revised Code, after sealed bids are received, opened, and published at the time and place fixed by the chief. The chief shall publish notice of the time and place at which bids will be received, opened, and published, at least once at least ten days before the date of the opening of the bids, in a newspaper of general circulation in the county in which the area of land to be reclaimed under the contract is located. If, after so advertising for bids, no bids are received by the chief at the time and place fixed for receiving them, the chief may advertise again for bids, or, if the chief considers the public interest will be best served, the chief may enter into a contract for the reclamation of the area of land without further advertisement for bids. The chief may reject any or all bids received and again publish notice of the time and place at which bids for contracts will be received, opened, and published.

(C) With the approval of the director, the chief, without advertising for bids, may enter into a contract with the landowner, a surface or in-stream mine operator or coal mine operator mining under a current, valid permit issued under this chapter or Chapter 1513. of the Revised Code, or a contractor hired by a surety to complete reclamation, to carry out reclamation on land affected by surface or in-stream mining operations that an operator has failed to reclaim.

(D) With the approval of the director, the chief may carry out all or part of the reclamation work on land affected by surface or in-stream mining operations that the operator has failed to reclaim using the employees and equipment of any division of the department of natural resources.

(E) The chief shall require every contractor performing reclamation work under this section to pay workers at the greater of their regular rate of pay, as established by contract, agreement, or prior custom or practice, or the average wage rate paid in this state for the same or similar work, as

determined by the chief under section 1513.02 of the Revised Code.

(F) Each contract entered into by the chief under this section shall provide only for the reclamation of land affected by the surface or in-stream mining operation or operations of one operator and not reclaimed by the operator as required by this chapter. If there is money in the fund derived from the performance bond deposited with the chief by one operator to ensure the reclamation of two or more areas of land affected by the surface or in-stream mining operation or operations of one operator and not reclaimed by the operator as required by this chapter, the chief may award a single contract for the reclamation of all such areas of land.

(G) The cost of the reclamation work done under this section on each area of land affected by surface or in-stream mining operations that an operator has failed to reclaim shall be paid out of the money in the fund derived from the performance bond that was deposited with the chief to ensure the reclamation of that area of land. If the amount of money is not sufficient to pay the cost of doing all of the reclamation work on the area of land that the operator should have done, but failed to do, the chief may expend from the reclamation forfeiture fund created in section 1513.18 of the Revised Code or the surface mining fund created in this section the amount of money needed to complete reclamation to the standards required by this chapter. The operator is liable for that expense in addition to any other liabilities imposed by law. At the request of the chief, the attorney general shall bring an action against the operator for the amount of the expenditures from either fund. Moneys so recovered shall be deposited in the state treasury to the credit of the fund from which the expenditures were made.

(H) If any part of the money in the surface mining fund remains in the fund after the chief has caused the area of land to be reclaimed and has paid all the reclamation costs and expenses, or if any money remains because the area of land has been repermited under this chapter or reclaimed by a person other than the chief, the chief may expend the remaining money to complete other reclamation work performed under this section. The chief shall prepare an annual report that summarizes the money credited to the fund and expenditures made from the fund and post the report on the division of mineral resources management's web site.

Sec. 1514.08. (A) The chief of the division of mineral resources management may adopt, amend, and rescind rules in accordance with Chapter 119. of the Revised Code in order to prescribe procedures for submitting applications for permits, amendments to permits, and amendments to plans of mining and reclamation; filing annual reports and

final reports; requesting inspection and approval of reclamation; paying permit and filing fees; and filing and obtaining the release of performance bonds deposited with the state. For the purpose of preventing damage to adjoining property or achieving one or more of the performance standards established in division (A)(10) of section 1514.02 of the Revised Code, the chief may establish classes of mining industries, based upon industrial categories, combinations of minerals produced, and geological conditions in which surface or in-stream mining operations occur, and may prescribe different rules consistent with the performance standards for each class. For the purpose of apportioning the workload of the division of mineral resources management among the quarters of the year, the rules may require that applications for permits and annual reports be filed in different quarters of the year, depending upon the county in which the operation is located.

(B) The chief shall adopt rules under this section that do all of the following:

(1) With respect to in-stream mining, and in consultation with the chief of the division of ~~soil and~~ water resources, determine periods of low flow, which are the only time periods during which in-stream mining is allowed, and develop and implement any criteria, in addition to the criteria established in section 1514.02 of the Revised Code, that the chief determines are necessary for the permitting of in-stream mining;

(2) Establish criteria and procedures for approving or disapproving the transfer of a surface or in-stream mining permit under division (F) of section 1514.02 of the Revised Code;

(3) Define when any of the following may be considered to be "significant" for purposes of section 1514.022 of the Revised Code:

(a) An amendment to a permit issued under section 1514.02 of the Revised Code for a surface or in-stream mining operation;

(b) An amendment to the plan of mining and reclamation that must be filed with an application for either permit under section 1514.02 of the Revised Code;

(c) Changes to that plan of mining and reclamation that are proposed in a permit renewal application filed under section 1514.021 of the Revised Code.

In defining "significant," the chief shall focus on changes that increase the likelihood that the mining operation may have a negative impact on the public.

(4) Establish a framework and procedures under which the amount of any bond required to be filed under this chapter to ensure the satisfactory performance of the reclamation measures required under this chapter may be

reduced by subtracting a credit based on the operator's past compliance with this chapter and rules adopted and orders issued under it. The rules also shall apply to cash, an irrevocable letter of credit, or a certificate of deposit that is on deposit in lieu of a bond. In establishing the amount of credit that an operator or applicant may receive based on past compliance, the chief may consider past compliance with respect to any permit for a surface or in-stream mining operation that has been issued in this state to the operator or applicant.

(5) Establish criteria and procedures for granting a variance from compliance with the prohibitions established in divisions (E)(3) and (F)(3) of section 1514.10 of the Revised Code. The criteria shall ensure that an operator may obtain a variance only if compliance with the applicable prohibition is not necessary to prevent damage to the watercourse or surrounding areas.

Sec. 1514.13. (A) The chief of the division of mineral resources management shall use the compilation of data for ground water modeling submitted under section 1514.02 of the Revised Code to establish a projected cone of depression for any surface mining operation that may result in dewatering. The chief shall consult with the chief of the division of ~~soil and~~ water resources when projecting a cone of depression. An applicant for a surface mining permit for such an operation may submit ground water modeling that shows a projected cone of depression for that operation to the chief, provided that the modeling complies with rules adopted by the chief regarding ground water modeling. However, the chief shall establish the projected cone of depression for the purposes of this section.

The chief shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code establishing requirements and standards governing both of the following:

(1) Ground water modeling for establishing a projected cone of depression. A ground water model shall be generally accepted in the scientific community.

(2) Replacement of water supplies.

(B)(1) If an owner of real property who obtains all or part of the owner's water supply for domestic, agricultural, industrial, or other legitimate use from ground water has a diminution, contamination, or interruption of that water supply and the owner's real property is located within the projected cone of depression of a surface mining operation established under this section, the owner may submit a written complaint to the operator of that operation or to the chief informing the operator or the chief that there is a diminution, contamination, or interruption of the owner's water supply. The

complaint shall include the owner's name, address, and telephone number.

If the chief receives a written complaint, the chief immediately shall send a copy of the complaint to the operator, and the operator immediately shall respond by sending the chief a statement that explains how the operator resolved or will resolve the complaint. If the operator receives a written complaint, the operator immediately shall send to the chief a copy of the complaint and include a statement that explains how the operator resolved or will resolve the complaint. Not later than seventy-two hours after receipt of the complaint, the operator shall provide the owner a supply of water that is comparable, in quantity and quality, to the owner's water supply prior to the diminution, contamination, or interruption of the owner's water supply. The operator shall maintain that water supply until the operator provides a permanent replacement water supply to the owner under division (B)(3) of this section or until the division of mineral resources management completes the evaluation under division (B)(2) of this section, whichever is applicable.

(2) A rebuttable presumption exists that the operation caused the diminution, contamination, or interruption of the owner's water supply. However, not later than fourteen days after receipt of the complaint, the operator may submit to the division information showing that the operation is not the proximate cause of the diminution, contamination, or interruption of the owner's water supply. The division shall evaluate the information submitted by the operator to determine if the presumption is rebutted. If the operator fails to rebut the presumption, the division immediately shall notify the operator that the operator failed to rebut the presumption. Not later than fourteen days after receipt of that notice, the operator shall provide the owner a permanent replacement water supply that is comparable, in quantity and quality, to the owner's water supply prior to the diminution, contamination, or interruption of the owner's water supply. If the operator rebuts the presumption, the division immediately shall notify the operator that the operator rebutted the presumption, and, upon receipt of that notice, the operator may cease providing a supply of water to the owner under division (B)(1) of this section.

(3) If, within fourteen days after receipt of the complaint, the operator does not submit to the division information showing that the operation is not the proximate cause of the diminution, contamination, or interruption of the owner's water supply, the operator shall provide the owner, not later than twenty-eight days after receipt of the complaint, a permanent replacement water supply that is comparable, in quantity and quality, to the owner's water supply prior to the diminution, contamination, or interruption of the

owner's water supply.

(4) The division may investigate a complaint under division (B) of this section.

(C) If an owner of real property who obtains all or part of the owner's water supply for domestic, agricultural, industrial, or other legitimate use from ground water has a diminution, contamination, or interruption of that water supply and the owner's real property is not located within the projected cone of depression of a surface mining operation established under this section, the owner may submit a written complaint to the operator of that operation or to the chief informing the operator or the chief that there is a diminution, contamination, or interruption of the owner's water supply. The complaint shall include the owner's name, address, and telephone number.

If the operator receives a written complaint, the operator immediately shall send the chief a copy of the complaint. If the chief receives a written complaint, the chief immediately shall send the operator a copy of the complaint. The chief shall investigate any complaint submitted under this division and, upon completion of the investigation, immediately shall send the results of the investigation to the operator and to the owner that filed the complaint.

An owner that submits a written complaint under this division may resolve the diminution, contamination, or interruption of the owner's water supply with the operator of that operation or may commence a civil action for that purpose.

(D) An operator may request the chief to amend the plan of mining and reclamation filed with the application under section 1514.02 of the Revised Code when a ground water user may affect the projected cone of depression established for the operation under division (A) of this section. The operator shall submit additional data that reflect the ground water user's impact on the ground water. The chief shall perform ground water modeling using the additional data and may establish a revised projected cone of depression for that operation.

(E) This section shall not be construed as creating, modifying, or affecting any right, liability, or remedy of surface riparian owners.

Sec. 1514.40. In accordance with Chapter 119. of the Revised Code, the chief of the division of mineral resources management, in consultation with a statewide association that represents the surface mining industry, shall adopt rules that do all of the following:

(A) For the purpose of establishing safety standards governing surface mining operations, incorporate by reference 30 C.F.R. parts 46, 47, 50, 56,

58, and 62, as amended;

(B) Establish criteria, standards, and procedures governing safety performance evaluations conducted under section 1514.45 of the Revised Code, including requirements for the notification of operators and the identification of authorized representatives of miners at surface mining operations for purposes of inspections conducted under sections 1514.41 to 1514.47 of the Revised Code;

(C) Establish requirements governing the reporting and investigation of accidents at surface mining operations. In adopting the rules, the chief shall establish requirements that minimize duplication with any reporting and investigations of accidents that are conducted by the mine safety and health administration in the United States department of labor.

(D) Establish the time, place, and frequency of mine safety training conducted under section 1514.06 of the Revised Code and a fee, if any, for the purpose of that section. The amount of the fee shall not exceed the costs of conducting the training that is required under that section.

(E) Establish the minimum qualifications necessary to take the examination that is required for certification of certified mine forepersons under division (B) of section 1514.47 of the Revised Code and requirements, fees, and procedures governing the taking of the examination;

(F) Establish requirements and fees governing the ~~renewal~~ reissuance of certificates under division (C) of that section;

(G) Establish requirements and procedures for the approval of training plans submitted under division ~~(E)~~ (D) of that section for the use of qualified persons to conduct examinations of surface mining operations in lieu of certified mine forepersons and minimum qualifications of those persons. The rules shall include requirements governing training frequency and curriculum that must be provided for qualified persons under such plans and shall establish related reporting and record keeping requirements.

As used in sections 1514.41 to 1514.47 of the Revised Code, "rule" means a rule adopted under this section unless the context indicates otherwise.

Sec. 1514.42. The chief of the division of mineral resources management ~~shall~~ may conduct a one safety audit at a surface mining operation annually if the operator of the operation has requested the division of mineral resources management to conduct mine safety training for that year. The safety audit shall be scheduled at a time to which the chief and the operator mutually agree and shall not continue more than one day. The chief shall conduct additional safety audits at any surface mining operation if requested by the operator of the operation. If the chief conducts a safety

audit, the operator shall ensure that the chief has a copy of the training plan that is required by 30 C.F.R. part 46, as amended, at the time of the audit.

After completion of an audit, the chief shall prepare a report that describes the general conditions of the surface mining operation, lists any hazardous conditions at the operation, lists any violations of the safety standards established in rules, and describes the nature and extent of any hazardous condition or violation found and the corresponding remedy for each hazardous condition or violation. The chief shall provide two copies of the report to the operator of the operation. The operator shall post one copy of the report at the operation for review by the employees of the operation.

Sec. 1514.47. (A)~~(1)~~ The operator of a surface mining operation shall employ a certified mine foreperson ~~or a person who is qualified in accordance with this section and rules to conduct examinations of surface mining operations for purposes of 30 C.F.R. part 56, as amended to be in charge of the conditions and practices at the mine and to be responsible for conducting examinations of the surface mining operation under 30 C.F.R. part 56, as amended.~~

(2) Examinations of surface mining operations for the purposes of 30 C.F.R. part 56, as amended, shall be conducted by one of the following:

(i) A certified mine foreperson;

(ii) A person who is qualified to conduct such examinations as provided in division (D) of this section;

(iii) A person designated by the certified mine foreperson as a competent person.

(3) For purposes of this section, a competent person is a person who has been trained in accordance with 30 C.F.R. part 46 and been determined by a certified mine foreperson to have demonstrated the ability, training, knowledge, or experience necessary to perform the duty to which the person is assigned. A person is not a competent person if the chief of the division of mineral resources management demonstrates, with good cause, that the person does not have the ability, training, knowledge, or experience necessary to perform that duty.

(4) The operator of a surface mining operation shall maintain records demonstrating that a competent person designated by a certified mine foreperson has the ability, training, knowledge, or experience to perform the duty to which the person is assigned as well as records of the competent person's training in accordance with 30 C.F.R. part 46. The operator shall make the records available to the chief upon request.

~~(B) The chief of the division of mineral resources management shall conduct examinations for the position of certified mine foreperson in~~

accordance with rules. In order to be eligible for examination as a certified mine foreperson, an applicant shall file with the chief an affidavit establishing the applicant's qualifications to take the examination. The chief shall grade examinations and issue certificates.

~~(C)(1) A certificate issued under this section shall not expire five years after the date of issuance. A certificate may be renewed, provided that the applicant verifies that all required training pursuant to 30 C.F.R. part 46, as amended, has been completed and any other requirements for renewal have been satisfied.~~

~~(D) If unless the certificate holder has not been employed in a surface mining operation for five consecutive years. If the certificate holder has not been employed in a surface mining operation for five consecutive years, the certificate holder may retake the mine foreperson examination or may petition the chief to accept past employment history in lieu of fulfilling the employment requirement established in this division. The chief shall grant or deny the petition by issuance of an order. If the chief grants the petition, the chief shall reissue the certificate.~~

(2) If a certificate issued under this section is suspended, the certificate shall not be renewed until the suspension period expires and the person whose certificate is suspended successfully completes all actions required by the chief. If an applicant's license, certificate, or similar authority that is issued by another state to perform specified mining duties is suspended or revoked by that state, the applicant shall be ineligible for examination for or renewal of a certificate in this state during that period of suspension or revocation. A certificate that has been revoked shall not be renewed.

(3) If a person who has been certified by the chief under this section purposely violates this chapter, the chief may suspend or revoke the certificate after an investigation and hearing conducted in accordance with Chapter 119. of the Revised Code are completed.

~~(E)(4) If a person holds a certificate issued under this section that has not expired prior to the effective date of this amendment, the chief, upon request, shall reissue to that person a certificate that does not expire as provided in division (C)(1) of this section.~~

(5) If a person holds a certificate issued under this section that expired on or after April 7, 2012, and has not been issued a new certificate prior to the effective date of this amendment, the chief, upon request, shall issue to that person a certificate that does not expire as provided in division (C)(1) of this section, provided that the person is in compliance with all other applicable requirements established in this chapter and rules adopted under it.

(D) In lieu of employing a certified mine foreperson, the operator of a surface mining operation may submit to the chief a detailed training plan under which persons who qualify under the plan may conduct and document examinations at the surface mining operation for purposes of 30 C.F.R. part 56, as amended. The chief shall review the plan and determine if the plan complies with the requirements established in rules. The chief shall approve or deny the plan and notify in writing the operator who submitted the plan of the chief's decision.

Sec. 1521.03. The chief of the division of ~~soil and~~ water resources shall do all of the following:

(A) Assist in an advisory capacity any properly constituted watershed district, conservancy district, or soil and water conservation district or any county, municipal corporation, or other government agency of the state in the planning of works for ground water recharge, flood mitigation, floodplain management, flood control, flow capacity and stability of streams, rivers, and watercourses, or the establishment of water conservation practices, within the limits of the appropriations for those purposes;

(B) Have authority to conduct basic inventories of the water and related natural resources in each drainage basin in the state; to develop a plan on a watershed basis that will recognize the variety of uses to which water may be put and the need for its management for those uses; with the approval of the director of natural resources and the controlling board, to transfer appropriated or other funds, authorized for those inventories and plan, to any division of the department of natural resources or other state agencies for the purpose of developing pertinent data relating to the plan of water management; and to accept and expend moneys contributed by any person for implementing the development of the plan;

(C) Have authority to make detailed investigations of all factors relating to floods, floodplain management, and flood control in the state with particular attention to those factors bearing upon the hydraulic and hydrologic characteristics of rivers, streams, and watercourses, recognizing the variety of uses to which water and watercourses may be put;

(D) Cooperate with the United States or any agency thereof and with any political subdivision of the state in planning and constructing flood control works;

(E) Hold meetings or public hearings, whichever is considered appropriate by the chief, to assist in the resolution of conflicts between ground water users. Such meetings or hearings shall be called upon written request from boards of health of city or general health districts created by or under the authority of Chapter 3709. of the Revised Code or authorities

having the duties of a board of health as authorized by section 3709.05 of the Revised Code, boards of county commissioners, boards of township trustees, legislative authorities of municipal corporations, or boards of directors of conservancy districts and may be called by the chief upon the request of any other person or at the chief's discretion. The chief shall collect and present at such meetings or hearings the available technical information relevant to the conflicts and to the ground water resource. The chief shall prepare a report, and may make recommendations, based upon the available technical data and the record of the meetings or hearings, about the use of the ground water resource. In making the report and any recommendations, the chief also may consider the factors listed in division (B) of section 1521.17 of the Revised Code. The technical information presented, the report prepared, and any recommendations made under this division shall be presumed to be prima-facie authentic and admissible as evidence in any court pursuant to Evidence Rule 902.

(F) Perform stream or ground water gauging and may contract with the United States government or any other agency for the gauging of any streams or ground water within the state;

(G) Primarily with regard to water quantity, have authority to collect, study, map, and interpret all available information, statistics, and data pertaining to the availability, supply, use, conservation, and replenishment of the ground and surface waters in the state in coordination with other agencies of this state;

(H) Primarily with regard to water quantity and availability, be authorized to cooperate with and negotiate for the state with any agency of the United States government, of this state, or of any other state pertaining to the water resources of the state;

(I) Provide engineering support for the coastal management program established under Chapter 1506. of the Revised Code.

Sec. 1521.031. There is hereby created in the department of natural resources the Ohio water advisory council. The council shall consist of seven members appointed by the governor with the advice and consent of the senate. No more than four of the members shall be of the same political party. Members shall be persons who have a demonstrated interest in water management and whose expertise reflects the various responsibilities of the division of ~~soil and~~ water resources under this chapter and Chapter 1523. of the Revised Code, including, but not limited to, dam safety, surface water, groundwater, and flood plain management. The chief of the division of ~~soil and~~ water resources may participate in the deliberations of the council, but shall not vote.

Terms of office of members shall be for two years commencing on the second day of February and ending on the first day of February. Each member shall hold office from the date of appointment until the end of the term for which appointed. The governor may remove any member at any time for inefficiency, neglect of duty, or malfeasance in office. In the event of the death, removal, resignation, or incapacity of any member, the governor, with the advice and consent of the senate, shall appoint a successor to hold office for the remainder of the term for which the member's predecessor was appointed. Any member shall continue in office following the expiration date of the member's term until the member's successor takes office or until sixty days have elapsed, whichever occurs first. Membership on the council does not constitute holding a public office or position of employment under the Revised Code and is not grounds for removal of public officers or employees from their offices or positions of employment.

The council annually shall select from its members a chairperson and a vice-chairperson. The council shall hold at least one meeting each calendar quarter 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 upon the written request of two or more members. A majority of the members constitutes a quorum. The division shall furnish clerical, technical, legal, and other services required by the council in the performance of its duties.

Members shall receive no compensation, but shall be reimbursed from the appropriations for the division for the actual and necessary expenses incurred by them in the performance of their official duties.

The council shall:

(A) Advise the chief of the division of ~~soil and~~ water resources in carrying out the duties of the division under this chapter and Chapter 1523. of the Revised Code;

(B) Recommend such policy and legislation with respect to water management and conservation as will promote the economic, industrial, and social development of the state while minimizing threats to the state's natural environment;

(C) Review and make recommendations on the development of plans and programs for long-term, comprehensive water management throughout the state; and

(D) Recommend ways to enhance cooperation among governmental agencies having an interest in water to encourage wise use and protection of the state's ground and surface waters. To this end, the council shall request

nonvoting representation from appropriate governmental agencies.

Sec. 1521.04. The chief of the division of ~~soil and~~ water resources, with the approval of the director of natural resources, may make loans and grants from the water management fund created in section 1501.32 of the Revised Code to governmental agencies for water management, water supply improvements, and planning and may administer grants from the federal government and from other public or private sources for carrying out those functions and for the performance of any acts that may be required by the United States or by any agency or department thereof as a condition for the participation by any governmental agency in any federal financial or technical assistance program. Direct and indirect costs of administration may be paid from the fund.

The chief may use the water management fund for the purposes of administering the water diversion and consumptive use permit programs established in sections 1501.30 to 1501.35 of the Revised Code and the withdrawal and consumptive use permit program established under sections 1522.10 to 1522.21 of the Revised Code; to perform watershed and water resources studies for the purposes of water management planning; and to acquire, construct, reconstruct, improve, equip, maintain, operate, and dispose of water management improvements. The chief may fix, alter, charge, and collect rates, fees, rentals, and other charges to be paid into the fund by governmental agencies and persons who are supplied with water by facilities constructed or operated by the department of natural resources in order to amortize and defray the cost of the construction, maintenance, and operation of those facilities.

Sec. 1521.05. (A) As used in this section:

(1) "Construct" or "construction" includes drilling, boring, digging, deepening, altering, and logging.

(2) "Altering" means changing the configuration of a well, including, without limitation, deepening a well, extending or replacing any portion of the inside or outside casing or wall of a well that extends below ground level, plugging a portion of a well back to a certain depth, and reaming out a well to enlarge its original diameter.

(3) "Logging" means describing the lithology, grain size, color, and texture of the formations encountered during the drilling, boring, digging, deepening, or altering of a well.

(4) "Grouting" means neat cement; bentonite products in slurry, granular, or pelletized form, excluding drilling mud or fluids; or any combination of neat cement and bentonite products that is placed within a well to seal the annular space or to seal an abandoned well and that is

impervious to and capable of preventing the movement of water.

(5) "Abandoned well" means a well whose use has been permanently discontinued and that poses potential health and safety hazards or that has the potential to transmit surface contaminants into the aquifer in which the well has been constructed.

(6) "Sealing" means the complete filling of an abandoned well with grouting or other approved materials in order to permanently prevent the vertical movement of water in the well and thus prevent the contamination of ground water or the intermixing of water between aquifers.

(B) Any person that constructs a well shall keep a careful and accurate log of the construction of the well. The log shall show all of the following:

(1) The character, including, without limitation, the lithology, color, texture, and grain size, the name, if known, and the depth of all formations passed through or encountered;

(2) The depths at which water is encountered;

(3) The static water level of the completed well;

(4) A copy of the record of all pumping tests and analyses related to those tests, if any;

(5) Construction details, including lengths, diameters, and thicknesses of casing and screening and the volume, type of material, and method of introducing gravel packing and grouting into the well;

(6) The type of pumping equipment installed, if any;

(7) The name of the owner of the well, the address of the location where the well was constructed, and either the state plane coordinates or the latitude and longitude of the well;

(8) The signature of the individual who constructed the well and filed the well log;

(9) Any other information required by the chief of the division of ~~soil~~ and water resources.

The log shall be filed with the division of ~~soil~~ and water resources within thirty days after the completion of construction of the well on forms prescribed and prepared by the division. The log shall be kept on file by the division.

(C) Any person that seals a well shall keep a careful and accurate report of the sealing of the well. The sealing report shall show all of the following:

(1) The name of the owner of the well, the address of the location where the well was constructed, and either the state plane coordinates or the latitude and longitude of the well;

(2) The depth of the well, the size and length of its casing, and the static water level of the well;

(3) The sealing procedures, including the volume and type of sealing material or materials and the method and depth of placement of each material;

(4) The date on which the sealing was performed;

(5) The signature of the individual who sealed the well and filed the sealing report;

(6) Any other information required by the chief.

The sealing report shall be filed with the division within thirty days after the completion of the sealing of the well on forms prescribed and prepared by the division.

(D) In accordance with Chapter 119. of the Revised Code, the chief may adopt, amend, and rescind rules requiring other persons that are involved in the construction or subsequent development of a well to submit well logs under division (B) of this section containing any or all of the information specified in divisions (B)(1) to (9) of this section and specifying additional information to be included in sealing reports required under division (C) of this section. The chief shall adopt rules establishing procedures and requirements governing the payment and collection of water well log filing fees, including the amount of any filing fee to be imposed as an alternative to the twenty-dollar filing fee established in division (G) of this section and including procedures for the quarterly transfer of filing fees by boards of health and the director of environmental protection under that division.

(E)(1) No person shall fail to keep and file a well log or a sealing report as required by this section.

(2) No person shall make a false statement in any well log or sealing report required to be kept and filed under this section. Violation of division (E)(2) of this section is falsification under section 2921.13 of the Revised Code.

(F) For the purposes of prosecution of a violation of division (E)(1) of this section, a prima-facie case is established when the division obtains either of the following:

(1) A certified copy of a permit for a private water system issued in accordance with rules adopted under section 3701.344 of the Revised Code, or a certified copy of the invoice or a canceled check from the owner of a well indicating the construction or sealing services performed;

(2) A certified copy of any permit issued under Chapter 3734. or 6111. of the Revised Code or plan approval granted under Chapter 6109. of the Revised Code for any activity that includes the construction or sealing of a well as applicable.

(G) In accordance with rules adopted under this section, a person or

entity that constructs a well for the purpose of extracting potable water as part of a private water system that is subject to rules adopted under section 3701.344 of the Revised Code or a public water system that is required to be licensed under Chapter 6109. of the Revised Code shall pay a well log filing fee of twenty dollars per well log or, if the chief has adopted rules establishing an alternative fee amount, the fee amount established under rules. The fee shall be collected by a board of health under section 3701.344 of the Revised Code or the environmental protection agency under section 6109.22 of the Revised Code, as applicable.

Each calendar quarter, a board of health or the environmental protection agency, as applicable, shall forward all well log filing fees collected during the previous calendar quarter to the division of ~~soil and~~ water resources. The fees shall be forwarded in accordance with procedures established in rules adopted under this section.

Proceeds of well log filing fees shall be used by the division of ~~soil and~~ water resources for the purposes of acquiring, maintaining, and dispensing digital and paper records of well logs that are filed with the division.

Sec. 1521.06. (A) No dam may be constructed for the purpose of storing, conserving, or retarding water, or for any other purpose, nor shall any levee be constructed for the purpose of diverting or retaining flood water, unless the person or governmental agency desiring the construction has a construction permit for the dam or levee issued by the chief of the division of ~~soil and~~ water resources.

A construction permit is not required under this section for:

(1) A dam that is or will be less than ten feet in height and that has or will have a storage capacity of not more than fifty acre-feet at the elevation of the top of the dam, as determined by the chief. For the purposes of this section, the height of a dam shall be measured from the natural stream bed or lowest ground elevation at the downstream or outside limit of the dam to the elevation of the top of the dam.

(2) A dam, regardless of height, that has or will have a storage capacity of not more than fifteen acre-feet at the elevation of the top of the dam, as determined by the chief;

(3) A dam, regardless of storage capacity, that is or will be six feet or less in height, as determined by the chief;

(4) A dam or levee that belongs to a class exempted by the chief;

(5) The repair, maintenance, improvement, alteration, or removal of a dam or levee that is subject to section 1521.062 of the Revised Code, unless the construction constitutes an enlargement or reconstruction of the structure as determined by the chief;

(6) A dam or impoundment constructed under Chapter 1513. of the Revised Code.

(B) Before a construction permit may be issued, three copies of the plans and specifications, including a detailed cost estimate, for the proposed construction, prepared by a registered professional engineer, together with the filing fee specified by this section and the bond or other security required by section 1521.061 of the Revised Code, shall be filed with the chief. The detailed estimate of the cost shall include all costs associated with the construction of the dam or levee, including supervision and inspection of the construction by a registered professional engineer. The filing fee shall be based on the detailed cost estimate for the proposed construction as filed with and approved by the chief, and shall be determined by the following schedule unless otherwise provided by rules adopted under this section:

(1) For the first one hundred thousand dollars of estimated cost, a fee of four per cent;

(2) For the next four hundred thousand dollars of estimated cost, a fee of three per cent;

(3) For the next five hundred thousand dollars of estimated cost, a fee of two per cent;

(4) For all costs in excess of one million dollars, a fee of one-half of one per cent.

In no case shall the filing fee be less than one thousand dollars or more than one hundred thousand dollars. If the actual cost exceeds the estimated cost by more than fifteen per cent, an additional filing fee shall be required equal to the fee determined by the preceding schedule less the original filing fee. All fees collected pursuant to this section, and all fines collected pursuant to section 1521.99 of the Revised Code, shall be deposited in the state treasury to the credit of the dam safety fund, which is hereby created. Expenditures from the fund shall be made by the chief for the purpose of administering this section and sections 1521.061 and 1521.062 of the Revised Code.

(C) The chief shall, within thirty days from the date of the receipt of the application, fee, and bond or other security, issue or deny a construction permit for the construction or may issue a construction permit conditioned upon the making of such changes in the plans and specifications for the construction as the chief considers advisable if the chief determines that the construction of the proposed dam or levee, in accordance with the plans and specifications filed, would endanger life, health, or property.

(D) The chief may deny a construction permit after finding that a dam or levee built in accordance with the plans and specifications would endanger

life, health, or property, because of improper or inadequate design, or for such other reasons as the chief may determine.

In the event the chief denies a permit for the construction of the dam or levee, or issues a permit conditioned upon a making of changes in the plans or specifications for the construction, the chief shall state the reasons therefor and so notify, in writing, the person or governmental agency making the application for a permit. If the permit is denied, the chief shall return the bond or other security to the person or governmental agency making application for the permit.

The decision of the chief conditioning or denying a construction permit is subject to appeal as provided in Chapter 119. of the Revised Code. A dam or levee built substantially at variance from the plans and specifications upon which a construction permit was issued is in violation of this section. The chief may at any time inspect any dam or levee, or site upon which any dam or levee is to be constructed, in order to determine whether it complies with this section.

(E) A registered professional engineer shall inspect the construction for which the permit was issued during all phases of construction and shall furnish to the chief such regular reports of the engineer's inspections as the chief may require. When the chief finds that construction has been fully completed in accordance with the terms of the permit and the plans and specifications approved by the chief, the chief shall approve the construction. When one year has elapsed after approval of the completed construction, and the chief finds that within this period no fact has become apparent to indicate that the construction was not performed in accordance with the terms of the permit and the plans and specifications approved by the chief, or that the construction as performed would endanger life, health, or property, the chief shall release the bond or other security. No bond or other security shall be released until one year after final approval by the chief, unless the dam or levee has been modified so that it will not retain water and has been approved as nonhazardous after determination by the chief that the dam or levee as modified will not endanger life, health, or property.

(F) When inspections required by this section are not being performed, the chief shall notify the person or governmental agency to which the permit has been issued that inspections are not being performed by the registered professional engineer and that the chief will inspect the remainder of the construction. Thereafter, the chief shall inspect the construction and the cost of inspection shall be charged against the owner. Failure of the registered professional engineer to submit required inspection reports shall be deemed

notice that the engineer's inspections are not being performed.

(G) The chief may order construction to cease on any dam or levee that is being built in violation of this section, and may prohibit the retention of water behind any dam or levee that has been built in violation of this section. The attorney general, upon written request of the chief, may bring an action for an injunction against any person who violates this section or to enforce an order or prohibition of the chief made pursuant to this section.

(H) The chief may adopt rules in accordance with Chapter 119. of the Revised Code, for the design and construction of dams and levees for which a construction permit is required by this section or for which periodic inspection is required by section 1521.062 of the Revised Code, for establishing a filing fee schedule in lieu of the schedule established under division (B) of this section, for deposit and forfeiture of bonds and other securities required by section 1521.061 of the Revised Code, for the periodic inspection, operation, repair, improvement, alteration, or removal of all dams and levees, as specified in section 1521.062 of the Revised Code, and for establishing classes of dams or levees that are exempt from the requirements of this section and section 1521.062 of the Revised Code as being of a size, purpose, or situation that does not present a substantial hazard to life, health, or property. The chief may, by rule, limit the period during which a construction permit issued under this section is valid. The rules may allow for the extension of the period during which a permit is valid upon written request, provided that the written request includes a revised construction cost estimate, and may require the payment of an additional filing fee for the requested extension. If a construction permit expires without an extension before construction is completed, the person or agency shall apply for a new permit, and shall not continue construction until the new permit is issued.

Sec. 1521.061. Except as otherwise provided in this section, a construction permit shall not be issued under section 1521.06 of the Revised Code unless the person or governmental agency applying for the permit executes and files a surety bond conditioned on completion of the dam or levee in accordance with the terms of the permit and the plans and specifications approved by the chief of the division of ~~soil~~ and water resources, in an amount equal to fifty per cent of the estimated cost of the project.

If a permittee requests an extension of the time period during which a construction permit is valid in accordance with rules adopted under section 1521.06 of the Revised Code, the chief shall determine whether the revised construction cost estimate provided with the request exceeds the original

construction cost estimate that was filed with the chief by more than twenty-five per cent. If the revised construction cost estimate exceeds the original construction cost estimate by more than twenty-five per cent, the chief may require an additional surety bond to be filed so that the total amount of the surety bonds equals at least fifty per cent of the revised construction cost estimate.

The chief shall not approve any bond until it is personally signed and acknowledged by both principal and surety, or as to either by the attorney in fact thereof, with a certified copy of the power of attorney attached. The chief shall not approve the bond unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact a fidelity and surety business in this state.

All bonds shall be given in a form prescribed by the chief and shall run to the state as obligee.

The applicant may deposit, in lieu of a bond, cash in an amount equal to the amount of the bond or United States government securities or negotiable certificates of deposit issued by any bank organized or transacting business in this state having a par value equal to or greater than the amount of the bond. Such cash or securities shall be deposited upon the same terms as bonds. If one or more certificates of deposit are deposited in lieu of a bond, the chief shall require the bank that issued any such certificate to pledge securities of the aggregate market value equal to the amount of the certificate that is in excess of the amount insured by the federal deposit insurance corporation. The securities to be pledged shall be those designated as eligible under section 135.18 of the Revised Code. The securities shall be security for the repayment of the certificate of deposit.

Immediately upon a deposit of cash, securities, or certificates of deposit, the chief shall deliver them to the treasurer of state, who shall hold them in trust for the purposes for which they have been deposited. The treasurer of state is responsible for the safekeeping of such deposits. An applicant making a deposit of cash, securities, or certificates of deposit may withdraw and receive from the treasurer of state, on the written order of the chief, all or any portion of the cash, securities, or certificates of deposit, upon depositing with the treasurer of state cash, other United States government securities, or negotiable certificates of deposit issued by any bank organized or transacting business in this state equal in par value to the par value of the cash, securities, or certificates of deposit withdrawn. An applicant may demand and receive from the treasurer of state all interest or other income from any such securities or certificates as it becomes due. If securities so deposited with and in the possession of the treasurer of state mature or are

called for payment by the issuer thereof, the treasurer of state, at the request of the applicant who deposited them, shall convert the proceeds of the redemption or payment of the securities into such other United States government securities, negotiable certificates of deposit issued by any bank organized or transacting business in this state, or cash as the applicant designates.

When the chief finds that a person or governmental agency has failed to comply with the conditions of the person's or agency's bond, the chief shall make a finding of that fact and declare the bond, cash, securities, or certificates of deposit forfeited in the amount set by rule of the chief. The chief shall thereupon certify the total forfeiture to the attorney general, who shall proceed to collect that amount.

In lieu of total forfeiture, the surety, at its option, may cause the dam or levee to be completed as required by section 1521.06 of the Revised Code and rules of the chief, or otherwise rendered nonhazardous, or pay to the treasurer of state the cost thereof.

All moneys collected on account of forfeitures of bonds, cash, securities, and certificates of deposit under this section shall be credited to the dam safety fund created in section 1521.06 of the Revised Code. The chief shall make expenditures from the fund to complete dams and levees for which bonds have been forfeited or to otherwise render them nonhazardous.

Expenditures from the fund for those purposes shall be made pursuant to contracts entered into by the chief with persons who agree to furnish all of the materials, equipment, work, and labor as specified and provided in the contract.

A surety bond shall not be required for a permit for a dam or levee that is to be designed and constructed by an agency of the United States government, if the agency files with the chief written assurance of the agency's financial responsibility for the structure during the one-year period following the chief's approval of the completed construction provided for under division (E) of section 1521.06 of the Revised Code.

Sec. 1521.062. (A) All dams and levees constructed in this state and not exempted by this section or by the chief of the division of ~~soil and~~ water resources under section 1521.06 of the Revised Code shall be inspected periodically by the chief, except for classes of dams that, in accordance with rules adopted under this section, are required to be inspected by registered professional engineers who have been approved for that purpose by the chief. The inspection shall ensure that continued operation and use of the dam or levee does not constitute a hazard to life, health, or property.

Periodic inspections shall not be required of the following structures:

(1) A dam that is less than ten feet in height and has a storage capacity of not more than fifty acre-feet at the elevation of the top of the dam, as determined by the chief. For the purposes of this section, the height of a dam shall be measured from the natural stream bed or lowest ground elevation at the downstream or outside limit of the dam to the elevation of the top of the dam.

(2) A dam, regardless of height, that has a storage capacity of not more than fifteen acre-feet at the elevation of the top of the dam, as determined by the chief;

(3) A dam, regardless of storage capacity, that is six feet or less in height, as determined by the chief;

(4) A dam or levee belonging to a class exempted by the chief;

(5) A dam or levee that has been exempted in accordance with rules adopted under section 1521.064 of the Revised Code.

(B) In accordance with rules adopted under this section, the owner of a dam that is in a class of dams that is designated in the rules for inspection by registered professional engineers shall obtain the services of a registered professional engineer who has been approved by the chief to conduct the periodic inspection of dams pursuant to schedules and other standards and procedures established in the rules. The registered professional engineer shall prepare a report of the inspection in accordance with the rules and provide the inspection report to the dam owner who shall submit it to the chief. A dam that is designated under the rules for inspection by a registered professional engineer, but that is not inspected within a five-year period may be inspected by the chief at the owner's expense.

(C) Intervals between periodic inspections shall be determined by the chief, but shall not exceed five years.

(D) In the case of a dam or levee that the chief inspects, the chief shall furnish a report of the inspection to the owner of the dam or levee. With regard to a dam or levee that has been inspected, either by the chief or by a registered professional engineer, and that is the subject of an inspection report prepared or received by the chief, the chief shall inform the owner of any required repairs, maintenance, investigations, and other remedial and operational measures. The chief shall order the owner to perform such repairs, maintenance, investigations, or other remedial or operational measures as the chief considers necessary to safeguard life, health, or property. The order shall permit the owner a reasonable time in which to perform the needed repairs, maintenance, investigations, or other remedial measures, and the cost thereof shall be borne by the owner. All orders of the

chief are subject to appeal as provided in Chapter 119. of the Revised Code. The attorney general, upon written request of the chief, may bring an action for an injunction against any person who violates this section or to enforce an order of the chief made pursuant to this section.

(E) The owner of a dam or levee shall monitor, maintain, and operate the structure and its appurtenances safely in accordance with state rules, terms and conditions of permits, orders, and other requirements issued pursuant to this section or section 1521.06 of the Revised Code. The owner shall fully and promptly notify the division of ~~soil and~~ water resources and other responsible authorities of any condition that threatens the safety of the structure and shall take all necessary actions to safeguard life, health, and property.

(F) Before commencing the repair, improvement, alteration, or removal of a dam or levee, the owner shall file an application including plans, specifications, and other required information with the division and shall secure written approval of the application by the chief. Emergency actions by the owner required to safeguard life, health, or property are exempt from this requirement. The chief may, by rule, define maintenance, repairs, or other remedial measures of a routine nature that are exempt from this requirement.

(G) The chief may remove or correct, at the expense of the owner, any unsafe structures found to be constructed or maintained in violation of this section or section 1521.06 of the Revised Code. In the case of an owner other than a governmental agency, the cost of removal or correction of any unsafe structure, together with a description of the property on which the unsafe structure is located, shall be certified by the chief to the county auditor and placed by the county auditor upon the tax duplicate. This cost is a lien upon the lands from the date of entry and shall be collected as other taxes and returned to the division. In the case of an owner that is a governmental agency, the cost of removal or correction of any unsafe structure shall be recoverable from the owner by appropriate action in a court of competent jurisdiction.

(H) If the condition of any dam or levee is found, in the judgment of the chief, to be so dangerous to the safety of life, health, or property as not to permit time for the issuance and enforcement of an order relative to repair, maintenance, or operation, the chief shall employ any of the following remedial means necessary to protect life, health, and property:

- (1) Lower the water level of the lake or reservoir by releasing water;
- (2) Completely drain the lake or reservoir;
- (3) Take such other measures or actions as the chief considers necessary

to safeguard life, health, and property.

The chief shall continue in full charge and control of the dam or levee until the structure is rendered safe. The cost of the remedy shall be recoverable from the owner of the structure by appropriate action in a court of competent jurisdiction.

(I) The chief may accept and expend gifts, bequests, and grants from the United States government or from any other public or private source and may contract with the United States government or any other agency or entity for the purpose of carrying out the dam safety functions set forth in this section and section 1521.06 of the Revised Code.

(J) In accordance with Chapter 119. of the Revised Code, the chief may adopt, and may amend or rescind, rules that do all of the following:

(1) Designate classes of dams for which dam owners must obtain the services of a registered professional engineer to periodically inspect the dams and to prepare reports of the inspections for submittal to the chief;

(2) Establish standards in accordance with which the chief must approve or disapprove registered professional engineers to inspect dams together with procedures governing the approval process;

(3) Establish schedules, standards, and procedures governing periodic inspections and standards and procedures governing the preparation and submittal of inspection reports;

(4) Establish provisions regarding the enforcement of this section and rules adopted under it.

(K) The owner of a dam or levee shall notify the chief in writing of a change in ownership of the dam or levee prior to the exchange of the property.

Sec. 1521.063. (A) Except for the federal government, the owner of a dam, that is classified as a class I, class II, or class III dam under rules adopted under section 1521.06 of the Revised Code and subject to section 1521.062 of the Revised Code shall pay an annual fee, based upon the height of the dam, the linear foot length of the dam, and the per-acre foot of volume of water impounded by the dam. The fee shall be paid to the division of ~~soil and~~ water resources on or before the thirtieth day of June of each year. The annual fee shall be as follows until otherwise provided by rules adopted under this section:

(1) For any dam classified as a class I dam under rules adopted by the chief of the division of ~~soil and~~ water resources under section 1521.06 of the Revised Code, three hundred dollars plus ten dollars per foot of height of dam, five cents per foot of length of the dam and five cents per-acre foot of water impounded by the dam;

(2) For any dam classified as a class II dam under those rules, ninety dollars plus six dollars per foot of height of dam, five cents per foot of length of the dam and five cents per-acre foot of water impounded by the dam;

(3) For any dam classified as a class III dam under those rules, ninety dollars plus four dollars per foot of height of the dam, five cents per foot of length of the dam, and five cents per-acre foot of volume of water impounded by the dam.

For purposes of this section, the height of a dam is the vertical height, to the nearest foot, as determined by the division under section 1521.062 of the Revised Code.

All fees collected under this section shall be deposited in the dam safety fund created in section 1521.06 of the Revised Code. Any owner who fails to pay any annual fee required by this section within sixty days after the due date shall be assessed a penalty of ten per cent of the annual fee plus interest at the rate of one-half per cent per month from the due date until the date of payment.

There is hereby created the compliant dam discount program to be administered by the chief. Under the program, the chief may reduce the amount of the annual fee that an owner of a dam is required to pay under division (A)(1), (2), or (3) of this section if the owner is in compliance with section 1521.062 of the Revised Code and has developed an emergency action plan pursuant to standards established in rules adopted under this section. The chief shall not discount an annual fee by more than twenty-five per cent of the total annual fee that is due. In addition, the chief shall not discount the annual fee that is due from the owner of a dam who has been assessed a penalty under this section.

(B) The chief shall, in accordance with Chapter 119. of the Revised Code and subject to the prior approval of the director of natural resources, adopt, and may amend or rescind, rules for the collection of fees and the administration, implementation, and enforcement of this section and for the establishment of an annual fee schedule in lieu of the schedule established in division (A) of this section.

(C)(1) No person, political subdivision, or state governmental agency shall violate or fail to comply with this section or any rule or order adopted or issued under it.

(2) The attorney general, upon written request of the chief, may commence an action against any such violator. Any action under division (C)(2) of this section is a civil action.

(D) As used in this section, "political subdivision" includes townships,

municipal corporations, counties, school districts, municipal universities, park districts, sanitary districts, and conservancy districts and subdivisions thereof.

Sec. 1521.064. The chief of the division of ~~soil and~~ water resources, in accordance with Chapter 119. of the Revised Code, shall adopt, and may amend and rescind, rules establishing a program under which dams and levees may be exempted from inspections under section 1521.062 of the Revised Code if the continued operation and use of, and any rupturing of or other structural damage to, the dams and levees will not constitute a hazard to life, health, or property. The rules shall establish, without limitation, all of the following:

(A) A procedure by which the owner of such a dam or levee may apply for an exemption under this section;

(B) The standards that a dam or levee shall meet in order to be exempted under this section;

(C) A procedure by which the chief shall periodically review the status of a dam or levee that has been exempted under this section to determine if the exemption should be rescinded;

(D) A requirement that the owner of any dam or levee exempted under this section shall agree, in writing, to accept liability for any injury, death, or loss to persons or property caused by the rupturing of or other structural damage to the dam or levee.

Sec. 1521.07. The chief of the division of ~~soil and~~ water resources or any employee in the service of the division may enter upon lands to make surveys and inspections in accordance with this chapter, when necessary in the discharge of the duties enumerated in this chapter.

Sec. 1521.10. In order to be entitled to the compensation provided for in section 1521.09 of the Revised Code, the landowner shall have prepared and submit to the division of ~~soil and~~ water resources complete plans for the dam provided for in such section. The plans shall have the approval of the chief of the division of ~~soil and~~ water resources and the dam shall be constructed in accordance with such plans before compensation can be claimed.

Sec. 1521.11. Upon the completion of the dam referred to in section 1521.09 of the Revised Code to the satisfaction of the division of ~~soil and~~ water resources, it shall certify the completion and the capacity thereof to the county auditor who shall thereupon make such reduction in the assessed valuation of the contiguous landowner as the contiguous landowner is entitled to receive under sections 1521.09 to 1521.12 of the Revised Code.

Sec. 1521.12. In the event that any dam is constructed before plans are

submitted to and approved by the division of ~~soil and~~ water resources as required by section 1521.10 of the Revised Code, the landowner may submit plans of the dam the landowner has built, showing the area of the drainage basin above the dam, a cross section of the dam site, a cross section, plan, and elevation of the dam, a map of the spillway, a topographic map of the reservoir basin, and such other data and information as the division requires. If the plans receive the approval of the division, and upon examination the dam is found to be satisfactorily completed in accordance with such plans, the division shall certify the completion and capacity thereof to the county auditor. If the plans fail to meet the requirements of the division, the owner may submit revised plans, and when such revised plans have been approved and the dam rebuilt to conform to such plans, the completion of the dam and its capacity shall then be certified to the auditor who shall thereupon make such reduction in the assessed valuation of the contiguous land as such owner is entitled to receive under sections 1521.09 to 1521.12 of the Revised Code.

Sec. 1521.13. (A) Development in one-hundred-year floodplain areas shall be protected to at least the one-hundred-year flood level, and flood water conveyance shall be maintained, at a minimum, in accordance with standards established under the national flood insurance program. This division does not preclude a state agency or political subdivision from establishing flood protection standards that are more restrictive than this division.

(B) Prior to the expenditure of money for or the construction of buildings, structures, roads, bridges, or other facilities in locations that may be subject to flooding or flood damage, all state agencies and political subdivisions shall notify and consult with the division of ~~soil and~~ water resources and shall furnish information that the division reasonably requires in order to avoid the uneconomic, hazardous, or unnecessary use of floodplains in connection with such facilities.

(C) The chief of the division of ~~soil and~~ water resources shall do all of the following:

(1) Coordinate the floodplain management activities of state agencies and political subdivisions with the floodplain management activities of the United States, including the national flood insurance program;

(2) Collect, prepare, and maintain technical data and information on floods and floodplain management and make the data and information available to the public, state agencies, political subdivisions, and agencies of the United States;

(3) Cooperate and enter into agreements with persons for the

preparation of studies and reports on floods and floodplain management;

(4) Assist any county, municipal corporation, or state agency in developing comprehensive floodplain management programs;

(5) Provide technical assistance to any county, municipal corporation, or state agency through engineering assistance, data collection, preparation of model laws, training, and other activities relating to floodplain management;

(6) For the purpose of reducing damages and the threat to life, health, and property in the event of a flood, cooperate with state agencies, political subdivisions, and the United States in the development of flood warning systems, evacuation plans, and flood emergency preparedness plans;

(7) Upon request, assist the emergency management agency established by section 5502.22 of the Revised Code in the preparation of flood hazard mitigation reports required as a condition for receiving federal disaster aid under the "Disaster Relief Act of 1974," 88 Stat. 143, 42 U.S.C.A. 5121, as amended, and regulations adopted under it;

(8) Adopt, and may amend or rescind, rules in accordance with Chapter 119. of the Revised Code for the administration, implementation, and enforcement of this section and sections 1521.14 and 1521.18 of the Revised Code;

(9) Establish, by rule, technical standards for the delineation and mapping of floodplains and for the conduct of engineering studies to determine the vertical and horizontal limits of floodplains and for the assessment of development impacts on flood heights and flood conveyance. The standards established in rules adopted under this division shall be consistent with and no more stringent than the analogous standards established under the national flood insurance program.

(10) On behalf of the director of natural resources, administer section 1506.04 of the Revised Code.

In addition to the duties imposed in divisions (C)(1) to (10) of this section, and with respect to existing publicly owned facilities that have suffered flood damage or that may be subject to flood damage, the chief may conspicuously mark past and probable flood heights in order to assist in creating public awareness of and knowledge about flood hazards.

(D)(1) Development that is funded, financed, undertaken, or preempted by state agencies shall comply with division (A) of this section and with rules adopted under division (C)(9) of this section.

(2) State agencies shall apply floodproofing measures in order to reduce potential additional flood damage of existing publicly owned facilities that have suffered flood damage.

(3) Before awarding funding or financing or granting a license, permit,

or other authorization for a development that is or is to be located within a one-hundred-year floodplain, a state agency shall require the applicant to demonstrate to the satisfaction of the agency that the development will comply with division (A) of this section, rules adopted under division (C)(9) of this section, and any applicable local floodplain management resolution or ordinance.

(4) Prior to the disbursement of any state disaster assistance money in connection with any incident of flooding to or within a county or municipal corporation that is not listed by the chief as being in compliance under division (D)(1) of section 1521.18 of the Revised Code, a state agency that has authority to disburse such money shall require the county or municipal corporation to establish or reestablish compliance as provided in that division.

(E)(1) Subject to section 1521.18 of the Revised Code, a county or a municipal corporation may do all of the following:

(a) Adopt floodplain maps that reflect the best available data and that indicate the areas to be regulated under a floodplain management resolution or ordinance, as applicable;

(b) Develop and adopt a floodplain management resolution or ordinance, as applicable;

(c) Adopt floodplain management standards that exceed the standards that are established under the national flood insurance program.

(2) A county or municipal corporation shall examine and apply, where economically feasible, floodproofing measures in order to reduce potential additional flood damage of existing publicly owned facilities that have suffered flood damage.

(3) A county that adopts a floodplain management resolution shall do so in accordance with the procedures established in section 307.37 of the Revised Code. The county may enforce the resolution by issuing stop work orders, seeking injunctive relief, or pursuing other civil actions that the county considers necessary to ensure compliance with the resolution. In addition, failure to comply with the floodplain management resolution constitutes a violation of division (D) of section 307.37 of the Revised Code.

(4) No action challenging the validity of a floodplain management resolution adopted by a county or a floodplain management ordinance adopted by a municipal corporation, or an amendment to such a resolution or ordinance, because of a procedural error in the adoption of the resolution, ordinance, or amendment shall be brought more than two years after the adoption of the resolution, ordinance, or amendment.

Sec. 1521.14. Upon the written request of the director of natural resources, the attorney general shall bring an action for appropriate relief in a court of competent jurisdiction against any development that is not in compliance with the standards of the national flood insurance program and that is one of the following:

(A) Located in a county or municipal corporation that is not listed by the chief of the division of ~~soil and~~ water resources as being in compliance under division (D)(1) of section 1521.18 of the Revised Code;

(B) Funded, financed, undertaken, or preempted by a state agency.

Sec. 1521.15. (A) The chief of the division of ~~soil and~~ water resources shall develop and maintain, in cooperation with local, state, federal, and private agencies and entities, a water resources inventory for the collection, interpretation, storage, retrieval, exchange, and dissemination of information concerning the water resources of this state, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of consumptive use and diversion of the water resources. The water resources inventory also shall include, without limitation, information to assist in determining the reasonableness of water use and sharing under common law, promoting reasonable use and development of water resources, and resolving water use conflicts.

All agencies of the state shall cooperate with the chief in the development and maintenance of the inventory.

(B) The chief shall cooperate with the other great lakes states and provinces to develop a common base of data regarding the management of the water resources of the Lake Erie drainage basin and to establish systematic arrangements for the exchange of those data.

Sec. 1521.16. (A) Any person who owns a facility that has the capacity to withdraw waters of the state in an amount greater than one hundred thousand gallons per day from all sources and whose construction is completed before January 1, 1990, shall register the facility by January 1, 1991, with the chief of the division of ~~soil and~~ water resources, and any person who owns a facility that has the capacity to withdraw waters of the state in such an amount and whose construction is completed on or after January 1, 1990, shall register the facility with the chief within three months after the facility is completed. The person shall register the facility using a form prescribed by the chief that shall include, without limitation, the name and address of the registrant and date of registration; the locations and sources of the facility's water supply; the facility's withdrawal capacity per day and the amount withdrawn from each source; the uses made of the water, places of use, and places of discharge; and such other information as

the chief may require by rule.

The registration date of any facility whose construction was completed prior to January 1, 1990, and that is registered under this division prior to January 1, 1991, shall be January 1, 1990. The registration date of any facility whose construction was completed prior to January 1, 1990, and that is required to register under this division prior to January 1, 1991, but that is not registered prior to that date, and the registration date of any facility whose construction was completed after January 1, 1990, and that is required to register under this division shall be the date on which the registration is received by the chief.

(B) In accordance with division (D) of this section, the chief shall adopt rules establishing standards and criteria for determining when an area of ground water is a ground water stress area, the geographic limits of such an area, and a threshold withdrawal capacity for the area below which registration under this division shall not be required. At any time following the adoption of those rules, the chief may by order designate an area of ground water as a ground water stress area and shall establish in any such order a threshold withdrawal capacity for the area below which registration under this division shall not be required.

Following the designation of a ground water stress area, the chief immediately shall give notice by publication in a newspaper of general circulation in the designated area that shall include a map delineating the designated ground water stress area and a statement of the threshold withdrawal capacity established for the area below which registration under this division shall not be required. The notice shall not appear in the legal notices section of the newspaper. Any person who owns a facility in the designated ground water stress area that is not registered under division (A) of this section and that has the capacity to withdraw waters of the state in an amount greater than the threshold withdrawal capacity for the area from all sources shall register the facility with the chief not later than thirty days after publication of the notice. A person registering a facility under this division shall do so using a form prescribed by the chief. The form shall include the information specified in division (A) of this section.

(C) Any person who owns a facility registered under division (A) or (B) of this section shall file a report annually with the chief listing the amount of water withdrawn per day by the facility, the return flow per day, and any other information the chief may require by rule. Any person who, under Chapter 6109. of the Revised Code, provides such information to the Ohio environmental protection agency is exempt from reporting under this division. The director of environmental protection shall provide the chief

any such reported information upon request.

(D) The chief shall adopt, and may amend or rescind, rules in accordance with Chapter 119. of the Revised Code to carry out this section.

(E)(1) No person knowingly shall fail to register a facility or file a report as required under this section.

(2) No person shall file a false report under this section. Violation of division (E)(2) of this section is falsification under section 2921.13 of the Revised Code.

(F) At the request of the director of natural resources, the attorney general may commence a civil action to compel compliance with this section, in a court of common pleas, against any person who has violated or is violating division (E)(1) of this section. The court of common pleas in which a civil action is commenced under this division has jurisdiction to and shall compel compliance with this section upon a showing that the person against whom the action is brought has violated or is violating that division.

Any action under this division is a civil action, governed by the rules of civil procedure and other rules of practice and procedure applicable to civil actions.

Sec. 1521.18. (A) For the purposes of this section, a one-hundred-year floodplain is limited to an area identified as a one-hundred-year floodplain in accordance with the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended.

(B) Each municipal corporation or county that has within its boundaries a one-hundred-year floodplain and that adopts a floodplain management ordinance or resolution or any amendments to such an ordinance or resolution on or after April 11, 1991, after adopting the ordinance, resolution, or amendments and before submitting the ordinance, resolution, or amendments to the federal emergency management agency for final approval for compliance with applicable standards adopted under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, shall submit the ordinance, resolution, or amendments to the chief of the division of ~~soil~~ and water resources for the chief's review for compliance with those standards. Within forty-five days after receiving any such ordinance, resolution, or amendments, the chief shall complete the review and notify the municipal corporation or county as to whether the ordinance, resolution, or amendments comply with those standards. If the chief finds that the ordinance, resolution, or amendments comply with those standards, the chief shall forward it or them to the federal emergency management agency for final approval.

(C)(1) If the chief determines that a county or municipal corporation

that has adopted a floodplain management resolution or ordinance fails to administer or enforce the resolution or ordinance, the chief shall send a written notice by certified mail to the board of county commissioners of the county or the chief executive officer of the municipal corporation stating the nature of the noncompliance.

(2) In order to maintain its compliance status in accordance with division (D) of this section, a county or municipal corporation that has received a notice of noncompliance under division (C)(1) of this section may submit information to the chief not later than thirty days after receiving the notice that demonstrates compliance or indicates the actions that the county or municipal corporation is taking to administer or enforce the resolution or ordinance. The chief shall review the information and shall issue a final determination by certified mail to the county or municipal corporation of the compliance or noncompliance status of the county or municipal corporation. If the chief issues a final determination of noncompliance, the chief shall send a copy of that determination to the federal emergency management agency concurrently with mailing the notice to the municipal corporation or county.

(D)(1) A county or municipal corporation is considered to be in compliance for the purposes of this section if either of the following applies:

(a) The county or municipal corporation has adopted a floodplain management resolution or ordinance that the chief has determined complies with applicable standards adopted under the "National Flood Insurance Act of 1968," 82 Stat. 572, 42 U.S.C.A. 4001, as amended, and is adequately administering and enforcing it as determined under division (C) of this section.

(b) The county or municipal corporation is participating in the national flood insurance program and has not received a notice of noncompliance under division (B) or (C) of this section.

(2) The chief shall maintain a list of all counties and municipal corporations that have one-hundred-year floodplains within their boundaries. The list shall indicate whether each such county or municipal corporation is in compliance or noncompliance as provided in division (D)(1) of this section and whether each such county or municipal corporation is participating in the national flood insurance program. The chief shall provide a copy of the list to the general assembly and all state agencies annually and shall notify the general assembly and the agencies of any changes at least quarterly.

(E) Any county or municipal corporation that is adversely affected by any determination of the chief under this section may appeal it in

accordance with Chapter 119. of the Revised Code not later than thirty days after the final determination.

Sec. 1521.19. (A) There is hereby created the Ohio water resources council consisting of the directors of agriculture, development services, environmental protection, health, natural resources, transportation, and the Ohio public works commission, the chairperson of the public utilities commission of Ohio, the executive director of the Ohio water development authority, and an executive assistant in the office of the governor appointed by the governor. The governor shall appoint one of the members of the council to serve as its chairperson. The council may adopt bylaws that are necessary for the implementation of this section. The council shall provide a forum for policy development, collaboration and coordination among state agencies, and strategic direction with respect to state water resource programs. The council shall be assisted in its functions by a state agency coordinating group and an advisory group as provided in this section.

(B) The state agency coordinating group shall consist of the executive director of the Ohio Lake Erie commission and a member or members from each state agency, commission, and authority represented on the council, to be appointed by the applicable director, chairperson, or executive director. However, the environmental protection agency shall be represented on the group by the chiefs of the divisions within that agency having responsibility for surface water programs and drinking and ground water programs, and the department of natural resources shall be represented on the group by the chief of the division of ~~soil and~~ water resources. The chairperson of the council shall appoint a leader of the state agency coordinating group. The group shall provide assistance to and perform duties on behalf of the council as directed by the council.

(C) The advisory group shall consist of not more than twenty-four members, each representing an organization or entity with an interest in water resource issues. The council shall appoint the members of the advisory group. Of the initial appointments, not more than ten members shall be appointed for one-year terms, and not more than ten members shall be appointed for two-year terms. Of the four initial appointments made after April 6, 2007, two of the members shall be appointed for one-year terms, and two of the members shall be appointed for two-year terms. Thereafter, all advisory group members shall serve two-year terms. Members may be reappointed. Each member shall hold office from the date of the member's appointment until the end of the member's term. A 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 council may remove a member for misfeasance, nonfeasance, or malfeasance in office. The council shall appoint members to fill any vacancies on the group. A member appointed to fill a vacancy shall hold office for the remainder of the term for which that member was appointed.

The chairperson of the council shall appoint a chairperson of the advisory group. The advisory group shall advise the council on water resources issues addressed by the council.

(D) There is hereby created in the state treasury the Ohio water resources council fund. The department of natural resources shall serve as the fiscal agent for the fund. The departments of agriculture, ~~development, environmental protection,~~ health, natural resources, and transportation, the environmental protection agency, and the development services agency shall transfer moneys to the fund in equal amounts via intrastate transfer voucher. The public utilities commission of Ohio, Ohio public works commission, and Ohio water development authority may transfer moneys to the fund. If a voluntary transfer of moneys is made to the fund, the portion that is required to be transferred by the departments of agriculture, ~~development, environmental protection,~~ health, natural resources, and transportation, the environmental protection agency, and the development services agency may be equally reduced. Moneys in the fund shall be used to pay the operating expenses of the Ohio water resources council, including those specified in division (E) of this section.

(E) The Ohio water resources council may hire staff to support its activities. The council may enter into contracts and agreements with federal agencies, state agencies, political subdivisions, and private entities to assist in accomplishing its objectives. Advisory group members shall be reimbursed for expenses necessarily incurred in the performance of their duties pursuant to section 126.31 of the Revised Code and any applicable rules pertaining to travel reimbursement adopted by the office of budget and management.

Sec. 1521.20. (A) The director of natural resources shall do all of the following:

(1) Determine the amount of dredging that is needed in each inland lake in this state to improve access, water quality, safety, and other applicable standards;

(2) Develop a plan to meet the needs identified under division (A)(1) of this section. In doing so, the director shall make every effort to optimize the utilization of dredging resources to maximize the amount of sediment removal from any inland lake that serves a watershed in distress and that is

subject to a lake facility authority created under Chapter 353. of the Revised Code.

(3) Increase the amount of time and resources expended on the dredging of inland lakes in order to meet the needs identified under division (A)(1) of this section and administer the plan developed under division (A)(2) of this section.

(B) The director may enter into contracts or agreements with other entities for the purposes of this section if doing so will assist in maximizing any of the dredging operations.

Sec. 1522.03. The chief of the division of ~~soil and~~ water resources shall do all of the following:

(A) Adopt rules in accordance with Chapter 119. of the Revised Code for the implementation, administration, and enforcement of the great lakes-st. Lawrence river basin water resources compact;

(B) Enforce the great lakes-st. Lawrence river basin water resources compact and take appropriate actions to effectuate its purposes and intent;

(C) Adopt rules in accordance with Chapter 119. of the Revised Code for the development, implementation, administration, and enforcement of any permit program established under this chapter.

Rules adopted under this section shall be no more stringent than the great lakes-st. Lawrence river basin water resources compact. The chief shall convene a working group consisting of parties with interests in Lake Erie, the Lake Erie watershed, and the great lakes-st. Lawrence river basin water resources compact. The working group shall consult with the chief regarding the adoption of rules under this section.

Sec. 1522.05. Pursuant to Section 9.2 of the great lakes-st. Lawrence river basin water resources compact, the governor may take such actions as are necessary for the initial organization and operation of the great lakes-st. Lawrence river basin water resources council created in Section 2.1 of the compact. Agencies of the state are hereby authorized to cooperate with the council.

The chief of the division of ~~soil and~~ water resources shall adopt voluntary watershedwide goals, objectives, and standards for water conservation and efficiency consistent with Section 4.2 of the great lakes-st. Lawrence river basin water resources compact.

Sec. 1522.11. (A) No person shall install or operate a facility or equipment that results in a new or increased diversion of any water out of the Lake Erie watershed to another watershed without first obtaining a permit to do so issued by the chief of the division of ~~soil and~~ water resources. An application for such a permit shall be submitted to the chief

on a form that the chief prescribes. An application shall be accompanied by a nonrefundable fee of one thousand dollars, which shall be credited to the water management fund created in section 1501.32 of the Revised Code.

(B) The chief shall approve a permit application submitted under this section only if the chief determines that it meets the criteria required to qualify as an exception to the prohibition against diversions established in Section 4.9 of the compact. The chief shall issue or deny a permit through issuance of an order.

Sec. 1522.12. (A) For purposes of the compact, not later than one hundred eighty days after ~~the effective date of this section~~ September 4, 2012, the chief of the division of ~~soil and~~ water resources shall establish a program for the issuance of permits for the withdrawal and consumptive use of water from the Lake Erie watershed. Upon establishment of the program, the owner or operator of a facility within the Lake Erie watershed that is not otherwise exempt under section 1522.14 of the Revised Code shall obtain a withdrawal and consumptive use permit from the chief if the facility meets any of the following threshold criteria:

(1) The facility has a new or increased capacity for withdrawals or consumptive uses from Lake Erie or a recognized navigation channel of at least two and one-half million gallons per day.

(2) Except as provided in division (A)(3) of this section, the facility has a new or increased capacity for withdrawals or consumptive uses from any river or stream or from ground water in the Lake Erie watershed of at least one million gallons per day.

(3)(a) Except as provided in division (A)(3)(b) of this section, the facility has a new or increased capacity for withdrawals or consumptive uses from any river or stream in the Lake Erie watershed that is a high quality water of at least one hundred thousand gallons per day. Division (A)(3) of this section does not apply to withdrawals and consumptive uses from outstanding state waters that are designated as such by the environmental protection agency due to their exceptional recreational values.

(b) If a river or stream or segment thereof is designated as a high quality water as of ~~the effective date of this section~~ September 4, 2012, the threshold established in division (A)(3)(a) of this section applies to the river or stream or segment thereof and the entire watershed upstream of that river, stream, or segment. If a river or stream or segment thereof is designated as a high quality water after ~~the effective date of this section~~ September 4, 2012, the threshold established in division (A)(3)(a) of this section applies to the river or stream or segment thereof and the entire watershed upstream of that river, stream, or segment, provided that the director of environmental

protection and the director of natural resources, or their designees, jointly determine that the proposed withdrawal or consumptive use would cause the high quality water to lose its designation as a high quality water. If the directors determine that the proposed withdrawal or consumptive use would not cause the high quality water to lose that designation, the threshold established in division (A)(2) of this section applies to the withdrawal or consumptive use at a point beginning one thousand feet upstream of the upstream end of the designated high quality water segment or at a point beginning two times the length of the river, stream, or segment that has been designated as a high quality water, whichever is greater.

Upon establishment of the withdrawal and consumptive use permit program under this division, the owner or operator of a facility that is not otherwise exempt under section 1522.14 of the Revised Code and that is subject to a threshold specified in division (A)(1) or (2) of this section, after submitting an application for a permit under this section and a determination by the chief that the application is complete, may commence installation of the facility or equipment that will result in a new or increased withdrawal or consumptive use of water in the Lake Erie watershed prior to issuance of the withdrawal and consumptive use permit.

Upon establishment of the withdrawal and consumptive use permit program under this division, the owner or operator of a facility that is not otherwise exempt under section 1522.14 of the Revised Code and that is subject to a threshold specified in division (A)(3) of this section shall not install or operate the facility or equipment that will result in a new or increased withdrawal or consumptive use of water in the Lake Erie watershed without first obtaining a withdrawal and consumptive use permit.

(B) Permits issued under this section shall be issued only for the amount of withdrawal or consumptive use capacity of a facility that meets or exceeds threshold amounts established in division (A) of this section. A permit shall not be required for the portion of the withdrawal and consumptive use capacity of the facility below that threshold amount.

(C) An applicant for a permit shall submit an application to the chief on a form that the chief prescribes. The applicant shall include with the application all of the following:

- (1) The name, address, and telephone number of the applicant and of a contact person for the applicant;
- (2) The names, addresses, and other necessary contact information of any other owners and operators of the facility;
- (3) A description of all of the following:
 - (a) The facility's current withdrawal capacity per day if the withdrawal

is to occur at a facility already in operation;

(b) The total new or increased daily withdrawal capacity proposed for the facility;

(c) The locations and sources of water proposed to be withdrawn;

(d) The locations of proposed discharges or return flows;

(e) The locations and nature of proposed consumptive uses and the applicable consumptive use coefficient for the facility;

(f) The estimated average annual and monthly volumes and rates of withdrawal;

(g) The estimated average annual and monthly volumes and rates of consumptive use;

(h) The environmentally sound and economically feasible water conservation measures to be undertaken by the applicant;

(i) Other ways the applicant's need for water may be satisfied if the application is denied or modified;

(j) Any other information the chief may require to adequately consider the application.

(4) A nonrefundable application fee of one thousand dollars, the proceeds of which shall be credited to the water management fund created in section 1501.32 of the Revised Code.

(D) Provided that a facility meets all applicable permit conditions, a permit for the facility is valid until the facility is the subject of facility abandonment. Once every five years, the owner or operator of a facility shall certify to the chief that the facility is in compliance with the permit that has been issued for the facility.

(E) No person that is required to do so shall fail to apply for and receive a withdrawal and consumptive use permit.

(F) A permit issued under this section shall include terms and conditions restricting the withdrawal and consumptive use by a facility to amounts not exceeding the capacity of the facility.

(G) The chief shall issue or deny a permit not later than ninety days after receipt of a complete application. If applicable, the chief shall comply with the requirements regarding prior notice established in Section 4.6 of the compact. The chief shall issue or deny a permit through issuance of an order. The chief shall issue a permit if all applicable criteria for receiving the permit are met as provided in sections 1522.10 to 1522.21 of the Revised Code.

Sec. 1522.13. (A) The chief of the division of ~~soil and~~ water resources shall issue a withdrawal and consumptive use permit for a facility if the chief determines that the facility meets all of the criteria established in

Section 4.11 of the compact.

(B) In applying the provision of the decision-making standard established in Section 4.11.2 of the compact, the chief shall require that a withdrawal or consumptive use will be implemented so as to ensure that the withdrawal or consumptive use will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or of the Lake Erie source watershed considered as a whole. As part of the evaluation of a permit application under Section 4.11.2 of the compact, the chief shall do all of the following:

(1) Rely on the best generally accepted scientific methods appropriate for this state derived from professionally accepted resources and practices;

(2) Consider the long-term mean annual inflow and outflow of the Lake Erie source watershed;

(3) Consider the withdrawal and the portion of the withdrawal that is not returned to the Lake Erie source watershed.

(C) Impacts of a withdrawal or consumptive use on the quantity or quality of waters and water dependent natural resources of more localized areas that affect less than the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole shall be considered as a part of the evaluation of whether a proposed withdrawal or consumptive use is reasonable as provided in Section 4.11.5 of the compact.

(D) The chief shall not submit an application for a withdrawal and consumptive use permit for regional review under Section 4.5.2(c)(ii) of the compact to the regional body as defined in Section 1.2 of the compact unless regional review is agreed to by the applicant.

(E) Nothing in sections 1522.10 to 1522.21 of the Revised Code shall be construed to affect, limit, diminish, or impair any rights validly established and existing under the laws of this state as of December 8, 2008, including, but not limited to, sections 1506.10 and 1521.17 of the Revised Code, or to limit a person's right to the reasonable use of ground water, water in a lake, or any other watercourse in contravention of Section 19b of Article I, Ohio Constitution.

Sec. 1522.131. (A) To encourage the development of innovative water use practices and technologies that ensure sustainable water use for industrial, commercial, residential, agricultural, or public purposes, including recreational and cultural resources, as a means to facilitate sustainable economic growth and job creation, the chief of the division of ~~soil and~~ water resources, with the approval of the director of natural resources, may issue experimental use permits. An experimental use permit

may be issued in lieu of a withdrawal and consumptive use permit as determined appropriate by the chief.

(B) An experimental use permit may be issued if all of the following apply:

(1) The experimental use is reasonable based on a consideration of the factors specified in Section 4.11.5 of the compact.

(2) The experimental use will use no more water than is necessary to determine the effectiveness and economic feasibility of the experimental use.

(3) The experimental use does not reduce the protection afforded the waters and water dependent natural resources of the source watershed as defined in the compact below what is provided in this chapter and rules adopted under it.

(C) The chief may refuse to issue an experimental use permit if the chief determines that the proposed use will result in significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole.

(D) The chief shall issue or deny a permit under this section through issuance of an order.

(E) The chief shall establish the terms and conditions of an experimental use permit and may suspend such a permit, at any time, if the chief finds that its terms or conditions are being violated or that its terms and conditions are inadequate to avoid significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole.

(F) An experimental use permit issued under this section shall expire not later than twenty-four months after the date of issuance of the permit.

Sec. 1522.15. (A)(1) Transfer of a withdrawal and consumptive use permit upon the sale or transfer of a facility may occur so long as the location of the facility, the source of water, and the withdrawal and consumptive use capacities do not change. Transfer of the baseline withdrawal and consumptive use capacity of a baseline facility upon the sale or transfer of the baseline facility may occur so long as the location of the facility, the source of water, and the withdrawal and consumptive use capacities do not change. Transferred capacity of a baseline facility does not require a withdrawal and consumptive use permit.

Notice of a transfer shall be provided to the chief of the division of ~~soil~~ and water resources in a manner prescribed by the chief.

(2) If the owner of a facility for which a withdrawal and consumptive use permit has been issued sells or transfers a portion of the facility, transfer of the applicable portion of the withdrawal and consumptive use capacity authorized by the withdrawal and consumptive use permit may occur so long as the location of the facility, the source of water, and the total withdrawal and consumptive use capacities do not change. The permittee shall provide notice of such a transfer to the chief in a manner prescribed by the chief. Upon receipt of the notice and if a permit is required for the transferred portion based on the threshold amounts established in divisions (A)(1) to (3) of section 1522.12 of the Revised Code, the chief shall issue a new permit for the transferred portion of the facility to the transferee and a modified permit for the remaining portion of the facility to the original permittee upon a showing that the transferee will meet the conditions of the original permit and all applicable requirements of this chapter and rules adopted under it. Any new permit shall reflect the portion of the withdrawal and consumptive use capacity that has been transferred.

(3) If the owner of a baseline facility sells or transfers a portion of the baseline facility, transfer of the applicable portion of the withdrawal and consumptive use capacity listed in the baseline report for that facility may occur so long as the location of the facility, the source of water, and the total withdrawal and consumptive use capacities do not change. The owner shall provide notice of such a transfer to the chief in a manner prescribed by the chief. The chief shall not require the owner of the baseline facility or the transferee to obtain a withdrawal and consumptive use permit, but shall update the baseline report to reflect the transfer.

(4) The chief may deny a transfer under this section by issuing an order denying the transfer and sending written notice to the permittee and the transferee not later than thirty days after notice of the intended transfer. The chief shall deny the transfer if the chief determines that the transfer will result in noncompliance with this chapter, rules adopted under it, or the terms and conditions of a withdrawal and consumptive use permit.

(5) The chief shall remove a facility from the baseline report when the facility is subject to baseline facility abandonment. However, a baseline facility shall not be removed from the baseline report due to the transfer of the facility's baseline capacity.

(B) No person shall sell or transfer a withdrawal and consumptive use permit for purposes of evading the requirements established in sections 1522.10 to 1522.21 of the Revised Code.

Sec. 1522.16. (A)(1) The owner or operator of a facility may petition the chief of the division of ~~soil and~~ water resources for either of the following:

(a) Inclusion in the baseline report if the owner or operator believes that the facility was erroneously excluded from the report;

(b) The amendment of the amount of a withdrawal and consumptive use or other information included in the baseline report regarding the facility if the owner or operator believes that the information is incorrect.

(2) The chief shall issue an order either approving or disapproving a petition submitted under this section. The chief shall issue the order based on a thorough examination of the circumstances concerning the petition.

(3) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that establish procedures for the submission of petitions under this division.

(B) With regard to the nonuse of a baseline facility's or a facility's withdrawal and consumptive use capacity, not later than sixty days after the time period specified in division (B)(1) or (2) or (I)(1) or (2) of section 1522.10 of the Revised Code, the owner or operator of the facility may request an extension from the chief to retain the facility's active status. The request shall be made in a manner prescribed by the chief. The chief shall determine the appropriate terms and conditions of the extension, if approved, based on information submitted by the owner or operator. The chief shall issue an order approving or disapproving the request and shall do so in a manner prescribed by the chief.

Sec. 1522.17. (A) The owner or operator of a facility who is applying for a withdrawal and consumptive use permit shall submit to the chief of the division of ~~soil and~~ water resources a facility water conservation plan that incorporates environmentally sound and economically feasible water conservation measures in accordance with Section 4.11.3 of the compact. If the plan reasonably incorporates environmentally sound and economically feasible water conservation measures applicable to the facility, it shall be deemed to be in compliance with Section 4.11.3 of the compact.

(B) The chief shall keep confidential any portions of a facility water conservation plan that constitute a trade secret as defined in section 1333.61 of the Revised Code as follows:

(1) During the period of time after confidentiality is requested under division (C) of this section and until the chief makes a determination to approve or disapprove the request;

(2) On and after the date on which the chief approves a request for confidentiality under division (C) of this section.

Any portions of a facility water conservation plan that are kept confidential as provided in this division are not subject to section 149.43 of the Revised Code.

(C)(1) The owner or operator of a facility may request that any portions of a facility water conservation plan be kept confidential. The request for confidentiality shall be submitted at the same time that an owner or operator submits a facility water conservation plan under division (A) of this section. The owner or operator shall clearly indicate the information that the owner or operator considers a trade secret and shall label it as "trade secret." Failure to make such a request shall constitute a waiver of the right to prevent public disclosure of the information. A request for confidentiality shall be accompanied by documents that support the request. The documents shall describe the measures that the requestor has taken to safeguard the confidentiality of the information and indicate whether or not others are bound by a confidentiality agreement related to the information.

(2) The chief, by order, shall issue a decision regarding the confidentiality request not later than forty-five days after the receipt of the request. Until the decision is issued, the information that is the subject of the request shall be confidential and maintained by the chief in a separate file labeled "confidential." The applicant shall be notified by mail of the decision.

Sec. 1522.18. The chief of the division of ~~soil and~~ water resources, on the chief's own initiative or upon written complaint by any person, may investigate or make inquiries into any alleged failure to comply with this chapter, any rule adopted under it, any order issued under it, or the terms and conditions of a permit issued under it. The chief or the chief's duly authorized representative may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged act of noncompliance and, if necessary, may apply to the court of common pleas having jurisdiction for a warrant permitting the entrance and inspection.

Sec. 1522.20. (A)(1) The chief of the division of ~~soil and~~ water resources may issue an order to a person that the chief determines has violated, is violating, or is threatening to violate any provisions of this chapter, rules adopted under it, or permits or orders issued under it. The order shall be effective upon issuance and shall identify the facility where the violation has occurred, is occurring, or is threatened to occur, the specific violation, and actions that the owner or operator of the facility must take to comply with the order. The order shall establish a reasonable date by which the owner or operator must comply with the order.

(2) An order issued under division (A)(1) of this section shall be in writing and shall contain a finding of the facts on which the order is based. Notice of the order shall be given by certified mail to the applicable owner

or operator of a facility. Notice also shall be provided to a person who initiated a complaint that resulted in the order and shall be posted on the web site of the department of natural resources in a manner prescribed by the chief.

(B)(1) The chief, by order, may propose to suspend or revoke a permit issued under this chapter if the chief determines that any term or condition of the permit is being violated. The chief's order shall identify the facility where the violation allegedly occurred, describe the nature of the violation, and prescribe what action the permittee may take to bring the facility into compliance with the permit. The chief shall fix and specify in the order a reasonable date or time by which the permittee must comply. The order shall state that the chief may suspend or revoke the permit if the permittee fails to comply with the order by that date or time. If on that date or time the chief finds that the permittee has not complied with the order, the chief may issue a new order suspending or revoking the permit.

(2) The chief or the chief's designee may enter on private or public lands and take action to mitigate, minimize, remove, or abate the conditions caused by a violation that is the subject of an order issued under division (B)(1) of this section.

(C) The attorney general, upon written request of the chief, shall bring an action for an injunction or other appropriate legal or equitable action against any person who has violated, is violating, or is threatening to violate any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it. The attorney general shall bring the action in the court of common pleas of Franklin county or the county where the applicable facility is located. In an action for injunction, any factual findings of the chief presented at a hearing conducted under division (A) of section 1522.21 of the Revised Code is prima-facie evidence of the facts regarding the order that is the subject of the hearing.

(D) A person who violates any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it is liable to the chief for any costs incurred by the division of ~~soil~~ and water resources in investigating, mitigating, minimizing, removing, or abating the violation and conditions caused by it. Upon the request of the chief, the attorney general shall bring a civil action against the responsible person to recover those costs in the court of common pleas of Franklin county. Moneys recovered under this division shall be deposited in the state treasury to the credit of the water management fund created in section 1501.32 of the Revised Code.

Sec. 1522.21. (A) As used in this section, "person who is or will be

aggrieved or adversely affected" means a person with a direct economic or property interest that is or will be adversely affected by an order or rule issued or adopted by the chief of the division of ~~soil and~~ water resources under this chapter.

(B)(1) Before issuance of a final order denying the issuance of a permit under section 1522.11, 1522.12, or 1522.131 of the Revised Code, denying a transfer under section 1522.15 of the Revised Code, denying a petition to the chief under section 1522.16 of the Revised Code, or denying a request for confidentiality under section 1522.17 of the Revised Code, or before the issuance of a final order under section 1522.20 of the Revised Code, the chief shall issue a proposed order indicating the chief's intent to issue a final order. If the chief receives a written objection from a person who is or will be aggrieved or adversely affected by the issuance of the final order, the chief shall conduct an adjudication hearing with respect to the proposed order in accordance with Chapter 119. of the Revised Code. A person who is or will be aggrieved or adversely affected by the issuance of the final order and who submitted a written objection under this division may be a party to the adjudication.

(2) Any person who is issued a proposed order or a final order by the chief shall be a party in any administrative or legal proceeding in which the proposed order or final order is at issue. This division is in addition to any other rights that a person may have as a person aggrieved or adversely affected.

(C)(1) After the issuance of a final order, a person who is or will be aggrieved or adversely affected by the issuance of the order may appeal the order to the court of common pleas of Franklin county or the court of common pleas of the county in which the facility that is the subject of the order is located. Subject to the exceptions specified in section 2506.03 of the Revised Code, the court is confined to the record as certified to it by the chief if an adjudication hearing was conducted by the chief under division (B) of this section. However, the court also may grant a request for the admission of additional evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the chief. If no adjudication hearing was conducted under division (B) of this section, the court shall conduct a hearing de novo.

(2) The filing of an appeal under division (C)(1) of this section does not automatically suspend the order that is the subject of the appeal. Upon application by the appellant, the court may suspend or stay the order, pending an immediate hearing on the appeal.

(3) If the court finds that the order was lawful and reasonable, it shall issue a written order affirming the order. If the court finds that the order was unreasonable or unlawful, it shall issue a written order vacating or modifying the order. The judgment of the court is final unless reversed, vacated, or modified on appeal.

(4) Attorney's fees shall not be awarded to any party to an administrative or legal proceeding under this section.

Sec. 1523.01. In addition to all other powers granted to and duties devolving upon the chief of the division of ~~soil and~~ water resources, when in the chief's judgment it is for the public welfare and the best interests of the citizens of the state that the surplus, flood, and other waters of any of the watersheds, rivers, streams, watercourses, or public waters should be conserved, impounded, and stored in order to insure and promote the public health, welfare, and safety and to encourage and promote agriculture, commerce, manufacturing, and other public purposes, such chief shall proceed in furtherance of the purposes of sections 1523.01 to 1523.13 of the Revised Code, and for the preservation of the use of such waters for navigation, in case such waters are required for navigation, to construct such reservoirs, dams, storage basins, dikes, canals, raceways, and other improvements as are necessary for such purposes, or the chief may make additions to, enlarge, and make alterations in and upon such reservoirs, dams, storage basins, dikes, canals, raceways, and other improvements already in existence and constituting a part of the public works, as are necessary for such purposes. Any rights or privileges granted by sections 1523.01 to 1523.13 of the Revised Code, shall not interfere with the control and maintenance of the state reservoirs or public parks which have been dedicated to the public for purposes of recreation and pleasure.

The chief, subject to the written approval of the director of natural resources and the governor, may acquire by gift, purchase, or by appropriation proceedings, in the name of and on behalf of the state, such real and personal property, rights, privileges, and appurtenances as are necessary in the chief's judgment for the construction of such reservoirs, dams, storage basins, dikes, canals, raceways, and other improvements, or for the alteration, enlargement, or maintenance of existing reservoirs, dams, and other improvements, together with such rights of way, drives, and roadways as are necessary for convenient access thereto. The appropriation proceedings referred to in this section shall be restricted to private property only.

Before proceeding to purchase or appropriate any such property or rights, the cost of which, together with the land or real estate necessary upon

which to locate and construct such improvements, including damages to remaining property, is in excess of one thousand dollars, the chief shall prepare plans, specifications, and estimates of such cost, including all material and labor therefor, together with the cost of such land or real estate and damages, and shall thereupon submit such plans, specifications, and estimates to the director, who in turn shall submit them to the governor for approval.

The governor shall thereupon publish written notice once a week for two consecutive weeks in a newspaper published in and of general circulation in the counties where any such improvements are proposed to be constructed, setting forth the location and character of the proposed improvements, that the plans, specifications, and estimates therefor are on file in the governor's office, and that objections thereto will be heard by the governor on a day to be named in the notice, which day shall be not less than ten nor more than twenty days after the first publication thereof. Within thirty days after the date fixed for the hearing, the governor shall return such plans, specifications, and estimates to the director, with the governor's written approval or rejection thereof indorsed thereon. The director shall immediately return such plans, specifications, and estimates, together with the governor's indorsement thereon, to the chief.

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. 1523.02. If the governor approves the plans, specifications, and estimates authorized by section 1523.01 of the Revised Code, the chief of the division of ~~soil and~~ water resources shall thereupon proceed, as provided in sections 1523.02 to 1523.13 of the Revised Code, to construct the improvements or to make alterations in or to enlarge those already existing, in such manner and form as is shown by such plans and specifications. In order to provide the funds for such construction, alteration, or enlargement, the chief shall issue and sell bonds of the state, not in excess of the estimated cost of such improvements. The bonds shall be issued in denominations of not less than one hundred dollars payable as a whole or in series on or before fifty years from the date thereof, with interest not to exceed the rate provided in section 9.95 of the Revised Code, payable either annually or semiannually.

The bonds shall show on their face the purpose for which issued and shall create no liability upon or be considered an indebtedness of the state, but both the principal and interest shall be paid solely out of the proceeds arising from the improvements constructed, altered, or enlarged by the chief,

or from the proceeds of the sale or foreclosure of the lien securing the bonds on such improvement or such part thereof as is constructed from the money realized from the sale of the bonds.

The form of the bonds shall be approved by the attorney general, and they shall be signed by the governor and attested by the director of natural resources and the chief. The bonds may be issued as coupon bonds, payable to bearer only, or upon demand of the owner or holder thereof as registered bonds.

Such bonds shall be sold by the chief to the highest bidder therefor, but for not less than the par value thereof, with accrued interest thereon, after thirty days' notice in at least two newspapers of general circulation in the county where such improvements are to be constructed, altered, or enlarged, setting forth the nature, amount, rate of interest, and length of time the bonds have to run, with the time and place of sale.

The treasurer of state shall be the treasurer of the fund realized from the sale of such bonds, and the auditor of state shall be the auditor of such fund. The proceeds of such sale shall be turned over to the treasurer of state and shall be deposited by the treasurer of state in a solvent bank, located either in Columbus or in the county in which such improvements are located. Such proceeds shall be kept by such bank in a fund to be known as the water conservation improvement fund. Such fund shall be used to acquire the necessary real estate and to construct such new improvements and for no other purpose, except that the treasurer of state may pay the interest on the bonds during the period of condemnation and the construction, alteration, or enlargement of such improvements out of the proceeds arising from the sale of the bonds for a term not exceeding three years from the date on which the bonds are issued. The bank shall give bond to the state in such amount as the treasurer of state considers advisable, and with surety to the satisfaction of the treasurer of state, for the benefit of the holders of the bonds, and for the benefit of any contractors performing labor or furnishing material for such improvements, as provided by law, conditioned that it will safely keep the money and will make no payments or disbursements therefrom except as provided in sections 1523.01 to 1523.13 of the Revised Code.

The treasurer of state shall hold such fund as trustee for the holders of the bonds and for all persons performing labor or furnishing material for the construction, alteration, or enlargement of any improvement made under such sections. Such funds shall not be turned into the state treasury, but shall be deposited and disbursed by the treasurer of state as provided in such sections. The interest coupons attached to such bonds shall bear the signature of the treasurer of state, executed by the treasurer of state or

printed or lithographed thereon.

Both the interest and principal of such bonds shall be made payable at the office of the treasurer of state in Columbus, and shall be paid by the treasurer of state, without warrant or authority of the director of budget and management, to the owner or holder of such bonds upon presentation by the owner or holder of matured interest coupons or bonds.

Sec. 1523.03. Immediately after the sale of the bonds authorized by section 1523.02 of the Revised Code and the payment of the proceeds thereof to the treasurer of state as provided in such section, the chief of the division of ~~soil and~~ water resources shall make a written contract for the construction of the improvements or for the making of additions to or alterations in existing improvements with the lowest responsive and responsible bidder, in accordance with section 9.312 of the Revised Code, after advertisements once a week for four consecutive weeks in one newspaper in each of the cities of Columbus, Cleveland, and Cincinnati having a general circulation therein, one trade paper having a circulation among contractors engaged in the construction of public improvement work of like character, and two newspapers having a general circulation within the county in which the dam, reservoir, storage basin, or other improvement is located or is to be located.

All bids shall be filed with the chief, within the time fixed for the filing of such bids in the advertisement. The bids shall be opened and publicly read by the chief at twelve noon on the last day for filing them. Each bid shall contain the full names of every person or company interested in it, shall separately state the price of both the labor and material to be furnished under it, and shall meet the requirements of section 153.54 of the Revised Code.

The chief may reject any bids. If the chief rejects all bids, the chief shall within sixty days thereafter readvertise for bids for the construction of such improvements, as provided in this section, and may continue to readvertise for bids every sixty days until bids are received which are made to the chief's satisfaction and in conformity to sections 1523.01 to 1523.13 of the Revised Code.

The chief may award separate contracts to bidders for each part of the labor to be done or material to be furnished for the construction of such improvements, provided that the amount of the contract, if awarded as a whole, or the aggregate of the several contracts, if awarded separately, shall not, together with the cost of the land necessary for such improvements and the estimated damages to remaining property, be in excess of the estimated cost of the construction thereof, including such land and damages. Such

contracts shall provide that all payments thereunder shall be made only from the proceeds of the sale of the bonds issued for the construction of such improvements. No contractor shall receive payment for any work or labor performed or material furnished for such improvements unless the contract therefor was, at the time of its execution, approved by the governor by the governor's written indorsement on such contract.

Sec. 1523.04. When estimates or statements for either material theretofore furnished or labor theretofore performed under a contract entered into as provided in section 1523.03 of the Revised Code are presented to the chief of the division of ~~soil and~~ water resources by the contractor, certified as to the correctness thereof under oath by the contractor or the contractor's authorized agent and approved in writing by the chief, the chief shall pay the amount of such estimates or statements from the water conservation improvement fund.

Sec. 1523.05. The chief of the division of ~~soil and~~ water resources shall by contract in writing sell or lease for agricultural, commercial, manufacturing, or other lawful purposes, for any term not exceeding fifty years, the water, or any part thereof, conserved and stored by the improvements then existing, or that will be conserved and stored by any improvements thereafter to be constructed by the chief. The chief may lease the land surrounding the water for a term not exceeding fifty years, as shown by the plans and specifications prepared by the chief and approved by the governor as provided in section 1523.01 of the Revised Code. Such agreements shall be for a certain price or rental for the water or lands furnished to or used by the grantees, lessees, or their assigns, to be paid quarterly, semiannually, or annually as the chief deems advisable.

The chief may, for a term not exceeding fifty years, sell or lease power generated by any head of water raised or maintained by any such improvement, or the chief may sell or lease the right to use such head of water for generating power or other hydraulic purposes.

All such contracts of sale or lease, whether for water or power, shall contain such reservations or restrictions as the chief deems necessary and proper in furtherance of the purposes of sections 1523.01 to 1523.13 of the Revised Code, and the preservation of the use of such waters for navigation in case they are required therefor.

Such contracts or leases shall be approved by the attorney general as to their general form and legality and, before becoming binding obligations on the state, they shall be approved by the governor by the governor's written indorsement thereon.

Sec. 1523.06. (A) The chief of the division of ~~soil and~~ water resources

before selling bonds as provided in section 1523.02 of the Revised Code or before receiving bids for the construction of improvements as authorized by section 1523.03 of the Revised Code may enter into tentative agreements for the sale or lease of water or power to:

(1) Ascertain whether the public interest and welfare reasonably require the proposed improvements in the proposed locality;

(2) Determine whether the revenues which the state may derive from the lease of lands and the lease and sale of the waters which are estimated will be conserved, impounded, and stored, or from the sale or lease of the power generated by such improvements, will be sufficient:

(a) To pay the interest on bonds issued under section 1523.02 of the Revised Code;

(b) To create a sinking fund to retire the bonds at their maturity;

(c) To maintain and keep the improvements in repair.

(B) The performance and carrying out of such tentative agreements shall be conditioned upon the ability of such chief to:

(1) Sell the proposed bonds at not less than par and accrued interest;

(2) Secure bids for the furnishing of all the labor and material necessary in the construction of such improvements, including all real estate required and damages incurred, at such a price that the rentals or compensation to be paid will provide during the terms of such contracts or leases a sum sufficient to pay the interest, retire the bonds, and maintain and keep the improvements in repair.

Sec. 1523.07. The treasurer of state shall be treasurer and the auditor of state shall be auditor of all moneys derived from the use of the improvements authorized by sections 1523.01 to 1523.13 of the Revised Code. The treasurer of state shall hold the moneys as trustee for the maintenance of any improvements constructed under such sections, and for the holders of any bonds issued in accordance with section 1523.02 of the Revised Code. The moneys shall not be turned into the state treasury, but shall be deposited and disbursed by the treasurer of state in the manner provided in this section. All such moneys shall be collected by the treasurer of state on statements to be furnished by the chief of the division of ~~soil and~~ water resources and when so collected shall be deposited in solvent banks in the state upon the same terms as state funds are now loaned. The funds shall be kept by such banks in a fund known as the "water conservation fund" and shall be used, first, to maintain and keep in repair the dams, reservoirs, storage basins, and other improvements, and, second, to pay the interest upon and principal of the bonds issued and sold pursuant to section 1523.02 of the Revised Code, as such interest falls due or the bonds mature.

The banks in which the treasurer of state deposits any of the moneys belonging either to the water conservation improvement fund provided for in section 1523.02 of the Revised Code or the water conservation fund provided for in this section shall be state depository banks as provided for in sections 135.01 to 135.21 of the Revised Code. An amount not to exceed fifty thousand dollars of the money on deposit at any one time in the water conservation improvement fund, and an amount not to exceed ten thousand dollars in the water conservation fund shall be held by any of the banks as an active deposit, and the banks shall pay the treasurer of state on such deposits, both active and inactive, the same rate of interest then being paid by them upon the funds of the state then deposited with them by the treasurer of state. All such payments of interest shall be credited to the respective funds upon which such interest is paid.

Sec. 1523.08. When the cost of any repairs to the improvements authorized by section 1523.01 of the Revised Code does not exceed one thousand dollars, the chief of the division of ~~soil and~~ water resources either may make such repairs or may let a contract therefor without advertising for bids. If the cost of any such repairs is in excess of one thousand dollars, the chief shall advertise for bids for the making of such repairs and let a contract therefor as provided in section 1523.03 of the Revised Code.

When itemized statements are presented to the chief showing the amount of labor performed and material furnished in the making of such repairs, verified by the person making them and approved in writing by the chief, the chief shall pay the amount of such statement from the water conservation fund.

Sec. 1523.09. If a reservoir, dam, storage basin, or other improvement constructed or enlarged by the chief of the division of ~~soil and~~ water resources as provided in sections 1523.01 to 1523.13 of the Revised Code constitutes a part of the canal system of the state or is located upon any river, stream, or body of water formerly used as a feeder for the canal system, no water shall be sold or leased from the improvement except in accordance with section 1520.03 of the Revised Code.

Sec. 1523.10. The funds derived from the sale, use, or lease of the water impounded and conserved or the power generated by the improvements constructed pursuant to sections 1523.01 to 1523.13 of the Revised Code, or from the lease of the lands and improvements adjacent thereto are hereby expressly pledged for the purpose of maintaining and keeping the improvements in repair and for the payment of the interest on and principal of the bonds issued under section 1523.02 of the Revised Code, as the same fall due and mature. The owners of such bonds are hereby given a lien for

the payment of the principal and interest of such bonds upon any dam, reservoir, storage basin, or other improvements, or any part thereof, with the appurtenances belonging thereto, constructed by the chief of the division of ~~soil and~~ water resources with the funds derived from the sale of such bonds.

If default is made in the payment of the interest on any of the bonds for three or more successive years, or if bonds, aggregating in par value not less than ten per cent of the total amount of such bonds then outstanding are not paid at maturity, then all of the bonds, both principal and interest, shall become due and payable, and the owners of any of the bonds, aggregating in par value not less than ten per cent of the total amount of such bonds then outstanding, may institute proceedings to foreclose such lien against the state in the court of common pleas of the county in which is located any of the improvements, constructed, altered, or enlarged out of the proceeds of the sale of such bonds.

The court shall have jurisdiction of such action with full power to foreclose such lien and to make an order to the sheriff of the county, acting as a master commissioner, directing the sheriff to make a sale of such improvements or part thereof at not less than two-thirds of the appraised value thereof, and upon such terms and in manner and form as provided for in the order, and to pay the proceeds of such sale to the clerk of the court of common pleas. Upon motion of the purchaser of such improvements at such sale, the court, if such sale is found to be regular in all respects and according to law, shall confirm the sale and order the sheriff to execute a deed to such purchaser and the purchaser's assigns, conveying to the purchaser and the purchaser's assigns all the right, title, and interest of the holders of the bonds in and to the improvements, and all the right, title, and interest of the state, for a period of not more than fifty years from the date of such conveyance, in the same, with full right and franchise, for the period of not to exceed fifty years, to operate the improvements and dispose of the water conserved or the power generated thereby, with the further right, for the period of fifty years, to flow, transport, and convey the water from the improvements, or to conduct and transmit power generated thereby through, over, and upon any of the lands of the state or channels or beds of any of its reservoirs, lakes, canals, races, aqueducts, or watercourses. In the exercise of such rights, such purchaser or the purchaser's assigns shall at all times during the term of the grant maintain the improvements so conveyed to them in a good state of repair and shall not interfere with the navigation of the canals of the state or with the control and maintenance thereof or with the sale of water by the state from its dams, reservoirs, and improvements other than those so constructed. The state does not incur any liability by reason of

such sale and the rights granted thereunder to continue to maintain such canals, races, channels, or watercourses, or to continue the use thereof. Such conveyance or grant by the sheriff as such master commissioner shall contain a clause giving the chief such control of waste gates and wickets as to regulate the flow of water in the state reservoirs or canals, in such manner as to maintain the proper level therein and to prevent the flowing into such reservoirs and canals of such quantities of water as might impair any of the property of the state or its lessees, except as otherwise provided in section 1520.03 of the Revised Code.

Upon the foreclosure of the lien and the sale of the improvements, all contracts or leases for the sale, use, or lease of water, the lands and improvements adjacent thereto, or power rights then outstanding shall become void, and the rights of the state and the several lessees thereunder, shall cease.

Upon the making of an order by the court for the sale of such improvements, and before they are offered for sale by the sheriff, the court shall appoint three disinterested appraisers, one of whom shall be a water-works or hydraulic engineer with at least five years' experience in the practice of the engineer's profession, and two of whom shall be freeholders residing in the county in which any of such improvements are located. The appraisers shall appraise the improvements and shall, within the time fixed by the court, file such appraisal in writing with the clerk. If the lien given by this section as security for the payment of the bonds covers a part only of the improvements, the appraisers shall appraise the improvements as an entirety, and shall also appraise separately the part constructed from the proceeds of the sale of the bonds, the lien of which is being foreclosed in such proceeding.

In making such appraisal and fixing the value of the improvements or of such part thereof, the appraisers shall have access to all papers and documents on file in the office of the chief relating to such improvements, including the plans and specifications therefor, and the bids made and contracts entered into for the construction thereof, and all leases and contracts for the sale of water impounded therein and power generated thereby. The order of the court shall direct the sale only of such part of the improvements as have been constructed from the proceeds of the sale of the bonds. The purchaser at such sale, in the operation of such improvements during the term of the franchise granted to the purchaser by this section, shall draw from the dam or reservoir impounding such water only such portion thereof as the appraised value of that part of such improvements, constructed from the proceeds of the sale of such bonds and sold to the

purchaser under the order of the court, bears to the entire appraised value of such improvements.

If at any time during the term of the franchise granted to the purchaser of such improvements at such foreclosure sale any controversy arises between the purchaser or the purchaser's assigns and the chief as to the operation of such improvements, or as to the amount of water which the purchaser is drawing or is entitled to draw therefrom, either the purchaser or the chief may file a petition in the court, setting forth the facts connected with such controversy.

Notice in writing of the filing of such petition shall be given to the opposite party to the controversy within thirty days from the date of the filing thereof, either by service of such notice personally upon such opposite party by the sheriff of such county or by service by mail by the clerk. Such notice shall be mailed to the name and address which the purchaser filed with the clerk at the time of the delivery to the purchaser by the sheriff of the deed. Within thirty days from the serving or mailing of such notice, the opposite party to the controversy shall file an answer in the court, and thereupon the court shall hear and determine the controversy and make such order in regard to it as is just and proper, which order shall be binding upon all the parties to the controversy.

At the termination of the period of not to exceed fifty years, all of the rights and privileges conveyed to the purchaser by the deed and grant of such sheriff as master commissioner shall cease and the improvements, with all the appurtenances belonging thereto, shall revert to and become the property of the state, free and clear of any claims whatever against them.

The clerk shall distribute and pay the money received by the clerk from the sheriff as such master commissioner from the sale of such improvements to the holders of the bonds pro rata, and upon such payment to any of the bondholders, they shall surrender to the ~~the~~ clerk their bonds, with all unpaid interest coupons thereon. The clerk shall thereupon cancel the same and deliver them, so canceled, to the treasurer of the water conservation improvement fund.

Sec. 1523.11. All appropriations of property made by the chief of the division of ~~soil and~~ water resources in carrying out sections 1523.01 to 1523.13 of the Revised Code, shall be made in accordance with sections 163.01 to 163.22 of the Revised Code, provided that possession of any property so appropriated shall not be taken by the state or the chief before the compensation and damages awarded therefor in the appropriation proceedings have been paid into court.

Sec. 1523.12. Sections 1523.01 to 1523.13 of the Revised Code do not

authorize any reduction in the quantity or any impairment in the quality of the water in any watershed, stream, or basin, developed or undeveloped, from which any political subdivision is, at the time the chief of the division of ~~soil and~~ water resources proposes and is proceeding to construct in such watershed, stream, or basin any of the improvements authorized by such sections, taking water for the use of itself or its inhabitants, or has plans under way, or has made or begun appropriation of any property or rights in such watershed, stream, or basin for the purpose of acquiring a water supply for itself or its inhabitants for either domestic, industrial, or other uses. Such sections do not authorize the chief to sell or lease the right to use water at any time for any purpose or to such an extent as to prejudice, abrogate, or supersede any of the water rights granted by the state to the city of Akron as provided in volume 102, Ohio Laws, page 175, sections 1 to 3.

Sec. 1523.13. If by reason of severe drought or other causes the water supply of any political subdivision is, in the judgment of the chief of the division of ~~soil and~~ water resources, at any time so reduced or impaired as to endanger the property of such political subdivision, or the health, safety, or property of the inhabitants thereof, then the chief, under such regulations as the chief prescribes, may grant to such political subdivision the right, during the continuance of such emergency, to draw or take such quantity of water as is necessary to protect the property of such political subdivision and the health, safety, or property of its inhabitants from any improvement constructed under sections 1523.01 to 1523.13 of the Revised Code, before any of the lessees or grantees of the state using the water for industrial purposes take water therefrom. Such political subdivision shall pay such price per thousand gallons for the water so taken by it as is fixed by the chief and the governor. The price so fixed shall not exceed the maximum price then being paid for water to the state by any of its lessees or grantees. Such grant by the chief to such political subdivision shall not modify the terms or impair the validity of any leases then existing between the state and other persons, firms, or corporations, except as expressly provided in this section.

Sec. 1523.14. The director of transportation in constructing highways, bridges, and culverts as provided by law; the board of county commissioners in constructing highways, bridges, and culverts as provided by law; the board of township trustees of any township in constructing highways, bridges, and culverts as provided by law; and any municipal corporation constructing or improving viaducts, bridges, and culverts under section 717.01 of the Revised Code, either severally or jointly, upon request of the chief of the division of ~~soil and~~ water resources and with the approval of the

director of transportation, may construct and maintain slack-water dams in connection with the highway, highway bridge, or culvert so as to create reservoirs, ponds, water parks, basins, lakes, or other incidental works to conserve the water supply of the state.

Sec. 1523.15. The chief of the division of ~~soil and~~ water resources may request the public authority having charge of the construction of state, county, or township highways, highway bridges, and culverts, or municipal streets, for the construction of slack-water dams in connection with the construction of any such highway, street, highway bridge, or culvert whenever, in the chief's opinion, the construction of such dam is desirable and feasible for the economical creation and construction of reservoirs, ponds, water parks, basins, lakes, or other incidental works for the conservation of the water supply of the state.

The public authority having charge of such construction may approve such request when, in its opinion, the construction of such dams will not unnecessarily delay or hinder the construction of the highway, street, highway bridge, or culvert, or will not interfere with its value or use for highway purposes.

If such request is approved, the chief, in cooperation with the department of transportation and the public authority participating in the project, shall make a survey and prepare plans, specifications, and estimates for the construction of such dams and the reservoir, pond, water park, basin, lake, or other incidental works in connection therewith.

Upon approval of the plans and specifications and determination to proceed with the project, the chief shall enter into an agreement with the public authority on the distribution of the cost and expense of the construction of such dams and incidental works in connection therewith. The portion of the cost to be paid by the division of ~~soil and~~ water resources shall be paid from any funds appropriated for or paid into the division and available for such purpose.

Such dams shall be constructed under and subject to any laws governing the construction of state, county, or township highways, bridges, or culverts. Any public authority undertaking construction under sections 1523.14 to 1523.20 of the Revised Code shall proceed in the same manner as provided for the construction of highway or street improvements.

Sec. 1523.16. Any department or division of the state government, or any county, township, municipal corporation, park board, or district, or any organization, club, corporation, or private person may petition the chief of the division of ~~soil and~~ water resources for the construction of dams and reservoir projects in connection with the construction of any highway,

highway bridge, or culvert.

Upon receipt of such a petition and its approval by the chief, the chief shall proceed as authorized by section 1523.15 of the Revised Code. If the public authority having charge of the construction of such highway, street, highway bridge, or culvert approves the request, then the chief shall enter into an agreement with the public authority, organization, or person petitioning for the construction of such dam or reservoir on the apportionment of the cost and expense of construction. The cost and expense of such dam project shall include the cost of clearing and grubbing and the cost of property and damages incidental thereto. Such agreement shall also contain provisions for the proper maintenance and repair of such projects after completion, and also apportion the revenue derived therefrom between the division of ~~soil and~~ water resources and the petitioner.

Sec. 1523.17. In all cases in which a public authority, private organization, or person petitions for the construction of a dam and reservoir project as authorized by sections 1523.14 to 1523.20 of the Revised Code, the chief of the division of ~~soil and~~ water resources, as a condition precedent to the construction of such project, shall require the petitioning authority, organization, or person to pay the petitioning authority's, organization's, or person's share of the cost and expense of such project.

Any deficiency shall be made up by the parties bearing the cost before any further work is done. If the deficiency is not made up within sixty days after it is known, the amount paid in, less the expense incurred by the chief and the cooperating public authorities, shall be refunded to the donor. After completion of the work, any amount remaining to the credit of the project shall likewise be refunded.

Sec. 1523.18. In the construction of dams, reservoirs, and other incidental works under sections 1523.14 to 1523.20 of the Revised Code, the chief of the division of ~~soil and~~ water resources shall proceed as provided by law, and shall enter into contracts therefor as provided in sections 153.01 to 153.29 of the Revised Code. The director of transportation, the chief of the division of wildlife with the approval of the director of natural resources, and any county, township, municipal corporation, and public park board or district may proceed with the letting of contracts for the construction of such dams or reservoir projects, approved by the chief of the division of ~~soil and~~ water resources, under any laws regulating the letting of contracts applicable to their respective departments, divisions, districts, or political subdivisions, and the authority of sections 1523.14 to 1523.20 of the Revised Code.

Sec. 1523.19. The chief of the division of ~~soil and~~ water resources shall

have the supervision, care, and control of all dams, reservoirs, ponds, water parks, basins, lakes, or other incidental works constructed under sections 1523.14 to 1523.20 of the Revised Code, and shall maintain and keep them in repair. The cost of such maintenance and repair shall be paid from any funds appropriated to the division of ~~soil and~~ water resources for that purpose or paid into the state treasury as agreed upon with the public or contracting authorities co-operating in the construction of such projects.

Such projects may also be maintained by any department or division of state government or other public authorities leasing or operating the projects, through agreements made with the chief. All rentals derived from the lessees of such projects shall be used by the chief in the maintenance or repair of all such projects constructed under such sections. The costs and expenses of the reconstruction of any such projects shall be distributed, unless otherwise agreed, on the same basis and pro-rata share of the costs and expenses as was paid by the contracting authorities contributing to the cost of the original project.

Sec. 1523.20. When the chief of the division of ~~soil and~~ water resources and the owners of the lands, waters, or riparian rights are unable to agree upon the terms, purchase price, and sale thereof, the chief may acquire the lands by appropriation proceedings in the manner provided by sections 163.01 to 163.22 of the Revised Code.

The title or lease to any such lands, waters, or riparian rights shall be taken by the chief, subject to the approval of the governor and the attorney general, in the name of the state. The lease rentals or purchase price of any such lands, waters, or riparian rights, as well as all costs and expenses of constructing any such reservoirs, ponds, water parks, basins, lakes, or other incidental works on those lands, may be paid for from any funds appropriated for the use of or paid into the division of ~~soil and~~ water resources and available for that purpose. The chief may accept contributions to those funds from individuals, associations, clubs, organizations, and corporations.

Sec. 1531.35. The wildlife boater angler fund is hereby created in the state treasury. The fund shall consist of money credited to the fund pursuant to section 5735.051 of the Revised Code and other money contributed to the division of wildlife for the purposes of the fund. The fund shall be used for boating access construction, improvements, ~~and~~ maintenance and repair of dams and impoundments, and acquisitions, including lands and facilities for boating access, and to pay for equipment and personnel costs involved with those activities, on ~~lakes~~ waters on which the operation of gasoline-powered watercraft is permissible. However, not more than ~~two~~ five hundred

thousand dollars of the annual expenditures from the fund may be used to pay for the equipment and personnel costs.

Sec. 1548.11. (A) In the event of the transfer of ownership of a watercraft or outboard motor by operation of law, as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution of sale, or whenever the engine of a watercraft is replaced by another engine, a watercraft or outboard motor is sold to satisfy storage or repair charges, or repossession is had upon default in performance of the terms of a security agreement as provided in Chapter 1309. of the Revised Code, a clerk of a court of common pleas, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or, when that is not possible, upon presentation of satisfactory proof to the clerk of ownership and rights of possession to the watercraft or outboard motor, and upon payment of the fee prescribed in section 1548.10 of the Revised Code and presentation of an application for certificate of title, may issue to the applicant a certificate of title to the watercraft or outboard motor. Only an affidavit by the person or agent of the person to whom possession of the watercraft or outboard motor has passed, setting forth the facts entitling the person to possession and ownership, together with a copy of the journal entry, court order, or instrument upon which the claim of possession and ownership is founded, is satisfactory proof of ownership and right of possession. If the applicant cannot produce such proof of ownership, the applicant may apply directly to the chief of the division of watercraft and submit such evidence as the applicant has, and the chief, if the chief finds the evidence sufficient, may authorize the clerk to issue a certificate of title. If the chief finds the evidence insufficient, the applicant may petition the court of common pleas for a court order ordering the clerk to issue a certificate of title. The court shall grant or deny the petition based on the sufficiency of the evidence presented to the court. If, from the records in the office of the clerk, there appears to be any lien on the watercraft or outboard motor, the certificate of title shall contain a statement of the lien unless the application is accompanied by proper evidence of its extinction.

(B) Upon the death of one of the persons who have established joint ownership with right of survivorship under section 2131.12 of the Revised Code in a watercraft or outboard motor and the presentation to the clerk of the title and the certificate of death of the deceased person, the clerk shall enter into the records the transfer of the watercraft or outboard motor to the surviving person, and the title to the watercraft or outboard motor immediately passes to the surviving person. The transfer does not affect any liens on the watercraft or outboard motor.

(C) The clerk shall transfer a decedent's interest in one watercraft, one watercraft trailer, one outboard motor, or one of each to the decedent's surviving spouse as provided in section 2106.19 of the Revised Code.

(D) Upon the death of an owner of a watercraft or outboard motor designated in beneficiary form under section 2131.13 of the Revised Code, upon application of the transfer-on-death beneficiary or beneficiaries designated pursuant to that section, and upon presentation to the clerk of the certificate of title and the certificate of death of the deceased owner, the clerk shall transfer the watercraft or outboard motor and issue a certificate of title to the transfer-on-death beneficiary or beneficiaries. The transfer does not affect any liens upon any watercraft or outboard motor so transferred.

Sec. 1561.04. The ~~chief of the division of mineral resources management~~ director of natural resources or the director's designee shall annually make a report to the governor, which shall include:

(A) A summary of the activities and of the reports of the deputy mine inspectors;

(B) A statement of the condition and the operation of the mines of the state;

(C) A statement of the number of accidents in and about the mines, the manner in which they occurred, and any other data and facts bearing upon the prevention of accidents and the preservation of life, health, and property, and any suggestions relative to the better preservation of the life, health, and property of those engaged in the mining industry.

The records of the bureau of workers' compensation shall be available to the ~~chief~~ director or the director's designee for information concerning such a report. The ~~chief~~ director or the director's designee shall send by mail to each coal operator in the state, to a duly designated representative of the miners at each mine, and to such other persons as the ~~chief~~ director or the director's designee deems proper, a copy of such report. The ~~chief~~ director or the director's designee may have as many copies of such report printed as are needed to make the distribution thereof as provided in this section.

The ~~chief~~ director or the director's designee shall also prepare and publish for public distribution quarterly reports, including therein information relative to the items enumerated in this section that is pertinent or available at such times.

Sec. 1707.01. As used in this chapter:

(A) Whenever the context requires it, "division" or "division of securities" may be read as "director of commerce" or as "commissioner of securities."

(B) "Security" means any certificate or instrument, or any oral, written,

or electronic agreement, understanding, or opportunity, that represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person or of any public or governmental body, subdivision, or agency. It includes shares of stock, certificates for shares of stock, an uncertificated security, membership interests in limited liability companies, voting-trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, interests in or under profit-sharing or participation agreements, interests in or under oil, gas, or mining leases, preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, interests in any trust or pretended trust, any investment contract, any life settlement interest, any instrument evidencing a promise or an agreement to pay money, warehouse receipts for intoxicating liquor, and the currency of any government other than those of the United States and Canada, but sections 1707.01 to 1707.45 of the Revised Code do not apply to the sale of real estate.

(C)(1) "Sale" has the full meaning of "sale" as applied by or accepted in courts of law or equity, and includes every disposition, or attempt to dispose, of a security or of an interest in a security. "Sale" also includes a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, a subscription, or an offer to sell, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

(2) "Sell" means any act by which a sale is made.

(3) The use of advertisements, circulars, or pamphlets in connection with the sale of securities in this state exclusively to the purchasers specified in division (D) of section 1707.03 of the Revised Code is not a sale when the advertisements, circulars, and pamphlets describing and offering those securities bear a readily legible legend in substance as follows: "This offer is made on behalf of dealers licensed under sections 1707.01 to 1707.45 of the Revised Code, and is confined in this state exclusively to institutional investors and licensed dealers."

(4) The offering of securities by any person in conjunction with a licensed dealer by use of advertisement, circular, or pamphlet is not a sale if that person does not otherwise attempt to sell securities in this state.

(5) Any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a part of the subject of that purchase and has been "sold."

(6) "Sale" by an owner, pledgee, or mortgagee, or by a person acting in a representative capacity, includes sale on behalf of such party by an agent, including a licensed dealer or salesperson.

(D) "Person," except as otherwise provided in this chapter, means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will, and a corporation or limited liability company organized under the laws of any state, any foreign government, or any political subdivision of a state or foreign government.

(E)(1) "Dealer," except as otherwise provided in this chapter, means every person, other than a salesperson, who engages or professes to engage, in this state, for either all or part of the person's time, directly or indirectly, either in the business of the sale of securities for the person's own account, or in the business of the purchase or sale of securities for the account of others in the reasonable expectation of receiving a commission, fee, or other remuneration as a result of engaging in the purchase and sale of securities. "Dealer" does not mean any of the following:

(a) Any issuer, including any officer, director, employee, or trustee of, or member or manager of, or partner in, or any general partner of, any issuer, that sells, offers for sale, or does any act in furtherance of the sale of a security that represents an economic interest in that issuer, provided no commission, fee, or other similar remuneration is paid to or received by the issuer for the sale;

(b) Any licensed attorney, public accountant, or firm of such attorneys or accountants, whose activities are incidental to the practice of the attorney's, accountant's, or firm's profession;

(c) Any person that, for the account of others, engages in the purchase or sale of securities that are issued and outstanding before such purchase and sale, if a majority or more of the equity interest of an issuer is sold in that transaction, and if, in the case of a corporation, the securities sold in that transaction represent a majority or more of the voting power of the corporation in the election of directors;

(d) Any person that brings an issuer together with a potential investor and whose compensation is not directly or indirectly based on the sale of any securities by the issuer to the investor;

(e) Any bank;

(f) Any person that the division of securities by rule exempts from the definition of "dealer" under division (E)(1) of this section.

(2) "Licensed dealer" means a dealer licensed under this chapter.

(F)(1) "Salesman" or "salesperson" means every natural person, other than a dealer, who is employed, authorized, or appointed by a dealer to sell securities within this state.

(2) The general partners of a partnership, and the executive officers of a corporation or unincorporated association, licensed as a dealer are not salespersons within the meaning of this definition, nor are clerical or other employees of an issuer or dealer that are employed for work to which the sale of securities is secondary and incidental; but the division of securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates the licensing.

(3) "Licensed salesperson" means a salesperson licensed under this chapter.

(G) "Issuer" means every person who has issued, proposes to issue, or issues any security.

(H) "Director" means each director or trustee of a corporation, each trustee of a trust, each general partner of a partnership, except a partnership association, each manager of a partnership association, and any person vested with managerial or directory power over an issuer not having a board of directors or trustees.

(I) "Incorporator" means any incorporator of a corporation and any organizer of, or any person participating, other than in a representative or professional capacity, in the organization of an unincorporated issuer.

(J) "Fraud," "fraudulent," "fraudulent acts," "fraudulent practices," or "fraudulent transactions" means anything recognized on or after July 22, 1929, as such in courts of law or equity; any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise; any fictitious or pretended purchase or sale of securities; and any act, practice, transaction, or course of business relating to the purchase or sale of securities that is fraudulent or that has operated or would operate as a fraud upon the seller or purchaser.

(K) Except as otherwise specifically provided, whenever any classification or computation is based upon "par value," as applied to securities without par value, the average of the aggregate consideration received or to be received by the issuer for each class of those securities shall be used as the basis for that classification or computation.

(L)(1) "Intangible property" means patents, copyrights, secret processes, formulas, services, good will, promotion and organization fees and expenses, trademarks, trade brands, trade names, licenses, franchises, any other assets treated as intangible according to generally accepted accounting principles, and securities, accounts receivable, or contract rights having no

readily determinable value.

(2) "Tangible property" means all property other than intangible property and includes securities, accounts receivable, and contract rights, when the securities, accounts receivable, or contract rights have a readily determinable value.

(M) "Public utilities" means those utilities defined in sections 4905.02, 4905.03, 4907.02, and 4907.03 of the Revised Code; in the case of a foreign corporation, it means those utilities defined as public utilities by the laws of its domicile; and in the case of any other foreign issuer, it means those utilities defined as public utilities by the laws of the situs of its principal place of business. The term always includes railroads whether or not they are so defined as public utilities.

(N) "State" means any state of the United States, any territory or possession of the United States, the District of Columbia, and any province of Canada.

(O) "Bank" means any bank, trust company, savings and loan association, savings bank, or credit union that is incorporated or organized under the laws of the United States, any state of the United States, Canada, or any province of Canada and that is subject to regulation or supervision by that country, state, or province.

(P) "Include," when used in a definition, does not exclude other things or persons otherwise within the meaning of the term defined.

(Q)(1) "Registration by description" means that the requirements of section 1707.08 of the Revised Code have been complied with.

(2) "Registration by qualification" means that the requirements of sections 1707.09 and 1707.11 of the Revised Code have been complied with.

(3) "Registration by coordination" means that there has been compliance with section 1707.091 of the Revised Code. Reference in this chapter to registration by qualification also includes registration by coordination unless the context otherwise indicates.

(R) "Intoxicating liquor" includes all liquids and compounds that contain more than three and two-tenths per cent of alcohol by weight and are fit for use for beverage purposes.

(S) "Institutional investor" means ~~any corporation, bank, insurance company, pension fund or pension fund trust, employees' profit-sharing fund or employees' profit-sharing trust, any association engaged, as a substantial part of its business or operations, in purchasing or holding securities, or any trust in respect of which a bank is trustee or cotrustee. "Institutional investor" does not include any business entity formed for the primary~~

purpose of evading sections 1707.01 to 1707.45 of the Revised Code any of the following, whether acting for itself or for others in a fiduciary capacity:

- (1) A bank or international banking institution;
- (2) An insurance company;
- (3) A separate account of an insurance company;
- (4) An investment company as defined in the "Investment Company Act of 1940," 15 U.S.C. 80a-3;
- (5) A broker-dealer registered under the "Securities Exchange Act of 1934," 15 U.S.C. 78o, as amended, or licensed by the division of securities as a dealer;
- (6) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars or its investment decisions are made by a named fiduciary, as defined in the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, that is one of the following:
 - (a) A broker-dealer registered under the "Securities Exchange Act of 1934," 15 U.S.C. 78o, as amended;
 - (b) An investment adviser registered or exempt from registration under the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3;
 - (c) An investment adviser registered under this chapter, a bank, or an insurance company.
- (7) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the "Employee Retirement Income Security Act of 1974," 29 U.S.C. 1001, that is one of the following:
 - (a) A broker-dealer registered under the "Securities Exchange Act of 1934," 15 U.S.C. 78o, as amended;
 - (b) An investment adviser registered or exempt from registration under the "Investment Advisers Act of 1940," 15 U.S.C. 80b-3;
 - (c) An investment adviser registered under this chapter, a bank, or an insurance company.
- (8) A trust, if it has total assets in excess of ten million dollars, its trustee is a bank, and its participants are exclusively plans of the types identified in division (S)(6) or (7) of this section, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;
- (9) An organization described in section 501(c)(3) of the "Internal Revenue Code of 1986," 26 U.S.C. 1, as amended, corporation,

Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars;

(10) A small business investment company licensed by the small business administration under section 301(c) of the "Small Business Investment Act of 1958," 15 U.S.C. 681(c), with total assets in excess of ten million dollars;

(11) A private business development company as defined in section 202(a)(22) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-2(a)(22), with total assets in excess of ten million dollars;

(12) A federal covered investment adviser acting for its own account;

(13) A "qualified institutional buyer" as defined in 17 C.F.R. 230.144A(a)(1), other than 17 C.F.R. 230.144A(a)(1)(H);

(14) A "major U.S. institutional investor" as defined in 17 C.F.R. 240.15a-6(b)(4)(i);

(15) Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars not organized for the specific purpose of evading this chapter;

(16) Any other person specified by rule adopted or order issued under this chapter.

(T) A reference to a statute of the United States or to a rule, regulation, or form promulgated by the securities and exchange commission or by another federal agency means the statute, rule, regulation, or form as it exists at the time of the act, omission, event, or transaction to which it is applied under this chapter.

(U) "Securities and exchange commission" means the securities and exchange commission established by the Securities Exchange Act of 1934.

(V)(1) "Control bid" means the purchase of or offer to purchase any equity security of a subject company from a resident of this state if either of the following applies:

(a) After the purchase of that security, the offeror would be directly or indirectly the beneficial owner of more than ten per cent of any class of the issued and outstanding equity securities of the issuer.

(b) The offeror is the subject company, there is a pending control bid by a person other than the issuer, and the number of the issued and outstanding shares of the subject company would be reduced by more than ten per cent.

(2) For purposes of division (V)(1) of this section, "control bid" does not include any of the following:

(a) A bid made by a dealer for the dealer's own account in the ordinary course of business of buying and selling securities;

(b) An offer to acquire any equity security solely in exchange for any other security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, in good faith and not for the purpose of avoiding the provisions of this chapter, and not involving any public offering of the other security within the meaning of Section 4 of Title I of the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C.A. 77d(2), as amended;

(c) Any other offer to acquire any equity security, or the acquisition of any equity security pursuant to an offer, for the sole account of the offeror, from not more than fifty persons, in good faith and not for the purpose of avoiding the provisions of this chapter.

(W) "Offeror" means a person who makes, or in any way participates or aids in making, a control bid and includes persons acting jointly or in concert, or who intend to exercise jointly or in concert any voting rights attached to the securities for which the control bid is made and also includes any subject company making a control bid for its own securities.

(X)(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of regular business, issues or promulgates analyses or reports concerning securities.

(2) "Investment adviser" does not mean any of the following:

(a) Any attorney, accountant, engineer, or teacher, whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the practice of the attorney's, accountant's, engineer's, or teacher's profession;

(b) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(c) A person who acts solely as an investment adviser representative;

(d) A bank holding company, as defined in the "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, that is not an investment company;

(e) A bank, or any receiver, conservator, or other liquidating agent of a bank;

(f) Any licensed dealer or licensed salesperson whose performance of investment advisory services described in division (X)(1) of this section is solely incidental to the conduct of the dealer's or salesperson's business as a licensed dealer or licensed salesperson and who receives no special compensation for the services;

(g) Any person, the advice, analyses, or reports of which do not relate to

securities other than securities that are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest, and that have been designated by the secretary of the treasury as exempt securities as defined in the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78c;

(h) Any person that is excluded from the definition of investment adviser pursuant to section 202(a)(11)(A) to (E) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-2(a)(11), or that has received an order from the securities and exchange commission under section 202(a)(11)(F) of the "Investment Advisers Act of 1940," 15 U.S.C. 80b-2(a)(11)(F), declaring that the person is not within the intent of section 202(a)(11) of the Investment Advisers Act of 1940.

(i) A person who acts solely as a state retirement system investment officer or as a bureau of workers' compensation chief investment officer;

(j) Any other person that the division designates by rule, if the division finds that the designation is necessary or appropriate in the public interest or for the protection of investors or clients and consistent with the purposes fairly intended by the policy and provisions of this chapter.

(Y)(1) "Subject company" means an issuer that satisfies both of the following:

(a) Its principal place of business or its principal executive office is located in this state, or it owns or controls assets located within this state that have a fair market value of at least one million dollars.

(b) More than ten per cent of its beneficial or record equity security holders are resident in this state, more than ten per cent of its equity securities are owned beneficially or of record by residents in this state, or more than one thousand of its beneficial or record equity security holders are resident in this state.

(2) The division of securities may adopt rules to establish more specific application of the provisions set forth in division (Y)(1) of this section. Notwithstanding the provisions set forth in division (Y)(1) of this section and any rules adopted under this division, the division, by rule or in an adjudicatory proceeding, may make a determination that an issuer does not constitute a "subject company" under division (Y)(1) of this section if appropriate review of control bids involving the issuer is to be made by any regulatory authority of another jurisdiction.

(Z) "Beneficial owner" includes any person who directly or indirectly through any contract, arrangement, understanding, or relationship has or shares, or otherwise has or shares, the power to vote or direct the voting of a

security or the power to dispose of, or direct the disposition of, the security. "Beneficial ownership" includes the right, exercisable within sixty days, to acquire any security through the exercise of any option, warrant, or right, the conversion of any convertible security, or otherwise. Any security subject to any such option, warrant, right, or conversion privilege held by any person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by that person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person. A person shall be deemed the beneficial owner of any security beneficially owned by any relative or spouse or relative of the spouse residing in the home of that person, any trust or estate in which that person owns ten per cent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which that person owns ten per cent or more of the equity, and any affiliate or associate of that person.

(AA) "Offeree" means the beneficial or record owner of any security that an offeror acquires or offers to acquire in connection with a control bid.

(BB) "Equity security" means any share or similar security, or any security convertible into any such security, or carrying any warrant or right to subscribe to or purchase any such security, or any such warrant or right, or any other security that, for the protection of security holders, is treated as an equity security pursuant to rules of the division of securities.

(CC)(1) "Investment adviser representative" means a supervised person of an investment adviser, provided that the supervised person has more than five clients who are natural persons other than excepted persons defined in division (EE) of this section, and that more than ten per cent of the supervised person's clients are natural persons other than excepted persons defined in division (EE) of this section. "Investment adviser representative" does not mean any of the following:

(a) A supervised person that does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser;

(b) A supervised person that provides only investment advisory services described in division (X)(1) of this section by means of written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(c) Any other person that the division designates by rule, if the division finds that the designation is necessary or appropriate in the public interest or for the protection of investors or clients and is consistent with the provisions fairly intended by the policy and provisions of this chapter.

(2) For the purpose of the calculation of clients in division (CC)(1) of

this section, a natural person and the following persons are deemed a single client: Any minor child of the natural person; any relative, spouse, or relative of the spouse of the natural person who has the same principal residence as the natural person; all accounts of which the natural person or the persons referred to in division (CC)(2) of this section are the only primary beneficiaries; and all trusts of which the natural person or persons referred to in division (CC)(2) of this section are the only primary beneficiaries. Persons who are not residents of the United States need not be included in the calculation of clients under division (CC)(1) of this section.

(3) If subsequent to March 18, 1999, amendments are enacted or adopted defining "investment adviser representative" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "investment adviser representative" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the substance of the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(DD) "Supervised person" means a natural person who is any of the following:

(1) A partner, officer, or director of an investment adviser, or other person occupying a similar status or performing similar functions with respect to an investment adviser;

(2) An employee of an investment adviser;

(3) A person who provides investment advisory services described in division (X)(1) of this section on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(EE) "Excepted person" means a natural person to whom any of the following applies:

(1) Immediately after entering into the investment advisory contract with the investment adviser, the person has at least seven hundred fifty thousand dollars under the management of the investment adviser.

(2) The investment adviser reasonably believes either of the following at the time the investment advisory contract is entered into with the person:

(a) The person has a net worth, together with assets held jointly with a spouse, of more than one million five hundred thousand dollars.

(b) The person is a qualified purchaser as defined in division (FF) of this section.

(3) Immediately prior to entering into an investment advisory contract with the investment adviser, the person is either of the following:

(a) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser;

(b) An employee of the investment adviser, other than an employee performing solely clerical, secretarial, or administrative functions or duties for the investment adviser, which employee, in connection with the employee's regular functions or duties, participates in the investment activities of the investment adviser, provided that, for at least twelve months, the employee has been performing such nonclerical, nonsecretarial, or nonadministrative functions or duties for or on behalf of the investment adviser or performing substantially similar functions or duties for or on behalf of another company.

If subsequent to March 18, 1999, amendments are enacted or adopted defining "excepted person" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "excepted person" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the substance of the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(FF)(1) "Qualified purchaser" means either of the following:

(a) A natural person who owns not less than five million dollars in investments as defined by rule by the division of securities;

(b) A natural person, acting for the person's own account or accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than twenty-five million dollars in investments as defined by rule by the division of securities.

(2) If subsequent to March 18, 1999, amendments are enacted or adopted defining "qualified purchaser" for purposes of the Investment Advisers Act of 1940 or additional rules or regulations are promulgated by the securities and exchange commission regarding the definition of "qualified purchaser" for purposes of the Investment Advisers Act of 1940, the division of securities shall, by rule, adopt the amendments, rules, or regulations, unless the division finds that the amendments, rules, or regulations are not necessary for the protection of investors or in the public interest.

(GG)(1) "Purchase" has the full meaning of "purchase" as applied by or accepted in courts of law or equity and includes every acquisition of, or attempt to acquire, a security or an interest in a security. "Purchase" also includes a contract to purchase, an exchange, an attempt to purchase, an option to purchase, a solicitation of a purchase, a solicitation of an offer to

sell, a subscription, or an offer to purchase, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

(2) "Purchase" means any act by which a purchase is made.

(3) Any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a part of the subject of that purchase.

(HH) "Life settlement interest" means the entire interest or any fractional interest in an insurance policy or certificate of insurance, or in an insurance benefit under such a policy or certificate, that is the subject of a life settlement contract.

For purposes of this division, "life settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of any life insurance policy or contract, in return for consideration or any other thing of value that is less than the expected death benefit of the life insurance policy or contract. "Life settlement contract" includes a viatical settlement contract as defined in section 3916.01 of the Revised Code, but does not include any of the following:

(1) A loan by an insurer under the terms of a life insurance policy, including, but not limited to, a loan secured by the cash value of the policy;

(2) An agreement with a bank that takes an assignment of a life insurance policy as collateral for a loan;

(3) The provision of accelerated benefits as defined in section 3915.21 of the Revised Code;

(4) Any agreement between an insurer and a reinsurer;

(5) An agreement by an individual to purchase an existing life insurance policy or contract from the original owner of the policy or contract, if the individual does not enter into more than one life settlement contract per calendar year;

(6) The initial purchase of an insurance policy or certificate of insurance from its owner by a viatical settlement provider, as defined in section 3916.01 of the Revised Code, that is licensed under Chapter 3916. of the Revised Code.

(II) "State retirement system" means the public employees retirement system, Ohio police and fire pension fund, state teachers retirement system, school employees retirement system, and state highway patrol retirement system.

(JJ) "State retirement system investment officer" means an individual employed by a state retirement system as a chief investment officer, assistant investment officer, or the person in charge of a class of assets or in

a position that is substantially equivalent to chief investment officer, assistant investment officer, or person in charge of a class of assets.

(KK) "Bureau of workers' compensation chief investment officer" means an individual employed by the administrator of workers' compensation as a chief investment officer or in a position that is substantially equivalent to a chief investment officer.

Sec. 1707.14. (A)(4) No person shall act as a dealer, unless the person is licensed as a dealer by the division of securities, except ~~in~~ when at least one of the following cases applies:

~~(a)~~(1) When the person is transacting business through or with a licensed dealer;

~~(b)~~(2) When the securities are the subject matter of one or more transactions enumerated in divisions (B) to (L), (O) to (R), and (U) to (Y) of section 1707.03, or in section 1707.06 of the Revised Code, except when a commission, discount, or other remuneration is paid or given in consideration with transactions enumerated in divisions (O), (Q), (W), (X), and (Y) of section 1707.03, or in section 1707.06 of the Revised Code;

~~(c)~~(3) When the person is an issuer selling securities issued by it or by its subsidiary, if such securities are specified under division (G) or (I) of section 1707.02, or under section 1707.04 of the Revised Code;

~~(d)~~(4) When the person is participating in transactions exempt, under section 1707.34 of the Revised Code, from this chapter;

(5) When the person has no place of business in this state, is registered with the securities and exchange commission, and the only transactions effected in this state are with institutional investors.

~~(2) Notwithstanding the exceptions to licensure set forth in divisions (A)(1)(a) to (d) of this section, no person other than an issuer selling its own securities shall engage in the business of selling securities to an institutional investor unless the person is licensed as a dealer or the division, by rule, finds that such licensure is not necessary for the protection of investors or in the public interest.~~

(B) Each dealer that in any twelve-month or shorter period, alone or with any other dealer with which it is affiliated, has total revenues of one hundred fifty thousand dollars or more derived from the business of buying, selling, or otherwise dealing in securities, and that at any time during such period has one hundred or more retail securities customers, shall be registered as a broker or dealer with the securities and exchange commission under the Securities Exchange Act of 1934, except the following entities:

(1) A bank;

(2) A dealer that enters into and is in compliance with an undertaking

accepted by the division, in which the dealer agrees that it will not engage in any transaction involving the buying, selling, or otherwise dealing in securities with any natural person in this state, except for transactions involving either of the following:

(a) Securities of corporations or associations that have qualified for treatment as nonprofit organizations pursuant to section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501, as amended;

(b) Securities or transactions that are described in divisions (A)(1)(a) to ~~(d)(4)~~ of this section.

(C) Every dealer that must be registered as a broker or dealer with the securities and exchange commission pursuant to division (B) of this section shall become so registered no later than ninety days after the date on which the dealer meets the requirements for such registration.

(D) The division by rule may exempt any dealer from complying with the licensing or registration requirements of this section, if the division finds that such licensing or registration is not necessary for the protection of investors or in the public interest.

(E) As used in division (B) of this section, "retail securities customer" means a person that purchases from or through or sells securities to or through a dealer, and that is not an officer, a director, a principal, a general partner, or an employee of, the dealer. Each of the following is deemed to be a single retail securities customer:

- (1) A husband and wife;
- (2) A minor child and the minor child's parent or legal guardian;
- (3) A corporation, a partnership, an association or other unincorporated entity, a joint stock company, or a trust.

Sec. 1711.15. In any county in which there is a duly organized county agricultural society, the board of county commissioners or the county agricultural society itself may purchase or lease, for a term of not less than twenty years, real estate on which to hold fairs under the management and control of the county agricultural society, and may erect suitable buildings on the real estate and otherwise improve it.

In counties in which there is a county agricultural society that has purchased, or leased, for a term of not less than twenty years, real estate as a site on which to hold fairs, or ~~in which~~ if the title to the site is vested in fee in the county, the board of county commissioners may erect or repair buildings or otherwise improve the site and pay the rental of it, or contribute to or pay any other form of indebtedness of the society, if the director of agriculture has certified to the board that the county agricultural society is

complying with all laws and rules governing the operation of county agricultural societies. The board may appropriate from the county's general fund or permanent improvement fund, and may appropriate revenue from a tax levied under division (L) of section 5739.09 of the Revised Code, any amount that it considers necessary for any of those purposes, provided that an appropriation of revenue from that tax may be expended only for the purposes provided in the resolution levying that tax.

Sec. 1711.16. When the control and management of a fairground is in a county agricultural society, and the board of county commissioners has appropriated an amount for the aid of the society as provided in section 1711.15 of the Revised Code, the society, with the consent of the board, may contract for the erection or repair of buildings or otherwise improve the fairground, to the extent that the payment for the improvement is provided by the board.

When the appropriation is made by the board, the county auditor shall place the proceeds in a special fund, designated the "county agricultural society fund," indicating the purpose for which it is available, provided that an appropriation of revenue from a tax levied by the board under division (L) of section 5739.09 of the Revised Code may be expended only for the purposes provided in the resolution levying that tax. On application of the treasurer of the society, the auditor shall issue an order for the amount of the appropriation to the treasurer of the society, if the society has secured the certificate required under section 1711.05 of the Revised Code, on the treasurer's filing with the auditor a bond in double the amount collected, with good and sufficient sureties approved by the auditor, conditioned for the satisfactory paying over and accounting of the funds for the purposes for which they were provided. The funds shall remain in the special fund in which they are placed by the auditor until they are applied ~~or~~ for by the treasurer of the society and the bond is given, or until they are expended by the board for the purposes for which the fund was created. If the society ceases to exist or releases the fund as not required for the purposes for which the fund was created, the board may by resolution transfer the fund to the general fund of the county.

Sec. 1713.02. (A) Any institution described in division (A) of section 1713.01 of the Revised Code may become incorporated under sections 1702.01 to 1702.58 of the Revised Code.

(B) Except as provided in division (E) of this section, no nonprofit institution or corporation of the type described in division (A) of section 1713.01 of the Revised Code that is established after October 13, 1967, may confer degrees, diplomas, or other written evidences of proficiency or

achievement, until it has received a certificate of authorization issued by the ~~Ohio board of regents~~ chancellor of higher education, nor shall any such institution or corporation identify itself as a "college" or "university" unless it has received a certificate of authorization from the ~~board~~ chancellor.

(C) Except as provided in division (E) of this section, no institution of the type described in division (A)(3) or (B) of section 1713.01 of the Revised Code that intends to offer or offers a course or courses within this state, but that did not offer a course or courses within this state on or before October 13, 1967, may confer degrees, diplomas, or other written evidences of proficiency or achievement or offer any course or courses within this state until it has received a certificate of authorization from the ~~Ohio board of regents~~ chancellor, nor shall the institution identify itself as a "college" or "university" unless it has received such a certificate from the ~~board~~ chancellor.

(D) Each certificate of authorization shall specify the diplomas or degrees authorized to be given, courses authorized to be offered, and the sites at which courses are to be conducted. A copy of such certificate shall be filed with the secretary of state if the institution is incorporated. Any institution or corporation established or that offered a course or courses of instruction in this state prior to October 13, 1967, may apply to the ~~board~~ chancellor for a certificate of authorization, and the ~~board~~ chancellor shall issue a certificate if it finds that such institution or corporation meets the requirements established pursuant to sections 1713.01, 1713.02, 1713.03, 1713.04, 1713.06, 1713.09, and 1713.25 of the Revised Code.

(E) An institution that clearly identifies itself in its name with the phrase "bible college" or "bible institute" and has not received a certificate of authorization may confer diplomas and other written evidences of proficiency or achievement other than associate, baccalaureate, master's, and doctoral degrees or any other type of degree and may identify itself as a "bible college" if such institution:

(1) Prominently discloses on any transcripts, diplomas, or other written evidences of proficiency or achievement, and includes with any promotional material or other literature intended for the public, the statement: "this institution is not certified by the ~~board of regents~~ department of higher education or the state of Ohio."

(2) Limits its course of instruction to religion, theology, or preparation for a religious vocation, or is operated by a church or religious organization and limits its instruction to preparation for service to churches or other religious organizations.

(3) Confers only diplomas and other written evidences of proficiency or

achievement that bear titles clearly signifying the religious nature of the instruction offered by the institution.

(F) Except as otherwise provided in section 3333.046 of the Revised Code, no school of the type described in division (E) of section 3332.01 of the Revised Code that intends to offer or offers a degree program within this state or solicits students within this state may confer a baccalaureate, master's, or doctoral degree or solicit students for such degree programs until it has received both a certificate of authorization from the ~~board of regents~~ chancellor of higher education under this chapter and program authorization from the state board of career colleges and schools for such degree program under section 3332.05 of the Revised Code.

Sec. 1713.03. The ~~Ohio board of regents~~ chancellor of higher education shall establish standards for certificates of authorization to be issued to institutions as defined in section 1713.01 of the Revised Code, to private institutions exempt from regulation under Chapter 3332. of the Revised Code as prescribed in section 3333.046 of the Revised Code, and to schools holding certificates of registration issued by the state board of career colleges and schools pursuant to division (C) of section 3332.05 of the Revised Code. A certificate of authorization may permit an institution or school to award one or more types of degrees.

The standards for a certificate of authorization may include, for various types of institutions, schools, or degrees, minimum qualifications for faculty, library, laboratories, and other facilities as adopted and published by the ~~Ohio board of regents~~ chancellor. The standards shall be adopted by the ~~board~~ chancellor pursuant to Chapter 119. of the Revised Code.

An institution or school shall apply to the ~~board~~ chancellor for a certificate of authorization on forms containing such information as is prescribed by the ~~board~~ chancellor. Each institution or school with a certificate of authorization shall file an annual report with the ~~board~~ chancellor in such form and containing such information as the ~~board~~ chancellor prescribes.

The ~~board~~ chancellor shall adopt a rule under Chapter 119. of the Revised Code establishing fees to pay the cost of reviewing an application for a certificate of authorization, which the institution or school shall pay when it applies for a certificate of authorization, and establishing fees, which an institution or school shall pay, for any further reviews the ~~board~~ chancellor determines necessary upon examining an institution's or school's annual report.

Sec. 1713.031. The ~~Ohio board of regents~~ chancellor of higher education shall review an application for a certificate of authorization from a

school described in division (E) of section 3332.01 of the Revised Code within twenty-two weeks.

Sec. 1713.04. A certificate of authorization provided for in section 1713.02 of the Revised Code is subject to revocation by the ~~Ohio board of regents~~ chancellor of higher education for cause pursuant to Chapter 119. of the Revised Code.

Sec. 1713.05. (A) As used in this section:

(1) "College or university" means a nonprofit educational institution qualifying under division (A)(2) of section 1713.01 and holding a certificate of authorization issued under section 1713.02 of the Revised Code.

(2) "Controlled entity" means a wholly owned subsidiary of a college or a university or a partnership in which a college or a university, or its wholly owned subsidiary, is the sole general partner.

(3) "Student" means a person attending a college or university who borrows money or obtains credit from such college or university, or from a controlled entity of such college or university, to finance the costs of attending such college or university, and includes the parents, guardians, and spouse of the student.

(B) Notwithstanding section 1343.01 of the Revised Code, a college or university, or a controlled entity of such college or university, may charge interest or finance charges on loans made or credit granted to a student for the student's costs of attending such college or university at any rate or rates agreed upon or consented to by the student in any open accounts receivable, loan agreement, or promissory note, but not to exceed the maximum interest rate applicable to the federal Stafford loan program under 34 C.F.R. 682.202(a)(1). The ~~Ohio board of regents~~ chancellor of higher education shall adopt rules specifying a schedule for the certification of such maximum interest rate.

(C) A college or university, or a controlled entity of such college or university, may charge students for the late payment of any costs of attending such college or university, including any payment under an agreement or note pursuant to division (B) of this section, at a rate not exceeding five per cent of any unpaid amount due and not paid per month for two months and not exceeding two per cent of such amount for subsequent months. A charge for a full month may be made for payments more than ten days late.

Sec. 1713.06. If any institution, school, or person confers degrees, diplomas, or other written evidences of proficiency or achievement or offers or intends to offer a course or courses in this state applicable to requirements for a diploma or degree without the certificate of authorization required by

section 1713.02 of the Revised Code, the ~~Ohio board of regents~~ chancellor of higher education may, through the office of the attorney general, apply to the court of common pleas in the county in which such institution, school, or person is operating to restrain such institution, school, or person from the exercise of its franchise, if the institution, school, or person is a corporation, from the awarding of the degrees or diplomas the institution, school, or person is not authorized to award, and from offering any course or courses or enrolling any student in any course or courses it is not authorized to conduct.

The ~~board~~ chancellor may, through the office of the attorney general, petition the court of common pleas in the county in which the institution, school, or person is operating for an order enjoining the awarding of diplomas or degrees, the offering of courses, and the enrolling of students. The court may grant such injunctive relief upon a showing that the institution, school, or person named in the petition is awarding degrees or diplomas, offering courses applicable to requirements for such degrees or diplomas, or enrolling students in such courses to be offered in the state without receiving the appropriate certificate of authorization issued by the ~~board of regents~~ chancellor.

Sec. 1713.09. A college, university, or other institution of learning, existing by virtue of an act of incorporation, or that becomes incorporated for any of the purposes specified in sections 1713.01 to 1713.39, inclusive, of the Revised Code, if three-fourths of the trustees or directors thereof deem it proper, or if the institution is owned in shares, or by stock subscribed or taken, by a vote of the holders of three-fourths of the stock or shares, may change the location of such institution, convey its real estate, and transfer the effects thereof, and invest them at the place to which such institution is removed. Any institution which has a certificate of authorization from the ~~Ohio board of regents~~ chancellor of higher education shall give written notice to the ~~board~~ chancellor before such institution changes its location. No such removal shall be ordered, and no vote taken thereon, until after publication in the manner provided by law in case of a sale and distribution of the property of such an institution. Such publication shall fully set forth the place to which it is proposed to remove the institution. In case of removal, a copy of the proceedings of such meeting shall be filed with the secretary of state.

Sec. 1713.25. The board of trustees of an institution of learning incorporated under the authority of this state for the sole purpose of promoting education, religion and morality, or the fine arts, at a regular or special meeting of such board called for that purpose, after thirty days'

actual notice to each trustee, may change the name and enlarge the purposes and objects of such institution of learning, by amendment to its charter, approved by a majority of the board.

No institution as defined in section 1713.01 of the Revised Code or school that holds a certificate of registration issued by the state board of career colleges and schools pursuant to division (C) of section 3332.05 of the Revised Code, that has been issued a certificate of authorization by the ~~Ohio board of regents~~ chancellor of higher education shall change the purposes of the institution without giving written notice to the ~~Ohio board of regents, which~~ chancellor, who shall issue an amended certificate of authorization to the institution or school upon receipt of such notice.

Sec. 1724.04. A county ~~having a population of more than sixty thousand as of the most recent decennial census~~ that elects under section 5722.02 of the Revised Code to adopt and implement the procedures set forth in sections 5722.02 to 5722.15 of the Revised Code may organize a county land reutilization corporation under this chapter and Chapter 1702. of the Revised Code for the purpose of exercising the powers granted to a county under Chapter 5722. of the Revised Code. The county treasurer of the county for the benefit of which the corporation is being organized shall be the incorporator of the county land reutilization corporation. The form of the articles of incorporation of the corporation shall be approved by resolution of the board of county commissioners of the county.

When the articles of incorporation of any community improvement corporation, or any amendment, amended articles, merger, or consolidation which provides for the creation of such a corporation, are deposited for filing and recording in the office of the secretary of state, the secretary of state shall submit them to the attorney general for examination. If such articles, amendment, amended articles, merger, or consolidation, are found by the attorney general to be in accordance with Chapter 1724. of the Revised Code, and not inconsistent with the constitution and laws of the United States and of this state, the attorney general shall endorse thereon the attorney general's approval and deliver them to the secretary of state, who shall file and record them pursuant to section 1702.07 of the Revised Code.

Sec. 1739.02. (A) ~~A trade association, industry association, or professional association~~ The following groups that ~~has~~ have been organized and maintained in good faith for a continuous period of ~~one year~~ five years or more for purposes other than obtaining insurance may establish, maintain, or operate a group self-insurance program under a multiple employer welfare arrangement that is chartered and created in this state under sections 1739.01 to 1739.22 of the Revised Code;

(1) A chamber of commerce;
(2) A trade association;
(3) An industry association;
(4) A professional association;
(5) A voluntary employee beneficiary association that is exempt from taxation by the internal revenue service under section 501(c)(9) of the Internal Revenue Code of 1986, as amended;

(6) A business league that is exempt from taxation by the internal revenue service under section 501(c)(6) of the Internal Revenue Code of 1986, as amended;

(7) Any other association that the superintendent of insurance may define by rule.

(B) Except as provided in section 9.833 and sections 1739.01 to 1739.22 of the Revised Code, no multiple employer welfare arrangement or other entity by which two or more employers jointly participate in a common employee welfare benefit plan shall operate a group self-insurance program in this state after four months after ~~the effective date of this section~~ April 9, 1993.

(C) Sections 1739.01 to 1739.22 of the Revised Code do not apply to any entity that establishes, maintains, or operates a ~~fully-insured~~ fully insured program.

(D) No person shall establish, operate, or maintain a multiple employer welfare arrangement providing benefits through a group self-insurance program in this state unless the multiple employer welfare arrangement has a valid certificate of authority from the superintendent of insurance.

Sec. 1739.03. (A) No employer shall enter into an agreement to participate in a group self-insurance program unless the multiple employer welfare arrangement has been issued a certificate of authority by the superintendent of insurance. Employers or other organizers that propose to create an arrangement or arrangements and provide benefits through a group self-insurance program or group self-insurance programs shall apply to the superintendent for a certificate of authority.

If a ~~trade association, industry association, or professional association~~ group listed under division (A) of section 1739.02 of the Revised Code establishes, maintains, or operates more than one multiple employer welfare arrangement subject to sections 1739.01 to 1739.22 of the Revised Code, the ~~trade association, industry association, or professional association~~ group shall apply to the superintendent for only one certificate of authority which shall cover all such arrangements.

(B) When applying for a certificate of authority, a proposed multiple

employer welfare arrangement or arrangements shall file with the superintendent a nonrefundable filing fee of one thousand dollars and an application setting forth all of the following:

- (1) The name of each arrangement;
- (2) The address of each arrangement's principal place of business;
- (3) The name and address of a resident of this state designated and appointed as the registered agent of each proposed arrangement for service of process in this state in accordance with division ~~(B)~~(C) of section 1739.15 of the Revised Code. The person so designated and appointed shall be an officer of the arrangement.
- (4) The names and addresses of the officers, directors, and trustees of each proposed arrangement and a statement of whether any of such officers, directors, and trustees have been convicted of any felony or misdemeanor within ten years prior to the date of the application;
- (5) The powers of the officers, directors, and trustees;
- (6) The term of office of each officer, director, and trustee;
- (7) A brief outline of the method by which the administrative obligations of each arrangement will be met;
- (8) A business plan describing the arrangement's anticipated method of operations for two years from its commencement of activities.
- (9) A copy of the articles and bylaws of each arrangement;
- (10) A copy of the agreement;
- (11) The name and address of all third-party administrators;
- (12) A copy of each agreement between each arrangement and all third-party administrators;
- (13) A statement certified by an independent certified public accountant regarding the financial condition of each arrangement listing, on a form as may be prescribed by the superintendent, all of its assets and liabilities for the last month ending forty-five days prior to the application date;
- (14) A copy of each contract, certificate, endorsement, and application form each proposed arrangement intends to issue or use;
- (15) The names of any co-sponsors, promoters, trustees, or other facilitators involved with the establishment of each arrangement;
- (16) Other information, documents, or statements as the superintendent requires.

(C) All fees collected under division (B) of this section shall be paid into the state treasury to the credit of the department of insurance operating fund created under section 3901.021 of the Revised Code.

Sec. 1739.05. (A) A multiple employer welfare arrangement that is created pursuant to sections 1739.01 to 1739.22 of the Revised Code and

that operates a group self-insurance program may be established only if any of the following applies:

(1) The arrangement has and maintains a minimum enrollment of three hundred employees of two or more employers.

(2) The arrangement has and maintains a minimum enrollment of three hundred self-employed individuals.

(3) The arrangement has and maintains a minimum enrollment of three hundred employees or self-employed individuals in any combination of divisions (A)(1) and (2) of this section.

(B) A multiple employer welfare arrangement that is created pursuant to sections 1739.01 to 1739.22 of the Revised Code and that operates a group self-insurance program shall comply with all laws applicable to self-funded programs in this state, including sections 3901.04, 3901.041, 3901.19 to 3901.26, 3901.38, 3901.381 to 3901.3814, 3901.40, 3901.45, 3901.46, 3901.491, 3902.01 to 3902.14, 3923.24, 3923.282, 3923.30, 3923.301, 3923.38, 3923.581, 3923.63, 3923.80, 3923.85, 3924.031, 3924.032, and 3924.27 of the Revised Code.

(C) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code shall solicit enrollments only through agents or solicitors licensed pursuant to Chapter 3905. of the Revised Code to sell or solicit sickness and accident insurance.

(D) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code shall provide benefits only to individuals who are members, employees of members, or the dependents of members or employees, or are eligible for continuation of coverage under section 1751.53 or 3923.38 of the Revised Code or under Title X of the "Consolidated Omnibus Budget Reconciliation Act of 1985," 100 Stat. 227, 29 U.S.C.A. 1161, as amended.

(E) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code is subject to, and shall comply with, sections 3903.81 to 3903.93 of the Revised Code in the same manner as other life or health insurers, as defined in section 3903.81 of the Revised Code.

Sec. 1739.07. (A)(1) ~~Except as provided in division (B) of section 1739.15 of the Revised Code, unless~~ Unless otherwise stated in the agreement, a member may elect to terminate voluntarily its participation in a multiple employer welfare arrangement operating a group self-insurance program by giving no less than thirty days' written notice to the arrangement. Except as provided in division (A)(2) of this section, the voluntary termination shall be approved by the board of the arrangement

upon a finding that the member is in good standing, that both the member and the arrangement have met all the requirements of sections 1739.01 to 1739.22 of the Revised Code and any rules adopted by the superintendent of insurance pursuant to such sections, and that the member has complied with all the requirements of the agreement as of the proposed effective date of termination.

(2) If a member voluntarily terminates its participation in a multiple employer welfare arrangement at a time when the total number of covered employees employed by the member represents less than five per cent of the total number of covered employees employed by all members of the arrangement, the member's voluntary termination of its participation, unless otherwise stated in the agreement, does not require approval by the board of the arrangement.

(B)(1) A multiple employer welfare arrangement operating a group self-insurance program may involuntarily terminate a member upon a finding by the board of the arrangement, after notice is given in accordance with division (B)(2) of this section, that the member has done any of the following:

(a) Failed to comply with the requirements of sections 1739.01 to 1739.22 of the Revised Code;

(b) Failed to comply with the articles and bylaws of the arrangement or the applicable agreement;

(c) Failed to pay its proportionate share of any premiums or installments thereof due the arrangement;

(d) Otherwise failed to discharge its obligations to the arrangement when due.

(2) A multiple employer welfare arrangement operating a group self-insurance program shall give the member written notice stating the time when the termination is effective, which time shall not be less than fifteen days from the date of the notice or any longer period as may be specified by rule of the superintendent or the agreement. Notice may be delivered in person, or sent by ~~certified mail to the last address of record of the member~~ any manner permitted in the agreement. The notice may or may not be accompanied by a tender of the unearned premium paid by the member, calculated on a pro rata basis. If the tender is not made simultaneously with the notice, it shall be made within fifteen days after notice of termination unless an audit or rate investigation is required, in which case the tender shall be made as soon as practicable after completion of the audit or investigation.

(C) Any member that terminates its membership or is involuntarily

terminated from membership in a multiple employer welfare arrangement pursuant to division (A) or (B) of this section shall remain liable for all obligations of the arrangement incurred during its membership in proportion to the ratio of the total number of covered employees employed by the member at the time of termination to the total number of covered employees employed by all members of the arrangement at the time of termination.

Sec. 1739.12. (A) The excess loss funding program of a multiple employer welfare arrangement operating a group self-insurance program shall be filed with the superintendent of insurance.

(B) As a condition to the issuance and maintenance of a certificate of authority, a multiple employer welfare arrangement operating a group self-insurance program shall purchase individual stop-loss insurance from insurers authorized to transact business in this state with a deductible retention of no more than five per cent of the arrangement's annual aggregate premium up to one million dollars and no more than two and one-half per cent of the arrangement's annual aggregate premium above that amount. ~~If the superintendent determines that aggregate stop-loss insurance is available for arrangements, the~~ The arrangement also shall purchase, as a condition to the issuance and maintenance of a certificate of authority, aggregate stop-loss insurance from insurers authorized to transact business in this state with a deductible retention of no more than one hundred twenty-five per cent of its projected claims for the succeeding fiscal year.

(C) Any excess or stop-loss insurance policy purchased by a multiple employer welfare arrangement shall provide that the superintendent must be notified by the arrangement of the cancellation of the policy for any reason, including the failure of the arrangement to pay any applicable premium.

(D) No excess or stop-loss insurance policy purchased by a multiple employer welfare arrangement shall do any of the following on the basis of actual or expected claims for an individual or an individual's given diagnosis:

(1) Assign a different attachment point for that individual;

(2) Assign a deductible to that individual that must be met before excess or stop-loss insurance applies;

(3) Deny excess or stop-loss insurance coverage to that individual.

Sec. 1739.13. (A) A multiple employer welfare arrangement operating a group self-insurance program shall maintain a minimum surplus of not less than ~~one~~ five hundred ~~fifty~~ thousand dollars or such higher amounts of surplus as the superintendent of insurance may establish by rule for the protection of the members and their employees.

(B) Except as otherwise provided for in sections 1739.01 to 1739.21 of

the Revised Code, the assets of a multiple employer welfare arrangement operating a group self-insurance program shall be invested only in securities or other investments permitted by the laws of this state for the investment of assets of domestic insurance companies other than life.

(C) A multiple employer welfare arrangement operating a group self-insurance program shall maintain assets in cash, receivables, or securities authorized by the laws of this state for the investment of assets of domestic insurance companies other than life in an amount that is equivalent to or higher than the unearned premiums and minimum surplus required under sections 1739.01 to 1739.22 of the Revised Code, the reserves for losses outstanding and unpaid, and any other liabilities of the arrangement.

Sec. 1739.141. (A) Each multiple employer welfare arrangement operating a group self-insurance program shall file annually with the superintendent of insurance an actuarial certification including a statement that the underwriting and rating methods of the carrier do all of the following:

(1) Comply with accepted actuarial practices;

(2) Are uniformly applied to arrangement members, employees of members, and the dependents of members or employees;

(3) Comply with the provisions of section 1739.06 of the Revised Code.

(B) The certification shall be filed with the superintendent not later than the thirty-first day of March.

Sec. 1739.20. (A) No multiple employer welfare arrangement operating a group self-insurance program shall do any of the following:

(1) Refuse, without just cause, to pay proper claims arising under coverage provided by the arrangement;

(2) Compel, without just cause, employee claimants of members or other persons entitled to the proceeds of the coverage to accept less than the amount due them;

(3) Compel, without just cause, employee claimants of members or other persons entitled to the proceeds of the coverage to bring an action against the arrangement to secure full payment or settlement thereof;

(4) Enroll a member into the group self-insurance program until the arrangement has provided to the member written notification stating that the member may be required to make additional payments in the event the program has insufficient funds to cover its liabilities. The arrangement shall maintain a copy of the notification in its program files to evidence compliance with this requirement.

(B) No officer, director, trustee, third-party administrator, member of any board or committee, or employee of a multiple employer welfare

arrangement operating a group self-insurance program who is charged with the duty of investing or handling the arrangement's assets shall do any of the following:

- (1) Deposit or invest the assets except in the name of the arrangement;
- (2) Borrow the assets of the arrangement;
- (3) Have a pecuniary interest in any loan, pledge of deposit, security, investment, sale, purchase, exchange, reinsurance, or other similar transaction or property of the arrangement;

(4) Take or receive for ~~his own~~ personal use any fee, brokerage, commission, gift, or other consideration for, or use any fee, brokerage, commission, gift, or other consideration for, or on account of any transaction made by or on behalf of the arrangement. Division (B)(4) of this section does not prevent either of the following:

(a) The reimbursement of a third-party administrator for administrative services related to the adjustment and settlement of claims pursuant to a contract with an arrangement;

(b) The payment of reasonable compensation to a corporation or firm, which is affiliated with ~~a trade association, industry association, or professional association~~ any of the groups listed in division (A) of section 1739.02 of the Revised Code that establishes, maintains, or operates the arrangement, for necessary services performed or sales or purchases made to or for the arrangement in the ordinary course of the arrangement's business.

(C) No multiple employer welfare arrangement operating a group self-insurance program shall guarantee any financial obligation of any of its officers, directors, trustees, board or committee members, or third-party administrators.

(D) This section does not prohibit a trustee, officer, director, member of a board or committee, or employee of a multiple employer welfare arrangement operating a group self-insurance program from being covered by the arrangement as a member or an employee of a member.

(E) The superintendent of insurance may allow, by rule, exceptions to division (B) of this section to allow the payment of reasonable compensation to a trustee or third-party administrator who is not an officer or employee of the multiple employer welfare arrangement operating a group self-insurance program or to a corporation or firm with which a trustee or third-party administrator is affiliated, for necessary services performed or sales or purchases made to or for the arrangement in the ordinary course of the arrangement's business and in the usual, private, professional or business capacity of the trustee, third-party administrator, corporation, or firm.

Sec. 1739.21. (A) The superintendent of insurance, after notice and

opportunity for hearing in accordance with Chapter 119. of the Revised Code, may impose a fine upon a multiple employer welfare arrangement operating a group self-insurance program, a third-party administrator, or other entity ~~if he finds~~ after finding either of the following:

(1) The arrangement, third-party administrator, or other entity, through the acts of its officers, directors, board or committee members, employees, agents, or representatives, has engaged in an act in violation of any applicable provision of division (B) of section 1739.02, division (F) of section 1739.09, or division (A), (B), or (C) of section 1739.20 of the Revised Code or of any rule or order adopted or issued by the superintendent to enforce or carry out the purposes of such sections;

(2) Division (C)(2), (3), or (4), ~~or (6)~~ of section 1739.04 of the Revised Code, or any rule or order adopted or issued by the superintendent to enforce or carry out the purposes of such section, applies to the arrangement, third-party administrator, or other entity.

(B) The fine imposed for any violation described in division (A) of this section shall not exceed one thousand dollars for each violation, except that a fine of not more than five thousand dollars may be imposed for each act of willful misconduct constituting a violation described in division (A) of this section.

(C) In addition to any penalty provided under this section, the superintendent, in lieu of an order of suspension or revocation under section 1739.04 of the Revised Code, may place any multiple employer welfare arrangement on probation for a period not to exceed one year for each violation described in division (A) of this section, and may subject the arrangement to a fine of up to one thousand dollars for each such violation. If the arrangement or its third-party administrator knew or reasonably should have known that the arrangement was engaged in a violation described in division (A) of this section, the fine provided in this division may be increased to an amount up to five thousand dollars for each such violation.

(D)(1) If the superintendent places an arrangement on probation under division (C) of this section, the superintendent may appoint a supervisor to supervise the arrangement and may prohibit the arrangement from doing any of the following, during the period of probation, without the prior approval of the ~~superintendent~~ superintendent or the supervisor:

(a) Dispose of, convey, or encumber any of its assets or its business in force;

(b) Withdraw from any of its bank accounts;

(c) Lend any of its funds;

- (d) Invest any of its funds;
- (e) Transfer any of its property;
- (f) Incur any debt, obligation, or liability;
- (g) Merge or consolidate with another company;
- (h) Enter into any new reinsurance contract or treaty.

(2) All expenses incurred as a result of probation shall be borne by the arrangement.

(E) All fines collected under this section shall be paid into the state treasury to the credit of the department of insurance operating fund created under section 3901.021 of the Revised Code.

Sec. 1751.18. (A)(1) No health insuring corporation shall cancel or fail to renew the coverage of a subscriber or enrollee because of any health status-related factor in relation to the subscriber or enrollee, the subscriber's or enrollee's requirements for health care services, or for any other reason designated under rules adopted by the superintendent of insurance.

(2) Unless otherwise required by state or federal law, no health insuring corporation, or health care facility or provider through which the health insuring corporation has made arrangements to provide health care services, shall discriminate against any individual with regard to enrollment, disenrollment, or the quality of health care services rendered, on the basis of the individual's race, color, sex, age, religion, military status as defined in section 4112.01 of the Revised Code, or status as a recipient of medicare or medicaid, or any health status-related factor in relation to the individual. However, a health insuring corporation shall not be required to accept a recipient of medicare or medical assistance, if an agreement has not been reached on appropriate payment mechanisms between the health insuring corporation and the governmental agency administering these programs. Further, except for open enrollment coverage under sections 3923.58 and 3923.581 of the Revised Code and except as provided in section 1751.65 of the Revised Code, a health insuring corporation may reject an applicant for nongroup enrollment on the basis of any health status-related factor in relation to the applicant.

(B) A health insuring corporation may cancel or decide not to renew the coverage of an enrollee if the enrollee has performed an act or practice that constitutes fraud or intentional misrepresentation of material fact under the terms of the coverage and if the cancellation or nonrenewal is not based, either directly or indirectly, on any health status-related factor in relation to the enrollee.

(C) An enrollee may appeal any action or decision of a health insuring corporation taken pursuant to section 2742(b) to (e) of the "Health Insurance

Portability and Accountability Act of 1996," Pub. L. No. 104-191, 110 Stat. 1955, 42 U.S.C.A. 300gg-42, as amended. To appeal, the enrollee may submit a written complaint to the health insuring corporation pursuant to section 1751.19 of the Revised Code. The enrollee may, within thirty days after receiving a written response from the health insuring corporation, appeal the health insuring corporation's action or decision to the superintendent.

(D) As used in this section, "health status-related factor" means any of the following:

- (1) Health status;
- (2) Medical condition, including both physical and mental illnesses;
- (3) Claims experience;
- (4) Receipt of health care;
- (5) Medical history;
- (6) Genetic information;
- (7) Evidence of insurability, including conditions arising out of acts of domestic violence;
- (8) Disability.

Sec. 1751.65. (A) As used in this section, "genetic screening or testing" means a laboratory test of a person's genes or chromosomes for abnormalities, defects, or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects, or deficiencies, and not an indirect manifestation of genetic disorders.

(B) ~~Upon the repeal of section 1751.64 of the Revised Code, no~~ No health insuring corporation shall do either of the following:

(1) Consider any information obtained from genetic screening or testing in processing an application for coverage for health care services under an individual or group policy, contract, or agreement or in determining insurability under such a policy, contract, or agreement;

(2) Inquire, directly or indirectly, into the results of genetic screening or testing or use such information, in whole or in part, to cancel, refuse to issue or renew, ~~or~~ limit benefits under, or set premiums for, an individual or group policy, contract, or agreement.

(C) Any health insuring corporation that has engaged in, is engaged in, or is about to engage in a violation of division (B) of this section is subject to the jurisdiction of the superintendent of insurance under section 3901.04 of the Revised Code.

Sec. 1776.82. (A) The name of a limited liability partnership shall