

AN ACT

To enact sections 6111.50 to 6111.56 of the Revised Code to establish requirements for the use of credible data in administering the Water Pollution Control Law.

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

SECTION 1. That sections 6111.50, 6111.51, 6111.52, 6111.53, 6111.54, 6111.55, and 6111.56 of the Revised Code be enacted to read as follows:

Sec. 6111.50. As used in sections 6111.50 to 6111.56 of the Revised Code:

(A) "Credible data" means scientifically valid chemical, physical, or biological water quality monitoring data concerning surface waters, including qualitative scoring of physical habitat characteristics and the sampling of fish, macroinvertebrates, and water quality, that have been collected by or submitted to the director of environmental protection and that comply with the requirements established in rules adopted under section 6111.51 of the Revised Code. "Credible data" may include historical data if the director identifies compelling reasons as to why the data are credible.

(B) "Historical data" means data that are more than five years old.

(C) "Naturally occurring condition" means any condition affecting water quality that is not caused by human influence on the environment, including, but not limited to, soils, geology, hydrology, climate, wildlife, and water flow with specific consideration given to seasonal and other natural variations.

(D) "Qualified data collector" means an individual who meets the requirements established in rules adopted under section 6111.53 of the Revised Code.

Sec. 6111.51. (A)(1) The director of environmental protection shall adopt rules that establish criteria for three levels of credible data related to surface water monitoring and assessment. The rules pertaining to each level shall establish requirements for data assessment, sample collection and analytical methods, and quality assurance and quality control procedures that must be followed in order to classify data as credible at that level. The rules shall provide that level three credible data are collected by employing

the most stringent methods and procedures, level two credible data are collected using methods and procedures that are less stringent than methods and procedures used to collect level three credible data, but more stringent than methods and procedures used to collect level one, and level one credible data are collected by employing the least stringent methods and procedures.

The requirements established in the rules for each level of credible data shall be commensurate with, and no more stringent than necessary to support, the purposes for which the data will be used. In adopting rules under this section, the director shall consider the cost of data collection methods and procedures to persons or entities collecting data, and the burden of compliance with those methods and procedures for those persons or entities, while ensuring the degree of accuracy commensurate with the purpose for which the data will be used. No data shall be classified as credible data unless they have been collected in compliance with the applicable methods and procedures for collecting the data established in rules adopted under this section.

(2) The director shall file the rules required to be adopted under division (A)(1) of this section with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review in accordance with divisions (B) and (H) of section 119.03 of the Revised Code not later than one year after the effective date of this section. As soon as practicable thereafter, the director shall proceed to adopt the rules in accordance with all other applicable provisions of Chapter 119. of the Revised Code.

(B)(1) Level three credible data shall be used for the purposes specified in section 6111.52 of the Revised Code.

(2) Levels two and three credible data shall be used for the purpose of evaluating the effectiveness of pollution controls for point sources and nonpoint sources and initial screening of water quality problems to determine if additional study is needed.

(3) Levels one, two, and three credible data shall be used for public awareness and education activities.

(C) No data shall be considered credible unless the data originate from studies and samples collected by the environmental protection agency, its contractors, federal or state environmental agencies, or qualified data collectors. However, data submitted pursuant to the requirements of a permit issued by an agency of the state or submitted as a result of findings and orders issued by the director or pursuant to a court order shall be considered credible unless the director identifies reasons why the data are not credible.

(D) If the director has obtained credible data for a surface water, the director also may use historical data for the purpose of determining whether any water quality trends exist for that surface water.

(E) Sections 6111.50 to 6111.56 of the Revised Code do not apply to civil or criminal enforcement actions brought under section 6111.07 of the Revised Code.

(F) The director's use of credible data shall be consistent with the Federal Water Pollution Control Act.

(G) Nothing in sections 6111.50 to 6111.56 of the Revised Code is an exception to statutory, common, or municipal law of trespass.

Sec. 6111.52. The director of environmental protection shall use only level three credible data to conduct any of the following activities:

(A) Developing, reviewing, and revising use designations in water quality standards;

(B) Developing a statewide water quality inventory or other water assessment report;

(C) Identifying, listing, and delisting waters of the state for the purpose of section 303(d) of the Federal Water Pollution Control Act;

(D) Determining whether a water of the state is supporting its designated use or other classification;

(E) Establishing a total maximum daily load for a water of the state.

Sec. 6111.53. (A) The director of environmental protection shall establish and maintain a water quality monitoring program to collect levels one, two, and three credible data for surface water monitoring and assessment. In the same manner provided in division (A)(2) of section 6111.51 of the Revised Code, the director shall adopt rules establishing the program. The rules shall describe the training and experience that are required for a person to become a qualified data collector in the program. The requirements shall be commensurate with the type and level of data collected. The rules shall require the training to include a thorough knowledge of applicable sampling protocols and field methods so that the data collection and interpretation are reproducible, scientifically defensible, and free from preconceived bias. The rules shall authorize individuals with the necessary academic credentials and experience to train other persons to be qualified data collectors.

The rules also shall require that the data collectors follow plans containing data collection methods, sampling and analysis methods, and quality assurance and quality control procedures that comply with those established in rules adopted under section 6111.51 of the Revised Code. The

rules shall require that the plans contain the certification required under division (D) of this section. Plans shall not be required under the rules for credible data that are collected by the environmental protection agency, its contractors, or federal or state environmental agencies. Except as otherwise required by a permit issued by an agency of the state, by findings and orders issued by the director, or pursuant to a court order, plans shall not be required under the rules for data that are submitted pursuant to the requirements of the permit. The director may develop generic plans or generic components of plans for use by qualified data collectors.

(B) A qualified data collector may submit credible data to the director in accordance with a generic plan without submitting a plan to the director for approval under division (C) of this section.

(C) In lieu of submitting data pursuant to a generic plan, a qualified data collector who intends to submit credible data to the director may submit a site-specific plan that complies with the rules adopted under division (A) of this section. If a qualified data collector will be assisted by other persons who are not qualified data collectors, the plan shall include procedures for the supervision of their work to ensure the accuracy of the data collection. The plan shall identify whether the data to be collected are level one, two, or three credible data. The director shall review the plan to determine if it complies with the rules adopted under division (A) of this section and with this division. After reviewing the plan, the director shall either approve or disapprove it. A plan that is not disapproved within sixty days shall be considered to have been approved.

(D) A person who chooses to submit data for consideration as credible data shall document the person's status as a qualified data collector, demonstrate compliance with a generic plan or a site-specific plan, certify to the best knowledge and belief of the qualified data collector that the credible data were collected in accordance with the procedures required by the plan developed or approved under this section, and certify that the person has not been convicted of or pleaded guilty to a violation of section 2911.21 of the Revised Code or a substantially similar municipal ordinance within the previous five years. The director shall not consider data submitted by a qualified data collector that are not accompanied by the certification required under this division.

No person is required to submit any of the data collected pursuant to a plan developed or approved under this section unless submission of the data is otherwise required by law, but a person submitting some data pursuant to such a plan shall submit all data collected pursuant to the plan.

(E) The director shall verify that a person submitting data is a qualified

data collector, review all data collected by a qualified data collector, and determine that all components of the plan for the collection of the data were followed. If the director determines that the data were collected by a qualified data collector in accordance with required procedures, the director shall approve the data as credible. The director shall provide the qualified data collector with written notice informing the qualified data collector as to whether the data have been approved, including the level at which the data qualify as credible data.

(F) The director shall retain all information submitted by a qualified data collector for a period of not less than ten years from the date of receipt. All information submitted is a public record.

Sec. 6111.54. Each state agency in possession of surface water quality data shall submit the data to the environmental protection agency in a format designated by the director of environmental protection. Each such agency shall submit the data to the director at the same time that the agency compiles or summarizes the data for its own use, but at a minimum shall submit the data to the director annually. If the director determines that the data were collected in accordance with the rules adopted under section 6111.51 of the Revised Code, the director shall approve the data as credible.

Sec. 6111.55. Following the adoption of rules under sections 6111.51 and 6111.53 of the Revised Code, the director of environmental protection shall establish and maintain a computerized database or databases composed of all credible data in the director's possession and shall make the data available to other agencies and all other interested persons. The data shall be stored in such a manner that they are easily retrieved and analyzed and are available for sharing with other agencies and all other interested persons.

Sec. 6111.56. (A) If the source or sources of a pollutant causing an impairment of a water of the state are unknown, the water of the state may be identified and listed under section 303(d) of the Federal Water Pollution Control Act. However, the director of environmental protection shall continue to monitor the water of the state to determine the source or sources of the impairment before a total maximum daily load is established for the water of the state pursuant to that section.

(B) The director shall not include a water of the state on a list established under section 303(d) of the Federal Water Pollution Control Act or establish a total maximum daily load for a water of the state if the failure of the water of the state to comply with an applicable water quality standard results solely from the existence of a naturally occurring condition or conditions.

(C) The director shall establish narrative water quality standards where

numerical criteria cannot be established or to supplement numerical criteria.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Am. H. B. No. 43

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____