

# AN ACT

To amend sections 3745.114, 5709.09, 6111.01, and 6111.31 and to enact sections 1571.30, 6111.011, 6111.311, 6111.312, 6111.313, 6111.314, 6111.315, and 6111.316 of the Revised Code to deregulate certain ephemeral water features, make other changes to various water pollution control laws, to authorize a property tax exemption for certain private wetlands, and to make an appropriation.

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

SECTION 1. That sections 3745.114, 5709.09, 6111.01, and 6111.31 be amended and sections 1571.30, 6111.011, 6111.311, 6111.312, 6111.313, 6111.314, 6111.315, and 6111.316 of the Revised Code be enacted to read as follows:

Sec. 1571.30. (A) As used in this section, "class VI injection well" means a well used to inject carbon dioxide into deep rock formations for geologic sequestration.

(B) Not later than ninety days after the effective date of this section, the department of natural resources shall initiate a process to work with the United States environmental protection agency and the United States department of energy to develop a statewide underground injection control program for class VI injection wells in order to obtain primary enforcement authority over those wells in this state from the United States environmental protection agency.

Sec. 3745.114. (A) A person that applies for a section 401 water quality certification under Chapter 6111. of the Revised Code and rules adopted under it shall pay an application fee of two hundred dollars at the time of application plus any of the following fees, as applicable:

(1) If the water resource to be impacted is a wetland, a review fee of five hundred dollars per acre of wetland to be impacted;

(2) If the water resource to be impacted is a stream one of the following fees, as applicable:

(a) ~~For an ephemeral stream, a review fee of five dollars per linear foot of stream to be impacted, or two hundred dollars, whichever is greater;~~

~~(b) For an intermittent stream, a review fee of ten dollars per linear foot of stream to be impacted, or two hundred dollars, whichever is greater;~~

~~(e)-(b) For a perennial stream, a review fee of fifteen dollars per linear foot of stream to be impacted, or two hundred dollars, whichever is greater.~~

(3) If the water resource to be impacted is a lake, a review fee of three dollars per cubic yard of dredged or fill material to be moved.

(B) One-half of all applicable review fees levied under this section shall be due at the time of application for a section 401 water quality certification. The remainder of the fees shall be paid upon the final disposition of the application for a section 401 water quality certification. The total fee to be

paid under this section shall not exceed twenty-five thousand dollars per application. However, if the applicant is a county, township, or municipal corporation in this state, the total fee to be paid shall not exceed five thousand dollars per application.

(C) All money collected under this section shall be transmitted to the treasurer of state for deposit into the state treasury to the credit of the surface water protection fund created in section 6111.038 of the Revised Code.

(D) The fees established under this section do not apply to any state agency as defined in section 119.01 of the Revised Code or to the United States army corps of engineers.

(E) The fees established under this section do not apply to projects that are authorized by the environmental protection agency's general certifications of nationwide permits or general permits issued by the United States army corps of engineers. As used in this division, "general permit" and "nationwide permit" have the same meanings as in rules adopted under Chapter 6111. of the Revised Code.

(F) Coal mining and reclamation operations that are authorized under Chapter 1513. of the Revised Code are exempt from the fees established under this section for one year after ~~the effective date of this amendment~~ March 30, 2006.

(G) As used in this section:

(1) "Ephemeral streamfeature" means ~~a stream that flows surface water flowing or pooling only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of, such as rain or snow and ice and that has channel bottom that is always above the local water table.~~ "Ephemeral feature" does not include a wetland as defined in section 6111.02 of the Revised Code.

(2) "Intermittent stream" means a stream that is below the local water table and flows for at least a part of each year and that obtains its flow from both surface runoff and ground water discharge.

(3) "Perennial stream" means a stream or a part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface water runoff. "Perennial stream" does not include an intermittent stream or an ephemeral streamfeature.

Sec. 5709.09. (A) Real property or any estate, interest, or right therein dedicated in accordance with section 1517.05 of the Revised Code is exempt from taxation.

(B) Real property is exempt from taxation if the property is owned or held by an organization that is organized for the purpose of natural resources protection, preservation, restoration, or enhancement or water quality improvement and that is described under section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the Internal Revenue Code and if either of the following apply:

(1) The property is subject to an environmental response project described in division (E)(2) of section 5301.80 of the Revised Code.

(2) The property is subject to a nature water project that receives funding from the H2Ohio fund established in section 126.60 of the Revised Code.

Sec. 6111.01. As used in this chapter:

(A) "Pollution" means the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state.

(B) "Sewage" means any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.

(C) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present.

(D) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other "pollutants" or "toxic pollutants" as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste.

(E) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne sewage, industrial waste, or other wastes to a point of disposal or treatment, but does not include plumbing fixtures, building drains and subdrains, building sewers, and building storm sewers.

(F) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, building sewer connected directly to treatment works, incinerator, or other works used for the purpose of treating, stabilizing, blending, composting, or holding sewage, sludge, sludge materials, industrial waste, or other wastes, except as otherwise defined.

(G) "Disposal system" means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.

(H) "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters. "Waters of the state" does not include an ephemeral feature for which the United States army corps of engineers lacks the authority to issue a permit under 33 U.S.C. 1344.

(I) "Person" means the state, any municipal corporation, any other political subdivision of the state, any person as defined in section 1.59 of the Revised Code, any interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof.

(J) "Industrial water pollution control facility" means any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, pipeline or conduit, pumping station, force main, or installation constructed, used, or placed in operation primarily for the purpose of collecting or conducting industrial waste to a point of disposal or treatment; reducing, controlling, or eliminating water pollution caused by industrial waste; or reducing, controlling, or eliminating the discharge into a disposal system of industrial waste or what would be industrial waste if discharged into the waters of the state.

(K) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with standards and rules adopted

under sections 6111.041 and 6111.042 of the Revised Code or compliance with terms and conditions of permits set under division (J) of section 6111.03 of the Revised Code.

(L) "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, and all other amendments to that act.

(M) "Historically channelized watercourse" means the portion of a watercourse on which an improvement, as defined in divisions (C)(2) to (4) of section 6131.01 of the Revised Code, was constructed pursuant to Chapter 940., 6131., or 6133. of the Revised Code or a similar state law that preceded any of those chapters and authorized such an improvement.

(N) "Sludge" means sewage sludge and a solid, semi-solid, or liquid residue that is generated from an industrial wastewater treatment process and that is applied to land for agronomic benefit. "Sludge" does not include ash generated during the firing of sludge in a sludge incinerator, grit and screening generated during preliminary treatment of sewage in a treatment works, animal manure, residue generated during treatment of animal manure, or domestic septage.

(O) "Sludge materials" means solid, semi-solid, or liquid materials derived from sludge and includes products from a treatment works that result from the treatment, blending, or composting of sludge.

(P) "Storage of sludge" means the placement of sludge on land on which the sludge remains for not longer than two years, but does not include the placement of sludge on land for treatment.

(Q) "Sludge disposal program" means any program used by an entity that begins with the generation of sludge and includes treatment or disposal of the sludge, as "treatment" and "disposal" are defined in division (Y) of section 3745.11 of the Revised Code.

(R) "Agronomic benefit" means any process that promotes or enhances plant growth and includes, but is not limited to, a process that increases soil fertility and moisture retention.

(S) "Sludge management" means the use, storage, treatment, or disposal of, and management practices related to, sludge and sludge materials.

(T) "Sludge management permit" means a permit for sludge management that is issued under division (J) of section 6111.03 of the Revised Code.

(U) "Sewage sludge" has the same meaning as in division (Y) of section 3745.11 of the Revised Code.

(V) "Ephemeral feature" means surface water flowing or pooling only in direct response to precipitation, such as rain or snow. "Ephemeral feature" does not include a wetland, as defined in section 6111.02 of the Revised Code.

Sec. 6111.011. (A) The exclusion of certain ephemeral features from the definition of waters of the state under section 6111.01 of the Revised Code does not affect the director of environmental protection's authority to do all of the following:

(1) Administer and enforce Chapter 3734. of the Revised Code with regard to any discharge, deposit, dumping, or placement of wastes regulated under that chapter in an ephemeral feature;

(2) Administer and enforce Chapter 3714. of the Revised Code with regard to any discharge, deposit, dumping, or placement of construction and demolition debris in an ephemeral feature;

(3) Take any other authorized actions under the Revised Code, other than Chapter 6111. of the Revised Code, that apply to the discharge, deposit, dumping, or placement of waste, debris, or

other materials in an ephemeral feature.

(B) The exclusion of certain ephemeral features from the definition of waters of the state under section 6111.01 of the Revised Code does not affect the authority of any state agency, other than the environmental protection agency, to take any authorized actions under the Revised Code, other than Chapter 6111. of the Revised Code, that apply to the discharge, deposit, dumping, or placement of waste, debris, or other materials in an ephemeral feature.

Sec. 6111.31. AH-(A) As used in this section, "interagency review team" means the interagency group of federal, tribal, state, or local regulatory and resource agency representatives established pursuant to 33 C.F.R. 332.8(b) that reviews documentation for and advises the United States army corps of engineers district engineer on the establishment and management of a wetland mitigation bank, stream mitigation bank, in-lieu fee mitigation program, or permittee responsible mitigation.

(B)(1) The directors of environmental protection, the department of natural resources, and the department of transportation shall each appoint an agency designee and an alternate to serve as members of the interagency review team. Each appointed person shall have significant experience in at least one of the following:

- (a) The restoration of wetlands or streams;
- (b) The enhancement and protection of wetlands or streams;
- (c) The development of compensatory mitigation plans.

(2) At least one of the appointees shall maintain accurate and complete minutes of interagency review team meetings, including documentation of the basis for any comments or decisions of the interagency review team with respect to wetland mitigation banks, stream mitigation banks, in-lieu fee mitigation proposals, permittee responsible mitigation, approvals, credit releases, or management. Minutes kept by an appointee are a public record.

(C)(1) Not later than twenty-four months after the effective date of this amendment, the director of environmental protection shall review and adopt, in accordance with sections 106.03 and 119.03 of the Revised Code, all substantive wetland, stream, or lake mitigation standards, guidance, guidelines, criteria, scientific methods, processes, or other procedures or policies that are used in a uniform manner by either of the following:

(a) The interagency review team to review documentation for and evaluate wetland mitigation bank, stream mitigation bank, in-lieu fee mitigation program, or permittee responsible mitigation;

(b) The director of environmental protection in evaluating the adequacy of any of the following in an application for a section 401 water quality certification: a mitigation proposal contained in an application for a section 401 water quality certification shall be adopted and reviewed in accordance with sections 119.03 and 106.03 of the Revised Code before those, including a wetland mitigation bank proposal, stream mitigation bank proposal, in-lieu fee mitigation project proposal, or permittee responsible mitigation, the establishment of performance metrics, a request for credit release, or termination of monitoring requirements.

(2) Beginning on the effective date of the actions taken by the director as required under division (C)(1) of this section or beginning twenty-four months after the effective date of this amendment, whichever is earlier, both of the following apply:

(a) No such standards, guidance, guidelines, criteria, or scientific methods, processes, or other procedures or policies that are not adopted in accordance with division (C)(1) of this section have the force of law. Until that time, any;

(b) Any such mitigation standards, guidance, guidelines, criteria, scientific methods, processes, or other procedures or policies that are not adopted in accordance with division (C)(1) of this section that are used by or approved for use by the director or the interagency review team to evaluate, measure, or determine the success, approval, or denial of a mitigation proposal, but that have not been subject to review under sections 119.03 and 106.03 of the Revised Code establishment of performance metrics, request for credit release, or termination of monitoring requirements shall not be used as the basis for review of any certification or permit denial or as a standard applied to mitigation unless the applicant has been notified in advance that additional mitigation standards, criteria, scientific methods, processes, or procedures will be considered as part of the review process.

(3) Actions taken by the director under division (C)(1) of this section are not subject to division (F) of section 121.95 of the Revised Code.

Sec. 6111.311. As used in sections 6111.31 to 6111.316 of the Revised Code:

(A) "Area of mitigation" or "AMIT" means the area of mitigation, as calculated using the formula specified in division (A) of section 6111.313 of the Revised Code, expressed in feet squared.

(B) Area of the streamway or "ASW" means the area of the streamway, expressed in feet squared.

(C) "DA" means drainage area, expressed in square miles.

(D) "Eight-digit hydrologic unit," "enhancement," "in-lieu fee mitigation," "mitigation," "mitigation bank service area," "restoration," "wetlands," and "wetland mitigation bank" have the same meanings as in section 6111.02 of the Revised Code.

(E) "LV" means the valley length of stream, expressed in feet.

(F) "Permanent impact" means any impact that is not a temporary impact.

(G) "Temporary impact" means an impact to an ephemeral feature that is a water of the state and to which all of the following apply:

(1) It facilitates a proposed activity or aids in the access, staging, or development of any construction.

(2) It will last not more than two years.

(3) Upon termination of the impact, the conditions of the ephemeral feature are expected to return to pre-impact functionality or better condition within the twelve months after such termination.

(H) "Volume of mitigation" or "VMIT" means the volume of mitigation, as calculated using the formula specified in division (A) of section 6111.313 of the Revised Code, expressed in cubic feet.

(I) "Water quality volume" or "WQV" means the surface area divided by the drawdown depth.

(J) "Width of a streamway" or "WSW" means the width of the streamway, expressed in feet, and calculated as  $147 \times DA^{0.38}$ .

Sec. 6111.312. (A) Notwithstanding section 6111.31 of the Revised Code, regarding any proposed impact to an ephemeral feature that is a water of the state, the director shall not impose or require any mitigation standard, criteria, scientific method, process, or other procedure or policy that

is not specified in sections 6111.313 to 6111.316 of the Revised Code.

(B) Notwithstanding section 6111.31 of the Revised Code, the director shall not impose any requirements beyond those specified in sections 6111.31 to 6111.316 of the Revised Code with respect to any activity impacting an ephemeral feature that is a water of the state in the issuance of a section 401 water quality certification.

Sec. 6111.313. (A) For the purposes of division (B)(1) of this section, the AMIT and VMIT shall be calculated as follows:

(1) First, calculate the area of the streamway (ASW). The ASW is the WSW multiplied by the LV.

(2) Next, calculate the AMIT as follows:

(a) For streams with a slope that is less than or equal to two per cent, the AMIT is equal to the ASW divided by two.

(b) For streams with a slope that is greater than two but not more than four per cent, the AMIT is equal to the ASW divided by five.

(c) For streams with a slope of greater than four per cent, the AMIT is equal to the ASW divided by eight.

(3) The VMIT is equal to the AMIT multiplied by one, assuming a one foot stream depth.

(4) Site-specific measurements, such as the streambed area, bankfull width, entrenchment ratio, or flood prone area, may be substituted for AMIT and VMIT calculations in instances where site geology or geomorphic conditions differ from the AMIT calculations specified in divisions (A) (1) to (3) of this section.

(B) Except as otherwise provided in section 6111.316 of the Revised Code, the director may require a person proposing to impact an ephemeral feature that is a water of the state to conduct mitigation in accordance with the following:

(1) If the proposal will have permanent impacts, the director may require the person to do any of the following:

(a) Provide mitigation by constructing an equivalent area of channel at a one-to-one ratio using the required AMIT or site-specific measurements specified under division (A)(4) of this section for the ephemeral feature that is a water of the state being impacted to provide a geomorphically stable feature within the impacted eight-digit hydrologic unit watershed;

(b) Provide bioretention on the project site in accordance with the rainwater manual utilized by the environmental protection agency using the required AMIT or site-specific measurements specified under division (A)(4) of this section. Performance and monitoring of performance shall be no more than normally required for a bioretention structure.

(c) Provide increased volume and surface area to the WQV using the required VMIT or site-specific measurements specified under division (A)(4) of this section. The WQV shall be increased by the required VMIT without increasing the maximum WQV discharge. Drawdown times may be increased proportionally. The additional required surface area may be in the form of a wetland shelf as part of a wet extended detention basin sized using the rainwater and land development manual. Where no onsite stormwater detention is planned, surface water storage volume with slow discharge may be provided using the required volume of mitigation as the temporary storage volume. When mitigation will be conducted using storage practices, performance and monitoring of performance

shall be no more than normally required for a particular storage structure.

(d) Provide equivalent area of channel at a one-to-one ratio using the required AMIT or site-specific measurements for streambed area calculations by purchasing credits at an approved wetland mitigation bank or in-lieu fee mitigation program for the ephemeral feature that is a water of the state being impacted within the impacted eight-digit hydrologic unit watershed. If there are no wetland mitigation bank credits or in-lieu fee mitigation credits within the mitigation bank service area that includes the impacted eight-digit hydrologic unit watershed, credits may be purchased from another provider in the state. When mitigation will occur at an approved wetland mitigation bank, in-lieu fee mitigation program, or mitigation paid to the department of natural resources, mitigation credits shall be acquired based on the acreage of streambed impacted and proof of acquisition shall be sent to the director of environmental protection before any impact may occur.

(e) Provide equivalent area of channel at a one-to-one ratio using the required AMIT or site-specific streambed measurements for area calculations by contributing funds to the department of natural resources for the purpose of stream improvement activities to address acid mine drainage or other water quality impacts. This mitigation may occur outside of the eight-digit hydrologic unit watershed where the impacts will occur.

(2) If the proposal will have temporary impacts, the director shall require the person to do the following:

(a) Restore any ephemeral feature that is a water of the state that is impacted upon completion of the temporary impact;

(b) Restore the flow regime to that of the pre-impact ephemeral flow regime or better;

(c) Restore the physical integrity of the ephemeral feature that is a water of the state to its pre-impact or better condition;

(d) Provide at least three high resolution color photographs taken at the restored area, including one facing upstream, one facing downstream, and a closeup that clearly depicts the substrate composition and size for each restored ephemeral feature that is a water of the state. Photographs shall accurately depict the quality of the ephemeral feature that is a water of the state and shall not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow, or ice.

(e) Continue to conduct monitoring or implement additional measures to meet performance standards if the restoration areas are not meeting restoration performance criteria within two years following the completion of restoration activities.

Sec. 6111.314. (A) The director of environmental protection may impose all of the following mitigation reporting and monitoring requirements on any person performing mitigation as required under division (B)(1)(a) of section 6111.313 of the Revised Code:

(1) A requirement that all mitigation for an ephemeral feature that is a water of the state be monitored for up to two years following the completion of mitigation construction activities. If the mitigation areas meet or exceed the performance criteria before the end of the second year of mitigation monitoring, no further monitoring shall be required. If the mitigation areas are not meeting the performance criteria by the end of the second year of mitigation monitoring, the monitoring period may be extended and the existing mitigation plan may be revised.

(2) A requirement that construction of any required mitigation shall commence not later than



thirty days after completion of fill activities and shall be completed not later than one year thereafter unless additional time is required for the project at issue;

(3) Annual monitoring reports that shall be submitted to the director not later than the thirty-first day of December of each year following the end of the first full growing season and completion of mitigation construction until the mitigation area is determined to meet its performance criteria. Each report shall contain all of the following information, as applicable:

(a) The status of all mitigation required for the project;

(b) Current contact information for all responsible parties including phone numbers, electronic mail addresses, and mailing addresses;

(c) Clear identification of the specific monitoring period the report is intended to represent, as well as the calendar year the monitoring occurred;

(d) A summary of current mitigation status comparing the monitoring information from the prior year with the current report;

(e) A list of native seed mixes planted in all mitigation areas;

(f) For the first year's report, plan views, longitudinal profiles, and cross sections of the as-built mitigation area including the location of native seed mixes in plan views;

(g) A physical integrity assessment for each ephemeral feature that is a water of the state on the project site consisting of measurements of streambed width, incision (bank height) ratio measured as the lowest bank height divided by the maximum bankfull depth, substrate composition, and riparian composition on each side of the stream with the riparian area being measured as two times the streambed width divided equally on both sides of the stream. (For example, for an ephemeral feature that is a water of the state with a streambed width of two feet, then two feet on each side of the feature.)

(h) At least three high resolution color photographs taken for each mitigation feature, including one facing upstream, one facing downstream, and a closeup that clearly depicts the substrate composition and size for each ephemeral feature that is a water of the state proposed for impact. Photographs shall accurately depict the quality of the feature and shall not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow, or ice.

(B) Not later than two years after completion of construction of any required mitigation, the director may require a person who impacted an ephemeral feature that is a water of the state to do any of the following:

(1) Provide the minimum acreage of the mitigation of the ephemeral feature that is a water of the state, as necessary;

(2) Demonstrate that the physical integrity assessment of the mitigation is equal to or better than the physical integrity assessment of the originally impacted ephemeral feature that is a water of the state;

(3) Demonstrate that the mitigation of the ephemeral feature that is a water of the state, including upstream and downstream of the mitigation, is stable and shows no signs of excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation.

Sec. 6111.315. The director of environmental protection may require any person required to perform mitigation under division (B)(1)(a) or (B)(2) of section 6111.313 of the Revised Code to also perform best management practices. Best management practices include the following:

(A) All ephemeral features that are a water of the state that are to be avoided shall be clearly indicated on site drawings, demarcated in the field, and protected with suitable materials, such as silt fencing, prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process and removed after completion of construction.

(B) Unless subject to a more specific stormwater NPDES permit, stormwater management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available on the environmental protection agency's web site, or any watershed specific construction general permit.

(C) Sediment and erosion control measures shall be designed, installed, and maintained in effective operating condition at all times during construction activities. Any such maintenance shall ensure that corrective measures will be implemented for failed controls as soon as practicable.

(D) Straw bales shall not be used as a form of sediment control unless used in conjunction with another structural control such as silt fencing. Straw bales may be utilized for purposes of erosion control such as ditch checks.

(E) Disturbance and removal of vegetation from the project construction area is to be avoided where possible and minimized to the maximum extent practicable.

(F) Entry to surface waters shall be through a single point of access to the maximum extent practicable to minimize disturbance to riparian habitat.

(G) Heavy equipment shall not be placed below the ordinary high water mark of any surface water, except when no other alternative is practicable.

(H) Fill material shall consist of suitable nonerodible material and shall be maintained and stabilized to prevent erosion.

(I) All dewatering activities shall be conducted in such a manner that does not result in a violation of water quality standards.

(J) All disturbed areas which remain dormant in excess of fourteen days shall be protected from erosion within seven days of the last earth disturbing activity.

(K) All areas of final grade shall be protected from erosion within seven days of the last earth disturbing activity.

(L) In the event of in-channel feature activities, provisions shall be established to temporarily or permanently redirect the stream flow around or through active areas of construction in a stabilized, nonerosive manner to the maximum extent possible.

(M) Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt shall not be used as fill or bank protection.

(N) To be used for fill or bank stabilization, concrete rubble shall be in accordance with department of transportation specifications, free of exposed re-bar, and free of all debris, soil, and fines.

(O) Chemically treated lumber, which may include chromated copper arsenate and creosote treated lumber, shall not be used in structures that come into contact with waters of the state.

(P) At the completion of construction activities, all temporary fill material shall be removed to an area that has no waters of the state and the ephemeral feature that is a water of the state shall be restored and replanted with native seed mixes to the maximum extent practicable.

Sec. 6111.316. Sections 6111.31 to 6111.315 of the Revised Code do not apply to, and the director of environmental protection shall not impose any additional requirements upon, an activity associated with an ephemeral feature that is a water of the state if the activity is either of the following:

(A) A restoration or enhancement project that will result in a net improvement of water quality. Such projects may include a project under section 319 of the Federal Water Pollution Control Act, an H2Ohio project, a water resource restoration sponsor program, a wetland mitigation bank, or an in-lieu fee mitigation project. To qualify under this exception, a person shall submit a demonstration as part of a mitigation proposal that the project will result in a net improvement in water quality.

(B) A project for the filling or discharge of dredged material into an ephemeral feature that is a water of the state that impacts three one-hundredths of an acre or less of streambed. For purposes of this division, if culvert maintenance or replacement is involved in the project, only an impact to an ephemeral feature that is a water of the state that goes beyond the enclosed configuration of the existing culvert structure shall be included in the calculation of the impacted streambed acreage.

SECTION 2. That existing sections 3745.114, 5709.09, 6111.01, and 6111.31 of the Revised Code are hereby repealed.

SECTION 3. The amendment by this act of section 5709.09 of the Revised Code applies to tax years ending on or after the effective date of this section.

SECTION 4. Until the effective date of the actions taken by the director that are required by division (C)(1) of section 6111.31 of the Revised Code, as amended by this act, or until twenty-four months after the effective date of this section, whichever is earlier, the director of environmental protection may continue to evaluate the adequacy of a mitigation proposal contained in an application for a section 401 water quality certification in accordance with section 6111.31 of the Revised Code as it existed prior to its amendment by this act.

SECTION 5. All items in this act are hereby appropriated as designated out of any moneys in the state treasury to the credit of the designated fund. For all operating appropriations made in this act, those in the first column are for fiscal year 2022 and those in the second column are for fiscal year 2023. The operating appropriations made in this act are in addition to any other operating appropriations made for the FY 2022-FY 2023 biennium.

|   |                                     |           |     |
|---|-------------------------------------|-----------|-----|
| A | DNR DEPARTMENT OF NATURAL RESOURCES |           |     |
| B | General Revenue Fund                |           |     |
| C | GRF 725520 Special Projects         | \$500,000 | \$0 |
| D | TOTAL GRF General Revenue Fund      | \$500,000 | \$0 |
| E | TOTAL ALL BUDGET FUND GROUPS        | \$500,000 | \$0 |

SPECIAL PROJECTS

Of the foregoing appropriation item 725520, Special Projects, \$250,000 shall be used by the Director of Natural Resources for weed harvesting operations at Indian Lake.

Of the foregoing appropriation item 725520, Special Projects, the Director of Natural Resources shall use up to \$250,000 to enter into a memorandum of understanding with the Indian Lake Watershed Project to support the Indian Lake Watershed Project's weed harvesting operations.

An amount equal to the unexpended, unencumbered portion remaining in appropriation item 725520, Special Projects, at the end of fiscal year 2022 is hereby reappropriated for the same purposes in fiscal year 2023.

SECTION 6. Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from operating appropriations contained in this act shall be accounted for as though made in H.B. 110 of the 134th General Assembly. The operating appropriations made in this act are subject to all provisions of H.B. 110 of the 134th General Assembly that are generally applicable to such appropriations.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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

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*Director, Legislative Service Commission.*

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

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_