

# AN ACT

To amend sections 3734.123, 4909.172, 5721.10, 6109.01, 6109.072, and 6109.24 and to enact section 5301.93 of the Revised Code to make changes to the application process for the waterworks infrastructure improvement surcharge and to residential PACE lien priority, to create exceptions to the moratorium on modifications to hazardous waste incinerator installation and operation permits, and to eliminate public water system asset management program requirements for transient noncommunity water systems.

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

SECTION 1. That sections 3734.123, 4909.172, 5721.10, 6109.01, 6109.072, and 6109.24 be amended and section 5301.93 of the Revised Code be enacted to read as follows:

Sec. 3734.123. (A) As used in this section and section 3734.124 of the Revised Code, "commercial hazardous waste incinerator" means an enclosed device that treats hazardous waste by means of controlled flame combustion and that accepts for treatment hazardous waste that is generated off the premises on which the device is located by any person other than the one who owns or operates the device or one who controls, is controlled by, or is under common control with the person who owns or operates the device. "Commercial hazardous waste incinerator" does not include any "boiler" or "industrial furnace" as those terms are defined in rules adopted under section 3734.12 of the Revised Code.

(B) Not sooner than three years after April 15, 1993, and triennially thereafter, the director of environmental protection shall prepare, publish, and issue as a final action an assessment of commercial hazardous waste incinerator capacity in this state. However, after the issuance as a final action of a determination under division (A) of section 3734.124 of the Revised Code that terminates the restrictions established in division (C) of this section, the director shall cease preparing, publishing, and issuing the periodic assessments required under this division. The assessment shall determine the amount of commercial hazardous waste incinerator capacity needed to manage the hazardous waste expected to be generated in this state and imported into this state for incineration at commercial hazardous waste incinerators during the next succeeding twenty calendar years. The assessment shall include at least all of the following:

(1) A determination of the aggregate treatment capacity authorized at commercial hazardous waste incinerators located in this state;

(2) A determination of the quantity of hazardous waste generated in this state that is being treated at commercial hazardous waste incinerators located in this state and projections of the quantity of hazardous waste generated in this state that will be treated at those facilities;

(3) A determination of the quantity of hazardous waste generated outside this state that is

being treated at commercial hazardous waste incinerators located in this state and projections of the quantity of hazardous waste generated outside this state that will be treated at those facilities;

(4) A determination of the quantity of hazardous waste generated in this state that is being treated at commercial hazardous waste incinerators located outside this state, and projections of the quantity of hazardous waste generated in this state that will be treated at those facilities;

(5) The amount of commercial hazardous waste incinerator capacity that the director reasonably anticipates will be needed during the first three years of the planning period to treat hazardous waste generated from the remediation of sites in this state that are on the national priority list required under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2767, 42 U.S.C.A. 9601, as amended; as a result of corrective actions implemented under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended; and as a result of clean-up activities conducted at sites listed on the master sites list prepared by the environmental protection agency;

(6) Based upon available data, provided that the data are reliable and are compatible with the data base of the environmental protection agency, an identification of any hazardous waste first listed as a hazardous waste in regulations adopted under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, on or after April 15, 1993, and of any hazardous waste that has been proposed for such listing by publication of a notice in the federal register on or before December 1 of the year immediately preceding the triennial assessment;

(7) An analysis of other factors that may result in capacity changes over the period addressed by the assessment.

(C) Except as otherwise provided in section 3734.124 of the Revised Code, none of the following shall occur on or after April 15, 1993:

(1) The director shall not do any of the following:

(a) Issue any hazardous waste facility installation and operation permit under division (D) of section 3734.05 of the Revised Code for the establishment of a new commercial hazardous waste incinerator, or issue any modified hazardous waste facility installation and operation permit under division (I) of that section that would authorize an increase in either the treatment capacity of a commercial hazardous waste incinerator or the quantity of hazardous waste authorized to be treated by it;

(b) Issue any permit pursuant to rules adopted under division (F) of section 3704.03 of the Revised Code, division (J) of section 6111.03 of the Revised Code, or the solid waste provisions of this chapter and rules adopted under those provisions, that is necessary for the establishment, modification, or operation of any appurtenant facility or equipment that is necessary for the operation of a new commercial hazardous waste incinerator, or the modification of such an existing incinerator to increase either the treatment capacity of the incinerator or the quantity of hazardous waste that is authorized to be treated by it. Upon determining that an application for any permit pertains to the establishment, modification, or operation of any appurtenant facility or equipment, the director shall cease reviewing the application and return the application and accompanying materials to the applicant along with a written notice that division (C)(1)(b) of this section precludes the director from reviewing and acting upon the application.

(c) Issue any exemption order under division (G) of section 3734.02 of the Revised Code

exempting the establishment of a new commercial hazardous waste incinerator; the modification of an existing facility to increase either the treatment capacity of the incinerator or the quantity of hazardous waste that is authorized to be treated by it; or the establishment, modification, or operation of any facility or equipment appurtenant to a new or modified commercial hazardous waste incinerator, from divisions (C)(1)(a) or (b) or (C)(2) of this section.

(2) If the director determines that an application for a hazardous waste facility installation and operation permit submitted under division (D) of section 3734.05 of the Revised Code pertains to the establishment of a new commercial hazardous waste incinerator, or a request for a modification of an existing incinerator submitted under division (I) of that section pertains to an increase of either the treatment capacity of the incinerator or the quantity of hazardous waste that is authorized to be treated by it, the director shall cease reviewing the application or request and shall return it and the accompanying materials to the applicant along with a written notice that division (C)(2) of this section precludes the review of the application or request.

(D) Division (C) of this section does not apply to an application for a modified hazardous waste facility installation and operation permit under division (I) of section 3734.05 of the Revised Code for any hazardous waste incinerator in operation before April 15, 1993, if both of the following apply to the application:

(1) The application seeks to install an improved air emission control system designed to achieve compliance with 40 C.F.R. 63, Subpart EEE.

(2) The application does not seek to increase the treatment capacity of the hazardous waste incinerator or the quantity of waste to be treated by it.

(E) Division (C) of this section does not apply to an application for a modified hazardous waste facility installation and operation permit under division (I) of section 3734.05 of the Revised Code for any hazardous waste incinerator in operation before April 15, 1993, if all of the following apply to the application:

(1) The application seeks to increase the treatment capacity of the hazardous waste incineration operations or the quantity of waste to be treated by it.

(2) The hazardous waste incinerator is at or near its actual maximum operating capacity on the effective date of this amendment.

(3) The application seeks to install an improved air emission control system designed to achieve compliance with 40 C.F.R. 63, Subpart EEE.

(4) The owner or operator of the hazardous waste incinerator has not been issued any other permit allowing for the expansion of the hazardous waste incinerator or construction of a new hazardous waste incinerator prior to the effective date of this amendment.

Sec. 4909.172. (A) A waterworks company, or a sewage disposal system company, that is a public utility may file an application with the public utilities commission for approval to collect an infrastructure improvement surcharge, determined in accordance with this section, from customers located in the company's affected service areas and subject to affected schedules filed by the company under section 4905.32 of the Revised Code. The application shall be in such form and contain such information as the commission prescribes. At the time of filing, the company shall serve a copy of the application upon the chief executive of each municipal corporation, the board of township trustees of each township, and the board of county commissioners of each county in which

affected customers are located. A company for which an infrastructure improvement surcharge is authorized under this section may file an application for another such surcharge not sooner than twelve months after the filing date of its most recent infrastructure improvement surcharge application.

(B) The commission shall provide an opportunity for the filing of comments on an application filed under division (A) of this section. After considering those comments, the commission may authorize an infrastructure improvement surcharge for the company that is just and reasonable and is sufficient, but does not exceed, the revenue requirement necessary to do both of the following:

(1) Cover such infrastructure plant costs of the company as are described in division (C) of this section, incurred after March 1, 2003, and before the date of filing, and not already reflected in the affected schedules filed by the company under section 4905.32 of the Revised Code;

(2) Provide a fair and reasonable rate of return on the filing date valuation of that particular infrastructure plant.

Each infrastructure improvement surcharge chargeable to each affected customer class within any single tariff of the company shall not exceed three per cent, for a sewage disposal system company, and four and ~~one-quarter~~ one-quarter per cent, for a waterworks company, of the rates and charges applicable to the class and for the tariff in effect on the date the application was filed and, as to the allowed percentage increase, shall be uniform for each such class. The commission shall not authorize a company to have more than three infrastructure improvement surcharges for any single company tariff in effect at any time.

Additionally, the commission shall not authorize an infrastructure improvement surcharge under this section if it determines that the surcharge causes the company to earn an excessive rate of return on its valuation under section 4909.15 of the Revised Code.

(C) For purposes of this section, a company's costs of infrastructure plant may include depreciation expenses. Such infrastructure plant may consist of the following capital improvements that the commission determines are prudent and used and useful in rendering public utility service and that are properly classified in the uniform system of accounts adopted by the National Association of Regulatory Utility Commissioners as identified in rule 4901.1-15-32 of the Administrative Code:

(1) In the case of a waterworks company, replacement of an existing plant including chemical feed systems, filters, pumps, motors, plant generators, meters, service lines, hydrants, mains, and valves, included in accounts 323, 324, 325, 326, 327, 328, 332, 342, 343, 345, 346, 347, and 348, as well as main extensions that eliminate dead ends to resolve documented water supply problems presenting significant health or safety issues to then existing customers, and main cleaning or relining;

(2) In the case of a sewage disposal system company, replacement of an existing infrastructure including chemical feed systems, filters, pumps, motors, sludge-handling equipment, plant generators, mains and lift stations, plant included in accounts 352, 352.1, 352.2, 353, 354, 355, 356, 362, 363, 364, 365, 372, 373, 374, and 375, as well as main extensions that resolve documented sewage disposal problems presenting significant health or safety issues to then existing customers, and main cleaning, inflow and infiltration elimination, or relining;

(3) Unreimbursed capital expenditures made by the waterworks company, or the sewage disposal system company, for waterworks, or sewage disposal, facility relocation required by a governmental entity due to a street or highway project;

(4) Capital expenditures made by the waterworks company or sewage disposal system company to comply with any consent decree, final order, or final rule of the United States environmental protection agency or the Ohio environmental protection agency.

(5) Minimum land or land rights acquired by the company as necessary for any service line, equipment, or facility described in divisions (C)(1) to ~~(3)~~(4) of this section.

As used in divisions (C)(1) and (2) of this section, "replacement of an existing plant" includes replacements that result in an upgrade or improvement of the previously existing plant, provided that the replacement plant is prudent, qualifies for recovery under this section, and performs the same or similar function or purpose as it did prior to the replacement.

(D)(1) If the commission fails to issue a final order within one hundred eighty days after the date the application is filed under this section, and at the waterworks or sewage disposal company's discretion, a surcharge not to exceed the proposed surcharge shall go into effect upon the filing of the revised affected rate schedules by the company, subject to refund of amounts collected that exceed those authorized by the final order of the commission.

(2) All refunds shall include interest at the rate stated in section 1343.03 of the Revised Code and shall be accomplished in a manner as prescribed by the commission in its final order. The commission may require an undertaking to secure the refund under this division if it finds it is warranted by the financial condition of the waterworks or sewage disposal system company.

(3) This division shall only apply to applications filed by a waterworks or sewage disposal system company that has annual operating revenues of two hundred fifty thousand dollars or more.

(E) During the period that an authorized infrastructure improvement surcharge is in effect, the commission, by order and on its own motion or upon good cause shown, may reduce the amount of or terminate an infrastructure improvement surcharge if it determines that the surcharge causes the company to earn an excessive rate of return on its valuation under section 4909.15 of the Revised Code.

~~(E)~~(F) An order issued by the commission deciding an application by a waterworks company or a sewage disposal system company for an increase in rates and charges pursuant to an application filed by the company under section 4909.18 of the Revised Code shall provide for the termination, as of the earlier of the effective date of the increase or the date specified in division (F) of this section, of any infrastructure improvement surcharges of the company authorized under this section.

~~(F)~~(G) All surcharges authorized under this section shall terminate by operation of law not later than December 31, 20252036.

~~(G)~~(H) The company shall provide notice of any infrastructure improvement surcharge authorized under this section to each affected customer with or on the customer's first bill containing the surcharge.

~~(H)~~(I) The commission may adopt such rules as it considers necessary to carry out this section.

Sec. 5301.93. (A) As used in this section:

(1) "PACE" means property assessed clean energy.

(2) "Qualifying residential real property" means a single family residential dwelling, or other residential dwelling of three or fewer units.

(3) "Residential PACE lien" means the encumbrance on the qualifying residential real property created by the special assessment for a residential PACE loan.

(4) "Residential PACE loan" means the extension of financing that is offered to pay for the installation of cost effective energy improvements on a homeowner's qualifying residential real property and is repayable by the homeowner through a special assessment under section 717.25 or Chapter 1710. of the Revised Code.

(B) Notwithstanding any provision of law to the contrary, a residential PACE lien shall be all of the following:

(1) Subordinate to all liens on the qualifying residential real property recorded prior to the time the residential PACE lien is recorded;

(2) Subordinate to a first mortgage on the qualifying property recorded after the residential PACE lien is recorded;

(3) Subject to division (B)(2) of this section, superior to any other lien on the qualifying residential real property recorded after the residential PACE lien is recorded.

(C) Notwithstanding any other law to the contrary, in the event of a foreclosure sale of a qualifying residential real property, the holders of any mortgages or other liens, including delinquent special assessments secured by residential PACE liens, shall receive proceeds in accordance with the priorities established under division (B) of this section.

Sec. 5721.10. Except as otherwise provided under section 5301.93 or sections 5721.30 to 5721.43 of the Revised Code, the state shall have the first lien on the lands and lots described in the delinquent land list, for the amount of taxes, assessments, interest, and penalty charged prior to the delivery of such list. If the taxes have not been paid for one year after having been certified as delinquent, the state shall institute foreclosure proceedings in the manner provided by section 323.25, sections 323.65 to 323.79, or sections 5721.01 to 5721.28 of the Revised Code, unless a tax certificate respecting that property has been sold or assigned under section 5721.32 or 5721.33 of the Revised Code, or unless such taxes are the subject of a valid delinquent tax contract under section 323.31 of the Revised Code for which the county treasurer has not made certification to the county auditor that the delinquent tax contract has become void. The court shall levy, as costs in the foreclosure proceedings instituted on the certification of delinquency, the cost of an abstract or certificate of title to the property described in the certification, if it is required by the court, to be paid into the general fund of the county. Sections 5721.01 to 5721.28 of the Revised Code do not prevent the partial payment of such delinquent taxes, assessments, interest, and penalty during the period the delinquency is being discharged in accordance with a delinquent tax contract under section 323.31 of the Revised Code, but the partial payments may be made and received as provided by law without prejudice to the right of the state to institute foreclosure proceedings for any amount then remaining unpaid, if the county treasurer certifies to the county auditor that the delinquent tax contract has become void.

Sec. 6109.01. As used in this chapter:

(A) "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has at least fifteen service

connections or regularly serves at least twenty-five individuals. "Public water system" includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, any collection or pretreatment storage facilities not under such control that are used primarily in connection with the system, and any water supply system serving an agricultural labor camp as defined in section 3733.41 of the Revised Code.

(B) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(C) "Person" means the state, any political subdivision, agency, institution, or instrumentality thereof, any federal agency, and any person as defined in section 1.59 of the Revised Code.

(D) "Safe Drinking Water Act" means the "Safe Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C. 300(f), as amended by the "Safe Drinking Water Amendments of 1977," 91 Stat. 1393, 42 U.S.C. 300(f), the "Safe Drinking Water Act Amendments of 1986," 100 Stat. 642, 42 U.S.C. 300(f), and the "Safe Drinking Water Act Amendments of 1996," 110 Stat. 1613, 42 U.S.C. 300(f), and regulations adopted under those acts.

(E) "Community water system" means a public water system that has at least fifteen service connections used by year-round residents or that regularly serves at least twenty-five year-round residents.

(F) "Small system" means a public water system serving a population of ten thousand or fewer individuals.

(G) "Technical assistance" means nonfinancial assistance provided by the state to public water systems and other eligible applicants, including, without limitation, assistance for planning and design, development, and implementation of source water quality protection programs; locating alternative supplies of drinking water; operational training; restructuring or consolidation of small systems; providing treatment information in order to assist compliance with a national primary drinking water standard; and other nonfinancial assistance authorized by the requirements governing the funds established under this chapter.

(H) "Disadvantaged community" means the service area or portion of a service area of a public water system that meets affordability and other criteria established by the director of environmental protection in rules adopted under division (M) of section 6109.22 of the Revised Code and may include the service area or portion of a service area of a public water system located in a distressed area as defined in section 122.19 of the Revised Code.

(I) "Director of environmental protection" or "director" includes an authorized representative of the director.

(J) "Federal Water Pollution Control Act" has the same meaning as in section 6111.01 of the Revised Code.

(K) "Nontransient noncommunity water system" means a public water system that regularly serves at least twenty-five of the same persons over six months per year and is not a community water system.

(L) "Transient noncommunity water system" means a noncommunity public water system that does not regularly serve at least twenty-five of the same persons over six months per year and is not a community water system or a nontransient noncommunity water system.

Sec. 6109.072. (A) No person shall install a public water system well without an approved

well siting application issued by the director of environmental protection in accordance with this chapter and any rules adopted under it.

(B) In addition to meeting the siting requirements established under section 6109.04 of the Revised Code and the rules adopted under it, a person that submits a well siting application for a public water system well shall include all of the following in the application:

(1) For a new public water system or an existing public water system that proposes an increase in the withdrawal of waters of the state, an evaluation of alternatives for the provision of drinking water, including the potential for tie-in to a regional water system;

(2) For a new public water system or an existing public water system that proposes an increase in the withdrawal of waters of the state, asset management program information in accordance with section 6109.24 of the Revised Code and the rules adopted under it;

(3) For an existing public water system, a description of the asset management program impacts of installing the well, including impacts to any existing asset management program and the potential for tie-in to a regional water system;

(4) For a public water system well that has the capacity to withdraw waters of the state in an amount requiring registration pursuant to section 1521.16 of the Revised Code, a general plan, subject to approval of the director, that includes both of the following:

(a) The information required to be submitted under section 6109.07 of the Revised Code and the rules adopted under it;

(b) Verification of registration pursuant to section 1521.16 of the Revised Code.

(5) For a public water system well that has new or increased capacities for withdrawal or consumptive use that require a permit issued under either section 1521.29 or 1522.12 of the Revised Code, a permit approved by the chief of the division of water resources in the department of natural resources pursuant to section 1521.29 or 1522.12 of the Revised Code.

(C) Divisions (B)(2) and (3) of this section do not apply to a transient noncommunity water system.

(D) If the director approves a well siting application for an applicant that meets the requirements of division (B)(5) of this section, the applicant then shall submit to the director a copy of any certification, continuing monitoring, or other data or reports required by the chief of the division of water resources pursuant to a permit issued under either section 1521.29 or 1522.12 of the Revised Code and any revised ground water model required by the chief.

~~(D)~~-(E) The director may require the well site applicant to include, in the application, additional information, including but not limited to hydrologic information, in a form prescribed by the director for any public water system that is not required to obtain a permit under either section 1521.23 or 1522.12 of the Revised Code.

~~(E)~~-(F) The director may adopt rules in accordance with Chapter 119. of the Revised Code as is necessary for the implementation of this section.

Sec. 6109.24. (A) The director of environmental protection shall adopt, and may amend and rescind, rules pursuant to section 6109.04 of the Revised Code establishing requirements governing the demonstration of technical, managerial, and financial capability for the purposes of this section.

(B)(1) A public water system shall demonstrate the technical, managerial, and financial capability of the system to comply with this chapter and rules adopted under it by implementing an



asset management program not later than October 1, 2018.

(2) Notwithstanding division (B)(1) of this section, the director may require a public water system to complete an asset management program prior to October 1, 2018.

(3) A public water system shall include in the asset management program all of the following:

- (a) An inventory and evaluation of all public water system assets;
- (b) Public water system operation and maintenance programs;
- (c) A public water system emergency preparedness and contingency planning program;
- (d) Criteria and timelines for public water system infrastructure rehabilitation and replacement;
- (e) Approved public water system capacity projections and public water system capital improvement planning;

(f) A long-term funding strategy to support the public water system's asset management program implementation.

(C) If requested by the director, a public water system shall submit a written description of the system's asset management program to the director. The system shall submit the written description not later than thirty days after the date of the request. A small public water system may meet the written description requirement by doing both of the following:

(1) Submitting the template made available by the director under division (F)(1) of this section;

(2) Including with the completed template a statement that the activities described in the template are being implemented.

(D) If a public water system fails to submit an acceptable written description of the system's asset management program or otherwise fails to demonstrate technical, managerial, and financial capability in accordance with this section and rules adopted under it, the director may request the owner or operator of the system to revise and resubmit the written description. Environmental protection agency staff may provide technical guidance to a public water system in preparing the asset management program or while addressing deficiencies noted in the asset management program.

(E) If a public water system fails to demonstrate technical, managerial, and financial capability in accordance with this section and rules adopted under it, the director may take any action authorized by this chapter or rules adopted under it to improve and ensure the capability of the public water system, including denying a plan submitted under section 6109.07 of the Revised Code.

(F) The director shall make available both of the following either on the environmental protection agency's web site or via another public forum:

- (1) A template for small public water systems to prepare an asset management program;
- (2) Information about sources of funding available to assist public water systems with preparing and completing an asset management program.

(G)(1) The director shall not adopt or enforce rules that require a transient noncommunity water system to prepare, implement, or complete an asset management program, including a demonstration of technical, managerial, and financial capability.

(2) Divisions (B) to (E) of this section do not apply to a transient noncommunity water system.

SECTION 2. That existing sections 3734.123, 4909.172, 5721.10, 6109.01, 6109.072, and 6109.24 of the Revised Code are hereby repealed.

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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 \_\_\_\_\_