

**MEMORANDUM**

TO: Ashley Montgomery-Hively, Ohio Department of Natural Resources

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: March 5, 2018

RE: **CSI Review – Dam Safety (OAC 1501:21-1-01 through 1501:21-1-04, 1501:21-3-01, 1501:21-3-02, 1501:21-5-01 through 1501:21-5-07, 1501:21-7-01, 1501:21-7-02, 1501:21-7-03, 1501:21-9-01, 1501:21-11-01, 1501:21-11-02, 1501:21-11-03, 1501:21-11-05, 1501:21-13-01 through 1501:21-13-14, 1501:21-15-01, 1501:21-15-02, 1501:21-15-04 through 1501:21-15-07, 1501:21-17-01 through 1501:21-17-04, 1501:21-19-01, 1501:21-19-02, 1501:21-21-01 through 1501:21-21-05, 1501:21-22-01, 1501:21-22-02, 1501:21-22-03, 1501:21-23-01, 1501:21-24-01, and 1501:21-24-02)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 23 amended rules and 35 no-change rules proposed by the Ohio Department of Natural Resources (ODNR) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on December 14, 2017 and the public comment period was held open through January 4, 2018. One public comment was received during this time.

The rules in this package set forth regulations regarding the ODNR Division of Water Resources Dam Safety program, which is authorized to issue permits for the construction of new dams and

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make inspections of regulated dams. Ohio Administrative Code (OAC) 1501:21-1-01, 1501:21-1-02, and 1501:21-11-05 are being amended to reflect the changing of the division name to Division of Water Resources. OAC 1501:21-5-02, 1501:21-13-09, 1501:21-13-13, 1501:21-15-06, 1501:21-15-07, 1501:21-19-01, 1501:21-19-02, and 1501:21-21-01 are being amended to remove requirements for Class IV levees and modify requirements for Class III levees. OAC 1501:21-5-07 and 1501:21-24-01 are being amended to address changes to the filing fees for construction of a new dam or levee and the annual fees for Class I, II, and III dams. Other rules are being amended to provide clarification regarding topics including compliant dam discounts, permit exemption requirements, and inspection exemption requirements.

During early stakeholder outreach, ODNR presented the rules to industry stakeholders, including conservancy districts, relevant municipalities, professional associations, and private businesses that maintain reservoirs, storage ponds, and dams. During this time, ODNR received four comments from stakeholders. One stakeholder suggested that dams which are not compliant should pay more to fund the dam safety program. ODNR responded that a discount is offered to compliant dams and that dams that fail to meet certain standards pay a higher annual fee. Two comments expressed concern that the increase to the fee structure impacts larger dams more heavily. ODNR stated that larger dams are higher hazard risks and that, since the program spends more resources to inspect larger dams, the changes are necessary. One stakeholder sought clarification regarding whether current installations would meet the standards for spillway construction, which ODNR provided.

One comment was received during the CSI public comment period. The stakeholder asked for clarification regarding the increase in fees, requested for exemptions from future fee increases, and suggested that ODNR find other means of sustaining the program without raising fees. ODNR responded, stating that large dams like the one maintained by the stakeholder are at greater risk than most dams and require more resources to inspect. ODNR also assured the stakeholder that, although the Department has taken significant steps to reduce expenses, funding reductions have necessitated the increase in fees to support the program.

The business communities impacted by the rules include all dams owned by private businesses in Ohio. ODNR estimates that approximately 134 dams are currently subject to the requirements of these rules. The adverse costs created by the rules include the permit filing fee for the construction of a new dam and the annual fee paid by regulated dams. The cost for permit filing is increasing to four percent of the first \$300,000 of estimated construction cost, three percent of the next \$300,000 in estimated cost, and two percent of the next \$400,000 in estimated cost. ODNR states in the BIA that the increases to the formula will result in a twelve percent increase in permit filing fee cost on average. The annual fee for Class I, II, and III dams is increased to \$0.08 per foot of length of the dam and \$0.08 per acre-foot of total storage volume impounded by the dam. ODNR states that the

purpose of these regulations is to ensure the safety of regulated dams through the establishment of a proper inspection program, which protects public safety by ensuring that dams are adequately maintained and do not pose significant threats to property. After reviewing the proposed rules and the BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rule package is justified.

Recommendations

For the reasons described above, the CSI Office has no recommendations on this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Department of Natural Resources should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.