



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Brian Becker, Ohio Department of Natural Resources

FROM: Michael Bender, Business Advocate

DATE: February 6, 2023

RE: **CSI Review – Division of Water Resources – 2022 Dam Safety Program Rules (OAC 1501:21-1-01, 1501:21-1-02, 1501:21-1-03, 1501:21-1-04, 1501:21-3-01, 1501:21-3-02, 1501:21-5-01, 1501:21-5-02, 1501:21-5-03, 1501:21-5-04, 1501:21-5-05, 1501:21-5-06, 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, 1501:21-13-02, 1501:21-13-03, 1501:21-13-04, 1501:21-13-05, 1501:21-13-06, 1501:21-13-07, 1501:21-13-08, 1501:21-13-09, 1501:21-13-10, 1501:21-13-11, 1501:21-13-12, 1501:21-13-13, 1501:21-13-14, 1501:21-15-01, 1501:21-15-02, 1501:21-15-04, 1501:21-15-05, 1501:21-15-06, 1501:21-15-07, 1501:21-17-01, 1501:21-17-02, 1501:21-17-03, 1501:21-17-04, 1501:21-19-01, 1501:21-19-02, 1501:21-21-01, 1501:21-21-02, 1501:21-21-03, 1501:21-21-04, 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 Jon Husted, 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 Department as provided for in ORC 107.54.

Analysis

This rule package consists of eighteen amended rules and forty no-change rules proposed by the Ohio Department of Natural Resources (ODNR) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on December 15, 2022, and the public comment period was held open through January 5, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on December 15, 2022.

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Ohio Administrative Code (OAC) 1501:21-1-01 requires the ODNR Division of Water Resources (DWR) to provide proper public notice of hearings that it conducts to adopt, amend, or rescind a rule. The rule is amended to update language. OAC 1501:21-1-02 states that the rules of OAC 1501:21 authorize the Chief of the DWR (Chief) to issue permits for the construction of dams and levees, to make periodic inspections of existing dams and levees, to collect annual fees for dams and levees, and to exempt certain dams and levees from certain statutory provisions. OAC 1501:21-1-03 requires a construction permit to be obtained for the construction of a dam or levee with certain exemptions. OAC 1501:21-1-04 states that the invalidation of a rule adopted or amended under ORC 1521.06 to 1521.064 does not affect the validity of any other rule adopted or amended thereunder. OAC 1501:21-3-01 specifies definitions pertaining to dam safety. OAC 1501:21-3-02 specifies requirements for registered professional engineers and registered professional surveyors with respect to the design, construction, and inspection of dams and levees. OAC 1501:21-5-01 states that the application procedure for a construction permit consists of a preliminary design report and the final design submittal. OAC 1501:21-5-02 provides for the preliminary design report. The rule is amended to update language. OAC 1501:21-5-03 provides for the final design submittal. The rule is amended to update language. OAC 1501:21-5-04 provides for the final design report that is included as part of the final design submittal. OAC 1501:21-5-05 provides for the plans that are included as part of the final design submittal. OAC 1501:21-5-06 provides for the specifications that are included as part of the final design submittal. The rule is amended to update language. OAC 1501:21-5-07 provides for the filing fee that is included as part of the final design submittal. OAC 1501:21-7-01 provides for the surety bond that is included as part of the final design submittal. OAC 1501:21-7-02 sets forth the conditions for release of the surety bond. The rule is amended to update language. OAC 1501:21-7-03 authorizes the forfeiture of the surety bond in the event of noncompliance with the terms of the bond and subsequent failure to correct the construction to comply. The rule is amended to update language. OAC 1501:21-9-01 authorizes the Chief to issue a construction permit when an applicant has satisfied the aforementioned criteria.

OAC 1501:21-11-01 requires an applicant to complete all necessary investigations prior to submitting the final design report. OAC 1501:21-11-02 provides for the required foundation investigation. OAC 1501:21-11-03 provides for the required construction materials investigation. OAC 1501:21-11-05 provides for the required hydrologic and hydraulic investigations. OAC 1501:21-13-01 sets forth the criteria for the classification of dams into four classes. The rule is amended to update language. OAC 1501:21-13-02 contains the requirements for the minimum design flood of a dam and the determination of critical flood. OAC 1501:21-13-03 sets forth general requirements for the spillway system that each dam is required to have. OAC 1501:21-13-04 specifies general requirements for pipe conduit spillways. OAC 1501:21-13-05 specifies additional, special requirements for pipe conduit spillways. OAC 1501:21-13-06 sets forth requirements for drains and other pipe conduits. OAC 1501:21-13-07 outlines what meets the criteria for a dam's required sufficient freeboard. OAC 1501:21-13-08 specifies additional design requirements for dams. OAC

1501:21-13-09 sets forth the criteria for the classification of levees into three classes. The rule is amended to update language. OAC 1501:21-13-10 sets forth general requirements for levees. OAC 1501:21-13-11 sets forth additional, special requirements for levees. OAC 1501:21-13-12 provides for the design flood for levees. OAC 1501:21-13-13 specifies the freeboard requirements for levees. OAC 1501:21-13-14 specifies additional design requirements for levees.

OAC 1501:21-15-01 outlines certain requirements to be followed with respect to the construction operations and activities. OAC 1501:21-15-02 requires the notification of and approval by the Chief for all proposed changes in the approved design, plans, or specifications. OAC 1501:21-15-04 requires the submission to the Chief of a complete set of as-built plans and the detailed final cost, with the former including any modifications and approved changes. OAC 1501:21-15-05 requires the registered professional engineer who inspected the construction to submit written certification that the structure was built in conformance with the plans, specifications, and changes approved by the Chief. OAC 1501:21-15-06 requires the preparation of a manual detailing the operation, maintenance, and inspection of a dam or levee and related appurtenances. OAC 1501:21-15-07 requires the formulation of an emergency action plan for dams and levees. OAC 1501:21-17-01 authorizes the Chief to make inspections during construction work. OAC 1501:21-17-02 authorizes the Chief to serve a written notice to an owner or owner's representative if construction work is not being performed according to approved plans, specifications, and changes and to revoke the permit under which is construction is authorized should the owner or owner's representative fail to subsequently comply. OAC 1501:21-17-03 requires the Chief to approve construction upon receipt of the registered professional engineer's certification, the as-built plans and detailed final cost, the manual, and the emergency action plan and upon subsequent inspection of the completed construction. The rule is amended to update language. OAC 1501:21-17-04 requires the Chief to perform a final inspection of construction and give final approval if construction was performed in accordance with the terms of the permit, plans, specifications, and approved changes and would not endanger life, health, or property. The rule is amended to update language. OAC 1501:21-19-01 outlines the exemptions for certain dams and levees from statutory construction permit requirements and the rules and regulations adopted pursuant thereto. OAC 1501:21-19-02 outlines the exemptions for certain dams and levees from statutory inspection requirements and the rules and regulations adopted pursuant thereto. The rule is amended to update language.

OAC 1501:21-21-01 requires the Chief to make periodic inspections of existing dams and levees, with certain exceptions. The rule is amended to update language. OAC 1501:21-21-02 provides for the procedures for the periodic inspections conducted by the Chief. The rule is amended to update language. OAC 1501:21-21-03 specifies the owner's responsibilities with respect to repairs, improvements, maintenance, investigations, analyses, tests, and other remedial measures performed to a dam or levee. The rule is amended to update language. OAC 1501:21-21-04 specifies the owner's responsibilities with respect to the operation, maintenance, and inspections of a dam or levee. OAC

1501:21-21-05 authorizes the Chief to remove or correct an unsafe dam or levee if the owner fails to perform the necessary repairs, maintenance, remedial measures, or other measures. The rule is amended to update language. OAC 1501:21-22-01 authorizes the Chief to make inspections during repair construction to ensure that the structure is being repaired in compliance with the approved plans and specifications. OAC 1501:21-22-02 authorizes the Chief to serve a written notice to an owner or owner's representative if repair construction is not being performed according to approved plans, specifications, and changes. OAC 1501:21-22-03 requires the Chief to inspect completed repair construction and approve it if it was completed according to the approved plans, specifications, and changes. The rule is amended to update language. OAC 1501:21-23-01 sets forth the process for the Chief to issue orders and provides for the appeal of such orders. The rule is amended to update language. OAC 1501:21-24-01 sets forth the fee schedule for the annual fee established in statute. The rule is amended to increase the annual fee base rate from \$300 to \$330 for class I dams and from \$90 to \$110 for class II and class III dams. OAC 1501:21-24-02 provides for the compliant dam discount program.

During early stakeholder outreach, ODNR sent a letter to stakeholders requesting comments on the proposed rule changes to the rules. The stakeholders included conservancy districts, municipalities that own wastewater treatment lagoons, upground water supply reservoirs, or flood control dams, private water companies that own reservoirs, power generators with waste storage pods, homeowner associations, private dam owners, the ODNR Parks, Wildlife, and Forestry Divisions, the Ohio Lake Communities Association, county and local park districts, civil and environmental engineering consultants, the Ohio Dam Safety Organization, the Association of State Dam Safety Officials, the American Society of Civil Engineers – Columbus Chapter, the Ohio Society of Professional Engineers, all county emergency management agencies, and the Ohio Farm Bureau. ODNR received no input from stakeholders as part of this effort. No comments were received during the CSI public comment period.

The business community impacted by the rules includes businesses that own regulated dams. ODNR notes that of the 1,376 dams that it regulates, only about 7% of them are owned by the business community. The adverse impacts created by the rules include obtaining a construction permit, design requirements, submitting information to the Chief, undergoing inspections, preparing a manual, formulating an emergency action plan, maintenance and repair responsibilities, and fees. ODNR states that the adverse impacts to business are justified to protect human life, health, and property from dam failures.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.