



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: March 21, 2024

RE: **CSI Review – Division of Water Resources – 2024 Package, Dam Safety Program Rules (OAC 1501:21-1-01, 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, 1501:21-13-04, 1501:21-13-05, 1501:21-13-06, 1501:21-13-07, 1501:21-13-08, 1501:21-13-09, 1501:21-13-13, 1501:21-13-14, 1501:21-15-2, 1501:21-15-06, 1501:21-15-07, 1501:21-17-02, 1501:21-17-03, 1501:21-19-01, 1501:21-19-02, 1501:21-21-01, 1501:21-21-02, 1501:21-21-03, 1501:21-21-04, 1501:21-22-02, 1501:21-22-02, 1501:21-23-01, 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 forty-five amended rules proposed by the Ohio Department of Natural Resources (ODNR). This rule package was submitted to the CSI Office on March 1, 2024, and the public comment period was held open through March 16, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 1, 2024.

The rules in this chapter regulate dam safety. Numerous amendments are made to all the rules to

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

streamline or update language. Other amendments are discussed below. Ohio Administrative Code (OAC) 1501:21-1-01 requires the ODNR Division of Water Resources (DWR) to provide public notice of hearings that in conducts to adopt, amend, or rescind a rule. OAC 1501:21-1-03 requires a construction permit to be obtained for the construction of a dam or levee unless specifically exempted by statute or rule. OAC 1501:21-1-04 declares 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 contains 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 a citation. OAC 1501:21-5-03 provides for the final design submittal. 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. The rule is amended to update typography. OAC 1501:21-5-06 provides for the specifications that are included as part of the final design submittal. 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 establishes the conditions for release of the surety bond. OAC 1501:21-7-03 authorizes the Chief of DWR (Chief) to declare a surety bond forfeited if a dam/levee owners fails comply with the terms of the bond and subsequently does not make the necessary corrections. 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 investigations prior to submitting the final design report. OAC 1501:21-11-02 provides for the required foundation investigation. The rule is amended to update typography and clarify that the Chief may deem boring, test pits, and other subsurface explorations necessary. 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 typography, clarify references to levees, and exempt manure storage or treatment facilities subject to livestock environmental permitting from the class II classification. OAC 1501:21-13-02 contains the requirements for the minimum design flood of a dam and the determination of minimum critical flood. OAC 1501:21-13-04 specifies general requirements for pipe conduit spillways. OAC 1501:21-13-05 specifies additional requirements for pipe conduit spillways. OAC 1501:21-13-06 sets forth requirements for drains and other pipe conduits. OAC 1501:21-13-07 requires sufficient freeboard to be provided to prevent overtopping of a dam. 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. OAC 1501:21-13-13 specifies the freeboard

requirements for levees. OAC 1501:21-13-14 specifies additional design requirements for levees.

OAC 1501:21-15-02 requires notification of and approval by the Chief of all proposed changes in the approved design, plans, or specifications. 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 1501:21-17-02 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, in addition to authorizing the Chief to revoke the permit under which 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 as well as upon subsequent inspection of the completed construction. OAC 1501:21-19-01 outlines the exemptions for certain dams and levees from statutory construction permit requirements and from 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 from the rules and regulations adopted pursuant thereto. The rule is amended to add citations.

OAC 1501:21-21-01 requires the Chief to make periodic inspections of existing dams and levees. The rule is amended to update typography and clarify which dams and levees are exempt from inspection. OAC 1501:21-21-02 describes the procedures for periodic inspections of dams and levees. OAC 1501:21-21-03 specifies the owner's responsibilities with respect to repairs, improvements, maintenance, investigations, analyses, tests, and other remedial measures to a dam or levee. OAC 1501:21-21-04 specifies the owner's responsibilities regarding the operation, maintenance, and inspection of a dam or levee. 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 completed according to the approved plans, specifications, and changes. OAC 1501:21-23-01 establishes the process for the Chief to issue orders and for an impacted party to appeal such orders. OAC 1501:21-24-02 provides for the compliant dam discount program.

During early stakeholder outreach, DWR sent a letter to stakeholders asking them to submit comments on the proposed rule changes. 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 ponds, homeowner associations that own dams, private dam owners, the ODNR Parks, Wildlife, and Forestry Divisions, county and local park districts that own dams, and the Ohio Department of Agriculture. DWR received approximately twenty phone calls from contacted stakeholders requesting hard copies and

summaries of the proposed rule changes, but no input was ultimately provided. No comments were received during the CSI public comment period, although ODNR made technical and grammatical corrections to the rules.

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 seven percent are owned by private businesses. The adverse impacts created by the rules include obtaining a construction permit, complying with 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 and levee failures.

Recommendations

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

Conclusion

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