

Am. Sub. H.B. 1
As Passed by the Senate
CC-5035-4

_____ moved to amend as follows:

- In line 359, after "3702.94," insert "3704.03," 1
- In line 370, after "3737.71," insert "3745.05," 2
- Between lines 49639 and 49640, insert: 3

- "Sec. 3704.03. The director of environmental protection may 4
do any of the following: 5
- (A) Develop programs for the prevention, control, and 6
abatement of air pollution; 7
- (B) Advise, consult, contract, and cooperate with any 8
governmental or private agency in the furtherance of the purposes 9
of this chapter; 10
- (C) Encourage, participate in, or conduct studies, 11
investigations, and research relating to air pollution, collect 12
and disseminate information, and conduct education and training 13
programs relating to the causes, prevention, control, and 14
abatement of air pollution; 15
- (D) Adopt, modify, and rescind rules prescribing ambient air 16
quality standards for the state as a whole or for various areas of 17
the state that are consistent with and no more stringent than the 18
national ambient air quality standards in effect under the federal 19

Clean Air Act;

20

(E) Adopt, modify, suspend, and rescind rules for the prevention, control, and abatement of air pollution, including rules prescribing for the state as a whole or for various areas of the state emission standards for air contaminants, and other necessary rules for the purpose of achieving and maintaining compliance with ambient air quality standards in all areas within the state as expeditiously as practicable, but not later than any deadlines applicable under the federal Clean Air Act; rules for the prevention or control of the emission of hazardous or toxic air contaminants; rules prescribing fugitive dust limitations and standards that are related, on an areawide basis, to attainment and maintenance of ambient air quality standards; rules prescribing shade, density, or opacity limitations and standards for emissions, provided that with regard to air contaminant sources for which there are particulate matter emission standards in addition to a shade, density, or opacity rule, upon demonstration by such a source of compliance with those other standards, the shade, density, or opacity rule shall provide for establishment of a shade, density, or opacity limitation for that source that does not require the source to reduce emissions below the level specified by those other standards; rules for the prevention or control of odors and air pollution nuisances; rules that prevent significant deterioration of air quality to the extent required by the federal Clean Air Act; rules for the protection of visibility as required by the federal Clean Air Act; and rules prescribing open burning limitations and standards. In adopting, modifying, suspending, or rescinding any such rules, the director, to the extent consistent with the federal Clean Air Act, shall hear and give consideration to evidence relating to all of the following:

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

(1) Conditions calculated to result from compliance with the rules, the overall cost within this state of compliance with the rules, and their relation to benefits to the people of the state to be derived from that compliance;

(2) The quantity and characteristics of air contaminants, the frequency and duration of their presence in the ambient air, and the dispersion and dilution of those contaminants;

(3) Topography, prevailing wind directions and velocities, physical conditions, and other factors that may or may combine to affect air pollution.

Consistent with division (K) of section 3704.036 of the Revised Code, the director shall consider alternative emission limits proposed by the owner or operator of an air contaminant source that is subject to an emission limit established in rules adopted under this division and shall accept those alternative emission limits that the director determines to be equivalent to emission limits established in rules adopted under this division.

(F)(1) Adopt, modify, suspend, and rescind rules consistent with the purposes of this chapter prohibiting the location, installation, construction, or modification of any air contaminant source or any machine, equipment, device, apparatus, or physical facility intended primarily to prevent or control the emission of air contaminants unless an installation permit therefor has been obtained from the director or the director's authorized representative.

(2)(a) Applications for installation permits shall be accompanied by plans, specifications, construction schedules, and such other pertinent information and data, including data on ambient air quality impact and a demonstration of best available technology, as the director may require. Installation permits shall be issued for a period specified by the director and are

transferable. The director shall specify in each permit the 82
applicable emission standards and that the permit is conditioned 83
upon payment of the applicable fees as required by section 3745.11 84
of the Revised Code and upon the right of the director's 85
authorized representatives to enter upon the premises of the 86
person to whom the permit has been issued, at any reasonable time 87
and subject to safety requirements of the person in control of the 88
premises, for the purpose of determining compliance with such 89
standards, this chapter, the rules adopted thereunder, and the 90
conditions of any permit, variance, or order issued thereunder. 91
Each proposed new or modified air contaminant source shall provide 92
such notice of its proposed installation or modification to other 93
states as is required under the federal Clean Air Act. 94
Installation permits shall include the authorization to operate 95
sources installed and operated in accordance with terms and 96
conditions of the installation permits for a period not to exceed 97
one year from commencement of operation, which authorization shall 98
constitute an operating permit under division (G) of this section 99
and rules adopted under it. 100

No installation permit shall be required for activities that 101
are subject to and in compliance with a plant-wide applicability 102
limit issued by the director in accordance with rules adopted 103
under this section. 104

No installation permit shall be issued except in accordance 105
with all requirements of this chapter and rules adopted 106
thereunder. No application shall be denied or permit revoked or 107
modified without a written order stating the findings upon which 108
denial, revocation, or modification is based. A copy of the order 109
shall be sent to the applicant or permit holder by certified mail. 110

(b) An air contaminant source that is the subject of an 111
installation permit shall be installed or modified in accordance 112

with the permit not later than eighteen months after the permit's 113
effective date at which point the permit shall terminate unless 114
one of the following applies: 115

(i) The owner or operator has undertaken a continuing program 116
of installation or modification during the eighteen-month period. 117

(ii) The owner or operator has entered into a binding 118
contractual obligation to undertake and complete within a 119
reasonable period of time a continuing program of installation or 120
modification of the air contaminant source during the 121
eighteen-month period. 122

(iii) The director has extended the date by which the air 123
contaminant source that is the subject of the installation permit 124
must be installed or modified. 125

(iv) The installation permit is the subject of an appeal by a 126
party other than the owner or operator of the air contaminant 127
source that is the subject of the installation permit, in which 128
case the date of termination of the permit is not later than 129
eighteen months after the effective date of the permit plus the 130
number of days between the date in which the permit was appealed 131
and the date on which all appeals concerning the permit have been 132
resolved. 133

(v) The installation permit has been superseded by a 134
subsequent installation permit, in which case the original 135
installation permit terminates on the effective date of the 136
superseding installation permit. 137

Division (F)(2)(b) of this section applies to an installation 138
permit that has not terminated as of the effective date of this 139
amendment. 140

The director may adopt rules in accordance with Chapter 119. 141
of the Revised Code for the purpose of establishing additional 142

requirements that are necessary for the implementation of division 143
(F)(2)(b) of this section. 144

(3) Not later than two years after August 3, 2006, the 145
director shall adopt a rule in accordance with Chapter 119. of the 146
Revised Code specifying that a permit to install is required only 147
for new or modified air contaminant sources that emit any of the 148
following air contaminants: 149

(a) An air contaminant or precursor of an air contaminant for 150
which a national ambient air quality standard has been adopted 151
under the federal Clean Air Act; 152

(b) An air contaminant for which the air contaminant source 153
is regulated under the federal Clean Air Act; 154

(c) An air contaminant that presents, or may present, through 155
inhalation or other routes of exposure, a threat of adverse human 156
health effects, including, but not limited to, substances that are 157
known to be, or may reasonably be anticipated to be, carcinogenic, 158
mutagenic, teratogenic, or neurotoxic, that cause reproductive 159
dysfunction, or that are acutely or chronically toxic, or a threat 160
of adverse environmental effects whether through ambient 161
concentrations, bioaccumulation, deposition, or otherwise, and 162
that is identified in the rule by chemical name and chemical 163
abstract service number. 164

The director may modify the rule adopted under division 165
(F)(3)(c) of this section for the purpose of adding or deleting 166
air contaminants. For each air contaminant that is contained in or 167
deleted from the rule adopted under division (F)(3)(c) of this 168
section, the director shall include in a notice accompanying any 169
proposed or final rule an explanation of the director's 170
determination that the air contaminant meets the criteria 171
established in that division and should be added to, or no longer 172
meets the criteria and should be deleted from, the list of air 173

contaminants. The explanation shall include an identification of
the scientific evidence on which the director relied in making the
determination. Until adoption of the rule under division (F) (3) (c)
of this section, nothing shall affect the director's authority to
issue, deny, modify, or revoke permits to install under this
chapter and rules adopted under it.

(4) (a) Applications for permits to install new or modified
air contaminant sources shall contain sufficient information
regarding air contaminants for which the director may require a
permit to install to determine conformity with the environmental
protection agency's document entitled "Review of New Sources of
Air Toxics Emissions, Option A," dated May 1986, which the
director shall use to evaluate toxic emissions from new or
modified air contaminant sources. The director shall make copies
of the document available to the public upon request at no cost
and post the document on the environmental protection agency's web
site. Any inconsistency between the document and division (F) (4)
of this section shall be resolved in favor of division (F) (4) of
this section.

(b) The maximum acceptable ground level concentration of an
air contaminant shall be calculated in accordance with the
document entitled "Review of New Sources of Air Toxics Emissions,
Option A." Modeling shall be conducted to determine the increase
in the ground level concentration of an air contaminant beyond the
facility's boundary caused by the emissions from a new or modified
source that is the subject of an application for a permit to
install. Modeling shall be based on the maximum hourly rate of
emissions from the source using information including, but not
limited to, any emission control devices or methods, operational
restrictions, stack parameters, and emission dispersion devices or
methods that may affect ground level concentrations, either

individually or in combination. The director shall determine
whether the activities for which a permit to install is sought
will cause an increase in the ground level concentration of one or
more relevant air contaminants beyond the facility's boundary by
an amount in excess of the maximum acceptable ground level
concentration. In making the determination as to whether the
maximum acceptable ground level concentration will be exceeded,
the director shall give consideration to the modeling conducted
under division (F) (4) (b) of this section and other relevant
information submitted by the applicant.

(c) If the modeling conducted under division (F) (4) (b) of
this section with respect to an application for a permit to
install demonstrates that the maximum ground level concentration
from a new or modified source will be greater than or equal to
eighty per cent, but less than one hundred per cent of the maximum
acceptable ground level concentration for an air contaminant, the
director may establish terms and conditions in the permit to
install for the air contaminant source that will require the owner
or operator of the air contaminant source to maintain emissions of
that air contaminant commensurate with the modeled level, which
shall be expressed as allowable emissions per day. In order to
calculate the allowable emissions per day, the director shall
multiply the hourly emission rate modeled under division (F) (4) (b)
of this section to determine the ground level concentration by the
operating schedule that has been identified in the permit to
install application. Terms and conditions imposed under division
(F) (4) (c) of this section are not federally enforceable
requirements and, if included in a Title V permit, shall be placed
in the portion of the permit that is only enforceable by the
state.

(d) If the modeling conducted under division (F) (4) (b) of

this section with respect to an application for a permit to
install demonstrates that the maximum ground level concentration
from a new or modified source will be less than eighty per cent of
the maximum acceptable ground level concentration, the owner or
operator of the source annually shall report to the director, on a
form prescribed by the director, whether operations of the source
are consistent with the information regarding the operations that
was used to conduct the modeling with regard to the permit to
install application. The annual report to the director shall be in
lieu of an emission limit or other permit terms and conditions
imposed pursuant to division (F)(4) of this section. The director
may consider any significant departure from the operations of the
source described in the permit to install application that results
in greater emissions than the emissions rate modeled to determine
the ground level concentration as a modification and require the
owner or operator to submit a permit to install application for
the increased emissions. The requirements established in division
(F)(4)(d) of this section are not federally enforceable
requirements and, if included in a Title V permit, shall be placed
in the portion of the permit that is only enforceable by the
state.

(e) Division (F)(4) of this section and the document entitled
"Review of New Sources of Air Toxics Emissions, Option A" shall
not be included in the state implementation plan under section 110
of the federal Clean Air Act and do not apply to an air
contaminant source that is subject to a maximum achievable control
technology standard or residual risk standard under section 112 of
the federal Clean Air Act, to a particular air contaminant
identified under 40 C.F.R. 51.166, division (b)(23), for which the
director has determined that the owner or operator of the source
is required to install best available control technology for that
particular air contaminant, or to a particular air contaminant for

which the director has determined that the source is required to meet the lowest achievable emission rate, as defined in 40 C.F.R. part 51, Appendix S, for that particular air contaminant.

(f) (i) Division (F) (4) of this section and the document entitled "Review of New Sources of Air Toxics Emissions, Option A" do not apply to parking lots, storage piles, storage tanks, transfer operations, grain silos, grain dryers, emergency generators, gasoline dispensing operations, air contaminant sources that emit air contaminants solely from the combustion of fossil fuels, or the emission of wood dust, sand, glass dust, coal dust, silica, and grain dust.

(ii) Notwithstanding division (F) (4) (f) (i) of this section, the director may require an individual air contaminant source that is within one of the source categories identified in division (F) (4) (f) (i) of this section to submit information in an application for a permit to install a new or modified source in order to determine the source's conformity to the document if the director has information to conclude that the particular new or modified source will potentially cause an increase in ground level concentration beyond the facility's boundary that exceeds the maximum acceptable ground level concentration as set forth in the document.

(iii) The director may adopt rules in accordance with Chapter 119. of the Revised Code that are consistent with the purposes of this chapter and that add to or delete from the source category exemptions established in division (F) (4) (f) (i) of this section.

(5) Not later than one year after August 3, 2006, the director shall adopt rules in accordance with Chapter 119. of the Revised Code specifying activities that do not, by themselves, constitute beginning actual construction activities related to the installation or modification of an air contaminant source for

which a permit to install is required such as the grading and
clearing of land, on-site storage of portable parts and equipment,
and the construction of foundations or buildings that do not
themselves emit air contaminants. The rules also shall allow
specified initial activities that are part of the installation or
modification of an air contaminant source, such as the
installation of electrical and other utilities for the source,
prior to issuance of a permit to install, provided that the owner
or operator of the source has filed a complete application for a
permit to install, the director or the director's designee has
determined that the application is complete, and the owner or
operator of the source has notified the director that this
activity will be undertaken prior to the issuance of a permit to
install. Any activity that is undertaken by the source under those
rules shall be at the risk of the owner or operator. The rules
shall not apply to activities that are precluded prior to permit
issuance under section 111, section 112, Part C of Title I, and
Part D of Title I of the federal Clean Air Act.

(G) Adopt, modify, suspend, and rescind rules prohibiting the
operation or other use of any new, modified, or existing air
contaminant source unless an operating permit has been obtained
from the director or the director's authorized representative, or
the air contaminant source is being operated in compliance with
the conditions of a variance issued pursuant to division (H) of
this section. Applications for operating permits shall be
accompanied by such plans, specifications, and other pertinent
information as the director may require. Operating permits may be
issued for a period determined by the director not to exceed ten
years, are renewable, and are transferable. The director shall
specify in each operating permit that the permit is conditioned
upon payment of the applicable fees as required by section 3745.11

of the Revised Code and upon the right of the director's 331
authorized representatives to enter upon the premises of the 332
person to whom the permit has been issued, at any reasonable time 333
and subject to safety requirements of the person in control of the 334
premises, for the purpose of determining compliance with this 335
chapter, the rules adopted thereunder, and the conditions of any 336
permit, variance, or order issued thereunder. Operating permits 337
may be denied or revoked for failure to comply with this chapter 338
or the rules adopted thereunder. An operating permit shall be 339
issued only upon a showing satisfactory to the director or the 340
director's representative that the air contaminant source is being 341
operated in compliance with applicable emission standards and 342
other rules or upon submission of a schedule of compliance 343
satisfactory to the director for a source that is not in 344
compliance with all applicable requirements at the time of permit 345
issuance, provided that the compliance schedule shall be 346
consistent with and at least as stringent as that contained in any 347
judicial consent decree or administrative order to which the air 348
contaminant source is subject. The rules shall provide for the 349
issuance of conditional operating permits for such reasonable 350
periods as the director may determine to allow the holder of an 351
installation permit, who has constructed, installed, located, or 352
modified a new air contaminant source in accordance with the 353
provisions of an installation permit, to make adjustments or 354
modifications necessary to enable the new air contaminant source 355
to comply with applicable emission standards and other rules. 356
Terms and conditions of operating permits issued pursuant to this 357
division shall be federally enforceable for the purpose of 358
establishing the potential to emit of a stationary source and 359
shall be expressly designated as federally enforceable. Any such 360
federally enforceable restrictions on a source's potential to emit 361
shall include both an annual limit and a short-term limit of not 362

more than thirty days for each pollutant to be restricted together 363
with adequate methods for establishing compliance with the 364
restrictions. In other respects, operating permits issued pursuant 365
to this division are enforceable as state law only. No application 366
shall be denied or permit revoked or modified without a written 367
order stating the findings upon which denial, revocation, or 368
modification is based. A copy of the order shall be sent to the 369
applicant or permit holder by certified mail. 370

(H) Adopt, modify, and rescind rules governing the issuance, 371
revocation, modification, or denial of variances that authorize 372
emissions in excess of the applicable emission standards. 373

No variance shall be issued except pursuant to those rules. 374
The rules shall prescribe conditions and criteria in furtherance 375
of the purposes of this chapter and consistent with the federal 376
Clean Air Act governing eligibility for issuance of variances, 377
which shall include all of the following: 378

(1) Provisions requiring consistency of emissions authorized 379
by a variance with timely attainment and maintenance of ambient 380
air quality standards; 381

(2) Provisions prescribing the classes and categories of air 382
contaminants and air contaminant sources for which variances may 383
be issued; 384

(3) Provisions defining the circumstances under which an 385
applicant shall demonstrate that compliance with applicable 386
emission standards is technically infeasible, economically 387
unreasonable, or impossible because of conditions beyond the 388
control of the applicant; 389

(4) Other provisions prescribed in furtherance of the goals 390
of this chapter. 391

The rules shall prohibit the issuance of variances from any 392

emission limitation that was applicable to a source pursuant to an
installation permit and shall prohibit issuance of variances that
conflict with the federal Clean Air Act.

Applications for variances shall be accompanied by such
information as the director may require. In issuing variances, the
director may order the person to whom a variance is issued to
furnish plans and specifications and such other information and
data, including interim reports, as the director may require and
to proceed to take such action within such time as the director
may determine to be appropriate and reasonable to prevent,
control, or abate the person's existing emissions of air
contaminants. The director shall specify in each variance that the
variance is conditioned upon payment of the applicable fees as
required by section 3745.11 of the Revised Code and upon the right
of the director's authorized representatives to enter upon the
premises of the person to whom the variance has been issued, at
any reasonable time and subject to safety requirements of the
person in control of the premises, for the purpose of determining
compliance with this chapter, the rules adopted thereunder, and
the conditions of any permit, variance, or order issued
thereunder.

The director may hold a public hearing on an application for
a variance or renewal thereof at a location in the county where
the variance is sought. The director shall give not less than
twenty days' notice of the hearing to the applicant by certified
mail and cause at least one publication of notice in a newspaper
with general circulation in the county where the variance is
sought. The director shall keep available for public inspection at
the principal office of the environmental protection agency a
current schedule of pending applications for variances and a
current schedule of pending variance hearings. The director shall

make a complete stenographic record of testimony and other 424
evidence submitted at the hearing. The director shall make a 425
written determination to issue, renew, or deny the variance and 426
shall enter the determination and the basis therefor into the 427
record of the hearing. The director shall issue, renew, or deny an 428
application for a variance or renewal thereof, or issue a proposed 429
action upon the application pursuant to section 3745.07 of the 430
Revised Code, within six months of the date upon which the 431
director receives a complete application with all pertinent 432
information and data required by the director. 433

Any variance granted pursuant to rules adopted under this 434
division shall be for a period specified by the director, not to 435
exceed three years, and may be renewed from time to time on such 436
terms and for such periods, not to exceed three years each, as the 437
director determines to be appropriate. A variance may be revoked, 438
or renewal denied, for failure to comply with conditions specified 439
in the variance. No variance shall be issued, denied, revoked, or 440
modified without a written order stating the findings upon which 441
the issuance, denial, revocation, or modification is based. A copy 442
of the order shall be sent to the applicant or variance holder by 443
certified mail. 444

(I) Require the owner or operator of an air contaminant 445
source to install, employ, maintain, and operate such emissions, 446
ambient air quality, meteorological, or other monitoring devices 447
or methods as the director shall prescribe; to sample those 448
emissions at such locations, at such intervals, and in such manner 449
as the director prescribes; to maintain records and file periodic 450
reports with the director containing information as to location, 451
size, and height of emission outlets, rate, duration, and 452
composition of emissions, and any other pertinent information the 453
director prescribes; and to provide such written notice to other 454

states as the director shall prescribe. In requiring monitoring devices, records, and reports, the director, to the extent consistent with the federal Clean Air Act, shall give consideration to technical feasibility and economic reasonableness and allow reasonable time for compliance. For sources where a specific monitoring, record-keeping, or reporting requirement is specified for a particular air contaminant from a particular air contaminant source in an applicable regulation adopted by the United States environmental protection agency under the federal Clean Air Act or in an applicable rule adopted by the director, the director shall not impose an additional requirement in a permit that is a different monitoring, record-keeping, or reporting requirement other than the requirement specified in the applicable regulation or rule for that air contaminant except as otherwise agreed to by the owner or operator of the air contaminant source and the director. If two or more regulations or rules impose different monitoring, record-keeping, or reporting requirements for the same air contaminant from the same air contaminant source, the director may impose permit terms and conditions that consolidate or streamline the monitoring, record-keeping, or reporting requirements in a manner that conforms with each applicable requirement. To the extent consistent with the federal Clean Air Act and except as otherwise agreed to by the owner or operator of an air contaminant source and the director, the director shall not require an operating restriction that has the practical effect of increasing the stringency of an existing applicable emission limitation or standard.

(J) Establish, operate, and maintain monitoring stations and other devices designed to measure air pollution and enter into contracts with any public or private agency for the establishment, operation, or maintenance of such stations and devices;

(K) By rule adopt procedures for giving reasonable public notice and conducting public hearings on any plans for the prevention, control, and abatement of air pollution that the director is required to submit to the federal government;

(L) Through any employee, agent, or authorized representative of the director or the environmental protection agency, enter upon private or public property, including improvements thereon, at any reasonable time, to make inspections, take samples, conduct tests, and examine records or reports pertaining to any emission of air contaminants and any monitoring equipment or methods and to determine if there are any actual or potential emissions from such premises and, if so, to determine the sources, amounts, contents, and extent of those emissions, or to ascertain whether there is compliance with this chapter, any orders issued or rules adopted thereunder, or any other determination of the director. The director, at reasonable times, may have access to and copy any such records. If entry or inspection authorized by this division is refused, hindered, or thwarted, the director or the director's authorized representative may by affidavit apply for, and any judge of a court of record may issue, an appropriate inspection warrant necessary to achieve the purposes of this chapter within the court's territorial jurisdiction.

(M) Accept and administer gifts or grants from the federal government and from any other source, public or private, for carrying out any of the functions under this chapter;

(N) Obtain necessary scientific, technical, and laboratory services;

(O) Establish advisory boards in accordance with section 121.13 of the Revised Code;

(P) Delegate to any city or general health district or political subdivision of the state any of the director's

enforcement and monitoring powers and duties, other than 518
rule-making powers, as the director elects to delegate, and in 519
addition employ, compensate, and prescribe the powers and duties 520
of such officers, employees, and consultants as are necessary to 521
enable the director to exercise the authority and perform duties 522
imposed upon the director by law. Technical and other services 523
shall be performed, insofar as practical, by personnel of the 524
environmental protection agency. 525

(Q) Certify to the government of the United States or any 526
agency thereof that an industrial air pollution facility is in 527
conformity with the state program or requirements for control of 528
air pollution whenever such certificate is required for a taxpayer 529
pursuant to any federal law or requirements; 530

(R) Issue, modify, or revoke orders requiring abatement of or 531
prohibiting emissions that violate applicable emission standards 532
or other requirements of this chapter and rules adopted 533
thereunder, or requiring emission control devices or measures in 534
order to comply with applicable emission standards or other 535
requirements of this chapter and rules adopted thereunder. Any 536
such order shall require compliance with applicable emission 537
standards by a specified date and shall not conflict with any 538
requirement of the federal Clean Air Act. In the making of such 539
orders, the director, to the extent consistent with the federal 540
Clean Air Act, shall give consideration to, and base the 541
determination on, evidence relating to the technical feasibility 542
and economic reasonableness of compliance with such orders and 543
their relation to benefits to the people of the state to be 544
derived from such compliance. If, under the federal Clean Air Act, 545
any such order shall provide for the posting of a bond or surety 546
to secure compliance with the order as a condition of issuance of 547
the order, the order shall so provide, but only to the extent 548

required by the federal Clean Air Act. 549

(S) To the extent provided by the federal Clean Air Act, 550
adopt, modify, and rescind rules providing for the administrative 551
assessment and collection of monetary penalties, not in excess of 552
those required pursuant to the federal Clean Air Act, for failure 553
to comply with any emission limitation or standard, compliance 554
schedule, or other requirement of any rule, order, permit, or 555
variance issued or adopted under this chapter or required under 556
the applicable implementation plan whether or not the source is 557
subject to a federal or state consent decree. The director may 558
require the submission of compliance schedules, calculations of 559
penalties for noncompliance, and related information. Any orders, 560
payments, sanctions, or other requirements imposed pursuant to 561
rules adopted under this division shall be in addition to any 562
other permits, orders, payments, sanctions, or other requirements 563
established under this chapter and shall not affect any civil or 564
criminal enforcement proceedings brought under any provision of 565
this chapter or any other provision of state or local law. This 566
division does not apply to any requirement of this chapter 567
regarding the prevention or abatement of odors. 568

(T) Require new or modified air contaminant sources to 569
install best available technology, but only in accordance with 570
this division. With respect to permits issued pursuant to division 571
(F) of this section beginning three years after August 3, 2006, 572
best available technology for air contaminant sources and air 573
contaminants emitted by those sources that are subject to 574
standards adopted under section 112, Part C of Title I, and Part D 575
of Title I of the federal Clean Air Act shall be equivalent to and 576
no more stringent than those standards. For an air contaminant or 577
precursor of an air contaminant for which a national ambient air 578
quality standard has been adopted under the federal Clean Air Act, 579

best available technology only shall be required to the extent 580
 required by rules adopted under Chapter 119. of the Revised Code 581
 for permit to install applications filed three or more years after 582
 August 3, 2006. 583

Best available technology requirements established in rules 584
 adopted under this division shall be expressed only in one of the 585
 following ways that is most appropriate for the applicable source 586
 or source categories: 587

(1) Work practices; 588

(2) Source design characteristics or design efficiency of 589
 applicable air contaminant control devices; 590

(3) Raw material specifications or throughput limitations 591
 averaged over a twelve-month rolling period; 592

(4) Monthly allowable emissions averaged over a twelve-month 593
 rolling period. 594

Best available technology requirements shall not apply to an 595
 air contaminant source that has the potential to emit, taking into 596
 account air pollution controls installed on the source, less than 597
 ten tons per year of emissions of an air contaminant or precursor 598
 of an air contaminant for which a national ambient air quality 599
 standard has been adopted under the federal Clean Air Act. In 600
 addition, best available technology requirements established in 601
 rules adopted under this division shall not apply to any existing, 602
 new, or modified air contaminant source that is subject to a 603
 plant-wide applicability limit that has been approved by the 604
 director. Further, best available technology requirements 605
 established in rules adopted under this division shall not apply 606
 to general permits issued prior to January 1, 2006, under rules 607
 adopted under this chapter. 608

For permits to install issued three or more years after 609

August 3, 2006, any new or modified air contaminant source that
has the potential to emit, taking into account air pollution
controls installed on the source, ten or more tons per year of
volatile organic compounds or nitrogen oxides shall meet, at a
minimum, the requirements of any applicable reasonably available
control technology rule in effect as of January 1, 2006,
regardless of the location of the source.

(U) Consistent with section 507 of the federal Clean Air Act,
adopt, modify, suspend, and rescind rules for the establishment of
a small business stationary source technical and environmental
compliance assistance program as provided in section 3704.18 of
the Revised Code;

(V) Provide for emissions trading, marketable permits,
auctions of emission rights, and economic incentives that would
reduce the cost or increase the efficiency of achieving a
specified level of environmental protection;

(W) Provide for the construction of an air contaminant source
prior to obtaining a permit to install pursuant to division (F) of
this section if the applicant demonstrates that the source will be
installed to comply with all applicable emission limits and will
not adversely affect public health or safety or the environment
and if the director determines that such an action will avoid an
unreasonable hardship on the owner or operator of the source. Any
such determination shall be consistent with the federal Clean Air
Act.

(X) Exercise all incidental powers, including adoption of
rules, required to carry out this chapter.

The environmental protection agency shall develop a plan to
control air pollution resulting from state-operated facilities and
property."

Between lines 56185 and 56186, insert: 640

"Sec. 3745.05. (A) In hearing the appeal, if an adjudication 641
hearing was conducted by the director of environmental protection 642
in accordance with sections 119.09 and 119.10 of the Revised Code 643
or conducted by a board of health, the environmental review 644
appeals commission is confined to the record as certified to it by 645
the director or the board of health, as applicable. The commission 646
may grant a request for the admission of additional evidence when 647
satisfied that such additional evidence is newly discovered and 648
could not with reasonable diligence have been ascertained prior to 649
the hearing before the director or the board, as applicable. If no 650
adjudication hearing was conducted in accordance with sections 651
119.09 and 119.10 of the Revised Code or conducted by a board of 652
health, the commission shall conduct a hearing de novo on the 653
appeal. 654

For the purpose of conducting a de novo hearing, or where the 655
commission has granted a request for the admission of additional 656
evidence, the commission may require the attendance of witnesses 657
and the production of written or printed materials. 658

When conducting a de novo hearing, or when a request for the 659
admission of additional evidence has been granted, the commission 660
may, and at the request of any party it shall, issue subpoenas for 661
witnesses or for books, papers, correspondence, memoranda, 662
agreements, or other documents or records relevant or material to 663
the inquiry directed to the sheriff of the counties where the 664
witnesses or documents or records are found, which subpoenas shall 665
be served and returned in the same manner as those allowed by the 666
court of common pleas in criminal cases. 667

(B) The fees of sheriffs shall be the same as those allowed 668
by the court of common pleas in criminal cases. Witnesses shall be 669

paid the fees and mileage provided for under section 119.094 of 670
the Revised Code. The fee and mileage expenses incurred at the 671
request of the appellant shall be paid in advance by the 672
appellant, and the remainder of the expenses shall be paid out of 673
funds appropriated for the expenses of the commission. 674

(C) In case of disobedience or neglect of any subpoena served 675
on any person, or the refusal of any witness to testify to any 676
matter regarding which the witness may be lawfully interrogated, 677
the court of common pleas of the county in which the disobedience, 678
neglect, or refusal occurs, or any judge thereof, on application 679
of the commission or any member thereof, may compel obedience by 680
attachment proceedings for contempt as in the case of disobedience 681
of the requirements of a subpoena issued from the court or a 682
refusal to testify therein. 683

(D) A witness at any hearing shall testify under oath or 684
affirmation, which any member of the commission may administer. A 685
witness, if the witness requests, shall be permitted to be 686
accompanied, represented, and advised by an attorney, whose 687
participation in the hearing shall be limited to the protection of 688
the rights of the witness, and who may not examine or 689
cross-examine witnesses. A witness shall be advised of the right 690
to counsel before the witness is interrogated. 691

(E) A stenographic record of the testimony and other evidence 692
submitted shall be taken by an official court shorthand reporter. 693
The record shall include all of the testimony and other evidence 694
and the rulings on the admissibility thereof presented at the 695
hearing. The commission shall pass upon the admissibility of 696
evidence, but any party may at the time object to the admission of 697
any evidence and except to the rulings of the commission thereon, 698
and if the commission refuses to admit evidence the party offering 699
same may make a proffer thereof, and such proffer shall be made a 700

part of the record of such hearing. 701

Any party may request the stenographic record of the hearing. 702
Promptly after receiving such a request, the commission shall 703
prepare and provide the stenographic record of the hearing to the 704
party who requested it. The commission may charge a fee to the 705
party who requested the stenographic record that does not exceed 706
the cost to the commission for preparing and transcribing it. 707

(F) If, upon completion of the hearing, the commission finds 708
that the action appealed from was lawful and reasonable, it shall 709
make a written order affirming the action, or if the commission 710
finds that the action was unreasonable or unlawful, it shall make 711
a written order vacating or modifying the action appealed from. 712
~~Every~~ 713

The commission shall issue a written order affirming, 714
vacating, or modifying an action pursuant to the following 715
schedule: 716

(1) For an appeal that was filed with the commission before 717
April 15, 2008, the commission shall issue a written order not 718
later than December 15, 2009. 719

(2) For all other appeals that have been filed with the 720
commission as of October 15, 2009, the commission shall issue a 721
written order not later than July 15, 2010. 722

(3) For an appeal that is filed with the commission after 723
October 15, 2009, the commission shall issue a written order not 724
later than twelve months after the filing of the appeal with the 725
commission. 726

(G) Every order made by the commission shall contain a 727
written finding by the commission of the facts upon which the 728
order is based. Notice of the making of the order shall be given 729
forthwith to each party to the appeal by mailing a certified copy 730

thereof to each party by certified mail, with a statement of the 731
time and method by which an appeal may be perfected. 732

(H) The order of the commission is final unless vacated or 733
modified upon judicial review." 734

In line 90861, after "3702.94," insert "3704.03," 735

In line 90872, after "3737.71," insert "3745.05," 736

Delete lines 96292 and 96292a 737

In line 96307, delete "\$134,505,201 \$134,960,492" and insert 738
"\$134,018,201 \$134,473,492" 739

In line 96311, delete "\$190,359,657 \$188,987,875" and insert 740
"\$189,872,657 \$188,500,875" 741

Between lines 96340 and 96341, insert: 742

"Section _____. EBR ENVIRONMENTAL REVIEW APPEALS COMMISSION 743

General Revenue Fund 744

GRF 172321 Operating Expenses	\$	487,000	\$	487,000	745
-------------------------------	----	---------	----	---------	-----

TOTAL GRF General Revenue Fund	\$	487,000	\$	487,000	746
--------------------------------	----	---------	----	---------	-----

TOTAL ALL BUDGET FUND GROUPS	\$	487,000	\$	487,000"	747
------------------------------	----	---------	----	----------	-----

In line 91 of the title, after "3702.94," insert "3704.03," 749

In line 106 of the title, after "3737.71," insert "3745.05," 750

The motion was _____ agreed to.

SYNOPSIS

Air Contaminant Source Installation Permits; Environmental 751
Review Appeals Commission 752

R.C. 3704.03 and 3745.05 753

Specifies that an air contaminant source that is the subject 754

of an installation permit must be installed or modified in accordance with the permit not later than 18 months after the permit's effective date at which point the permit must terminate unless any of specified circumstances exists.

755
756
757
758

Establishes statutory deadlines by which the Environmental Review Appeals Commission must issue written orders regarding appeals pending before the Commission.

759
760
761

Environmental Protection Agency and Environmental Review Appeals Commission

762
763

Sections 277.10 and _____.

764

Deletes a \$487,000 appropriation in each fiscal year for the Environmental Review Appeals Commission within the Environmental Protection Agency, and instead reestablishes the Environmental Review Appeals Commission as a free-standing agency under GRF appropriation item 172321, Operating Expenses, with funding of \$487,000 in each fiscal year.

765
766
767
768
769
770