

10:00 a.m. (EST)
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Environment Committee

March 8, 2017

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**2017 Environment Committee
meetings**

Wednesday, March 8
Wednesday, June 21
**Thursday, October 26 (Note
Cleveland location)**

OMA Environment Committee Meeting Sponsor:





OMA Environment Committee

March 8, 2017

Agenda

Welcome & Roll Call	Chairman Julianne Kurdila, ArcelorMittal
NAM Update	Greg Bertelsen, Senior Director, Energy and Resources Policy, National Association of Manufacturers
Member Water Panel	Mike Shelton, The Scotts Miracle-Gro Company Austin Olshavsky, Zaclon Joseph Koncelik, Tucker Ellis / ArcelorMittal
Counsel's Report	Frank Merrill, Bricker & Eckler
Guest Speaker	Laura Factor, Assistant Director, Ohio EPA Greg Vergamini, Chief of Legislative Affairs, Ohio EPA
Public Policy Report	Rob Brundrett, OMA Staff

Lunch

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: dlocke@ohiomfg.com or (614) 224-5111 or toll free at (800) 662-4463.

Additional committee meetings or teleconferences, if needed, will be scheduled at the call of the Chair.

OMA Environment Committee Meeting Sponsor:





Greg Bertelsen is the Senior Director of Energy and Resources Policy

Greg Bertelsen is the Senior Director of Energy and Resources Policy at the National Association of Manufacturers, the largest industrial trade organization in the United States, representing over 14,000 small, medium and large manufacturers in all 50 states. Greg advocates on behalf of manufacturers for a variety of energy and environmental issues, including Environmental Protection Agency (EPA) regulations, greenhouse gas issues, sustainability and energy efficiency policies.

Greg has testified in front of the EPA on several occasions and on a variety of issues. Greg is also a member of the National Environmental Justice Advisory Council (NEJAC), the official advisory council that provides advice and recommendations to the EPA on environmental justice issues.

Prior to working at the NAM, Greg worked as a policy expert at Siemens Corporation in their energy consulting division where he advised energy companies and large industrials on environmental and energy policy issues impacting their investments and operations.

Greg received a B.A. in economics at Dickinson College and a J.D. at American University Washington College of Law.



[Laura Factor, Assistant Director](#) — Laura Factor was appointed assistant director in January 2005. Factor assists the director in overseeing key program activities and establishing Agency priorities to protect Ohio's air, land and water resources. She also oversees the Agency's legislative efforts and policy/rule development.

Greg Vergamini, Chief of Legislative Affairs - Greg Vergamini coordinates the legislative affairs for the agency, and serves as a liaison to the legislature and the Governor's office on environmental issues. Vergamini represents the Agency before the Legislature and responds to questions and concerns from legislators.



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COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP, Counsel to the OMA
March 8, 2017

ENVIRONMENTAL DEVELOPMENTS

A. Ohio EPA Activities of Note

1. Ohio EPA General Industrial Storm Water Permit

On November 21, 2016, Ohio EPA issued for public notice and comment, its Draft Industrial Storm Water General Permit. OMA attended Ohio EPA's public hearing on January 9, 2017 to provide oral comments on the draft permit, and submitted written comments on January 17, 2017. OMA's comments related to issues including exemptions for run-on from neighboring facilities and non-industrial pollutant sources, such as building materials; sampling after measurable storm events; re-evaluation of benchmarks with past 5-years' data; adding a definition of "outfall"; and allowance of alternative benchmark concentrations. OMA will continue to be active in the renewal of this permit given its significance to members, and will vigorously oppose any overreach by Ohio EPA in the renewal of this permit.

2. Universal Waste Rules

Ohio EPA issued draft Ohio-specific Universal Waste Rules as part of its interested party review process on November 21, 2016. Ohio's universal waste rules, found in Ohio Administrative Code Chapter 3745-273, apply to handlers, transporters, and destination facilities for specific categories of hazardous waste streams, including lamps, pesticides, mercury-containing equipment and discarded batteries. The new draft universal waste rules include hazardous non-empty aerosol cans, hazardous antifreeze, and hazardous paint and paint-related wastes, in part as proposed by OMA and some of its members. OMA submitted written comments to these rules and will continue to be actively involved with these rules. Ohio EPA has indicated that it hopes to issue the proposed rules for public comment in late April 2017.

3. Startup, Shutdown or Malfunction and Scheduled Maintenance Rules

On October 25, 2016, Ohio EPA issued draft rules for Ohio's startup, shutdown or malfunction and scheduled maintenance rules. The rules address identification and reporting of excess air emissions during periods of startup, shut down or malfunction and how to handle scheduled maintenance of air pollution control equipment. Ohio EPA is performing the rulemaking in response to a U.S. EPA call for modifications to the rules on June 12, 2015, to which Ohio EPA (and OMA) objected to. Ohio EPA will propose these amendments to U.S. EPA as modifications to Ohio's state implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). OMA submitted written comments on these rules to Ohio EPA on December 14, 2016.

4. Beneficial Use Designation Rules

The Ohio EPA Division of Materials and Waste Management finalized its beneficial use rules for waste material, which will become effective in Ohio on March 31, 2017. The new rules pertain to five categories of wastes: (1) foundry sand; (2) residuals from a public water supply treatment facility; (3) solid waste, industrial waste, or other waste for use as fuel or as an ingredient in a combustion unit; (4) dredge material from Lake Erie's Federal shipping channels (not to include dredge material from other locations); and (5) sewage sludge incinerator ash. The rules provide for authorization of beneficial use of a waste material in several ways. Wastes used as an ingredient in the manufacturing of specific construction materials (asphalt, cement, glass, etc.) are defined as beneficial use byproducts.

General permit coverage will be available for specific categories of beneficial use byproducts and beneficial uses: (1) foundry sand used in soil blends and bioretention soils; (2) foundry sand used as sub-bedding and structural fill; (3) drinking water treatment material used as a soil amendment; and (4) biosolids incinerator ash. Ohio EPA is accepting comments on its draft guidance for seeking coverage under each of these general permits and its draft Notice of Intent to seek coverage through March 17, 2017.

Individual permits will also be available for wastes not included in a general permit. Authorization for types of beneficial use already approved by Ohio EPA (such as land application of paper mill sludge, industrial wastewater treatment sludge, flue gas desulfurization waste from coal combustion plant scrubbers, and flue gas desulfurization waste in manufacturing gypsum board) is not included in Ohio EPA's new rules, and will continue to be handled through existing mechanisms such as land application management plans and Director's Findings & Orders.

5. Draft 401 Water Quality Certification for 2017 Nationwide Permits

Ohio EPA Division of Surface Water has issued draft Clean Water Act Section 401 water quality certifications for the Nationwide Permits proposed by US EPA in the January 6, 2017 Federal Register (Volume 82, No. 4). The current 2012 Nationwide Permits expire on March 18, 2017. Ohio EPA held a public information session and public hearing on March 3, 2017, and is accepting comments through March 10, 2017.

6. Division of Surface Water Permit to Install Program Draft Rules

Ohio EPA Division of Surface Water proposed draft rules under OAC 3745-42 pertaining to permits to install. In particular, amendments to OAC 3745-42-02 are proposed in order to update applicable exemptions to the permit to install requirement. New exemptions include for building sewers; sanitary sewer replacement projects; repair or replacement of a treatment works component; disposal systems designed to be a best management practice under a storm water NPDES permit; and filtration systems, ion exchange systems and oil simmers on process tanks that serve manufacturing equipment. Ohio EPA is soliciting interested party input and comments are due to Ohio EPA by March 13, 2017.

7. Sulfur Dioxide Regulations

Ohio EPA has adopted amended rules in OAC Chapter 3745-18 pertaining to sulfur dioxide. The rules contain the requirements for the prevention of emissions of sulfur dioxide into the atmosphere from fuel burning and process equipment, and are part of Ohio's State Implementation

Plan for the attainment and maintenance of the National Ambient Air Quality Standards as required by the Clean Air Act. The amended rules went into effect on February 16, 2017.

8. House Bill 49 – Total Maximum Daily Loads

On February 10, 2017, House Bill 49 was introduced into the Ohio House of Representatives. H.B. 49 includes a provision for the addition of Ohio Revised Code 6111.561, in response to the March 24, 2015 Ohio Supreme Court decision in *Fairfield Cty. Bd. of Commrs. v. Nally*, 143 Ohio St.3d 93, 2015-Ohio-991. (This provision can be found in H.B. 49 at pages 2972 through 2976). In the *Fairfield County* decision, the Supreme Court ruled that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

House Bill 49 provides that TMDLs established by the Director and submitted to and approved by the U.S. EPA prior to March 24, 2015 (the date of the Fairfield County decision) will be valid and remain in full force and effect as approved. However, holders of NPDES permits that contain water quality based effluent limitations derived from a TMDL approved prior to March 24, 2015 may appeal the lawfulness and reasonableness of these permit limits in one of two ways: (1) filing an appeal with ERAC within 30 days of the first eligible NPDES permit renewal date subsequent to the effective date of the bill's provision; or (2) seeking a modification of the water quality based effluent limitation in the NPDES permit from the Director, and, if such request is denied, appealing to ERAC.

Each TMDL developed after March 24, 2015 must go through the public notice, public comment, and public hearing process, and is subject to appeal at ERAC. Therefore, while the bill does not require that each and every TMDL go through formal rulemaking pursuant to R.C. Chapter 119, it provides for due process considerations in a similar manner as the R.C. Chapter 119 process, while conserving the considerable amount of agency resources that would otherwise be spent on taking each TMDL through the formal R.C. Chapter 119 process.

B. U.S. EPA Activities of Note

1. Hazardous Waste Generator Improvements Rule

On October 28, 2016, the US EPA announced its final Hazardous Waste Generator Improvements Rule pertaining to requirements for generators of hazardous wastes under the Resource Conservation and Recovery Act. The Rule includes more than 60 changes to the existing hazardous waste generator regulations and will affect large quantity generators (LQGs), small quantity generators (SQGs), and conditionally exempt small quantity generators (very small quantity generators, or "VSQGs"). Key changes include: VSQGs will be allowed to transport hazardous waste to LQGs that are under control of the same entity; SQGs and LQGs will be required to maintain hazardous waste determination records for 3 years; VSQGs and SQGs will not be subject to a higher generator category due to an episodic event resulting in short-term increase in hazardous waste generation provided the episodic waste is properly managed; and new labeling requirements for containers of hazardous waste. The new rule will take effect on May 30, 2017.

2. USEPA's New TSCA Legislation

Pursuant to the recently amended Toxic Substances Control Act (TSCA), US EPA intends to require safety reviews of all chemicals in the marketplace. On November 29, 2016, US EPA announced the first ten chemicals that it intends to evaluate for potential risks to human health and

the environment. These first ten chemicals are: (1) 1,4-Dioxane; (2) 1-Bromopropane; (3) Asbestos; (4) Carbon Tetrachloride; (5) Cyclic Aliphatic Bromide Cluster; (6) Methylene Chloride; (7) N-methylpyrrolidone; (8) Pigment Violet 29; (9) Tetrachloroethylene (aka perchloroethylene); and (10) Trichloroethylene. US EPA was required to publish its list of chemicals by December 19, 2016, which then triggers a statutory deadline to complete risk evaluations of these chemicals within three years. If any of the chemicals are found to present an unreasonable risk to humans and the environment, US EPA must mitigate that risk within two years. For each risk evaluation that US EPA completes, TSCA requires that it begin another, so that by the end of 2019, at least 20 chemical risk valuations will be ongoing at any given time.

On January 17, 2017, US EPA proposed procedures to establish the risk-based screening process and criteria that EPA will use to identify chemical substances under TSCA as either high-priority substances for risk evaluation, or low-priority substances for which risk evaluations are not warranted at the time. The proposed rule identifies the steps of a risk evaluation process including scope, hazard assessment, exposure assessment, risk characterization, and a risk determination. Comments on the proposed rule are due by March 20, 2017.

3. Risk Management Program Rule Amendments

On January 13, 2017, US EPA published final amendments to its Risk Management Program regulations, which apply to any facility holding more than a threshold quantity of a “regulated substance” as identified in 40 C.F.R. Part 68, which includes facilities in the chemical manufacturing, agricultural, petroleum manufacturing, general manufacturing, and food and beverage sectors. Amendments to the rule address accident prevention, emergency response, and data availability. The final rule comes in response to Executive Order 13650, which ordered federal agencies to take actions to improve chemical facility safety and security. The amendments take effect on March 14, 2017.

4. United States Army Corps of Engineers Guidance

For the first time in 8 years, the United States Army Corps of Engineers issued Regulatory Guidance Letter (“RGL”) No. 16-01, dated October 2016, addressing Jurisdictional Determinations (JDs) made by the Corps when identifying what geographic areas are subject to Corps regulation pursuant to Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act. In its RGL, the Corps references *U.S. Army Corps of Engineers v. Hawkes Co.*, the May 31, 2016 U.S. Supreme Court decision holding that approved JDs issued by the Corps pursuant to the Clean Water Act are final actions and subject to judicial review by federal district courts pursuant to the Administrative Procedures Act. The RGL states that its goal is to ensure that all parties have a common understanding of the different options for JDs so that “the most appropriate mechanism for addressing the needs of a person requesting a JD can be identified.” It further instructs Corps District Engineers to “set reasonable priorities based upon the district’s workload and available regulatory resources” and cites, as an example, that it would be “reasonable to give higher priority to a JD request when it accompanies a permit request.”

C. Legislative

On February 29, President Trump issued an executive order directing that US EPA’s Waters of the United States Rule (WOTUS Rule) be rescinded or revised. The WOTUS Rule, finalized in May 2015, provided a new, expanded definition of “waters of the United States,” the term that determines how far the jurisdiction of the Clean Water Act extends. The executive order directs the

federal agencies to consider application of the interpretation of “waters of the United States” advanced by Justice Scalia in the *Rapanos v. United States* Supreme Court decision (a fractured 4-1-4 opinion). In *Rapanos*, Justice Scalia concluded that waters of the United States should consist of “relatively permanent, standing or continuously flowing bodies of water” connected to traditional rivers or streams that are traditionally navigable, as well as wetlands with “a continuous surface connection to such water bodies.” The executive order’s directed shift to Justice Scalia’s interpretation may considerably limit Clean Water Act jurisdiction and narrow the scope of development projects and land use activities that are required to obtain a permit. Environmental groups are likely to oppose the executive order and any changes to the WOTUS Rule. The pre-WOTUS rule is likely to remain in effect until the EPA and the Army Corps propose a new rule.

D. Judicial

Much publicity has been generated over the controversy surrounding the Dakota Access Pipeline and the Standing Rock Sioux Tribe. The Tribe filed a lawsuit on July 27, 2016 in U.S. District Court in Washington, D.C. against the U.S. Army Corps of Engineers, accusing the Corps of violating the National Historic Preservation Act and other laws after the Corps issued final permits for a crude oil pipeline stretching from North Dakota to Illinois. The Corps’ permit allows for Energy Transfer Partners, the company building the Dakota Access Pipeline, to install the pipeline under the Missouri River a half-mile upstream of the tribe’s reservation and the tribe’s drinking water supply. With its lawsuit, the Tribe sought an injunction to stay the pipeline’s construction until the case could be heard by the court.

Court documents filed in September reveal different facts than those commonly portrayed by the media. Energy Transfer Partners worked on the routing of the pipeline with federal, state and local officials for years. Project leaders participated in 559 separate meetings with community leaders, local officials, and organizations to listen to concerns and fine-tune the route. In particular, the Army Corps participated in 389 meetings with 55 tribes, including numerous meetings with leaders of the Standing Rock Sioux tribe. The Corps alerted the Tribe to the permit application in the fall of 2014, and repeatedly requested comments from and meetings with the Tribe, but the Tribe refused to meet with the Corps until after construction had started. Ultimately, the court denied the Tribe’s request for an injunction to stay construction of the pipeline, stating: “Aware of the indignities visited upon the tribe over the last centuries, the court scrutinizes the permitting process here with particular care.” The court continued, “Having done so, the court must nonetheless conclude that the tribe has not demonstrated that an injunction is warranted here.”

Despite the court’s decision, the federal government under President Obama stepped in to temporarily halt further action with the pipeline until it could review its decisions pertaining to the Tribe’s drinking water supply. However, upon taking office, President Trump signed a presidential memorandum on January 24, 2017 directed to the Secretary of the Army, expressing his intent to push the pipeline forward, and on February 7, 2017, the Army Corps notified Congress of its intent to grant a permit allowing the pipeline project to move forward.

TO: OMA Environment Committee
FROM: Rob Brundrett
RE: Environment Public Policy Report
DATE: March 8, 2017

Overview

Ohio EPA remains active on a variety of regulatory fronts. They are also proposing some big changes in the introduced budget. The House of Representatives is currently vetting those changes before sending the budget to the Ohio Senate. Ohio EPA continues to work on the industrial storm water permits and universal waste. Senate Bill 2 remains priority legislation for the agency.

General Assembly News and Legislation

Senate Bill 2 – Ohio EPA Water Bill

Senator Cliff Hite (R-Findley) introduced Senate Bill 2. The bill was formerly the Ohio EPA Water MBR bill in the 131st General Assembly. That bill ran into some last minute controversy and was not passed during lame duck in 2016. The reintroduced version has had three non-controversial hearings in the Senate and is slated for a possible vote this week. Among the provisions is language that would exempt slag from Ohio's water statutes. The OMA provided proponent testimony for the bill.

House Bill 49 – State Budget Bill

The Governor's budget bill has had several hearings in the House of Representatives. Ohio EPA has several law changes proposed in the bill. Among items of interest includes language that responds to the Ohio Supreme Court's decision requiring all TMDLs go through the ORC 119 rule making process.

Under the bill, Ohio EPA is required to provide for public comment when a TMDL is established, and such decisions would be appealable to the Environmental Review Appeals Commission. The bill also allows for appeals of existing National Pollutant Discharge Elimination System (NPDES) permits that were based on TMDLs established before March 24, 2015, while retaining the enforceability of any TMDL established before March 25, 2015. This is a significant change for manufacturers with NPDES direct discharge permits to waters of the state.

Other changes include expansion of the local air agency statute, the authority to waive or reduce late payment penalties and fees, and to authorize explosive landfill gas monitoring. The House is expected to vote the bill in mid-April.

Regulations

Industrial Storm Water Permits

In January the OMA submitted comments to Ohio EPA about its proposed renewal of its National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activity.

The OMA commented about sampling, benchmark feasibility, alternative benchmarks and non-industrial pollutants, among other items. The OMA also led a business group coalition in providing additional comments to Ohio EPA. The OMA had a follow up call with the agency to discuss any questions the agency may have had regarding OMA comments.

Ohio EPA will review and respond to comments provided. The agency plans to finalize the permit this spring.

Ohio EPA is hosting a webinar focused on Ohio's new Industrial Storm Water General Permit on Wednesday March 29, at 1:00 p.m.

Universal Waste

The OMA-led initiative to expand Ohio EPA's definition of universal waste to include more items, among them, paint and paint-related wastes, took another step forward in December. The OMA working group submitted comments in reaction to Ohio EPA's universal waste proposal.

The OMA has been working closely with Ohio EPA over the past two years to expand Ohio's universal waste program to include items now considered hazardous wastes, thus providing waste management relief for Ohio manufacturers.

The OMA commented on a variety of issues from storage to transportation to management standards. If all goes according to plan, Ohio EPA will review and accept OMA's comments and issue a final rule in early 2017.

Thank you to the members who participated in drafting comments.

Ohio EPA Initiates PIT Interested Party Review

Ohio EPA has initiated an interested party review for draft amendments to Permits to Install and Plan Approvals for Water Pollution Control (OAC Chapter 3745-42).

Major updates being considered include: clarification of and additions to the list of exemptions from permit to install or plan approval applicability, and clarification of sewage holding tank prohibitions and restrictions. Minor revisions to the rules include updates to style, grammar and references.

If you are interested in commenting, please contact OMA's Rob Brundrett. Comments are due March 13.

Startup, Shutdown, and Malfunction Emissions Comments

The OMA submitted two sets of comments to Ohio EPA's Interested Party Review draft amendment for Ohio's startup, shutdown, and malfunction (SSM) rules, issued in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during the SSM periods.

In the first set of comments, the OMA and business allies recommended: 1) modify the proposed definition of "malfunction" to remove the exclusion for equipment failures caused only in part by poor maintenance or careless operation; 2) modify the scheduled maintenance rule to allow owners or operators to continue operating when shutting down would be unsafe; 3) modify the malfunction rule to impose work practice standards during equipment failures; 4) expand the availability of alternative emission limits to minor sources; and 5) allow the adoption of alternative emission limits that are not equivalent to emission limits applicable during normal operation.

In the second set of comments, the OMA alone submitted detailed concerns about the regulations' adverse business impact, how the regulations were developed, and specific problematic language in the regulations.

Ohio EPA Agency News

Ohio Materials Marketplace

The Ohio EPA is inviting OMA members to participate in its newly launched Ohio Materials Marketplace with the objective to advance Ohio towards a circular material economy.

The free online platform enables Ohio businesses to list by-product and waste materials, as well as post requests for desired materials. The Materials Marketplace aims to assist manufacturers and other businesses in advancing their zero-landfill goals, decreasing greenhouse gas emissions, and reducing material and waste management costs.

Raw materials, by-products, and massive volumes are welcomed. Materials can range from computer monitors to waste paper to clay.

Chairman of the Board
WILLIAM E. SOPKO
President, William Sopko & Sons Co., Inc.



President
ERIC L. BURKLAND

February 22, 2017

The Honorable Troy Balderson
Chairman, Energy and Natural Resources Committee
Ohio Senate
Senate Building
1 Capitol Square, 1st Floor
Columbus, OH 43215

RE: Senate Bill 2 – Written Proponent Testimony

Dear Chairman Balderson:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to provide written proponent testimony to Senate Bill 2. As Ohio EPA Director Butler pointed out in his testimony, the bill "continues to build on the Governor's commitment to protect Lake Erie while also addressing critical concerns in surface and drinking water and solid waste." It is important that Ohio remains committed to protecting its precious water resources including everything from navigable shipping channels to clean drinking water.

In particular, there is a provision in the bill that OMA has long advocated: common sense regulation of slag. The bill recognizes that slag is a valuable product and not a waste under Ohio's water laws. Senate Bill 2 exempts slag from excessive regulation while at the same time requiring that slag be used in a manner that conforms with appropriate water quality standards (primary or secondary containment levels for ground water). Also, slag will not be permitted in any discharge prohibited by federal environmental law, or treated in a manner that is a threat to public health, safety, or the environment. Note that slag has been exempt from the definition of "solid waste" under Ohio's waste laws for decades.

The bill nicely balances environmental protection with economics by allowing for the responsible use of slag in the market, but maintains common sense regulations that hold entities accountable for misuse.

The OMA appreciates the time and effort that Senator Hite and Ohio EPA have invested in crafting this legislation and we encourage a swift, affirmative vote of the esteemed committee.

Sincerely,

A handwritten signature in blue ink that reads "Robert A. Brundrett".

Robert Brundrett
Director, Public Policy Services
The Ohio Manufacturers' Association



MEMORANDUM

TO: The Ohio Manufacturers Association

FROM: Frank Merrill, Bricker & Eckler LLP

DATE: March 7, 2017

RE: H.B. 49 Total Maximum Daily Loads (TMDL) Rule

On February 10, 2017, House Bill 49 was introduced into the Ohio House of Representatives. H.B. 49 includes a provision for the addition of Ohio Revised Code 6111.561 in response to the March 24, 2015 Ohio Supreme Court decision in *Fairfield Cty. Bd. of Commrs. v. Nally*, 143 Ohio St.3d 93, 2015-Ohio-991. (This provision can be found in H.B. 49 at pages 2972 through 2976). In the *Fairfield County* decision, the Supreme Court ruled that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

The Ohio Supreme Court Decision in *Fairfield Cty. Bd. of Commrs. v. Nally*:

The *Fairfield County* case stemmed from the Ohio EPA's issuance of a 2006 wastewater discharge renewal permit for the Tussing Road Water Reclamation Facility ("Tussing plant"), owned by Fairfield County, Ohio. Because the wastewater treatment plant discharges pollutants into nearby Blacklick Creek, part of the Big Walnut Creek watershed, the plant is required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit from the Ohio EPA, pursuant to the federal Clean Water Act and state law. The Clean Water Act also requires each state to establish a total maximum daily load ("TMDL") for certain bodies of water. The TMDL establishes the maximum amount of a pollutant that may be discharged without causing the receiving body of water to violate water-quality standards.

Based upon Ohio EPA's TMDL for the Big Walnut Creek watershed, the renewal permit for the Tussing plant included a new condition limiting the discharge of phosphorus. The Ohio EPA imposed this new limit based on a survey in which the Ohio EPA collected biological and chemical data for the area. Its survey suggested that the Tussing plant was contributing to a negative environmental situation in Blacklick Creek. Fairfield County appealed Ohio EPA's imposition of the new phosphorus limit in its NPDES permit to the Ohio Environmental Review Appeals Commission, and subsequent appeals were made to the Tenth District Court of Appeals and eventually the Ohio Supreme Court.

In the opinion, written by Justice Judith Ann Lanzinger, the Court held that a TMDL established by the Ohio EPA, pursuant to the Clean Water Act, is a “rule”. Therefore, the Ohio EPA must abide by the procedures outlined in Ohio Revised Code (“R.C.”) Chapter 119, which provide for, among other procedures, public notice, comments and a public hearing prior to a rule being adopted.

Justice Lanzinger explained that a TMDL is a “rule” as defined in R.C. 119.01 because it is a “standard” that has “a general and uniform operation” and creates new legal obligations. Although the TMDL was specific to the Tussing plant, the Court provided that “[t]he TMDL applies to all current and future discharges in the Big Walnut Creek watershed.” The opinion further explains that “[r]equiring Ohio EPA to undertake rulemaking procedures before applying the new standards set forth in the TMDL ensures that all stakeholders in the watershed have an opportunity to express their views on the wisdom of the proposal and to contest its legality if they so desire.” As a result, the phosphorus limit cannot be included as part of the Tussing plant’s NPDES permit because it did not undergo the R.C. Chapter 119 administrative rulemaking process. Because the phosphorus TMDL was part of impermissible rulemaking, the standard for the Tussing plant was vacated, and the case was remanded to the Ohio EPA.

In his concurring opinion, Justice Terrence O’Donnell provided that the “decision is far-reaching in that Ohio EPA has issued 1,761 TMDLs for watercourses throughout Ohio, including 132 TMDLs for phosphorus alone”, none of which have been promulgated through the R.C. 119 administrative process. “[T]hus the majority’s decision invalidates all of them, leaving the enforceability of numerous permits in question.”

H.B. 49 – Pages 2972 to 2975

House Bill 49 outlines the scope of the Director of Ohio EPA’s authority in establishing TMDLs for pollutants for each impaired water of the state or segment thereof as identified and listed in the Clean Water Act section 1313(d). The stated intent of the bill is to supersede the effect of the *Fairfield County* decision, excluding the TMDL process from rulemaking procedures and making the establishment of a final TMDL appealable to the Environmental Review Appeals Commission (ERAC).

The bill provides that TMDLs established by the Director and submitted to and approved by the U.S. EPA prior to March 24, 2015 (the date of the *Fairfield County* decision) will be valid and remain in full force and effect as approved. However, holders of NPDES permits that contain water quality based effluent limitations derived from a TMDL approved prior to March 24, 2015 may appeal the lawfulness and reasonableness of these permit limits in one of two ways: (1) filing an appeal with ERAC within 30 days of the first eligible NPDES permit renewal date subsequent to the effective date of the bill’s provision; or (2) seeking a modification of the water quality based effluent limitation in the NPDES permit from the Director, and, if such request is denied, appealing to ERAC.

The bill specifies that TMDLs developed after March 24, 2015 will not be subject to the formal rulemaking process pursuant to R.C. Chapters 106, 119, or 121. However, Ohio EPA shall provide opportunities for interested parties to provide input during the development of a

TMDL, including commenting on and meeting with interested parties. Prior to establishing a final TMDL, the Director is obligated to prepare an official draft TMDL and provide public notice, an opportunity for comment, and an opportunity for a public hearing on the draft TMDL, as well as prepare a written responsiveness summary of the comments submitted. Following this public notice and comment process and issuance of a final TMDL, the final TMDL is appealable to ERAC.

The bill further requires the Director to adopt rules pursuant to R.C. Chapter 119, by no later than December 31, 2018, that (1) allocate pollutant load between and among nonpoint sources and point sources in a TMDL report; (2) establish procedures and requirements for developing and issuing a new TMDL; (3) establish procedures and requirements for revising and updating a TMDL; and (4) establish procedures and requirements for validation of existing TMDLs following implementation and additional assessment.

In sum, the bill does not require that each and every TMDL go through formal rulemaking pursuant to R.C. Chapter 119. However, each TMDL must go through the public notice, public comment, and public hearing process, and is subject to appeal at ERAC, therefore providing for due process considerations in a similar manner as the R.C. Chapter 119 process, while conserving the considerable amount of agency resources that would otherwise be spent on taking each TMDL through the formal R.C. Chapter 119 process.



Ohio EPA's 2018-19 Biennial Budget

Ohio EPA's policy initiatives for the 2018-19 biennial budget

Improve efficiency and promote innovation at Ohio EPA

Consolidation of existing technical, compliance and financial assistance programs within Ohio EPA: Memorialize in statute the consolidation of existing compliance, technical and financial assistance programs under a single division to create a "one-stop shop" within Ohio EPA for customers seeking resources to help them achieve compliance. Through a more efficient, coordinated and strategic approach to administering resources, Ohio EPA is better positioned to help more regulated entities with a greater level of service.

Asbestos Certification Transfer from Ohio Department of Health (ODH) to Ohio EPA: Currently, ODH certifies asbestos removal contractors and Ohio EPA regulates asbestos notification, including removal and disposal. The transfer will streamline the entire process into one agency and help ensure that those operators who are certified to remove asbestos in accordance with state and federal law are complying with the law. Creates a "one-stop shop" for contractors/operators/citizens; reduces onsite inspections from two state agencies to one; consolidates state field workers and staff to eliminate duplication and conflicts; and improves the asbestos compliance and enforcement that protects citizens from relying on known problematic companies and individuals.

Update Local Air Agency Statute: While updating the names and jurisdictions of the local air agencies that work with Ohio EPA's Division of Air Pollution Control, this language also improves efficiency by allowing the local air agencies to perform additional work in nearby counties.

Authority to Waive or Reduce Late Payment Penalties and Environmental Fees: Many of Ohio EPA's environmental fees have an additional late payment penalty established in the revised code to encourage on time payment. Situations arise where a late fee should be waived or reduced and this amendment would provide that opportunity to the director.

Water Pollution Control Loan Fund (WPCLF) Administration: Federal regulations allow WPCLF administrative fees to be used for water quality work throughout the state, while Ohio law is more restrictive to work related only to administering the water pollution control loan program. This amendment will allow Ohio EPA to use the funds in a manner consistent with existing federal regulations.

Diesel Emission Reduction Grant Program (DERG): Ohio EPA and Ohio Department of Transportation (ODOT) seek to continue the DERG program with spending of \$10 million each year at ODOT for administration of the awards.

Authorize Explosive Landfill Gas Monitoring: Expands the director's authority to enter and evaluate explosive gas generation and migration issues at any solid waste disposal facility or closed solid waste disposal facility. Authorizes the director to issue orders to responsible parties to address explosive gas formation and migration if he/she determines that there is a threat to human health, safety or the environment.

Streamline the State Toxic Release Inventory Reporting: Thousands of Ohio companies are required to submit annual chemical inventory reports to both U.S. EPA and Ohio EPA. This change recognizes the electronic reporting mechanism of U.S. EPA as simultaneously fulfilling the obligation of the state requirement, eliminates the state filing and fee, but retains Ohio EPA's authority to take enforcement action if a toxic release inventory violation occurs.

Total Maximum Daily Loads (TMDLs): In response to the Ohio Supreme Court's decision in *Fairfield County Board of Commissioners versus Nally*, 2015, reestablish the legal validity of TMDLs approved by U.S. EPA prior to that date (March 24, 2015) and exempt TMDLs from formal rulemaking in favor of more robust public involvement opportunities and due process requirements for those affected by TMDLs. The amendment provides a process to outline, review and approve current and future TMDLs. TMDLs are required by federal law to address waters not meeting water quality standards.

Ohio EPA's 2018-19 Biennial Budget

Environmental Fund Transfers and Consolidation

- Federal Hazardous Waste Management Fund to the Federally Supported Cleanup and Response Fund.
- Federal Nonpoint Source Pollution Management Fund to the Federal Water Quality Protection Fund.
- Allow Ohio EPA to continue giving grants to area-wide planning agencies for water quality management planning activities.
- Replaces the mandatory transfer of \$.50 per ton from the annual Title V clean air emissions fee to the Small Business Assistance Fund managed by the Ohio Air Quality Development Authority (OAQDA), with a transfer on an as-needed basis. Transfer \$1.5 million back to the Title V program at Ohio EPA.
- Transfer up to \$3 million from the Scrap Tire Cleanup Fund to the Auto Emissions Test Fund to support oversight costs of the auto emissions test program (E-Check).

Fiscal Budget Language Items

Ohio EPA will continue to exercise fiscal responsibility by not increasing fees.

Extend Sunsets on Existing Ohio EPA Fees: Ohio EPA's Division of Surface Water, Division of Air Pollution Control, Division of Drinking and Ground Waters and the Division of Materials and Waste Management are extending but not increasing their environmental program fees. Changes allow for a transfer of up to \$1 million instead of mandating the transfer from the Scrap Tire Abatement Program to the Scrap Tire Market Development Fund each fiscal year.

Consolidation of NPDES Application and Issuance Fees: This change would end the multiple billing requirements in the permit process and have a combined fee at the time of application. Combining application and issuance fees will result in no net fee increase to applicants; it simply makes the billing process easier, less confusing and provides a cost savings of check processing to the agency.

Eliminate Obsolete Reports/Statutes

- Delete old Construction Grant references to a program that no longer exists.
- Delete references and the use of funds for cleanup and removal at Kirby tire site.
- Remove obsolete landfill permit-to-install submission requirements.
- Delete the obsolete authorizing language for the Clean Diesel School Bus Fund.
- Delete old Industrial Tax Certificate language.

ENVIRONMENTAL PROTECTION AGENCY

Local air pollution control authorities

- Modifies the list of agencies that qualify as a local air pollution control authority for purposes of the law governing air pollution control.
- Authorizes the Director of Environmental Protection (OEPA) to modify a contract between the Director and a local air pollution control authority to authorize the authority to perform air pollution control activities outside that authority's geographic boundaries.

Elimination of the Clean Diesel School Bus Fund

- Eliminates the Clean Diesel School Bus Fund, which, according to OEPA, is obsolete and is required to be used to update emissions equipment on existing diesel school buses.

Asbestos abatement certification transfer

- Transfers the authority to administer and enforce the laws governing asbestos abatement certification from the Department of Health to OEPA.
- Eliminates several administrative procedures that apply to hearings conducted regarding violations of the law governing asbestos abatement that are supplemental to the Administrative Procedure Act.
- Specifies that money collected from civil and criminal penalties, fees, and other money collected under the asbestos abatement certification laws be deposited in the Non-title V Clean Air Fund administered by OEPA, rather than the General Operations Fund administered by the Department of Health.
- Delays the effective date of all of the above changes to January 1, 2018.

Monitoring of explosive gases at solid waste disposal facilities

- Revises the law governing the monitoring of explosive gases (primarily methane) at solid waste disposal facilities, including:

--Authorizing, rather than requiring as provided under current law, the OPEA Director to order the submittal of explosive gas monitoring plans when there is a threat to human health or safety or the environment;

--Requiring a plan to be submitted for active or closed solid waste disposal facilities, if ordered, rather than for active or closed sanitary landfills (a subset of solid waste disposal facilities) as provided under current law; and

--Requiring specified "responsible parties" associated with a facility, after the submittal of a plan, to monitor explosive gas levels at the facility and submit written reports of the results of the monitoring in accordance with the plan.

Antiquated law governing solid waste facilities

- Eliminates antiquated provisions of law that applied in the 1980s and early 1990s and that governed applications for a permit-to-install a solid waste facility.

Scrap Tire Grant Fund transfer

- Makes discretionary the requirement that the OEPA Director request the Director of Budget and Management (OBM) to transfer money each fiscal year from the Scrap Tire Management Fund to the Scrap Tire Grant Fund, which is used to support market development activities related to scrap tires.
- Also makes discretionary the requirement that OBM execute that transfer.
- Specifies that the amount transferred by OBM may be up to \$1 million each fiscal year rather than equal to \$1 million each fiscal year as in current law.

Clean-up and removal activities at tire sites

- Repeals an obsolete provision of law that required at least 65% of an existing 50¢ fee on the sale of tires to be expended for clean-up and removal activities at the Goss Tire Site in Muskingum County or other tire sites in Ohio.

Authority to waive fees and late payment penalties

- Authorizes the OEPA Director to waive or reduce late fees and fees incurred during a response to an emergency.

Cleanup and Response Fund

- Requires the Cleanup and Response Fund to be used for implementing the law governing hazardous waste.

Administration of programs division

- Requires the Director to establish within OEPA a division to administer the Agency's financial, technical, and compliance programs to assist communities, businesses, and other regulated entities.

Extension of various fees

- Extends all of the following for two years:
 - The sunset of the annual emissions fees for synthetic minor facilities;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works;
 - The sunset of the annual discharge fees for holders of national pollutant discharge elimination system permits under the Water Pollution Control Law;
 - The sunset of license fees for public water system licenses;
 - A higher cap on the total fee due for plan approval for a public water supply system and the decrease of that cap at the end of the two years;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control and Safe Drinking Water Laws;
 - The sunset of the fees levied on the transfer or disposal of solid wastes; and
 - The sunset of the fees levied on the sale of tires.

Title V air emissions fees

- Makes discretionary the requirement that OEPA transfer up to 50¢ per ton of each type of Title V air pollution emissions fee assessed to the Small Business Assistance Fund.

- Permits the Director of Budget and Management, on July 1, 2017, or as soon as possible thereafter, to transfer up to \$1,500,000 from the Small Business Assistance Fund (Fund 5A00) used by the Air Quality Development Authority to the Title V Clean Air Fund (Fund 4T30) used by OEPA.

Revision of NPDES permit fees

- Requires the fee for the issuance of an NPDES permit to be paid at the time of application along with the nonrefundable application fee.
- Changes the fee for municipal storm water discharge from \$100 per square mile of area permitted under an NPDES permit to \$10 per $\frac{1}{10}$ of a square mile.

Toxic Release Inventory Program

- Allows owners and operators of specified facilities to fulfill state toxic release inventory reporting requirements under the Toxic Release Inventory Program by complying with federal reporting requirements established by the U.S. EPA.
- Specifies that submission of a toxic chemical release inventory report to U.S. EPA constitutes simultaneous submission of the report to OEPA, thereby satisfying state reporting requirements under state and federal law.
- Retains the authority of OEPA to investigate and enforce civil and criminal penalties for violations committed under the Toxic Release Inventory Program, including the failure to submit toxic release inventory reports to U.S. EPA.
- Eliminates fees required to be paid for filing a toxic release inventory report, including late fees.

Total maximum daily load (TMDL)

- Authorizes the Director of Environmental Protection to establish a total maximum daily load (TMDL) for impaired waters and to submit the TMDL to the U.S. EPA for approval.
- Requires the Director to adopt rules that do all of the following:
 - Allocate pollutant load between and among nonpoint sources and point sources in a TMDL report;
 - Establish procedures and requirements for developing and issuing a new TMDL;

- Establish procedures and requirements for revising and updating a TMDL; and
- Establish procedures and requirements for validation of existing TMDLs following implementation and additional assessment.
- Requires the Director to allow interested parties an opportunity to provide input during the development of a TMDL.
- Requires the Director to prepare an official draft TMDL and establishes procedures and requirements for a public comment period on the official draft TMDL.
- Requires the Director to prepare and make available a written responsiveness summary of comments from the public comment period.
- Specifies that the final TMDL is appealable to the Environmental Review Appeals Commission, but that the submission of the final TMDL to the U.S. EPA is not appealable.
- Authorizes the Director to revise an established TMDL to accommodate new information.
- Retains, in full force and effect, TMDLs issued prior to the date of the Ohio Supreme Court's ruling in *County Board of Commissioners v. Nally*, 143 Ohio St.3d 93 (2015) (March 24, 2015).
- Establishes appeal procedures for a national pollutant discharge elimination system (NPDES) permit holder to appeal water quality based effluent limitations if these limitations were based on a TMDL that was established prior to the Court's decision.

Industrial water pollution control certificate

- Eliminates obsolete authority of the Director to issue, deny, revoke, or modify industrial water pollution control certificates.

Construction Grant Fund and program

- Eliminates the Construction Grant Fund, which is required to consist of money arising from grants to the state from the U.S. EPA under the Federal Water Pollution Control Act (U.S. EPA has discontinued this grant program).
- In accordance with the termination of the Construction Grant Fund, eliminates the construction grant program, under which local governments can apply for money derived from the U.S. EPA grants for the design, acquisition, construction, alteration, and improvement of sewage and waste treatment works.

Water Pollution Control Loan Administrative Fund

- Allows OEPA to use money in the Water Pollution Control Loan Administrative Fund for water quality related programs administered by OEPA, rather than solely to defray OEPA's administrative costs associated with the Water Pollution Control Loan Program as under current law.

Local air pollution control authorities

(R.C. 3704.01 and 3704.111)

The bill modifies the list of local agencies that constitute a local air pollution control authority for purposes of the law governing air pollution control by doing all of the following:

(1) Changing the name of the agency representing Butler, Warren, Hamilton, and Clermont counties from the Hamilton County Department of Environmental Services to the Hamilton County Department of Environmental Services, Southwest Ohio Air Quality Agency;

(2) Expanding the jurisdiction of the City of Cleveland Division of the Environment to all of Cuyahoga County, rather than the city of Cleveland only; and

(3) Eliminating the North Ohio Valley Air Authority that represents Carroll, Jefferson, Columbiana, Harrison, Belmont, and Monroe counties.

Contracts with OEPA

The bill authorizes the Director of Environmental Protection (OEPA) to modify a contract between the Director and a local air pollution control authority to authorize that authority to perform air pollution control activities outside that authority's geographic boundaries.

Elimination of the Clean Diesel School Bus Fund

(Repealed R.C. 3704.144)

The bill eliminates the Clean Diesel School Bus Fund, which was originally created to provide grants to school districts and county boards of developmental disabilities to do all of the following:

--Add pollution control equipment to diesel-powered school buses;



--Convert diesel-powered school buses to alternative fuels by means of certified engine configurations and verified technologies;

--Maintain installed pollution control equipment; and

--Pay the OEPA's costs incurred in administering the Fund.

The purposes for which the Fund was originally established are now obsolete. According to the OEPA, there is no longer a market for installing pollution control equipment on school buses because the equipment is standard on all new buses manufactured after 2005. Instead, money in the Fund will be redirected to the existing Diesel Emission Reduction Grant Program, which provides partial funding for replacing aging diesel buses with new clean diesel or alternatively fueled buses.⁴¹

Asbestos abatement certification transfer

(R.C. 3701.83, 3704.035, 3710.01, 3710.02, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, 3710.09, 3710.10, 3710.11, 3710.12, 3710.13, 3710.14, 3710.15, 3710.17, 3710.19, 3710.99, and 3745.11; Sections 277.20 and 812.10)

The bill transfers the authority to administer and enforce the laws governing asbestos abatement from the Department of Health to OEPA beginning January 1, 2018. Under current law, the Department of Health licenses and certifies companies and persons directly involved with the asbestos abatement industry. Under the program, the Department of Health regulates contractors performing asbestos removal projects, project supervisors, project designers, workers removing asbestos, persons inspecting buildings for asbestos-containing materials, persons developing plans to manage asbestos found in a facility, persons conducting air sampling for asbestos, and the companies that provide required asbestos training.

For purposes of transferring the asbestos certification program from the Department of Health to OEPA, the bill makes technical and clarifying changes, such as:

(1) Revising definitions that apply to asbestos certification to comport with rules adopted by the Director of OEPA that address asbestos under current law;

(2) Specifying that rules adopted by the Director, hearing procedures, and emergency orders of the Director apply to environmental health and environmental health emergencies, rather than public health and public health emergencies;

⁴¹ R.C. 122.861, not in the bill.

(3) Stipulating that all rules, orders, and determinations of the Department of Health related to the Asbestos Abatement Program continue in effect until the rules, orders, and determinations of OEPA become effective;

(4) Stipulating that all licenses, certificates, permits, registration approvals, or endorsements issued by the Department of Health before January 1, 2018, continue in effect as if issued by OEPA;

(5) Stipulating that business commenced but not completed by the Department of Health must be completed by OEPA, and providing for the transfer of the authority over contracts from the Department to OEPA;

(6) Transferring all employees of the Department of Health working full-time for the Asbestos Abatement Program to OEPA, subject to specified labor laws and the applicable collective bargaining agreement; and

(7) Authorizing the Department of Health and OEPA to enter into a memorandum of understanding to facilitate the transfer.

The bill also eliminates several administrative procedures that apply to Department of Health hearings regarding violations of the law governing asbestos abatement that are supplemental to the Administrative Procedure Act. The supplemental provisions of law include provisions governing the venue of a hearing, special notice procedures, the postponement or continuation of a hearing, hearing referees or examiners, and a special filing deadline for appeals.

The bill specifies that money collected from civil and criminal penalties, fees, and other money collected under the law governing asbestos abatement must be deposited in the Non-Title V Clean Air Fund, rather than the General Operations Fund currently administered by the Department of Health. Under current law, the Non-Title V Clean Air Fund is used by OEPA to pay the cost of administering and enforcing law pertaining to the prevention, control, and abatement of air pollution. The bill further specifies that the money in the Fund may be used by OEPA for the prevention, control, and abatement of asbestos, and asbestos abatement licensure and certification.

Monitoring of explosive gases at solid waste disposal facilities

(R.C. 3734.041)

The bill makes revisions to the law governing the monitoring of methane gas at solid waste disposal facilities as follows:



(1) Revises the submittal of explosive gas monitoring plans by doing both of the following:

--Authorizing, rather than requiring as provided under current law, the OEPA Director to order the submittal of such plans when there is a threat (rather than a danger as in current law) to human health or safety or the environment; and

--Requiring a plan to be submitted for active or closed solid waste disposal facilities (hereafter facility), if ordered, rather than for active or closed sanitary landfills (a subset of solid waste disposal facilities) as provided under current law.

(2) Adds to the individuals who may be required to create and submit an explosive gas monitoring plan to include a person appointed as a receiver under the law governing receiverships and a trustee in bankruptcy;

(3) Adds "information related to concentrations of explosive gas at or surrounding a facility" to the list of factors that may trigger an order to submit an explosive gas monitoring plan;

(4) Requires the plan to provide for adequate evaluation of explosive gas generation at and migration from the facility;

(5) Requires specified "responsible parties" associated with a facility to do both of the following after the submittal of the plan:

--Monitor explosive gas levels at the facility; and

--Submit written reports of the results of the monitoring in accordance with the plan.

(6) Authorizes, rather than requires as provided under current law, the Director to do both of the following:

--Conduct an evaluation of the levels of explosive gases on the premises of a facility to determine whether the formation or migration of the gases is a threat to human health or safety or the environment;

--Issue orders addressing explosive gas formation and migration issues at any facility (currently sanitary landfills only) when the Director determines that the formation and migration could threaten human health or safety or the environment.

(7) Authorizes the Director or the Director's authorized representative on their own initiative to enter on land where a facility is located in order to evaluate explosive gas generation and migration; and

(8) Limits evaluations of structures in proximity of a facility to occupied structures, rather than all structures as under current law.

Antiquated law governing solid waste facilities

(R.C. 3734.02, 3734.05, and 3734.06)

The bill eliminates antiquated provisions of law that applied in the 1980s and early 1990s and that governed applications for a permit-to-install a solid waste facility.

Scrap Tire Grant Fund transfer

(R.C. 3734.82)

The bill alters the procedure for the transfer of money from the Scrap Tire Management Fund to the Scrap Tire Grant Fund. Under current law, the Director of OEPA must request the Director of Budget and Management (OBM) to transfer \$1,000,000 each fiscal year from the Scrap Tire Management Fund to the Scrap Tire Grant Fund. OBM must execute the transfer upon request.

With regard to the transfer, the bill makes the following three changes:

- (1) Makes discretionary the requirement that OEPA request the transfer;
- (2) Makes discretionary the requirement that OBM execute the transfer; and
- (3) Specifies that the amount transferred by OBM may be up to \$1 million each fiscal year rather than equal to \$1 million each fiscal year as in current law.

Under current law, the Scrap Tire Grant Fund is used by OEPA to (1) support market development activities for scrap tires and synthetic rubber from tire manufacturing processes and tire recycling processes, and (2) support scrap tire amnesty and cleanup events sponsored by solid waste management districts. The Scrap Tire Grant Fund consists solely of money transferred from the Scrap Tire Management Fund as discussed above.

The Scrap Tire Management Fund consists, in part, of money derived from fees on scrap tire disposal facilities. OEPA must use money in the Scrap Tire Management Fund for administering OEPA's Scrap Tire Management Program, providing grants to boards of health to support the control of vectors (pests) at scrap tire facilities, and making transfers to the Scrap Tire Grant Fund.

Clean-up and removal activities at tire sites

(R.C. 3734.821)

The bill repeals an obsolete provision of law that required, from September 2001 until June 2011, at least 65% of an existing 50¢ fee on the sale of tires to be expended for clean-up and removal activities at the Goss Tire Site in Muskingum County or other tire sites in Ohio.

Authority to waive fees and late payment penalties

(R.C. 3745.012)

The bill authorizes the Director to waive or reduce a fee incurred for either of the following:

- (1) A late payment penalty if the original fee amount due has been paid; or
- (2) A fee incurred during a response to an emergency, including fees for the disposal of material and debris, if the Governor declares a state of emergency.

Current law allows the Director to collect fees for environmental permits, licenses, plan approvals, variances, and certifications issued and administered by OEPA under Ohio law. With respect to late fees, current law establishes procedures for the collection of late fees in certain circumstances. In one such circumstance, if payment is not made within 30 days of issuance of the fee invoice, the person responsible for payment of the fee must pay an additional 10% of the amount due for each month that it is late. As indicated above, the bill allows the Director to waive or reduce the entire compounded late fee after the original invoiced amount has been paid.⁴²

Cleanup and Response Fund

(R.C. 3745.016)

The bill requires OEPA to use money in the existing Cleanup and Response Fund for implementation of the law governing hazardous waste. The bill retains existing law that requires OEPA to also use money in the Fund to support the investigation and remediation of contaminated property.

⁴² R.C. 3745.11(V).



Administration of programs division

(R.C. 3745.018)

The bill requires the Director to establish within OEPA a new division to administer OEPA's financial, technical, and compliance programs and assist communities, businesses, and other regulated entities. The division must administer all of the following:

- (1) Existing state revolving wastewater and drinking water loan programs;
- (2) OEPA grant programs, including the already established recycling and litter prevention grant programs;
- (3) Existing programs for providing compliance and pollution prevention assistance to regulated entities; and
- (4) Existing statewide source reduction, recycling, recycling market development and litter prevention programs.

Extension of various fees

(R.C. 3745.11, 3734.57, and 3745.901)

The bill extends the time period for charging various OEPA fees under the laws governing air pollution control, water pollution control, and safe drinking water. The following table sets forth each fee, its purposes, and the time period OEPA is authorized to charge the fee under current law and the bill:

Type of fee	Description	Sunset under current law	Sunset under the bill
Synthetic minor facility: emission fee	Each person who owns or operates a synthetic minor facility must pay an annual fee in accordance with a fee schedule that is based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant source at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major	The fee is required to be paid through June 30, 2018.	The bill extends the fee through June 30, 2020.

Type of fee	Description	Sunset under current law	Sunset under the bill
	source thresholds established in rules adopted under current law.		
Wastewater treatment works: plan approval application fee	<p>A person applying for a plan approval for a wastewater treatment works is required to pay one of the following fees depending on the date:</p> <p>--A fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000, when submitting an application through June 30, 2018;</p> <p>--A fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000, on and after July 1, 2018.</p>	As indicated in the cell immediately to the left, an applicant must pay the tier one fee through June 30, 2018, and the tier two fee on and after July 1, 2018.	The bill extends the tier one fee through June 30, 2020; the tier two fee begins on or after July 1, 2020.
Discharge fees for holders of national pollutant discharge elimination system (NPDES) permits	Each NPDES permit holder that is a public discharger or an industrial discharger with an average daily discharge flow of 5,000 or more gallons per day must pay an annual discharge fee based on the average daily discharge flow. There is a separate schedule for public and industrial dischargers.	The fees are due by January 30, 2016, and January 30, 2017.	The bill extends the fees and the fee schedules to January 30, 2018, and January 30, 2019.
Surcharge for major industrial dischargers	A holder of an NPDES permit that is a major industrial discharger must pay an annual surcharge of \$7,500.	The surcharge is required to be paid by January 30, 2016, and January 30, 2017.	The bill extends the fee to January 30, 2018, and January 30, 2019.
Discharge fee for specified exempt dischargers	One category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180.	The fee is due not later than January 30, 2016, and January 30, 2017.	The bill extends the fee to January 30, 2018, and January 30, 2019.
License fee for public water system license	A person is prohibited from operating or maintaining a public water system without an annual license from OEPA. Applications for initial licenses or license renewals must be accompanied by a fee,	The fee for an initial license or a license renewal applies through June 30, 2018, and must be paid	The bill extends the initial license and license renewal fee through June 30, 2020.



Type of fee	Description	Sunset under current law	Sunset under the bill
	which is calculated using schedules for the three basic categories of public water systems.	annually in January.	
Fee for plan approval to construct, install, or modify a public water system	Anyone who intends to construct, install, or modify a public water supply system must obtain approval of the plans from OEPA. The fee for such plan approval is \$150 plus .35% of the estimated project cost. However, current law sets a cap on the amount of the fee.	The cap on the fee is \$20,000 through June 30, 2018, and \$15,000 on and after July 1, 2018.	The bill extends the cap of \$20,000 through June 30, 2020; the cap of \$15,000 applies on and after July 1, 2020.
Fee on state certification of laboratories and laboratory personnel	In accordance with two schedules, OEPA charges a fee for evaluating certain laboratories and laboratory personnel. An additional provision states that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.	The schedule with higher fees applies through June 30, 2018, and the schedule with lower fees applies on and after July 1, 2018. The \$1,800 additional fee applies through June 30, 2018.	The bill extends the higher fee schedule through June 30, 2020; the lower fee schedule applies on and after July 1, 2020. The bill extends the additional fee through June 30, 2020.
Fee for examination for certification as an operator of a water supply system or wastewater system	A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.	A higher schedule applies through November 30, 2018, and a lower schedule applies on and after December 1, 2018.	The bill extends the higher fee schedule through November 30, 2020; the lower fee schedule applies on and after December 1, 2020.
Application fee for a permit other than an NPDES permit, variance, or plan approval	A person applying for a permit other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law must pay a nonrefundable fee.	If the application is submitted through June 30, 2018, the fee is \$100. If the fee is submitted on or after July 1, 2018, the fee is \$15.	The bill extends the \$100 fee through June 30, 2020; the \$15 fee applies on and after July 1, 2020.
Application fee for an NPDES permit	A person applying for an NPDES permit must pay a nonrefundable application fee.	If the application is submitted through June 30, 2018, the fee is \$200. If the	The bill extends the \$200 fee through June 30, 2020; the \$15



Type of fee	Description	Sunset under current law	Sunset under the bill
		fee is submitted on or after July 1, 2018, the fee is \$15.	fee applies on and after July 1, 2020.
Fees on the transfer or disposal of solid wastes	A total of \$4.75 in fees is levied on each ton of solid waste disposed of or transferred in Ohio. The fees are used for administering the hazardous waste, solid waste, and other OEPA programs, and for soil and water conservation districts	The fees apply through June 30, 2018.	The bill extends the fees through June 30, 2020.
Fees on the sale of tires	A base fee of 50¢ per tire is levied on the sale of tires to assist in the cleanup of scrap tires. An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.	Both fees sunset on June 30, 2018.	The bill extends the fees through June 30, 2020.

Title V air emissions fees

(R.C. 3745.11(K)(1))

The bill makes discretionary the requirement that the Director transfer up to 50¢ per ton of each type of Title V air pollution emission fee to the Small Business Assistance Fund. Title V emissions fees are assessed on the total actual emissions from a Title V air contaminant source of specified pollutants, including particulate matter, sulfur dioxide, nitrogen oxides, organic compounds, and lead.

Revision of NPDES permit fees

(R.C. 3745.11(L), (U), and (V), and 6111.14)

The bill makes various revisions throughout the law governing National Pollutant Discharge Elimination System (NPDES) permit fees. For example, the bill specifies that the application fee for an NPDES permit is not refundable. The bill also alters the fee for municipal storm water discharge from \$100 per square mile of area permitted under an NPDES permit to \$10 per $\frac{1}{10}$ of a square mile. In so doing, the bill clarifies the mathematical calculation of the fee amount.

Toxic Release Inventory Program

(R.C. 3751.01, 3751.02, 3751.03, 3751.04, 3751.05, 3751.10, 3751.11; Section 737.10)

The bill allows owners and operators of specified facilities to fulfill state toxic release inventory reporting requirements under the Toxic Release Inventory Program by complying with federal reporting requirements established by the U.S. Environmental Protection Agency. Under current state and federal law, owners and operators of specified industrial facilities must submit toxic release inventory reports to both OEPA and U.S. EPA. The bill specifically states that the electronic submission of a report to U.S. EPA constitutes the simultaneous submission of the report to OEPA as required by federal law. According to OEPA, U.S. EPA shares the federally submitted reports with OEPA. Thus, according to OEPA, the elimination of the requirement to submit the report directly to OEPA removes the redundancy in federal and state reporting requirements.

The bill retains the authority of OEPA to undertake investigations and enforcement actions regarding violations of the Toxic Release Inventory Program and to impose civil and criminal penalties for such violations. OEPA's investigatory authority includes the power to enter upon property to conduct investigations. Violations of the Program include the failure to submit a toxic release inventory report to U.S. EPA.

The bill eliminates fees required to be paid for filing a toxic release inventory report with OEPA, including late fees. The bill further provides that any money collected by OEPA before or after the bill's effective date from fees must remain in the Toxic Chemical Release Reporting Fund to be used exclusively for implementing, administering, and enforcing the laws governing the Toxic Release Inventory Program.

Total maximum daily load (TMDL)

(R.C. 6111.03 and 6111.561; Section 761.10)

Introduction

According to the U.S. EPA, a total maximum daily load (TMDL) is a planning tool and potential starting point for restoration or protection activities for bodies of water under the federal Water Pollution Control Act. A TMDL establishes a target for the total load of a pollutant that a water body can assimilate and allocates the load to sources of the pollutant. The TMDL can impact the parameters under which a water pollution discharge permit is issued.

The bill authorizes the Director of OEPA to establish a TMDL for each impaired body of water in Ohio and to submit the TMDL to the U.S. EPA. Under current law, the



Director is already authorized to undertake this task. However, the bill outlines the scope of this authority in order to supersede case law regarding TMDLs. In *County Board of Commissioners v. Nally*, 143 Ohio St.3d 93 (2015), the Ohio Supreme Court held that a TMDL prescribed a legal standard that did not previously exist, and therefore had to be formally promulgated as a rule pursuant to the Administrative Procedure Act before it could be enforced against the general public. The bill alters the Court's ruling by establishing specific procedures and standards under which a TMDL may be issued. The bill does so by declaring that the establishment, amendment, or modification of a TMDL after March 24, 2015, is not subject to the Administrative Procedure Act and additional laws governing the adoption of administrative rules.

Rules

Under the bill, the Director must adopt new rules governing TMDLs no later than December 31, 2018 that do all of the following:

(1) Allocate pollutant load between and among nonpoint sources and point sources in a TMDL report;

(2) Establish procedures and requirements for developing and issuing a new TMDL;

(3) Establish procedures and requirements for revising and updating a TMDL; and

(4) Establish procedures and requirements for validation of existing TMDLs following implementation and additional assessment.

Establishing a TMDL

The Director must establish a TMDL for pollutants for each impaired body of water or segment thereof that is identified and listed under the federal Water Pollution Control Act. The Director must establish each TMDL as follows:

(1) Pursuant to a priority ranking established by the Director;

(2) Only for pollutants that the Administrator of the U.S. EPA has identified under the federal Water Pollution Control Act as suitable; and

(3) At a level necessary to implement applicable water quality standards that accounts for seasonal variations, a margin of safety, and lack of knowledge concerning the relationship between effluent limitations and water quality.

The bill establishes new administrative procedures that apply to the development of TMDLs. For example, it requires the Director to provide opportunities for interested parties to provide input during the development of a TMDL. The opportunities to provide input may include comment on and meeting with interested parties on any of the following aspects of the TMDL process:

(1) The project assessment plan development process, including the process for determining the cause and source of water quality impairments or threats;

(2) The technical support document that identifies and analyzes water quality data and habitat assessments that will assist in determining TMDL target conditions;

(3) The preliminary draft TMDL, which must include development of modeling, management choices, restoration targets, load allocations, waste load allocations, and associated TMDL-derived permit limits necessary to establish and select a TMDL restoration scenario; and

(4) The proposed TMDL implementation plan, under which specific actions, schedules, and monitoring necessary to implement a TMDL are established.

The proposed TMDL implementation plan also may include considerations of the cost and cost effectiveness of pollutant controls supplied by interested parties, sources of funding necessary to address pollutant load reductions, and the environmental benefit of incremental reductions in pollutant levels.

Draft TMDL

Before establishing a final TMDL for an impaired body of water, the bill requires the Director to prepare an official draft TMDL. The official draft TMDL must include:

(1) An estimate of the total amount of each pollutant that causes the water quality impairment from all sources;

(2) An estimate of the total amount of pollutants that may be added to the impaired body of water or segment thereof while still achieving and maintaining applicable water quality standards; and

(3) Draft allocations among point and nonpoint sources contributing to the impairment sufficient to meet water quality standards.

The official draft TMDL implementation plan also may include interim water quality target values and principles of adaptive management necessary to achieve water quality standards, as the Director determines appropriate.

Notice and comment

The bill requires the Director to provide all of the following:

- (1) Public notice of the official draft TMDL;
- (2) An opportunity for comment on the official draft TMDL; and
- (3) An opportunity for a public hearing regarding the official draft TMDL, if there is significant public interest, as determined by the Director.

Regarding the public notice, the bill requires the Director to specify in the notice the body of water or segment thereof to which the official draft TMDL relates and the time, date, and place of the hearing. The Director must send the public notice to all interested parties that participated in the public input process on the official draft TMDL. Further, the Director must prepare and make available a written responsiveness summary of the comments after the public comment period expires.

Final TMDL

After the public comment process is completed and the Director has completed and made available the written responsiveness summary, the Director may establish the final TMDL. The bill specifies that the final TMDL is appealable to the Environmental Review Appeals Commission (ERAC), however, the submission of that TMDL by the Director to the U.S. EPA is not appealable. The bill states that the Director may revise an established TMDL to accommodate new information.

Intent of the bill's TMDL provisions and existing TMDLs

The bill includes an intent statement, clarifying that it is the intent of the General Assembly to supersede the effect of the holding in *County Board of Commissioners v. Nally*, to exclude the TMDL process from rule-making procedures, and to make the establishment of a final TMDL appealable to ERAC.

The bill states that a TMDL submitted to and approved by the U.S. EPA prior to March 24, 2015 (the date of the decision in *County Board of Commissioners v. Nally*) is valid and remains in full force and effect as approved, but may be revised by the Director. The holder of an NPDES permit that contains water quality based effluent limitations based on a TMDL established prior to March 24, 2015 may appeal the lawfulness and reasonableness of those limitations by:

- (1) Filing an appeal with ERAC no later than 30 days after the first eligible NPDES permit renewal date after the bill's effective date; or



(2) Seeking a modification of the water quality based effluent limitations contained in the NPDES permit from the Director. If the Director denies the request for modification, the permit holder can appeal that denial to ERAC no later than 30 days after the denial.

Industrial water pollution control certificate

(R.C. 6111.03, 6111.04, and 6111.30)

The bill eliminates obsolete authority of the Director to issue, deny, revoke, or modify industrial water pollution control certificates. Water pollution control certificates are issued for tax exemption purposes. The authority to issue the certificates was transferred from OEPA to the Department of Taxation in 2003.⁴³

Construction Grant Fund and program

(Repealed R.C. 6111.033 and 6111.40)

The bill eliminates the Construction Grant Fund, which is required to consist of money arising from grants to the state from the U.S. EPA under the Federal Water Pollution Control Act. The Fund is currently empty, because U.S. EPA has ceased making such grants. In accordance with this change, the bill eliminates the construction grant program, under which a municipal corporation, board of county commissioners, conservancy district, sanitary district, or regional water and sewer district can apply for money for the design, acquisition, construction, alteration, and improvement of sewage and waste treatment works.

Water Pollution Control Loan Administrative Fund

(R.C. 6111.036)

The bill authorizes OEPA to use money in the Water Pollution Control Loan Administrative Fund for water quality related programs administered by OEPA. The bill retains current law that authorizes OEPA to also use money in the Fund to defray administrative costs associated with the Water Pollution Control Loan Program. Under current law, the Fund consists of fees collected through the administration of loans under that Program.

⁴³ See R.C. 5709.20 through 5709.27, not in the bill.



January 17, 2017

VIA HAND DELIVERY

Ohio Environmental Protection Agency
Division of Surface Water – Permits Processing Unit
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

Re: **Written Comments to Ohio's General Permit for Storm Water Discharges Associated with Industrial Activity (NPDES Permit No. OHR000006)**

Dear Sir/Madam:

Pursuant to Ohio EPA's Public Notice, issued on November 24, 2016, The Ohio Manufacturers' Association ("OMA") is hereby providing Ohio EPA with written comments to Ohio's General Permit for Storm Water Discharges Associated with Industrial Activity ("GSWP"). OMA also attended Ohio EPA's public hearing on January 9, 2017 and provided oral comments related to the GSWP. The following written comments are in support of, and in addition to, OMA's oral comments provided at the public hearing.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

A. **Exemption for "Non-Industrial" Pollutant Sources**

Ohio EPA's proposed GSWP contains a provision that allows permittees, that may exceed a benchmark due to a neighboring facility's storm water run-on, to document and account for this situation (see Part 6.2.1.2). OMA appreciates the Agency's recognition of these off-site storm water influences in accounting for a permittee's storm water discharge from its facility and its industrial activity conducted on its premises.

Part 6.2.1.2 provides, in pertinent part, as follows:

Ideally your storm water samples will contain only runoff from your site. However, storm water from a neighboring facility can run-on

and comingle with your regulated storm water discharge, possibly adding contaminants not found at your facility. The SWPPP site description shall document the locations and sources of any run-on. If you feel your discharge is exceeding a benchmark value due to run-on from neighboring properties you can collect and analyze samples of the run-on for purposes of evaluating impacts to your regulated storm water discharge and notify your Ohio EPA District Office. All sample data and findings shall be maintained with your SWPPP.

So as not to overload Ohio EPA District Officers with these “run-on” notice situations, we recommend that such notices be reported in the comment section when reporting the benchmark monitoring data in eDMR.

While it appears that Ohio EPA is acknowledging that storm water run-on from a neighboring facility may influence the storm water run-off from a permittee’s facility, the GSWP does not contain any specific language that such run-on influence may be deducted from a facility’s discharge in determining whether a benchmark has been exceeded. As a result, we recommend that the following language be added to Part 6.2.1.2: “If samples of run-on from neighboring properties demonstrate that such run-on impacts a facility’s storm water run-off discharge, the contaminants from the run-on may be deducted from the facility’s storm water run-off discharge in determining whether a benchmark has been exceeded.”

While Part 6.2.1.2 allows for the recognition of “natural background pollutants” in determining whether a benchmark has been exceeded, there is no likewise recognition for “non-industrial” pollutant sources, which are commonly part of a facility’s building materials (e.g., zinc from galvanized steel roofing and siding, galvanized roof gutters and painted surfaces; copper from copper or brass water pipes and fittings), road traffic on or off the industrial property (e.g., zinc in tire dust), or in items beyond the control of the industrial facility (e.g., zinc in potable city water).

These sources are common to all industrial sites, whether in or out of the storm water permit program. They are present with or without the industrial activity, at all industrial sites regardless of their Standard Industrial Classification (“SIC”) codes or whether exempted or not. Moreover, there is no feasible “corrective action” or reasonable “control measure” to address contamination from these ubiquitous “non-industrial” sources. Because of this anomaly, OMA recommends that Part 6.2.1.2 also include a provision that contamination from a facility’s “non-industrial” sources can also be deducted for purposes of determining whether a benchmark has been exceeded, similar to the provision and procedures for “neighboring run-on.” We recommend that the following language be included in Part 6.2.1.2:

Ideally your storm water samples will contain only runoff from the industrial activities at your site. However, storm water may come into contact with building materials and other non-industrial sources at your facility, possibly adding contaminants not found in the industrial activities at your facility. The SWPPP site description shall document the locations and sources of any non-industrial sources, such as building materials. If you feel your discharge is exceeding a benchmark value due to contact with non-industrial sources, you can account for non-industrial sources for purposes of evaluating impacts to your regulated storm water discharge and report these non-industrial source impacts in the parameter comment section when reporting the benchmark monitoring data in eDMR. All sample data and findings shall be maintained with your SWPPP. If samples of storm water from non-industrial sources demonstrate that such sources impact a facility's storm water run-off discharge, the contaminants from the non-industrial sources may be deducted from the facility's storm water run-off discharge in determining whether a benchmark has been exceeded.

B. Sampling After Measurable Storm Event

Part 6.1.4 of the GSWP requires that a grab sample from a discharge resulting from a measurable storm event be collected within the first 30 minutes of a measurable storm event ("first flush"). If it is not possible to collect the sample within the first 30 minutes, then the sample must be collected as soon as practicable and rationale for such failure be documented in the SWPPP.

Because of ongoing operational demands, often times it is not feasible to grab samples within the first 30 minutes of a rain event. Manufacturing facilities are conducting ongoing operations with personnel busy performing operational duties. The thought to grab a storm water sample within the first 30 minutes of a rain event is probably not the top priority on the manufacturing floor. Ohio EPA needs to recognize this real world timing demand and balance this time restriction with the need for the information within the first 30 minutes.

The current benchmarks in the GSWP are based on very conservative assumptions, resulting in very low values that are difficult to achieve under most circumstances. Coupled with the requirement to compare these strict benchmarks against the "first flush" storm water, that typically reflects the worst storm water quality, makes complying with the benchmarks very difficult, if not impossible.

For example, the current benchmarks included in the GSWP for the metals that are based on hardness reflect the lower Outside Mixing Zone Maximum ("OMZM") in Ohio's aquatic life water quality values. Instead the OMA suggests that these benchmarks reflect higher Inside Mixing Zone Maximum ("IMZM") in Ohio's aquatic life water quality

values. The IMZM values should be considered since the current storm water sampling requirement is the “first flush” which takes place within 30 minutes of the start of the discharge, which is more akin to a wastewater point source discharge with IMZM requirements. One additional benefit of raising the metals benchmarks to the IMZMs would be to account for the contributions from non-industrial sources of these metals, such as zinc, while being protective of Ohio’s water quality.

If Ohio EPA does not think it feasible to move to IMZM values then Ohio EPA should consider moving to a longer sampling window, which would better reflect the purpose of using the lower OMZM as the benchmark. Other states (e.g., California, Washington, and Oregon) have moved to much wider 12-hour sampling windows with justified reasoning.

A longer period of time (at least 4 hours) will adequately balance the purpose behind the sampling with the operational demands of a facility, allowing personnel time to grab the sample while not rushing off from the job at hand. Allowing for more than 30 minutes provides for better coordination with operational responsibilities and planning that will improve the quality of the sampling procedure.

As a result, we recommend that Part 6.1.4 be revised to allow up to 12 hours after the measurable rain event to grab the storm water sample. As an alternative, we would recommend that at least 4 hours be provided.

C. Re-evaluation of Benchmarks

In the last GSWP, Ohio EPA included a provision that benchmarks could be re-evaluated based on sampling data collected during the 5-year period of the previous GSWP. At the time of the last GSWP, neither Ohio EPA nor permittees had any sampling data on storm water run-off because such information was not required in the previous GSWP. Now that Ohio EPA has 5-years’ worth of data, that data should be analyzed to identify if any benchmarks are unreasonably achievable and may need to be revised accordingly.

Our review of the data for the past five years indicates that several benchmarks are not realistic, including but not limited to at least the zinc and the Nitrate plus Nitrite Nitrogen benchmarks monitoring concentrations. Based on the zinc numbers, facilities are experiencing benchmark exceedances in the range of a 20-70% failure rate, which means that almost half of Ohio’s industrial activity facilities are experiencing exceedances of the zinc benchmark. As stated previously, zinc is not even present in the industrial activities at most of the facilities, and most zinc is coming from building components at the facility, or from sources beyond the control of the facility.

The problem is compounded when the facility is required to undertake “corrective action” to address the zinc exceedances. What “corrective action” can address this issue short of reconstruction of the building components? It is imperative from a regulatory perspective to avoid a situation of “perpetual non-compliance” even when all reasonable control measures have been undertaken.

As mentioned previously, using the IMZM levels for zinc, as well as for other benchmarks based on OMZM values, would be a great start to addressing this low benchmark issue.

Specific concerns related to Nitrate plus Nitrite Nitrogen benchmark monitoring concentrations are further detailed in Comment E below.

D. Monitoring “Outfalls”

There is confusion in the field with Ohio EPA inspectors and facility personnel as to what constitutes an “outfall” for purposes of storm water monitoring. There is no definition or guidance in the GSWP as to what is an “outfall.” We recommend that the GSWP include a definition of “outfall” similar to that found in Indiana’s general storm water permit for industrial activity (see IAC 15-6-4). We recommend that the following definition of “outfall” be added to the GSWP:

“Outfall” means the point of discharge from a discernible, confined, and discrete conveyance including a pipe, ditch, channel, tunnel or conduit.

E. Ohio EPA Should Revise the GSWP’s Benchmark Monitoring Reference Values for Nitrate Plus Nitrite Nitrogen

The Draft GSWP establishes sector-specific benchmark monitoring concentrations for Nitrate plus Nitrite Nitrogen for a number of Sectors (including but not limited to Subsector C1 -- Agricultural Chemicals, SIC 2873-2879, except 2874 and 2875). For example, Subsector C1 of Table 8.C-1 is shown below in Table 1 for reference.

Table 1

Table 8.C-1		
Subsector	Parameter	Benchmark Monitoring Concentration
Subsector C1. Agricultural Chemicals (SIC 2873-2879, except 2874 and 2875)	Nitrate plus Nitrite Nitrogen	0.68 mg/L
	Total Lead	Hardness Dependent
	Total Zinc	Hardness Dependent
	Phosphorus	2.0 mg/L

The Nitrate plus Nitrite Nitrogen value above is identical in all Sectors that include this benchmark parameter. These benchmark monitoring parameters, apart from lead, have concentrations that are identical to the benchmark monitoring concentrations presented in the 2015 Multi-Section General Permit developed by USEPA. USEPA’s Fact Sheet associated with the 2015 Multi-Sector General Permit identifies the basis for the benchmark monitoring concentrations, which are summarized below in Table 2.

Table 2
EPA’s Basis for Benchmark Monitoring Concentrations

Parameter	Basis
Nitrate plus Nitrite Nitrogen	National Urban Runoff Program (NURP) median concentration
Total Lead	“National Recommended Water Quality Criteria.” Chronic Aquatic Life Freshwater (EPA-822-F-04-010 2006-CCC)
Total Zinc	“National Recommended Water Quality Criteria.” Acute Aquatic Life Freshwater (EPA-822-F-04-010 2006-CMC)
Phosphorus	North Carolina storm water benchmark derived from NC water quality standards

As summarized in Table 2, although all the other benchmarks are based on water quality criteria, the benchmark for Nitrate plus Nitrite Nitrogen is set using a reference value unrelated to water quality criteria compliance and in fact is unrelated to storm water discharges from industrial facilities (including, in particular, Agricultural Chemical facilities). Specifically, the Nitrate plus Nitrite Nitrogen benchmark is based on the median values from a nationwide assessment of urban runoff, conducted by USEPA between 1979 and 1983, without any reference to Ohio water quality standards.

Ohio EPA has relied upon this 30-year old NURP study without demonstration that this study has relevance under Ohio law or applicability to industrial facilities (and specifically Agricultural Chemical facilities) in Ohio. Ohio EPA has established no record of its evaluation of this historical data or the necessity of such a benchmark parameter (based on a 30-year old data set) to protect water quality or indicate the effectiveness of industrial storm water best management practices (“BMPs”). The NURP values are essentially anthropogenic background values that assume zero discharge of the constituents, a scenario that would not even necessitate a storm water permit to begin with. Additionally, an exceedance of these median NURP levels does not pose any water quality concern and, consequently, should not serve as the basis for triggering enhanced monitoring and BMP evaluation. Such a requirement would go well beyond the authority of the Ohio Water Pollution Control Act, O.R.C. § 6111 et seq.

Accordingly, the proposed benchmark value is arbitrary and capricious and Ohio EPA must revise the Nitrate plus Nitrite Nitrogen benchmark monitoring concentrations, including those in Subsector C1, to meet the standards of Ohio law.

In developing a Nitrate plus Nitrite Nitrogen benchmark value, Ohio EPA needs to consider the concentration of Nitrate plus Nitrite Nitrogen expected due to natural conditions as well as incidental increases in concentration attributed to the type of industrial facilities being regulated, where such facilities have implemented reasonable and appropriate BMPs and do not impair the designated uses of the receiving stream. As described in Section 6.2.1 of the Draft GSWP, benchmark monitoring data are for the permittee's use to determine the overall effectiveness of control measures and to assist the permittee in knowing when additional corrective action(s) may be necessary to comply with the control measures and best management practices. We believe that the proposed Nitrate plus Nitrite Nitrogen concentration is so stringent that it would not serve as a functional threshold for evaluating control measures or BMP performance in Ohio. This belief is further supported by the Nitrate plus Nitrite Nitrogen data collected by Ohio during the last GSWP permit cycle. The median Nitrate plus Nitrite Nitrogen concentration was 0.66 mg/L, just slightly below the benchmark concentration of 0.68 mg/L. Therefore, nearly half the Nitrate plus Nitrite Nitrogen results achieved by the regulated community resulted in benchmark exceedances. Additionally, this data set included data collected by all Sectors, and does not represent the higher values reasonably and appropriately expected from Agricultural Chemical facilities covered under Section C1.

Without these adjustments, the Draft GSWP will not be consistent with Ohio law and industrial facilities covered under the GSWP will needlessly and unnecessarily embark on enhanced monitoring campaigns and costly documentation that pollutant reductions are not technologically available and economically practicable and achievable in light of best industry practice.

F. In Addition, and Consistent With Other State General Permits, the GSWP Should Be Revised to Include a Provision for Demonstrating Alternative Benchmark Concentrations

OMA requests that Ohio EPA add a provision to the Draft GSWP for permittees to have the option to develop alternative benchmark concentrations for Ohio EPA review. If authorized, the alternative benchmark concentration would be in lieu of the default benchmark concentrations listed in the Draft GSWP. For Ohio EPA's convenience, OMA has included draft language below. This language is based off of the alternative benchmark analysis, which has been a component of the Georgia GSWP since 2012.

Proposed Language, Section 6.2.1.2, new third paragraph:

Permittees have the option of establishing their own alternative benchmark for any or all of the sector-specific benchmark pollutants. Alternative benchmarks shall be for the same pollutants as the benchmarks in this permit. An alternative benchmark must be documented in the SWPPP, which must contain any supporting data used to develop the alternative benchmark, and submitted to Ohio EPA. Unless notified by the Ohio EPA in writing to the contrary within 90 days of Ohio EPA's receipt of the alternative benchmark submittal, permittees who submit such documentation are authorized to use the alternative benchmark for discharge of storm water associated with industrial activity under the terms and conditions of this permit. An alternative benchmark shall be based on the following:

- i. A study by qualified person(s) published within 5 years of the effective date of this permit that establishes the industry standard; or
- ii. A site-specific study by a professional engineer registered in the State of Ohio. The study must be signed, dated and sealed; or
- iii. Ohio's Water Quality Standards or EPA's Water Quality Criteria value multiplied by the ratio of the combined drainage areas for the receiving waterbody and the storm water discharge to the drainage area for the storm water discharge. The value of this ratio shall not be less than one (1) nor greater than one hundred (100). If the facility is in one of the industrial sectors subject to benchmark concentrations that are hardness-dependent, include in the SWPPP with the first benchmark result a hardness value, established consistent with the procedures in Appendix J, which is representative of the storm water discharge combined with the receiving waterbody.
- iv. Use of alternative benchmarks cannot cause or contribute to an exceedance of a Water Quality Standard.

This alternative benchmark provision would allow regulated parties to use either the default benchmark values as the target reference for BMP evaluation, or to develop one of these specific parameters to allow for a more thorough, detailed and accurate evaluation of BMPs. Because many of the benchmark parameters in the Draft GSWP

are equal to the in-stream water quality standards, a value far more stringent than required by law, the alternative benchmark provisions would ensure that regulated facilities are not required to implement unnecessary BMPs. Without such an alternative benchmark provision, the Draft GSWP would impose arbitrary and capricious requirements by imposing continuous BMP evaluations where they are not necessary to maintain water quality standards.

G. Remaining References to Section 4.3

Though Section 4.3 regarding comprehensive site inspections was removed, there remain some references to Section 4.3, as follows which should be corrected:

- Section 8.D.3.1 (page 44)
- Section 8.E.4.1 (page 46)
- Section 8.J.8.1 (Page 58)

The OMA appreciates the opportunity to comment on the GSWP. We look forward to the Agency's incorporation of our recommendations in the final GSWP (OHR000006). If Ohio EPA has any questions regarding the foregoing, please do not hesitate to contact me or OMA's environmental counsel, Frank Merrill at Bricker & Eckler LLP (614-227-8871).

Regards,



Robert A. Brundrett

Director, Public Policy Services
rbrundrett@ohiomfg.com

cc: Frank L. Merrill, Esq.
Julianne Kurdila



January 17, 2017

VIA HAND DELIVERY

Ohio Environmental Protection Agency
 Division of Surface Water – Permits Processing Unit
 50 West Town Street, Suite 700
 P.O. Box 1049
 Columbus, OH 43216-1049

Re: **Written Comments to Ohio's General Permit for Storm Water Discharges Associated with Industrial Activity (NPDES Permit No. OHR000006)**

Dear Sir/Madam:

Pursuant to Ohio EPA's Public Notice, issued on November 24, 2016, the undersigned business associations are hereby providing Ohio EPA with written comments to Ohio's General Permit for Storm Water Discharges Associated with Industrial Activity ("GSWP"). We appreciate the opportunity to formally comment on the GSWP and look forward to your response.

Exemption for "Non-Industrial" Pollutant Sources

We appreciate the Agency's recognition of neighboring facility's storm water run-on and the provision included in the permit which allows a permittee to document and account for these common situations.

Ohio EPA should also amend the permit to ensure that it allows for the recognition of "natural background pollutants" in determining whether a benchmark has been exceeded; there is no likewise recognition for "non-industrial" pollutant sources, which are commonly part of a facility's building materials. These sources are present with or without industrial activity, at all industrial sites regardless of their SIC codes or whether exempted or not. Because of this, the permit should include a section allowing these sources to be deducted for purposes of determining benchmark exceedance, similar to the "neighboring run-on provision."

Sampling after Measurable Storm Event

The GSWP continues to require that a grab sample from a discharge resulting from a measurable storm event be collected within the first 30 minutes of a measurable storm event ("first flush").

A longer period of time will adequately balance the purpose behind the sampling with the operational demands of a facility, allowing personnel time to grab the sample while not rushing off from the job at hand for no real purpose. Other states (e.g., California, Washington, and

Oregon) have moved to much wider 12-hour sampling windows with justified reasoning. We recommend Ohio follow the precedent set by the western states to allow up to 12 hours after the measurable rain to take the sample. As a result, we recommend that Part 6.1.4 be revised to allow up to 12 hours after the measurable rain event to grab the storm water sample. As an alternative, we would recommend that at least 4 hours be provided.

Re-evaluation of Benchmarks

In the last GSWP, Ohio EPA included a provision that benchmarks could be re-evaluated based on sampling data collected during the five-year period of the previous GSWP. At the time of the last GSWP, neither Ohio EPA nor permittees had any sampling data on storm water run-off because such information was not required in the previous GSWP. Now that Ohio EPA has five-years' worth of data, that data should be analyzed to identify if any benchmarks have been inappropriately established. We would appreciate seeing an Ohio EPA analysis determining that the benchmarks included in the proposed GSWP are reasonable.

Since Ohio EPA now has five-years' worth of established, verifiable data for storm water run-off from industrial activities, this data should be used to establish statistically significant levels of benchmark exceedances that warrant or need control measures, which would be an improvement and advancement on the current methodology of using stagnant benchmarks to dictate the need in every situation for further control measures.

Monitoring "Outfalls"

Due to confusion as to what constitutes an "outfall" for purposes of storm water monitoring, we recommend that the GSWP include a definition of "outfall" similar to that found in Indiana's general storm water permit for industrial activity (see IAC 15-6-4).

Ohio EPA Should Revise the GSWP's Benchmark Monitoring Reference Values for Nitrate plus Nitrite Nitrogen

The Draft GSWP establishes sector-specific benchmark monitoring concentrations for Nitrate plus Nitrite Nitrogen for a number of sectors.

Nitrate plus Nitrite Nitrogen is set using a reference value unrelated to water quality criteria compliance and, in fact, unrelated to storm water discharges from industrial facilities (including, in particular, Agricultural Chemical facilities). Ohio EPA must consider the concentration of Nitrate plus Nitrite Nitrogen expected due to natural conditions as well as incidental increase in concentration attributed to the type of regulated industrial facilities.

In Addition, and Consistent With Other State General Permits, the GSWP Should Be Revised to Include a Provision for Demonstrating Alternative Benchmark Concentrations

OMA requests that Ohio EPA add a provision to the Draft GSWP for permittees to have the option to develop alternative benchmark concentrations for Ohio EPA review. If authorized, the alternative benchmark concentration would be in lieu of the default benchmark concentrations listed in the Draft GSWP. We recommend this be patterned after the successful Georgia model.

This alternative benchmark provision would allow regulated parties to use either the default benchmark values as the target reference for best management practice (BMP) evaluation, or to develop one of these specific parameters to allow for a more thorough, detailed and accurate evaluation of BMPs.

We appreciate the opportunity to comment on the GSWP.

Sincerely,



Director, Public Policy Services
The Ohio Manufacturers' Association



Director, Energy and Environmental Policy
Ohio Chamber of Commerce



President
Ohio Chemistry Technology Council



12/21/2016

Karen Hale
Ohio Environmental Protection Agency, DERR
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049
karen.hale@epa.ohio.gov

Re: Interested Party Review – Draft Ohio-Specific Universal Waste Rules

Dear Ms. Hale,

The Ohio Manufacturers' Association (OMA) is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry and in every county of Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

The OMA appreciates the opportunity to comment on Ohio EPA's draft rules adding Ohio-specific wastes to Ohio EPA's Universal Waste rules. The OMA has a few comments to submit regarding the draft rules and rule modifications.

Waste Management Standards and Storage

The rule provisions in OAC 3745-273-33(E)(1) and OAC 3745-34(F) pertaining to management and labeling of aerosol containers allow for storage of aerosol containers in "a cabinet, hopper, or container." A cabinet is therefore recognized as an acceptable manner of storage that "prevents releases of any universal waste or any component of a universal waste to the environment" as it pertains to aerosol containers. OAC 3745-273-33(E). However, the rule provisions pertaining to universal waste batteries and lamps do not similarly allow for storage of batteries and lamps in a cabinet, even though cabinet would be well-suited for storage of these universal wastes as well. OAC 3745-273-33(A)(1), (D)(1).

A cabinet holding universal waste batteries or lamps can be better secured to prevent releases or damage to the waste containers than a container alone. A closed and labeled cabinet containing batteries or lamps, rather than, for example, individual boxes of batteries or lamps, would in some scenarios be easier to manage. Lamps and batteries are collected and placed in containers over the course of months, often by multiple individuals. It can be difficult to ensure that box ends remain fully closed. Moreover, the original packaging of boxes for new lamps is often used for lamp collection. These boxes are typically glued or stapled shut, and there are ends that often do not stay fully closed. Furthermore, purchased tubes for lamp collection can deform into an oval shape if left on their side, making it extremely difficult to get the lid back on the box. Placing the box upright,

especially for 8 foot bulbs, creates other issues and may even subject the box to getting dropped.

For these reasons, “cabinet or other unit” should be added to the provisions for storage of batteries and lamps, to reflect the similar provision already included for aerosol containers. Suggested changes have also been made to ensure consistency between OAC 3745-273-33 and -34. The suggested changes have been made in redline to the enclosed versions of draft OAC 3745-273-33(A)(1), (D)(1), and (E)(1), and OAC 3745-273-34(A), (E), and (F) as they pertain to large quantity handlers. Changes should similarly be made to OAC 3745-273-13(A)(1), (D)(1), and (E)(1), and OAC 3745-273-14(A)(1) and (E) as they pertain to small quantity handlers.

Interstate Transport of Universal Waste

The OMA further requests clarification of the rules pertaining to interstate transport of universal wastes. If a facility manages an Ohio-specific universal waste and sends it for recycling to another state, can this be managed as a universal waste? Are the requirements set forth in OAC 3745-273-39 the only such requirements for tracking of this waste? For example, with universal waste paint waste and paint-related waste, if another state has not adopted provisions similar to Ohio to treat such wastes as universal wastes, but rather, regulates paint waste and paint-related waste as a hazardous waste, what rule provisions would apply to such scenario? How would paint waste and paint-related waste be regulated if another state has not adopted provisions similar to Ohio to treat such wastes as universal wastes, but rather has adopted the federal provisions for solid waste set forth in 80 FR 1694, and if such paint waste or paint-related waste meets the Ohio definition for universal waste but does not meet the federal definition for solid waste applicable in the other state? The OMA would appreciate clarification of scenarios of this nature.

Labeling or Marking Standards

The rule changes applicable to how universal wastes must be labeled present a concern, as these new requirements differ from the federal requirements. Many facilities use pre-printed universal waste labels that comply with the federal requirements for labeling of universal waste, which are acceptable in all other states. The Ohio-specific labeling changes will now consequently result in a different labeling requirement than that used by the majority of states. OMA requests that OAC 3745-273-14 and OAC 3745-273-34 be modified to include the option to use either the federally-accepted label phrases or the Ohio-specific phrases.

Management Standards

The management standards set forth in OAC 3745-273-89 prohibit mixtures of universal waste and other waste to be managed as universal waste. See OAC 3745-273-89(C)(2)(c). While the definition of paint-related waste set forth in OAC 3745-273-09(M) is broad, the wording of OAC 3745-273-89(C)(2)(c) leaves confusion as to the scope of what is included. OMA believes that paint overspray captured on filters and PPE, wipes, cleaners, and solvents mixed with paint fall within the definition of paint-related waste in OAC 3745-273-09(M). Such wastes should not be considered mixtures of universal and other waste, and should be eligible for management as universal waste.

Puncturing, Shredding, or Crushing Containers of Paint

The current rules in OAC 3745-273-13(G)(10) and -33(G)(10) allow for the use of commercially available equipment specifically designed to puncture, shred, or crush and empty the paint containers within an enclosed compartment or hopper. However, some handlers perform these same actions using noncommercial equipment (for example, custom-built equipment) that is equally as effective. The OMA therefore requests that OAC 3745-273-13(G)(10) and -33(G)(10) be broadened to allow for use of noncommercial equipment in addition to commercially available equipment.

Additionally, OAC 3745-273-13(G)(10) and -33(G)(10) should be broadened to allow for handlers to open, scrape, and drain the paint containers, in addition to puncturing, shredding, or crushing. This addition is necessary to allow handlers to segregate the coatings into colors to facilitate recycling of the paint. The OMA therefore requests that language be added to allow for handlers to open, scrape, and drain paint containers, in addition to puncturing, shredding, or crushing.

VOCs Emission Control

The provisions for aerosol containers and paint waste and paint-related wastes that require the capture of volatile organic carbons (VOCs) using an air filter should be reconsidered, as such filters would not suffice to capture such emissions for propellant or any substantial VOCs. See OAC 3745-273-13(E)(4) and (G)(10); OAC 3745-273-33(E)(4) and (G)(10). Any such language should be expanded to allow for "other methods approved by the agency," so as to provide an option for VOC control that may be more effective (such as direct to RTO or boiler).

The OMA is grateful to Ohio EPA for expanding the Universal Waste Rule definitions for Ohio. The OMA would further encourage exploration of other opportunities in the future to expand these provisions, such as implementation of U.S. EPA's RCRA rules for definitions of solid waste (as published in the January 13, 2015 Federal Register, 80 FR 1694). This would have the effect of encouraging recycling and reducing regulatory costs to Ohio's manufacturers.

As Ohio EPA continues to develop these rules please include the OMA in these developments, and OMA environmental counsel Frank L. Merrill at Bricker & Eckler. We look forward to working with Ohio EPA on this issue.

Regards,



Rob Brundrett
Director, Public Policy Services

Encl.

cc: Frank L. Merrill, Esq.

NEW

3745-273-33 **Waste management- standards for large quantity handlers of universal waste.**

(A) Universal waste batteries. A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container, cabinet, tank, or other unit. The container, cabinet, tank, or other unit shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct any or all of the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

(a) Sorting batteries by type.

(b) Mixing battery types in one container.

(c) Discharging batteries so as to remove the electric charge.

(d) Regenerating used batteries.

(e) Disassembling batteries or battery packs into individual batteries or cells.

(f) Removing batteries from consumer products.

(g) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed in paragraph (A)(2) of this rule, shall determine whether the electrolyte or other waste exhibit a characteristic of hazardous waste identified in rules 3745-51-20 to 3745-51-24 of the Administrative Code.

- (a) If the electrolyte or other waste exhibit a characteristic of hazardous waste, the electrolyte or other waste shall be managed in compliance with all applicable requirements of Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, and 3745-270 of the Administrative Code. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to Chapter 3745-52 of the Administrative Code.
 - (b) If the electrolyte or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable law.
- (B) Universal waste pesticides. A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

 - (1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
 - (2) A container that does not comply with paragraph (B)(1) of this rule, provided that the unacceptable container is overpacked in a container that does comply with paragraph (B)(1) of this rule.
 - (3) A tank that complies with rules 3745-66-90 to 3745-66-101 of the Administrative Code, except for paragraph (C) of rule 3745-66-97, rule 3745-66-100, and rule 3745-66-101 of the Administrative Code.
 - (4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
- (C) Universal waste mercury-containing equipment. A large quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

 - (1) A large quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall

be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

- (2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler does all of the following:
- (a) Removes and manages the ampules in a manner designed to prevent breakage of the ampules.
 - (b) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage).
 - (c) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that complies with rule 3745-52-34 of the Administrative Code.
 - (d) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that complies with rule 3745-52-34 of the Administrative Code.
 - (e) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable occupational safety and health administration (OSHA) exposure levels for mercury.
 - (f) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers.
 - (g) Stores removed ampules in closed, non-leaking containers that are in good condition.
 - (h) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.
- (3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler does the following:

- (a) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment.
- (b) Follows all requirements for removing ampules and managing removed ampules under paragraph (C)(2) of this rule.

(4) Mercury and clean-up residues.

- (a) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in the original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in rules 3745-51-20 to 3745-51-24 of the Administrative Code:
 - (i) Mercury or clean-up residues resulting from spills or leaks.
 - (ii) Other waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).
- (b) If the mercury, residues, or other waste exhibit a characteristic of hazardous waste, the mercury, residues, or other waste shall be managed in compliance with all applicable requirements of Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, and 3745-270 of the Administrative Code. The handler is considered the generator of the mercury, residues, or other waste and shall manage the mercury, residues, or other waste in compliance with Chapter 3745-52 of the Administrative Code.
- (c) If the mercury, residues, or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable law.

(D) Universal waste lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- (1) A large quantity handler of universal waste shall contain any lamp in containers, ~~cabinets, or~~ packages, or other units that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers, ~~cabinets, and~~ packages, or other units shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

- (2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps, and shall lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.
- (E) Universal waste aerosol containers. A large quantity handler of universal waste shall manage universal waste aerosol containers in a way that prevents releases of any universal waste or any component of a universal waste to the environment, as follows:
- (1) A large quantity handler of universal waste shall store aerosol containers in a cabinet, hopper, ~~package, or~~ container, or other unit that is structurally sound and compatible with the contents of the containers and that lacks leakage.
- (2) A large quantity handler of universal waste who initially collects aerosol containers at universal waste satellite accumulation areas prior to moving the aerosol containers to a specified accumulation area for storage, puncturing, or shipment off-site shall move the satellite accumulation container to the specified accumulation area once the satellite accumulation container is full.
- (3) A large quantity handler of universal waste shall immediately empty a leaking aerosol container of the container's contents in accordance with paragraph (E)(4) of this rule or shall individually overpack the leaking aerosol container in a container having enough absorbent material to absorb the leaking contents of the aerosol container.
- (4) A large quantity handler of universal waste may puncture, crush, or shred an aerosol container to remove and collect the contents of the aerosol container, rendering the container empty, provided the handler does the following:
- (a) The large quantity handler of universal waste shall use commercially available equipment specifically designed to puncture, crush, or shred and empty aerosol containers within an enclosed compartment.
- (b) The large quantity handler of universal waste shall use puncturing, crushing, or shredding equipment that has sufficient processing

3745-273-34 Labeling/markings Labeling or marking- standards for large quantity handlers of universal waste.

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified in this rule follows:

- (A) Universal waste batteries (i.e., each battery), or a container, ~~cabinet, or tank, or other unit~~ in which the batteries are contained, must be labeled or marked clearly with any ~~one~~ of the following phrases: "Universal Waste-Battery(ies), Batteries" or "Waste Battery(ies), Batteries" or "Used Battery(ies) Batteries.";
- (B) A container (or multiple container package unit), tank, or transport vehicle or vessel in which recalled universal waste pesticides as described in paragraph (A)(1) of rule 3745-273-03 of the Administrative Code are contained must be labeled or marked clearly with the following:
- (1) The label that was on or accompanied the product as sold or distributed; and.
- (2) The words "Universal Waste- Pesticide(s) Pesticides" or "Waste-Pesticide(s) Pesticides.";
- (C) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in paragraph (A)(2) of rule 3745-273-03 of the Administrative Code are contained must be labeled or marked clearly with the following:
- (1) Labeling.
- (a) The label that was on the product when purchased, if still legible;
- (b) If using the labels described in paragraph (C)(1)(a) of this rule is not feasible, the appropriate label as required under the department of transportation regulation 49 CFR Part 172;
- (c) If using the labels described in paragraphs (C)(1)(a) and (C)(1)(b) of this rule is not feasible, another label prescribed or designated by the pesticide collection program; and.
- (2) The words "Universal Waste- Pesticide(s) Pesticides" or "Waste-Pesticide(s) Pesticides."
- (D) Universal waste mercury-containing equipment and mercury-containing thermostats.

- (1) Mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, ~~must~~shall be labeled or marked clearly with any of the following phrases: "Universal Waste- Mercury-Containing Equipment;" or "Waste Mercury-Containing Equipment;" or "Used Mercury-Containing Equipment."
- (2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats ~~must~~shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury ~~Thermostat(s), Thermostats~~" or "Waste Mercury ~~Thermostat(s), Thermostats~~" or "Used Mercury ~~Thermostat(s), Thermostats~~."
- (E) Each lamp or a container, ~~cabinet, or~~ package, or other unit in which such lamps are contained ~~must~~shall be labeled or marked clearly with any one of the following phrases: "Universal Waste- ~~Lamp(s), Lamps~~" or "Waste ~~Lamp(s), Lamps~~" or "Used ~~Lamp(s), Lamps~~."
- (F) Each universal waste aerosol container, multiple aerosol container package, cabinet, hopper, or other unit in which the aerosol containers are accumulated shall be labeled with words that identify the contents (for example but not limited to: universal waste aerosol containers, used aerosol containers, recyclable aerosol containers). This provision also applies to collection units used in universal waste satellite accumulation areas.
- (G) Each container or tank of universal waste antifreeze used to accumulate antifreeze shall be labeled with words that identify the contents of the container or tank (for example, used antifreeze, spent antifreeze, universal waste antifreeze, recyclable antifreeze).
- (H) Paint and paint-related wastes.
- (1) Each container, tank, multiple container package or hopper in which universal waste paints are accumulated shall be labeled with words that identify the contents of the container, tank, transport vehicle, multiple container package or hopper (for example but not limited to, universal waste paint, paint waste or recyclable paint).
- (2) Each container or tank in which universal paint-related wastes are accumulated shall be labeled to identify the contents of the container or tank (for example but not limited to: paint-related universal waste, paint-related waste, paint wastes or a general description of the waste- paint rags, used paint stripper or used paint blast media).

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]

Effective: Set UW date

Five-year review date: Exempt, Set UW review

Promulgated under: 119.03

Rule amplifies: 3734.12

Statutory authority: 3734.12

Prior effective dates: 09/02/1997, 12/07/2004, 09/05/2010



Draft Rules – Permit to Install Program Interested Party Review OAC 3745-42-02, -06, -08, & -11

What does OAC 3745-42 cover?

Ohio Administrative Code (OAC) Chapter 3745-42 covers the requirements for wastewater permits to install (PTIs). The following is a brief description of the rules covered in this rulemaking:

- OAC 3745-42-02 includes the applicability, exemptions and procedures for issuance and modification of permits to install or plan approvals for disposal systems.
- Rule 3745-42-06 contains the procedural and administrative requirements for general permits to install.
- Rule 3745-42-08 contains isolation distance requirements for components of a disposal system to either an occupied building or surface waters of the state.
- Rule 3745-42-11 covers the design and management requirements for holding tanks containing either sewage or industrial waste.

What step is this in the rulemaking process?

This step in Ohio EPA's rulemaking process, required by Ohio Revised Code (ORC) 121.39, is called Interested Party Review. During this step, the Agency makes available draft rules for interested parties for review and comment. This step occurs after the Early Stakeholder Outreach comment period.

Why are these rules under review and what changes are being considered?

Four rules under OAC Chapter 3745-42 have been reviewed and amended pursuant to section 119.032 of the ORC. Ohio EPA is required to review its rules every five years to determine if the rules need to be revisited. The Agency has reviewed the rules and has identified needed changes. The following major changes are being considered:

OAC 3745-42-02

- Update of references and style.
- Update of applicability exemptions. New exemptions, with qualifiers, have been included for: building sewers, sanitary sewer replacement projects, in situ sanitary sewer repairs, repair or replacement of a treatment works component, media or equipment, modifications within existing treatment works infrastructure, disposal systems designed to be a best management practice under a storm water National Pollutant Discharge Elimination System (NPDES) permit, treatment works pilot study, installation of on line monitoring or process control equipment, installation of odor control equipment, remodel or replacement of buildings or laboratories located at a treatment works, and filtration systems, ion exchange systems and oil skimmers on process tanks that serve manufacturing equipment.

Rule 3745-42-06

- Update of references and style.

Rule 3745-42-08

- Update of references and style.

Rule 3745-42-11

- Update of references and style.
- Minor clarifications of rule requirements on prohibitions and restrictions for sewage holding tanks. The rule considers a new allowance of a proprietary, stand alone, self-contained system to be installed, for example, to serve a restroom facility at a park.

How will the draft rules affect the regulated community?

Draft Rules – Permit to Install Program OAC 3745-42-02, -06, -08 & -11

The draft rule revisions will allow the regulated community to have a better understanding of when a permit to install or plan approval is required. By including more detail in the permit to install applicability and exemptions rule (OAC 3745-42-02), the Agency is providing clarity, transparency, and predictability to the regulated community.

What additional information is the Agency seeking?

The Agency wants to hear from interested stakeholders (public, local officials, consultants and PTI applicants) who may be impacted by these rule revisions. General comments and specific factual information are welcome.

In addition to the draft rule amendments, Ohio EPA is also seeking comments and feedback on the draft Common Sense Initiative (CSI) Business Regulation Impact Analysis form, which is being released with these draft rules during interested party review.

How are the amendments formatted in the draft rules?

Text being considered for deletion is struck through; new text being considered is underlined.

What is the rulemaking schedule?

At this time, the Agency is soliciting interested party input on these draft rule revisions. Ohio EPA is required by Section 121.39(D) of the ORC to contact potentially affected parties prior to adopting rule changes. At the close of the interested party comment period, the Agency will review the comments and make necessary changes to the rules. The Agency will then file the proposed rules with the Joint Commission on Agency Rule Review (JCARR), the Legislative Service Commission and the Secretary of the State. At that point, another comment period, including one or more public hearings, will be scheduled. After the close of that public comment period, the Agency will review the comments, make any necessary changes and then adopt the final rules. Ohio EPA expects to file the proposed rules in spring 2017. The final rules could be adopted by summer 2017.

How can I provide input on the draft revisions?

Please submit your comments in one of the following ways:

By email: dsw_rulecomments@epa.ohio.gov

By fax: (614) 644-2745

By postal mail:

Rule Coordinator

Ohio EPA, Division of Surface Water

P.O. Box 1049

Columbus, Ohio 43216-1049

Comments on the draft rules must be received no later than March 13, 2017.

How can I get more information?

Copies of this fact sheet, CSI form and the draft rules are on the Division of Surface Water website at www.epa.ohio.gov/dsw/dswrules.aspx.

For more information about the draft rules, please contact Mark Stump at (614) 644-2028 or mark.stump@epa.ohio.gov.



Paul Braun
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Columbus, Ohio 43216-1049
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Re: Draft Rule Language Available for Comment – Startup, Shutdown or Malfunction
Scheduled Maintenance Rules

Dear Mr. Braun,

The Ohio Manufacturers' Association ("OMA") is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry and in every county of Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

The OMA respectfully submits the following comments in response to amended Ohio Administrative Code Rules 3745-14-11, 3745-15-01, 3745-15-06, and 3745-17-07, Ohio's startup, shut down or malfunction ("SSM") rule amendments in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods (80 Fed. Reg. 33,840 (June 12, 2015)).

The OMA submitted comments in response to Ohio EPA's solicitation of early stakeholder input in July 2016 and comments in opposition to U.S. EPA's Proposed SSM SIP Call in May 2013. Those comments are incorporated and attached hereto. The OMA appreciates the opportunity to participate in this process.

Regards,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett
Director, Public Policy Services

Encl.

cc: Frank L. Merrill, Esq.
Julianne Kurdila, Committee Chair

**Comments of
The Ohio Manufacturers' Association**

**In Response to Ohio EPA's Amended Startup, Shutdown
or Malfunction and Scheduled Maintenance Rules
and Business Impact Analysis**

December 14, 2016

I. Comments to Draft Business Impact Analysis Form

The OMA first looks to the Draft Business Impact Analysis and offers limited comments in the following areas.

Development of the Regulation

Number 10: "What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the agency consider regulatory alternatives?"

Here, Ohio EPA states that "all suggested alternatives were considered before the current draft was prepared." The OMA would ask that Ohio EPA consider expanding this response to include a more explicit answer to the question posed. Namely, what alternative "specific provisions" were considered by Ohio EPA; how it incorporated, or chose not to incorporate, draft language from the industry and trade groups referenced; and what regulatory alternatives were or were not considered. Ohio EPA indicates that "suggested alternatives were considered," but does not elaborate on those alternatives, the OMA asks that it do so for the Common Sense Initiative's benefit.

Adverse Impacts to Business

Number 14: "Provide a summary of the estimated cost of compliance with the rule."

Ohio EPA informs that "[t]here should be no additional costs associated with the changes in this rulemaking if the changes are accepted by U.S. EPA as part of Ohio's SIP." The OMA would note that any change to current regulations will impact their constituent base. Namely, distributing additional information related to maintaining compliance with any changes to the rules already in place. General uncertainty as it relates to best practices during period of SSM is a quantifiable cost to business that should be accounted for in this calculation. Of note is new regulation related to opacity that was not previously correlated with particulate matter NAAQS attainment or nonattainment, but rather as an indicator of proper orientation and maintenance of particulate control equipment. Many of the regulations to be amended, such as this one, have been in place and approved by U.S. EPA as far back as the early 1980s. *See, e.g.*, OAC 3745-15-06(A)(3), approved October 1982. Changing systems will likely result in additional costs of compliance, at least as far as information dissemination and practice adaptation are concerned. Regulated entities will be the ones who feel the impact of the rule change because of increased exposure to enforcement from malfunction events and the need to carefully review permits and

emission limits to identify those that need to be adjusted to account for startup and shutdown operations.

II. General Areas of Concern Regarding Ohio EPA's Rule Amendments

Setting aside the general legal invalidity of the SSM SIP Call, the OMA has a few overarching concerns with Ohio EPA's rulemaking on this topic. These broader areas of concern are outlined as follows:

1. U.S. EPA's SSM SIP Call is arbitrary and unlawful. Ohio EPA and others are rightfully challenging the SSM SIP Call's facial invalidity before the D.C. Circuit (Case No. 15-1166, oral argument not yet assigned). Any challenges to the SSM SIP Call as specifically applied to Ohio must await potential appeals to the Sixth Circuit after final action by U.S. EPA specific to Ohio in response to the SIP Call. Ohio should continue to respond to the SIP Call in a manner that does not undermine Ohio's recourse to judicial review of U.S. EPA's actions. Ohio should also try to minimize the harm and disruption resulting from U.S. EPA's improvident action.
2. SIP requirements applicable during SSM conditions should never compromise or take precedence over safety.
3. Any prejudicial or unwarranted rule changes in response to the SSM SIP Call should take effect only upon full approval by U.S. EPA. Moreover, those rule changes should cease to be effective if any court, future Congress, or future U.S. EPA negates the SSM SIP Call's requirements.
4. As previously stated in the OMA's July 28, 2016 response to Early Stakeholder Input (attached), U.S. EPA's objections to OAC 3745-17-07(A)(3)(c) and 3745-17-07(B)(11)(f) (which currently exclude SSM periods from the opacity provisions applicable to normal source operations) have no rational basis. U.S. EPA's New Source Performance Standards have contained the same exclusions since 1971. Ohio has successfully attained and maintained the NAAQS for particulate matter with these exclusions in place. There is no correlation between the level of opacity—the degree to which an emission of air contaminants obstructs the transmission of light—from an individual stack and the concentration of regulated particulate matter in the ambient air. There is no ambient air quality standard for opacity. Moreover, a change such as this would require a demonstration of compliance with the criteria set forth in Clean Air Act § 110 and R.C. 3704.03(D) and (E). In the absence of any such demonstration, Ohio EPA should not have sought to make changes to OAC 3745-17-07(A)(3)(c) or 3745-17-07(B)(11)(f). The OMA would ask that Ohio EPA reconsider its decision to amend OAC 3745-17-07.
5. The OMA appreciates and recognizes that Ohio EPA adopted many of their suggestions as it relates to the definition of "Malfunction" in OAC 3745-15-01(P). The OMA does remain concerned, however, that the majority of the definition suffers from being too specific, while also too vague. The degree of uncertainty as it relates to the draft rule

changes will dictate the regulated community's ability to understand the nature and cost of the adverse impacts of the rulemaking on their day-to-day operations. The OMA asserts that their more streamlined suggestion for language in OAC 3745-15-01(P) (highlighted below) would provide the same regulatory impact Ohio EPA seeks, while also furthering the goals of Executive Order 2011-01K and providing accessible standards to those expected to comply with the new rulemaking requirements.

6. The OMA recognizes and appreciates that OAC 3745-15-06(E)(1)-(4) "Alternative emissions limits applicable to operations during period of startup, shutdown, malfunction, and scheduled maintenance" accommodates its previous request that "where an applicable New Source Performance Standard or NESHAP already provides work practice or performance standards for malfunction events, the rule should provide the option to follow those federal standards." The OMA would suggest that perhaps the title of this Rule provision reflect its purpose more clearly to the regulated community.

III. Specific Rule Text Comments

The OMA respectfully recommends that Ohio EPA's final draft rule changes in response to the SSM SIP Call incorporate the following revisions and comments to the existing rules in question (the recommended changes are underlined in red for clarity):

2745-15-06 Definitions (as proposed)

(P) "Malfunction" means a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, process monitoring equipment or a process to operate in a normal or usual manner. Equipment failures that are caused in part or whole by poor maintenance or careless operation are not malfunctions.

Comment:

The above draft rule language deviates from that proposed by the OMA in their July 28, 2016 Comments. The first half of the rule mirrors the language previously proposed by the OMA ("Malfunction" means a sudden, infrequent, and not reasonably preventable failure . . ."), however the latter half of the draft rule language does not. In an effort to provide clarity and certainty, the OMA proposes the following language as it relates to this rule:

(P) "Malfunction means a sudden, infrequent, and not reasonably preventable failure of any emission source, air pollution control equipment, or related facility air pollution control equipment, process equipment, process monitoring equipment or a process to operate in a normal or usual manner. Equipment failures that are caused in part or whole by poor maintenance or careless operation are not malfunctions."

3745-15-06 Malfunction of equipment; scheduled maintenance; reporting.

Below please find select comments as to certain provisions in OAC 3745-15-06.

3745-15-06(B)(1) (as proposed)

In the event that any emission source, air pollution control equipment, or related facility ~~breaks down in such a manner as to cause~~ causes the emission of air contaminants in ~~violation of any applicable law~~ excess of the applicable emission standard as a result of a malfunction, the person responsible for such source, equipment or facility shall immediately notify the Ohio environmental protection agency district office or delegate agency of such ~~failure or breakdown~~ malfunction. If the malfunction continues for more than ~~seventy-two~~ twenty-four hours, the source owner or operator shall provide a written statement to the director within ~~two weeks~~ one week of the date the malfunction occurred.

Comment:

The above language adopts many of the suggestions put forth by the OMA. Four such omissions, however, would improve upon the language as presented.

- (1) The use of “immediately” regarding notification requirements would be better served by the language originally suggested by the OMA: “as soon as practicable.” This requirement is more realistic when considering facilities dealing with perhaps sudden changes to previously functioning equipment. It also serves the purpose of prioritizing the safety of those encountering a malfunction.
- (2) The OMA and its constituents are not served by the reduction in time for providing a written statement to the director regarding the malfunction, from two weeks to “one week of the date the malfunction occurred” as proposed by Ohio EPA. There is no justification for the change in this requirement, and it is not necessary to effectuate the rule amendment, moreover it is unduly burdensome. The OMA proposes that, as a more definite time period, Ohio EPA utilize the standard of “within one week of the date the malfunction ended.” This is a certain period of time that would provide ease of compliance to OMA members.
- (3) Finally, the OMA would ask that Ohio EPA consider including its suggested extension provision in the draft rule. The OMA proposes that Ohio EPA add the following sentence: “The director may extend the deadline for providing the written statement for good cause.” In bringing the written report requirement down from two weeks to one week, and not explicitly providing for a means to seek a reasonable extension, Ohio EPA may hamstring the regulated community and cause entities to unnecessarily run afoul of this provision. The OMA would ask that Ohio EPA reconsider both concepts in its final rule.

Incorporating these concepts, the OMA suggests the revised rule read as follows:

- (1) ~~In the event that any emission source, air pollution control equipment, or related facility causes the emission of air contaminants in excess of the applicable emission standard as a result of~~ If a malfunction causes, or in the judgment of the owner or operator may cause, the emission of air contaminants in violation of any applicable excess of the applicable emission standard as a result of a malfunction potential to emit of such source, as defined in OAC 3745-31-01, expressed in pounds per hour, the person responsible for such source, equipment or facility the owner or operator shall notify the Ohio environmental protection agency district office or delegate agency of such failure or breakdown malfunction as soon as practicable. If the malfunction continues for more than ~~seventy-two hours~~ twenty-four hours, the ~~source~~ owner or operator shall provide a written statement to the director within one week of the date the malfunction ~~occurred~~ ended. The director may extend the deadline for providing the written statement for good cause.

3745-15-06(B)((1)(b)-(c) (as proposed)

- (b) The estimated or actual duration of breakdown.
- (c) The nature and estimated quantity of air contaminants which have been or may be emitted into the ambient air during the breakdown period.

Comment:

The OMA would suggest, for the purposes of consistency, that instead of “breakdown” these provisions utilize the word “malfunction” as it is used throughout the rest of the rule as amended.

3745-15-06 (F) (as proposed)

(F) During routine maintenance of add-on pollution controls, an owner or operator of a coke oven battery is exempt from the provisions of any permit-to-install or permit-to-install and operate issued under Chapter 3745-31 of the Administrative Code or any permit-to-operate issued under Chapter 3745-77 of the Administrative Code if all of the following occur:

- (1) Routine maintenance of the add-on control in any ~~rolling twenty-four month period~~ calendar year does not exceed ~~fourteen~~ twenty-one days.
- (2) Routine maintenance is conducted in a manner consistent with good air pollution control practices for minimizing emissions.

(3) A report is submitted to the director ten days prior to the start of the routine maintenance (if ten days cannot be provided, the report must be submitted as soon as practicable) containing an explanation of the schedule of the maintenance.

Comment:

The OMA appreciates Ohio EPA's efforts to address sources where a complete source shutdown may result in damage to the air pollution source or is otherwise impossible or impractical. Coke ovens are such sources. However, as evidenced by decades of routine maintenance on coke oven sources, more than 14 days is needed to conduct maintenance.

The sulfur removal system is complex and requires enough time to meet **safe** purge conditions. For instance, one member has 3 separate areas that need maintenance activities during the outage, and it is not as simple as flipping a switch. Rather, the system requires 10 days just to shut down (isolate, purge) and start up (fill, heat). Maintenance activities typically take 10 – 14 days. Anything shorter than 21 days could impact the reliability of the air pollution control system and cause more frequent outages in the year.

The OMA suggests 21 days rather than 14 for routine maintenance of coke oven add-on pollution control systems, calendar year rather than rolling twenty-four month period, and flexibility on the report if routine maintenance is conducted earlier than anticipated because circumstances dictate the need.

IV. Conclusion

The OMA appreciates the opportunity to comment on Ohio EPA's proposed draft rulemaking. As Ohio EPA continues to develop these rules please include the OMA in these developments, and our environmental counsel Frank L. Merrill of Bricker & Eckler. The OMA looks forward to working with Ohio EPA on this issue.

**OHIO ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL**

Ohio Administrative Code Rules 3745-14-11,
3745-15-01, 3745-15-06, and 3745-17-07 –
Startup, Shutdown or Malfunction and
Scheduled Maintenance Rules

Interested Party Review
December 14, 2016

**Comments of the Ohio Chemistry Technology Council,
the Ohio Chamber of Commerce, the Ohio Manufacturers' Association,
and API Ohio on Ohio EPA's Draft Rule Language for
the Startup, Shutdown or Malfunction and Scheduled Maintenance Rules**

I. Introduction

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, the Ohio Manufacturers' Association, and API Ohio (the "Commenters") respectfully submit the following comments in response to Ohio EPA's Interested Party Review draft amendments to Ohio's startup, shutdown, and malfunction (SSM) rules in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods.

The Ohio Chemistry Technology Council represents the interests of over 80 chemistry industry-related companies doing business in Ohio. The Ohio Chamber of Commerce represents the interests of over 8,000 member companies, including manufacturers, utilities, and small businesses, in addition to hosting the Ohio Small Business Council. The Ohio Manufacturers' Association represents the interests of over 1,400 member companies to protect and grow Ohio manufacturing. And API is the only national trade association representing all facets of the oil and natural gas industry, which supports 9.8 million U.S. jobs and 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. The Commenters' members are regulated by Ohio's Clean Air Act State Implementation Plan (SIP) and have a direct and substantial interest in the Ohio SIP's SSM provisions.

The Commenters generally support Ohio EPA's response to the SSM SIP Call and endorse the agency's efforts to improve its malfunction reporting rule. The Commenters would recommend modifying the proposed definition of "malfunction" to remove the exclusion for equipment failures caused only in part by poor maintenance or careless operation. They would modify the scheduled maintenance rule to allow owners or operators to continue operating when shutting down would be unsafe. They would further modify the malfunction rule to impose work practice standards during equipment failures. They would expand the availability of alternative emission limits to minor sources. And they would allow the adoption of alternative emission limits that are not equivalent to emission limits applicable during normal operation. The Commenters would also suggest

a variety of non-substantive revisions to the draft rules to make the rules clearer and more consistent. A narrative description of the Commenters' proposed changes follows. A red-line version showing the recommended changes is also attached.

II. Proposed Amendments to Ohio Adm.Code 3745-15-01

A. Substantive Comments

The Commenters generally support Ohio EPA's draft proposed definition of "malfunction." However, Ohio EPA's proposal to exclude "[e]quipment failures * * * caused *in part* * * * by poor maintenance or careless operation" from the definition of malfunction is impractical. Requiring Ohio EPA to determine whether poor maintenance or careless operation played *any* role in causing a malfunction would force Ohio EPA and owners/operators into evidentiary battles over causation. And, if the proposed exclusion leads to a *presumption* of causation – in other words, if future Ohio EPA employees or delegated local air agencies come to presume that any "poor maintenance or careless operation" must have caused, at least "in part," any equipment failure – the exclusion would unfairly prejudice owners/operators.

The "in part" exclusion is also unnecessary. The definition of "malfunction" includes a requirement that the failure not be "reasonably preventable." If "poor maintenance or careless operation" helped cause an equipment failure in part, but the failure still was "not reasonably preventable" for other reasons, then Ohio EPA should still consider the failure a malfunction. Ohio EPA should remove the words "in part" from the proposed definition of "malfunction."

B. Non-Substantive Comments

The Commenters also offer two suggestions for improving the consistency of the definitions in Ohio Adm.Code 3745-15-01.

First, the list of machinery in Ohio EPA's draft definition of "malfunction" is inconsistent with the list in Ohio Adm.Code 3745-15-06(B), the malfunction rule. The proposed definition of "malfunction" pertains to "air pollution control equipment, process equipment, process monitoring equipment [and] a process * * * ." The terms "process equipment," "process monitoring equipment," and "process" are not defined in Ohio Adm.Code Chapter 3745-15. The malfunction rule, in comparison, applies to "any emission source, air pollution control equipment, or related facility * * * ." Ohio EPA should revise the proposed definition for "malfunction" to match the language used in the malfunction rule.

Second, in the existing definition of "owner or operator" (currently at Ohio Adm.Code 3745-15-01(U)), the term "emission source" is redundant. A facility or operation is not a "source" unless it "emits or may emit any air pollutant." Ohio Adm.Code 3745-15-01(X). Thus, all "sources" are "emission sources." Ohio EPA should remove the word "emission" from the definition of "owner or operator."

III. Proposed Amendments to Ohio Adm.Code 3745-15-06

A. Scheduled Maintenance

1. Substantive comments

The Commenters generally support Ohio EPA's draft amendments to Ohio Adm.Code 3745-15-06(A). The draft rule change would eliminate the "Director's discretion" that U.S. EPA has deemed unacceptable and, instead, convert the criteria for the Director's case-by-case authorization to bypass air pollution control equipment for maintenance into mandatory, self-executing "work practice" standards.

However, Ohio EPA's proposed definition of "malfunction" (in Ohio Adm.Code 3745-15-01) contradicts existing subparagraph (A)(1). Currently, if an owner/operator schedules maintenance to prevent a failure of air pollution control equipment that would otherwise occur within two weeks, Ohio Adm.Code 3745-15-06(A)(1) requires the owner/operator to treat that outage as a malfunction. But Ohio EPA has proposed to define "malfunction" as a "sudden, infrequent, and not reasonably preventable failure of air pollution control equipment." Proposed Ohio Adm.Code 3745-15-01(P) (emphasis added). An air pollution control equipment failure that is foreseen and prevented is not a "malfunction" under Ohio EPA's proposed (and appropriate) definition. The Commenters would recommend deleting subparagraph (A)(1).

Under subparagraph (A)(3), Ohio EPA's proposed work practice and notification requirements for scheduled maintenance apply "where a complete source shutdown may result in damage to the source or is otherwise impossible or impractical * * *." The Commenters recommend that Ohio EPA add the words "or unsafe" after "impractical," for obvious and compelling public policy reasons.

Additionally, Ohio EPA should delete proposed subparagraph (A)(6). The work practice standards that Ohio EPA has proposed adding to paragraph (A) would apply in lieu of any otherwise applicable SIP emission limits or control requirements. Compliance with those work practice standards would not be a "deviation" from any emission limit, and it should not be a deviation from any permit term or condition, unless the owner/operator has failed to comply with the notification requirements in paragraph (A).

2. Non-substantive comments

The Commenters would also suggest three additional, non-substantive amendments to Ohio Adm.Code 3745-15-06(A). First, there is an extra period at the end of subparagraph (A)(3)(c). Second, in subparagraphs (A)(4)(a) and (b), Ohio EPA should replace the phrase "shutdown period" with "scheduled maintenance," as it did in the proposed revisions to subparagraph (A)(3)(f). Third, in proposed subparagraph (A)(5), Ohio EPA has unnecessarily converted two simple verbs into lengthier noun phrases. Ohio EPA should revise the beginning phrase "Within five business days of completion of the scheduled maintenance" to read, "Within five business days of completing the scheduled maintenance." And Ohio EPA should revise the phrase "shall provide notification to the director" to read, "shall notify the director."

B. Malfunctions

1. Substantive comments

The Commenters recognize that Ohio Adm.Code 3745-15-06(B) was not part of the SSM SIP Call and that, consequently, Ohio EPA has proposed only minimal amendments to that paragraph. Though EPA has not mandated further amendments to paragraph (B), Ohio EPA has proposed changes to the inextricably interrelated paragraph (C). The Commenters urge Ohio EPA to clarify the ambiguities in both paragraphs and turn the malfunction criteria into work-practice standards, as Ohio EPA has proposed to do with the scheduled maintenance requirements in paragraph (A).

First, Ohio EPA should more clearly articulate the emission threshold for malfunction reporting and work practices so they apply only to malfunctions that cause a meaningful increase in emissions. Ohio EPA should also remove any implication that the owner/operator must determine it has violated the law to satisfy the malfunction reporting obligations. When a malfunction occurs, the operator is unlikely to “immediately” know, or perhaps ever know, the amount of emissions from the source in question, in the units of measure and the compliance averaging time specified in the underlying applicable requirement. The rule-based compliance test method and the form of the compliance obligation can further complicate the assessment. The reporting trigger must therefore necessarily provide for good-faith, informed judgment calls on the part of the operator. Additionally, the emission rate threshold that triggers the duty to report malfunctions should be as clear, simple, and understandable as possible. A trigger that is indeterminable or that leads owners and operators to over-report environmentally insignificant or trivial events serves no useful purpose.

The Commenters suggest the trigger to report a malfunction should be the release (or expected release) of emissions in excess of the source’s potential to emit, expressed in pounds per hour. Put differently, the malfunction notification requirements should kick in when the mass rate of emissions exceeds the lesser of the physically achievable and legally allowable mass rate of emissions, consistent with the familiar definition of potential to emit that Ohio EPA has used for permitting for over four decades. The definition of “potential to emit” in Ohio Adm.Code 3745-31-01(BBBBB) incorporates the limits on allowable emissions in the applicable SIP, and either directly or indirectly caps the lb/hr emission rate for the unit/pollutant combination. This recommended language is generally in line with historical practice, but more clearly expressed.

Tying malfunction reporting to permit limits, as Ohio EPA has proposed to do, is problematic. Emission limitations under which the allowable rate of mass emissions varies with the level of operating capacity or throughput (such as lb/MMBtu, gr/dscf, lbs per ton of process weight rate, or percent reduction emission limits) presuppose normal operation of emission units and control systems. SIP emission limitations that reduce the mass rate of allowable emissions when the source reduces capacity or throughput inherently reduce emissions more than is necessary to attain and maintain the NAAQS. When a rare, unavoidable, non-normal malfunction event occurs, the premise of sliding scale emission limits meant for representative normal operations does not apply. Ohio EPA should not intend to impose SIP malfunction obligations in the overkill zone Ohio EPA has elected to

regulate (pursuant to section 116 of the Clean Air Act) when sources are operating as designed and intended. It makes no sense to require a malfunction report when the resulting emissions are far below the maximum allowable emission rate in the SIP for the unit/pollutant combination. Using applicable emission limitations, converted to a pound-per-hour mass emissions rate, as the trigger for malfunction reporting and work practices is conservative, but not unduly conservative.

In addition, the Commenters encourage Ohio EPA to convert the criteria for malfunctions in subparagraph (B)(1)(d) into mandatory, self-executing work practice standards, like Ohio EPA's proposed scheduled maintenance work practice standards in paragraph (A). The malfunction work practice standards should require owners or operators to take all practicable measures to minimize the duration of the malfunction (reflecting the current requirement in subparagraph (B)(1)(d)(ii)). They should require the owner or operator to implement alternative operating procedures and interim control measures to reduce adverse effects on public health or welfare (reflecting the current requirement in subparagraph (B)(1)(d)(iii)). Moreover, subparagraph (B) should give owners/operators the option, as an alternative, to follow SSM requirements in federal technology-based standards, such as NSPS and MACT standards, that directly or indirectly apply to the same unit/pollutant combination.

2. Non-substantive comments

The Commenters would also suggest eight non-substantive revisions.

First, the introductory paragraph's description of the rule's scope is incorrect. Ohio EPA should remove the words "of air pollution control equipment" from paragraph (B).

Second, in the first sentence of subparagraph (B)(1), the phrase "In the event that" is unnecessarily wordy, and the term "emission source" is redundant. Ohio EPA should replace them with "If" and "source."

Third, if Ohio EPA accepts the Commenters' suggested changes to the proposed definition of "malfunction," that definition will make clear that the malfunction rule applies to sources, air pollution control equipment, and related facilities. Rather than repeating that language in subparagraph (B)(1), Ohio EPA should replace that language with the newly defined term "malfunction."

Fourth, subparagraph (B)(1) inconsistently and incorrectly describes the person to whom its requirements apply. The first sentence requires "the person responsible" to notify Ohio EPA of any malfunction. The second sentence requires the "source operator" to submit a written statement after any malfunction lasting longer than 24 hours. Ohio EPA uses the more broadly defined term "owner or operator" in other sections of Ohio Adm.Code 3745-15-06, and it should use the same term here.

Fifth, the second sentence of subparagraph (B)(1) makes clear that a malfunction can last for more than a day. However, the proposed revision would require the owner or operator to submit a written statement "within one week of the date the malfunction occurred." Because malfunctions can last for more than one "date," Ohio EPA should

clarify whether the written statement is due within one week of the malfunction's beginning or end.

Sixth, Ohio EPA should revise subparagraph (B)(1)(a) to be consistent with the language it used in subparagraph (A)(3)(a) ("The identification, including the facility identification number, and location of the source.").

Seventh, Ohio EPA should revise subparagraphs (B)(2) and (B)(3) to replace each instance of the ambiguous and undefined term "equipment" with the terms used in subparagraph (B)(1) ("source, air pollution control equipment, or related facility"), for consistency and greater clarity.

Eighth, Ohio EPA should take this opportunity to clean up the awkward language in existing subparagraph (B)(2). Ohio EPA wrote the paragraph in passive voice, making it unclear who must provide the required notification. Ohio EPA should revise the subparagraph to clarify that the "owner or operator" must provide the notification. In the second sentence, it is unnecessary to repeat the purpose of the notification. And Ohio EPA should replace the phrases "again in operation" and "if the duration of the malfunction is twenty-four hours or less" with the clearer and more compact phrases "operating again" and "if the malfunction lasts twenty-four hours or less."

C. Director's Evaluation

Under current law, Ohio Adm.Code 3745-15-06(C) provides a means for the Director to review and evaluate any report submitted pursuant to Ohio Adm.Code 3745-15-06(A) or (B) or Ohio Adm.Code 3745-17-07(A)(3)(c) or (B)(11)(f) and "take appropriate action" if an owner or operator has not complied with those paragraphs' requirements. U.S. EPA included paragraph (C) in its SSM SIP Call because "it is the regulatory mechanism by which exemptions are granted in" Ohio Adm.Code 3745-15-06(A)(3) and 3745-17-07 and because U.S. EPA believed paragraph (C) gave Ohio EPA's Director insufficiently bounded discretion to "excuse excess emissions." 78 Fed. Reg. 12,460, 12,519 (Feb. 22, 2013) (proposed rule); *see also* 80 Fed. Reg. 33,840, 33,967 (June 12, 2015) (final rule). In response, Ohio EPA has proposed to modify paragraph (C) so it applies only to malfunctions (and not to scheduled maintenance).

Portions of the first sentence of proposed paragraph (C) are inconsistent with the definition of "malfunction" proposed in Ohio Adm.Code 3745-15-01, for two reasons. First, the proposed paragraph (C) would authorize the director to take action if the equipment "was not properly maintained prior to the malfunction," whether that lack of proper maintenance caused the malfunction or not. Under the proposed definition of "malfunction," however, a failure to perform adequate maintenance is relevant only if the poor maintenance *caused* the malfunction. Second, the proposed paragraph (C) would authorize the director to consider whether "the malfunction was avoidable" when determining what action to take. But by definition, under the proposed definition of "malfunction," a "malfunction" is "not reasonably preventable."

But instead of modifying paragraph (C) to correct these issues, the Commenters urge Ohio EPA to delete all but the first sentence of the second paragraph. The first

paragraph is unnecessary. Ohio EPA does not need to reassert the Director's ability to "take appropriate action" if any owner or operator fails to follow paragraph (B)'s reporting requirements, fails to show that their equipment failure qualifies as a malfunction, or fails to comply with paragraph (B)'s work practice standards. R.C. 3704.03(R) and 3704.06 give Ohio EPA's Director clear authority to respond to violations of the agency's rules. And the second sentence of the second paragraph is misleading. If Ohio EPA converts the criteria in the first paragraph of proposed paragraph (C) into work practice standards, as the Commenters have suggested, then non-compliance with emission limits or permit terms and conditions that apply during normal source operation would be irrelevant. Instead, an owner or operator would have to report a malfunction as a deviation only if the owner/operator failed to comply with the notification requirements or work practice standards for malfunctions.

The Commenters support including the first sentence of the second paragraph, which makes clear that reporting a malfunction is not equivalent to admitting a violation of any applicable emission standard. But the remainder of paragraph (C) is either redundant, unnecessary, or misleading. The first sentence of the second paragraph should be moved to paragraph (B), and paragraph (C) should be omitted from the final rules.

D. Alternative Emission Limits

1. Substantive comments

The Commenters support Ohio EPA's proposal to let owners or operators obtain source-specific emission limitations (including work practice standards) in lieu of the otherwise applicable malfunction or scheduled maintenance requirements of 15-06. But the Commenters would recommend several amendments to the proposed language.

In proposed subparagraph (E)(1)(a), Ohio EPA should clarify what it means by "any state or federal permitting authority [that] has been delegated to the director." The Commenters do not believe Ohio EPA would necessarily be free to approve alternatives to emission limits set by applicable NSPS or NESHAP/MACT standards.

In proposed subparagraph (E)(1)(b), Ohio EPA has limited the availability of source-specific permit terms for SSM to situations where "the use of control equipment is technically infeasible." The Commenters believe this restriction is too narrow. In many cases, the SIP does not specify any control requirement during SSM conditions, so the source-specific SSM terms will fill in a gap. In other cases, the owner or operator may desire SSM work practices or emission limits different from those applicable during normal source operation (based on environmental, safety, or practical considerations) whether or not "control equipment is technically infeasible." Ohio EPA should delete the phrase "where the use of the control equipment for the source is technically infeasible."

In proposed paragraph (E)(2)(a), Ohio EPA has suggested allowing an alternative "numerical emission limit" during SSM periods, but would require such limits to be "equivalent to emission levels during other modes of operation of the source * * *." The Commenters urge Ohio EPA to remove that language. U.S. EPA's SIP Call recognized that "[s]ome equipment during startup and shutdown may be unable to meet the same

emission limitation that applies during steady-state operations and so alternative limitations for startup and shutdown may be appropriate.” 80 Fed. Reg. 33,840, 33,915 (June 12, 2015). Moreover, it is unclear how a permit holder would demonstrate that a requested alternative numerical emission limit is “equivalent to emission levels during other modes of operation * * * under best engineering practices for the unit.” Ohio EPA should omit the requirement that any alternative limit be “equivalent to” emissions during normal source operations.

Under proposed paragraph (E)(2)(b), owners/operators would require a permit to use the SSM provisions applicable to a unit under Part 60 (NSPS) or Part 63 (NESHAP/MACT). The Commenters believe the SSM compliance provisions in federal NSPS or NESHAP rules should be available to source owners and operators, in lieu of any different SIP SSM requirements, through an administrative amendment to an existing PTIO or Title V permit, rather than a full-blown permitting process. The Commenters recommend above that Ohio EPA should include the option of following applicable Part 60 or Part 63 SSM provisions in the work practice standards in paragraph (B).

Proposed subparagraphs (E)(3)(d) and (e) are inappropriate and redundant of subparagraph (E)(3)(g). Many sources, including electric generating units, cannot control the frequency and duration of operation in startup or shutdown mode. And sources lack the ability to model the impact of emissions on ambient air quality during startup and shutdown. Regardless, the requirement to operate facilities “[a]t all times *** in a manner consistent with good engineering practice for minimizing emissions” should accomplish the same goals as proposed subparagraphs (E)(3)(d) and (e). The Commenters recommend Ohio EPA omit those proposed subparagraphs.

Proposed subparagraphs (E)(3) and (E)(4) currently limit the availability of alternative emission limits to major sources that have or require Title V permits (i.e., those subject to Ohio Adm.Code Chapter 3745-77). The Commenters believe Ohio EPA should also allow non-Title V sources to seek alternative limits, subject to the PTIO permitting requirements in Ohio Adm.Code Chapter 3745-31.

Finally, the Commenters urge Ohio EPA to consider streamlining the process for incorporating alternative emissions limits into existing Title V permits and PTIOs, particularly where a source seeks to incorporate an alternative emission limit or work practice standard established under an applicable NSPS or NESHAP/MACT standard.

2. Non-substantive comments

In proposed subparagraph (E)(1)(a), Ohio EPA has omitted the word “that” before “has been delegated to the director.”

IV. Proposed Amendments to Ohio Adm.Code 3745-17-07

Ohio EPA’s proposal to limit the availability of the malfunction/shutdown exception to the opacity limits for stack emissions and fugitive dust, so that the exception would not apply to malfunctions that cause a nuisance under Ohio Adm.Code 3745-15-07, is impractical. The nuisance rule has nothing to do with the SSM SIP Call, and there is no

way for a source owner or operator to know what is or is not a public nuisance until after a case-by-case adjudication. Ohio EPA should delete the portions of the proposed amendments to Ohio Adm.Code 3745-17-07 that reference Ohio Adm.Code 3745-15-07.

V. Conclusion

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, the Ohio Manufacturers' Association, and API Ohio appreciate the opportunity to comment on Ohio EPA's Interested Party Review draft rulemaking in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods. Ohio EPA's proposed amendments to Ohio Adm.Code 3745-15-01, 3745-15-06, and 3745-17-07 offer several improvements over existing law. And the Commenters believe the changes recommended above, and illustrated in the attached red-lines, will result in a clearer, streamlined, more efficient, and more easily understood regulatory scheme for operation during scheduled air pollution control equipment maintenance and malfunctions. The Commenters look forward to the opportunity to work with Ohio EPA as it progresses with this rulemaking.

Very truly yours,

Robert L. Brubaker

Eric B. Gallon

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The Ohio Chemistry Technology Council
and The Ohio Chamber of Commerce

Frank L. Merrill

Environmental Counsel for
The Ohio Manufacturers' Association

Chris Ziegler

Executive Director for the American
Petroleum Institute

Environment

[Got Scrap? Want Scrap? Ohio Materials Marketplace Launched!](#)

March 3, 2017

The Ohio EPA is inviting OMA members to participate in its newly launched [Ohio Materials Marketplace](#) with the objective to advance Ohio towards a circular material economy.

The free online platform enables Ohio businesses to list by-product and waste materials, as well as post requests for desired materials. The Materials Marketplace aims to assist manufacturers and other businesses in advancing their zero-landfill goals, decreasing greenhouse gas emissions, and reducing material and waste management costs.

Raw materials, by-products, and massive volumes are welcomed. Materials can range from computer monitors to waste paper to clay.

To inquire about joining, [click here](#). For further information, contact Ohio EPA's [Joseph Klatt](#) at (614) 705-1147. 2/24/2017

[Calling Environmental Managers!](#)

March 3, 2017

The first OMA Environment Committee meeting of the year will be on [Wednesday, March 8](#), from 10:00 a.m. until 1:00 p.m. at the [OMA offices](#) (with a nice lunch provided by OMA).

- Ohio EPA Assistant Director, [Laura Factor](#), and Chief of Legislative Affairs,

Greg Vergamini, will brief us on agency news and updates.

- [Greg Bertelsen](#), Senior Director, Energy and Resources Policy, National Association of Manufacturers, will provide an outlook of Ohio EPA under the Trump administration.
- We'll have a panel discussion focusing on manufacturers' water issues.
- And, we'll also have a state budget bill and legislative update.

Julianne Kurdila, Lead Specialist, Environmental Compliance & Policy, ArcelorMittal, is the committee chair.

Please [register here](#) for in-person or call-in attendance. 3/2/2017

[Ohio EPA to Host Webinar on New Industrial Storm Water General Permit](#)

March 3, 2017

Ohio EPA is [hosting a webinar](#) focused on Ohio's new Industrial Storm Water General Permit on Wednesday March 29, at 1:00 p.m. The permit is expected to be renewed in early March 2017.

The webinar will include updates on changes from the previous general permit and resources for industrial storm water permit holders. 2/27/2017

OMA Advocates for Common Sense Regulation of Slag

February 24, 2017



Pictured: Geoff Guss, Assistant Sales Manager, of OMA member McWane-Ductile-Ohio

OMA and OMA member McWane-Ductile presented testimony this week in support of SB 2, an environmental bill, to the Senate Energy and Natural Resources Committee.

In [written testimony](#), OMA's Rob Brundrett said: "... there is a provision in the bill that OMA has long advocated: common sense regulation of slag. The bill recognizes that slag is a valuable product and not a waste under Ohio's water laws. Senate Bill 2 exempts slag from excessive regulation while at the same time requiring that slag be used in a manner that conforms with appropriate water quality standards ..."

Geoff Guss, Assistant Sales Manager, McWane-Ductile-Ohio, [testified](#): "We think this bill will help improve the quality of our state's surface water, and also ensure residents of a failing water system that the Ohio EPA will assist

them in their time of need. In addition, as the second largest consumer of scrap steel in the state of Ohio, McWane Ductile is glad to see the reclassification of slag, a byproduct of our manufacturing process." 2/23/2017

Call for Entries! Important Annual Industrial Recycling Survey

February 17, 2017

Ohio's solid waste management districts (SWMDs), in collaboration with the OMA and Ohio EPA invite you to participate in a statewide recycling survey. The purpose of the survey is to collect data about the amounts and the types of materials that Ohio businesses recycled in 2016.

Information obtained through this survey will be used to track progress toward local and state recycling goals, assess recycling infrastructure and determine the recycling needs of Ohio's businesses.

You will send your completed survey directly to your SWMD. The SWMD will combine the data from your business with data reported by other businesses. The combined data will be used to calculate recycling rates for the SWMD. The data collected by all SWMDs will be aggregated and used to calculate recycling rates for the state. OMA reports recycling data in this [annual report](#) (page 19).

To access the survey forms for your SWMD and to learn about your SWMD, [click here](#). If you experience difficulties using the webpage or have questions, contact Ohio EPA's [Ernest Stall](#) at (614) 728-5356. 2/13/2017

Budget Bill Makes Changes to TMDL Process

February 17, 2017

House Bill 49, the state operating budget bill, includes provisions that propose how Ohio EPA would establish Total Maximum Daily Load (TMDL) limitations for Ohio's streams.

Under the bill, Ohio EPA is required to provide for public comment when a TMDL is established, and such decisions would be appealable to the Environmental Review Appeals Commission. The bill also allows for appeals of existing National Pollutant Discharge Elimination System (NPDES) permits that were based on TMDLs established before March 24, 2015, while retaining the enforceability of any TMDL established before March 25, 2015.

This is a significant change for manufacturers with NPDES direct discharge permits to waters of the state. Read more in [this HB 49 analysis](#). 2/16/2017

Ohio EPA Initiates PIT Interested Party Review

February 17, 2017

Ohio EPA has [initiated an interested party review](#) for draft amendments to Permits to Install and Plan Approvals for Water Pollution Control (OAC Chapter 3745-42).

Major updates being considered include: clarification of and additions to the list of exemptions from permit to install or plan approval applicability, and clarification of sewage holding tank prohibitions and restrictions. Minor revisions to the rules include updates to style, grammar and references.

See [this fact sheet](#) for specific rule revisions. If you are interested in commenting, please contact OMA's [Rob Brundrett](#). Comments are due March 13. 2/16/2017

Slag Rocks!

February 10, 2017

This week the Senate Energy and Natural Resources Committee heard [sponsor testimony](#) for SB 2 ([bill](#) and [analysis](#)), which deals with a range of environmental issues. Included in the bill is a provision the OMA has long advocated which exempts slag from certain requirements of the water pollution laws.

Senator [Cliff Hite](#) (R-Findlay), the bill's primary sponsor, and [Ohio EPA Director Craig Butler](#), provided [testimony](#). Many of the bill's provisions were carried over from Ohio EPA's Mid Biennium Review bill of the 131st General Assembly.

Proponent testimony is expected the week of February 20. The committee chairman has indicated he wishes to fast track the bill out of committee and to the Senate floor for a full vote. 2/9/2017

New Ohio EPA Publications Support Compliance

February 10, 2017

Solvent Metal Cleaning and Environmental Rules – If you clean metals with solvents, you may be subject to state and federal environmental requirements for waste management, air pollution control and wastewater disposal. This [fact sheet](#) will help you understand some of the environmental requirements that may apply to your company.

[Small Business Environmental Compliance Self-Assessment Guide](#) is intended to help small businesses understand and comply with environmental regulations. *2/8/2017*

[Ohio EPA Air Reporting Due Soon](#)

February 3, 2017

This week Ohio EPA [reminded Ohio companies](#) of upcoming annual air compliance reporting requirements due in the first half of 2017. Due dates that fall on weekends or holidays, where state agencies are closed for business, will be extended to the following business day. *2/2/2017*

[OMA Comments on Storm Water Permit to Ohio EPA](#)

January 20, 2017

This week the OMA [submitted comments](#) to Ohio EPA about its proposed renewal of its National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activity.

The OMA commented about sampling, benchmark feasibility, alternative benchmarks and non-industrial pollutants, among other items. The OMA also led a business group coalition in providing [additional comments](#) to Ohio EPA.

Ohio EPA will review and respond to comments provided. The agency plans to finalize the permit by March. *1/19/2017*

[Ohio EPA to Host Webinar on New Industrial Storm Water General Permit](#)

January 13, 2017

Ohio EPA is [hosting a webinar](#) focused on Ohio's new Industrial Storm Water General Permit on Wednesday March 29, at 10:00 a.m. The permit is expected to be renewed in early March 2017.

The webinar will include updates on changes from the previous general permit and resources for industrial storm water permit holders.

Ohio EPA is still accepting written comments to the draft permit that was released in the fall. Comments are due at Ohio EPA by Tuesday, January 17. [Rob Brundrett](#) is your OMA point of contact. *1/12/2017*

[OMA Submits Official Comments to Ohio EPA on Universal Waste](#)

December 22, 2016

The OMA-led initiative to expand Ohio EPA's definition of universal waste to include more items, among them, paint and paint-related wastes, took another step forward this week. The OMA working group [submitted comments](#) on Wednesday in reaction to Ohio EPA's universal waste proposal.

The OMA has been working closely with Ohio EPA over the past two years to expand Ohio's universal waste program to include items now considered hazardous wastes, thus providing waste management relief for Ohio manufacturers.

The OMA commented on a variety of issues from storage to transportation to management standards. If all goes according to plan, Ohio EPA will review and accept OMA's comments and issue a final rule in early 2017.

Thank you to the members who participated in drafting comments. *12/22/2016*

OMA Files Comments on Startup, Shutdown, Malfunction Rules

December 16, 2016

The OMA submitted two sets of comments to Ohio EPA's Interested Party Review draft amendment for Ohio's startup, shutdown, and malfunction (SSM) rules, issued in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during the SSM periods.

In the [first set of comments](#), the OMA and business allies recommended: 1) modify the proposed definition of "malfunction" to remove the exclusion for equipment failures caused only in part by poor maintenance or careless operation; 2) modify the scheduled maintenance rule to allow owners or operators to continue operating when shutting down would be unsafe; 3) modify the malfunction rule to impose work practice standards during equipment failures; 4) expand the availability of alternative emission limits to minor sources; and 5) allow the adoption of alternative emission limits that are not equivalent to emission limits applicable during normal operation.

In the [second set of comments](#), the OMA alone submitted detailed concerns about the regulations' adverse business impact, how the regulations were developed, and specific

problematic language in the regulations. *12/15/2016*

New Ohio EPA Waste Materials Marketplace

December 9, 2016

Does your business have waste material or product that can be re-used by another business?

If you answered yes, then the new Ohio EPA Ohio Materials Marketplace launching in January 2017 might interest you. Material exchanges connect entities so they can re-use or recycle by-products or waste materials.

Questions about the new exchange can be directed to Ohio EPA's [Joseph Klatt](#) at (614) 644-3469. *12/5/2016*

Complying with Your Air Permit

December 9, 2016

You have identified equipment and processes at your facility that are sources of air pollution, and submitted applications for these sources to Ohio EPA or your local air agency. Now that you have received your air permit, have you met all your regulatory requirements under Ohio EPA's air program? Not exactly.

Your air permit is your written authorization from Ohio EPA (or local air agency) to install and operate equipment or conduct activities that release pollutants into the air. Your permit includes all conditions and requirements to operate your air pollution source in accordance with state and federal air quality requirements. This [article from Ohio EPA](#) will help you understand common air permit requirements and steps

you can take to improve your compliance. *12/5/2016*

[Draft Rules Beneficially Reclassify Hazardous Waste as Universal Waste](#)

December 2, 2016

Ohio EPA has prepared a package of draft hazardous waste management rules pertaining to the classification of certain hazardous wastes as Ohio-specific universal wastes.

The new universal wastes include hazardous non-empty aerosol cans, hazardous antifreeze and hazardous paint and paint-related wastes.

The OMA has been instrumental in advancing these beneficial rules. Comments are due December 21, 2016. The draft rules and related documents are available for [download here](#); see the Interested Party Tab. Contact OMA's [Rob Brundrett](#) for more information. *12/1/2016*

[Draft Industrial Storm Water Permit Issued – Comment Period Opens](#)

December 2, 2016

On November 24, Ohio EPA issued a public notice that it will issue a draft general National Pollutant Discharge Elimination System (NPDES) permit for the statewide regulation of storm water associated with industrial activities.

The NPDES permit identifies who can be covered, how an entity obtains coverage, and how a permittee terminates coverage. The permit contains requirements for permittees to develop and implement a Storm Water Pollution Prevention Plan (SWP3) to minimize or eliminate the

potential for contamination of storm water by industrial activities. The permit includes reporting requirements for all facilities and also contains analytical monitoring requirements for most facilities covered.

A public hearing is scheduled for January 9, 2017. Additionally, written comments can be submitted. All relevant [documents can be found here](#). OMA has been engaged with Ohio EPA on this issue and will file additional comments. Contact OMA's [Rob Brundrett](#) for more information. *12/1/2016*

[Energy and Environmental Ramifications of Trump Election](#)

November 18, 2016

While some of President-elect Trump's priorities in the environmental and energy policy areas are largely uncontroversial—such as continuing the push toward U.S. energy independence—the new administration is likely to encounter pushback on the more contentious elements of its agenda, including the revival of the Keystone Pipeline Project and the withdrawal from international climate change efforts such as the Paris Agreement.

This [Commentary](#) from OMA Connections Partner Jones Day explains the practical and logistical issues Mr. Trump can expect as he pursues his policy goals, along with the related implications for the energy sector. *11/17/2016*

[Zero Waste Event Planning](#)

November 11, 2016

Ever hold employee or community events? Ohio EPA's Division of Environmental and Financial Assistance

(DEFA) [developed this guide](#) to help event planners reduce waste through recycling, composting and source minimization. This general resource guide that can be applied to a wide variety of small and large events, held at inside or outside venues.

A zero waste event minimizes the amount of waste going to a landfill by diverting materials for re-use, recycling or composting. An event is typically considered to be zero waste if at least 90% of the waste generated is diverted. *11/10/2016*

[AG DeWine Files Arguments Against U.S. EPA on “WOTUS”](#)

November 4, 2016

Attorney General Mike DeWine, on behalf of the State of Ohio and 30 other states, [filed a brief](#) this week in the U.S. Court of Appeals for the Sixth Circuit with regard to *Murray Energy Corporation, et al. v. U.S. Environmental Protection Agency, et al.*

This litigation resulted from efforts by the U.S. EPA and the U.S. Army Corps of Engineers to re-define, by rule, the definition of “waters of the United States” (WOTUS) under the Clean Water Act. If successful in their efforts, the U.S. EPA and the U.S. Army Corps of Engineers would expand the definition of “waters of the United States” to reach even remote and isolated waters, including such features as normally dry stream beds and other occasionally damp ground.

Our attorney general argues that the rule goes far beyond what was intended by Congress when it passed the Clean Water Act, and that a state-based approach to protection of waterways would be much more effective. *11/2/2016*

[Midwest Environmental Compliance Conference Draws Nice Crowd](#)

November 4, 2016



More than 300 members of the regulated community and EPA agency staff gathered in Chicago this week for the second annual Midwest Environmental Compliance Conference.

“We know of nothing like it anywhere for gathering current compliance information and support, and making important connections,” said OMA’s Rob Brundrett, director, Public Policy Services. OMA is a conference sponsor. *11/3/2016*

Pictured: Julianne Kurdila, Lead Specialist, Environmental Compliance & Policy, ArcelorMittal & Chair, OMA Environment Committee, with Greg Bertelsen, Senior Director, Energy and Resources Policy at The National Association of Manufacturers

[Ohio EPA Director Brings Good News to OMA Environment Committee](#)

October 21, 2016



On Wednesday, Ohio EPA Director Craig Butler visited the OMA Environment Committee to discuss members' issues of concern.

He brought good news: Both the Industrial Storm Water Permit and the new Universal Waste Rules should be coming out in the very near future. Members of the committee, and staff, have worked hard on these issues for months.

The director talked about other agency priorities, including the continuing fight against algal blooms on Ohio's surface water, most importantly Lake Erie, and continuing to lead the charge against the Army Corps of Engineers on Port of Cleveland dredging, which is vital to Ohio's manufacturers. 10/20/2016

Pictured: Ohio EPA Director Craig Butler at OMA

[Ohio EPA Taking Applications for Recycling Grants](#)

October 21, 2016

Ohio EPA is now accepting applications for four types of recycling related grants to be awarded in 2017. Grant applications for all programs are due February 3, 2017.

To assist potential applicants, Ohio EPA will host an informational meeting on Thursday, October 26, 2016, to explain eligibility requirements and the grant application process. In addition, Ohio EPA will also hold an informational webinar on November 16, 2016.

Through its Recycling and Litter Prevention Grant program, Ohio EPA administers grants that support statewide source reduction, recycling, market development, litter prevention and scrap tire recycling efforts. Read [more here](#). 10/17/2016

The event is hosted by state business and manufacturing associations, including the OMA, and supported by EPA and state agencies.

Use registration code 'OMA' to receive your discount. [Register here](#).

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on March 6, 2017

- HB29** **MUNICIPAL WATER RESERVOIR BUFFERS** (LELAND D, BOGGS K) To eliminate law authorizing the maintenance of buffers around municipal water reservoirs by contiguous property owners.
Current Status: 2/8/2017 - Referred to Committee House Energy and Natural Resources
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-29>
- HB62** **WATER QUALITY IMPROVEMENT** (PATTERSON J, SHEEHY M) To require the Director of Agriculture to adopt rules establishing the Ohio Water Quality Improvement Program, to exempt land enrolled in the Program from taxation, and to reimburse local taxing units for revenue lost due to that exemption.
Current Status: 2/21/2017 - Referred to Committee House Agriculture and Rural Development
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-62>
- HCR4** **ELIMINATE E-CHECK REQUIREMENT** (YOUNG R) To urge Congress to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program, to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress fails to act, and to encourage OEPA to explore alternatives to E-Check.
Current Status: 2/21/2017 - Referred to Committee House Federalism and Interstate Relations
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HCR-4>
- SB2** **ENVIRONMENTAL PROTECTIONS LAWS** (HITE C) To revise specified laws relating to environmental protection.
Current Status: 3/8/2017 - Senate Energy and Natural Resources, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-2>
- SB50** **WELL INJECTION-PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.
Current Status: 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-50>
- SB53** **NATURAL GAS RESTRICTION** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-53>

SJR4

CAPITAL IMPROVEMENTS FUNDING (SCHIAVONI J) Proposing to enact Section 2t of Article VIII of the Constitution of the State of Ohio to permit the issuance of general obligation bonds to fund sewer and water capital improvements.

Current Status: 3/2/2017 - Introduced

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SJR-4>