

**10:00 a.m. (EST)**  
**1-866-362-9768**  
**552-970-8972#**



# **Environment Committee**

**March 8, 2016**

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**2016 Environment  
Committee Calendar**

**Tuesday, March 8**  
**Wednesday, June 1**  
**Wednesday, October 19**

**OMA Environment Committee Meeting Sponsor:**





## OMA Environment Committee

March 8, 2016

### Agenda

<b>Welcome &amp; Roll Call</b>	Chairman Joe Bulzan, WestRock
<b>Passing of the Gavel</b>	Chairman Joe Bulzan, WestRock and Julianne Kurdila, ArcelorMittal
<b>Guest Presentation</b>	Timothy W. Ling, P.E., Plaskolite LLC
<b>Guest Speaker</b>	Cindy Hafner, Deputy Director of Legal, Ohio Environmental Protection Agency
<b>Counsel's Report</b>	Frank Merrill, Bricker & Eckler
<b>Public Policy Report</b>	Rob Brundrett, OMA Staff
<b>Lunch</b>	

Please RSVP to attend this meeting (indicate if you are attending in-person or by teleconference) by contacting Denise: [dlocke@ohiomfg.com](mailto: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.

**Thanks To Today's Meeting Sponsor:**





**Cindy Hafner, Deputy Director of Legal**

**Ohio Environmental Protection Agency**

Cindy Hafner has been named Deputy Director for Legal and will oversee legal issues for all programs and manage the Office of Legal Services. Since 1999, Cindy has been chief of the Division of Environmental Response and Revitalization (DERR). She oversaw six statewide programs: emergency response, remedial response, the voluntary action program, the Clean Ohio Fund brownfields program, federal facilities oversight (since 2010), and hazardous waste closure and corrective action (since 2011).

Cindy joined Ohio EPA in 1988 as a staff attorney, and was later promoted to supervising attorney and then manager in DERR. Prior to joining Ohio EPA, Cindy worked in a general practice law firm in Cincinnati. She has a bachelor's degree in biology from Heidelberg College, a master's degree in environmental science from Kent State University and a law degree from the University of Cincinnati.

## Biographical Sketch

***Timothy W. Ling, P.E.***  
***Corporate Environmental Manager***  
**Plaskolite LLC.**  
**P.O. Box 1497, Columbus, OH 43216-1497**  
**(614) 294-3281, (614) 297-7282 (fax), [tim.ling@plaskolite.com](mailto:tim.ling@plaskolite.com)**

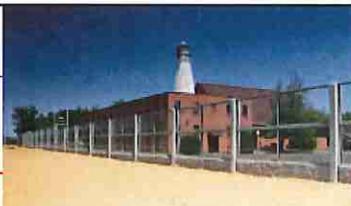
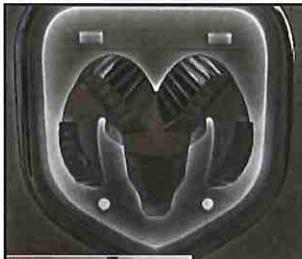
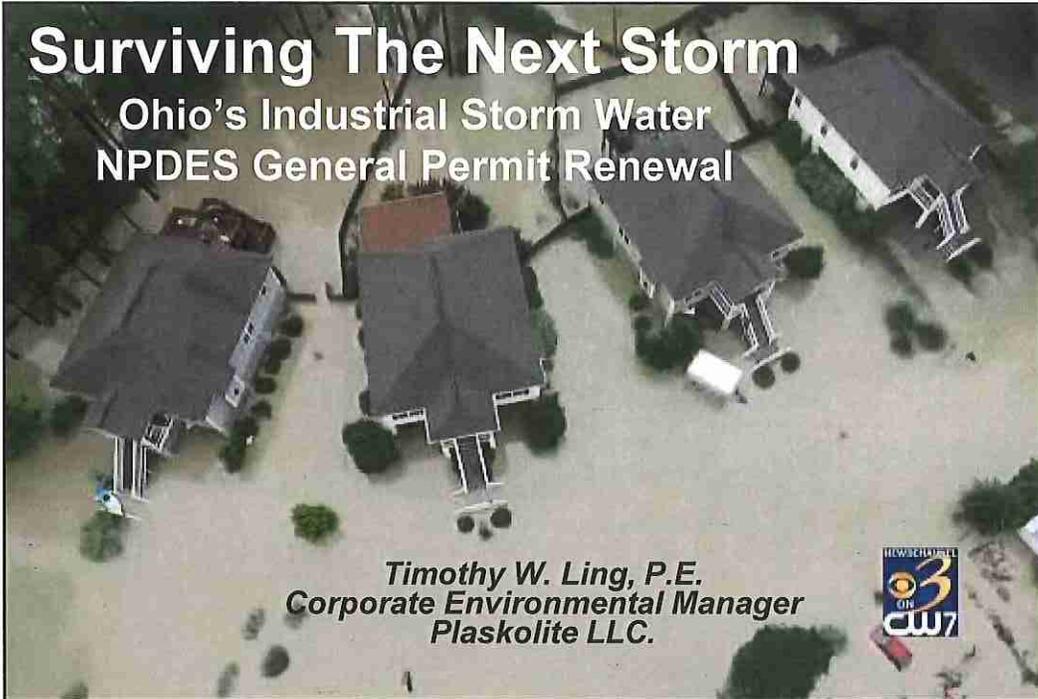
Mr. Ling is the Corporate Environmental Manager for Plaskolite LLC., a 66-year old, Columbus-based manufacturer of continuously processed acrylic sheet. Mr. Ling is responsible for Plaskolite's environmental compliance at its 6 manufacturing facilities in Ohio, California, Texas, Mississippi, and Mexico. He has over 25 years of experience in environmental engineering, both as a consultant to businesses, and now as in-house environmental manager. He has spoken and written on a wide range of environmental topics.

Mr. Ling holds a Bachelor of Science degree in Civil Engineering from the Florida Institute of Technology (1989), and Master of Science degree in Civil Engineering from the University of Notre Dame (1991). He is a Registered Professional Engineer in the states of Ohio and Florida.

# Surviving The Next Storm

Ohio's Industrial Storm Water  
NPDES General Permit Renewal

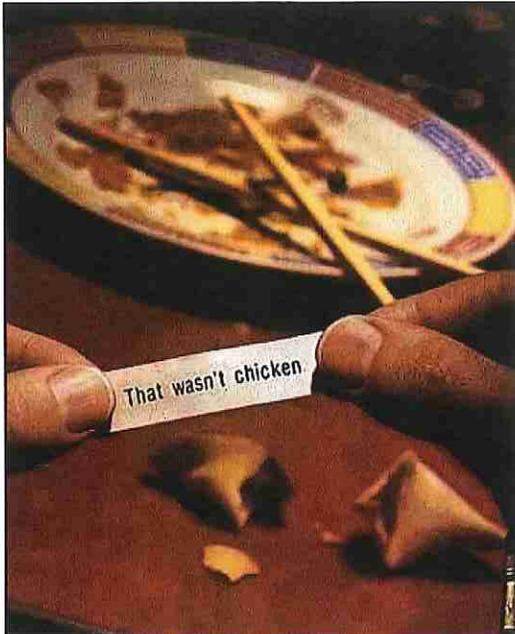
*Timothy W. Ling, P.E.  
Corporate Environmental Manager  
Plaskolite LLC.*



**Plaskolite**

- 66 years
- Plastic sheet extruder
- 6+ manufacturing plants

**PLASKOLITE**



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## Tip Of The Day ...

OHIO'S STORM WATER  
GENERAL PERMIT IS ...

**A MENU OF  
~~COMPLIANCE~~  
ENFORCEMENT**

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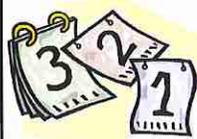
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## A Brief History

- **11/16/1990: Phase I Rules**
  - **1992: 1<sup>st</sup> Ohio Industrial SWGP**
  - **9/29/1995: 1<sup>st</sup> USEPA MSGP**
  
- **12/8/1999: Phase II Rules**
  - **6/1/2006 – 5/31/2011: 4<sup>th</sup> Ohio SWGP**
  - **9/29/2008: 3<sup>rd</sup> USEPA MSGP**

OhioEPA

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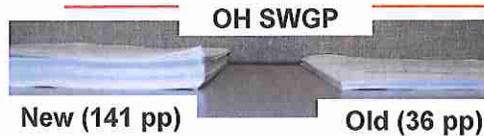
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## A Brief History

- **2006:** Alcoa ERAC appeals Ohio SWGP
- **2/22/2010:** Ohio EPA-Alcoa ERAC settlement – to use USEPA MSGP
- **11/1/2010:** Ohio EPA proposes SWGP = USEPA 2008 MSGP

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## A Brief History



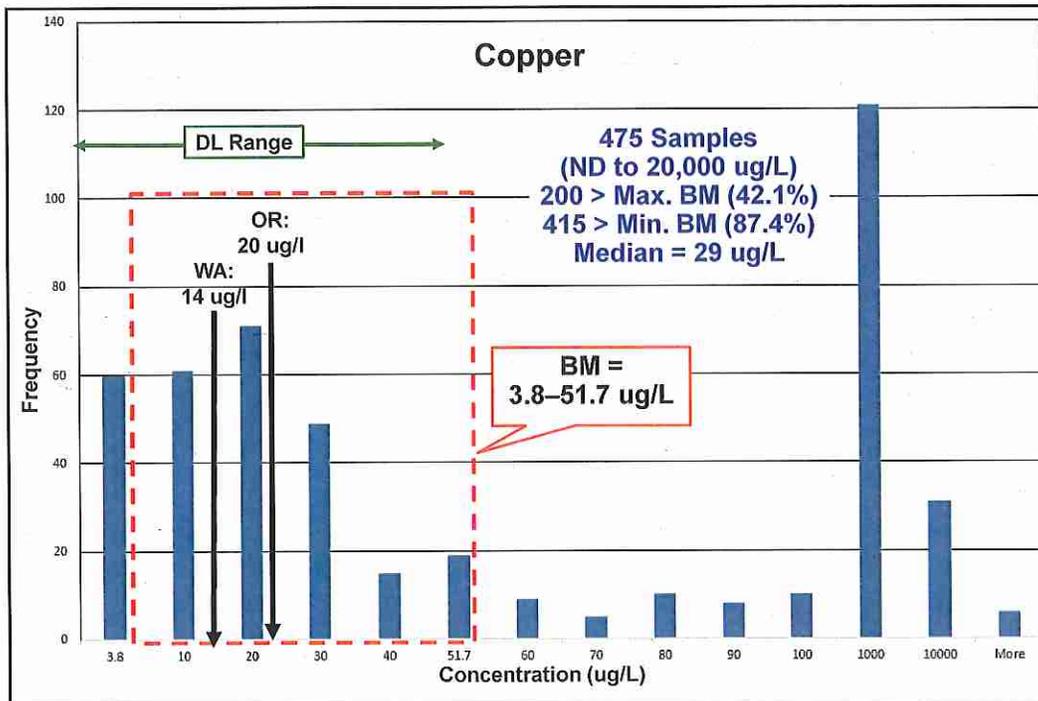
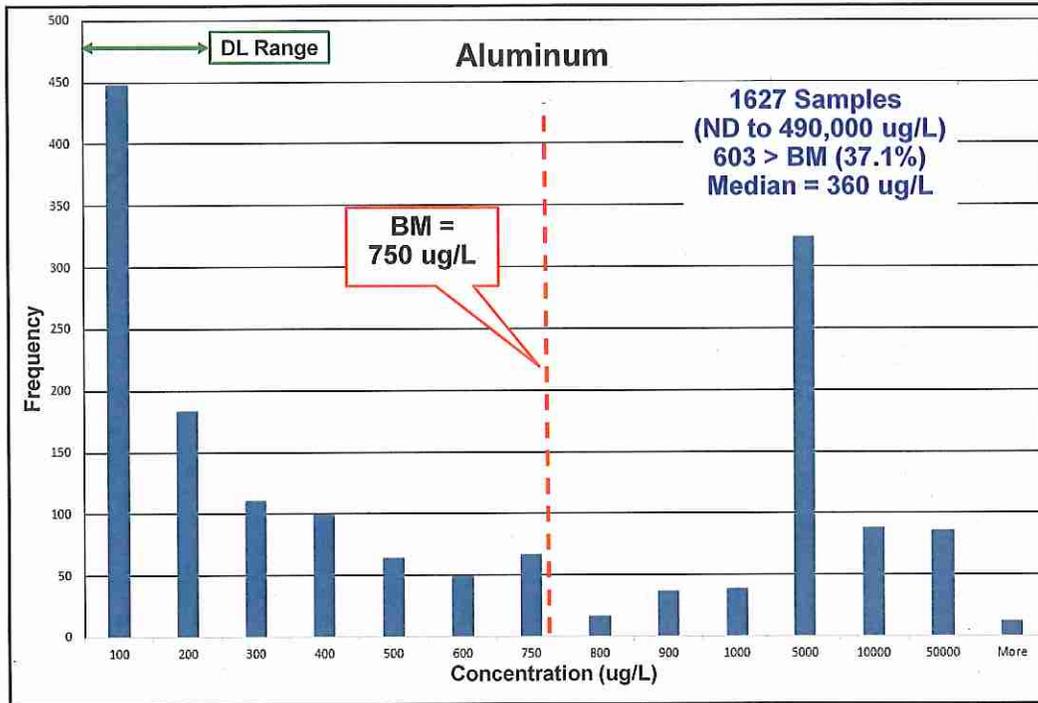
- **1/1/2012 – 12/31/2016: 5<sup>th</sup> Ohio SWGP**
- **6/4/2015: 4<sup>th</sup> & Current USEPA MSGP**
- **7/1/2015: Benchmarks “kick-in”**

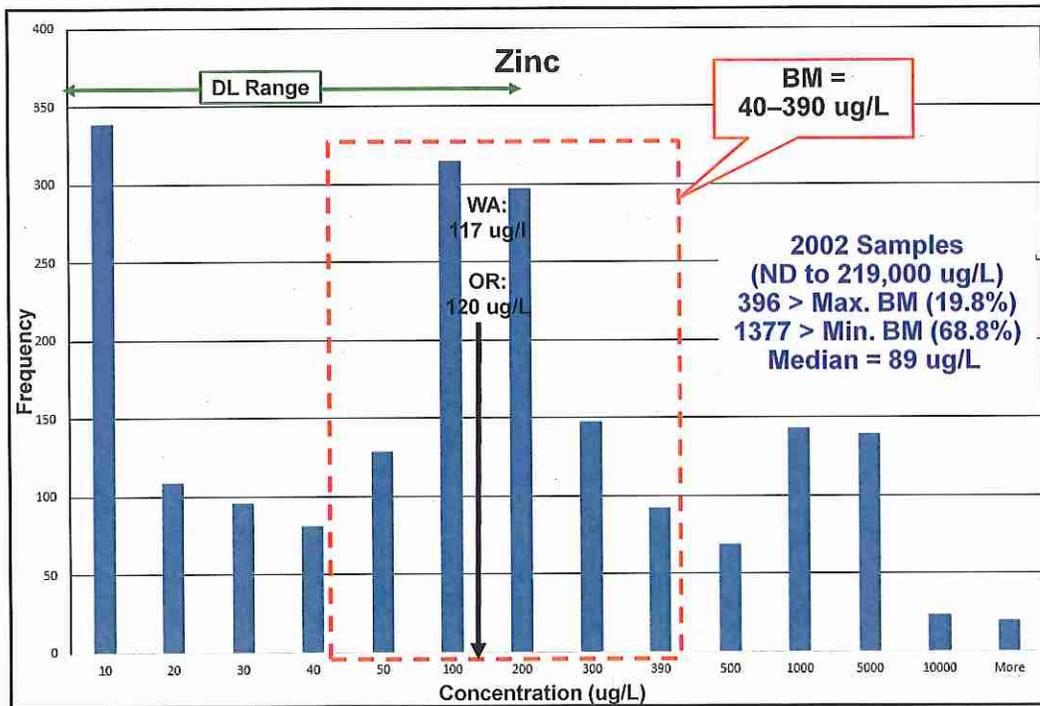
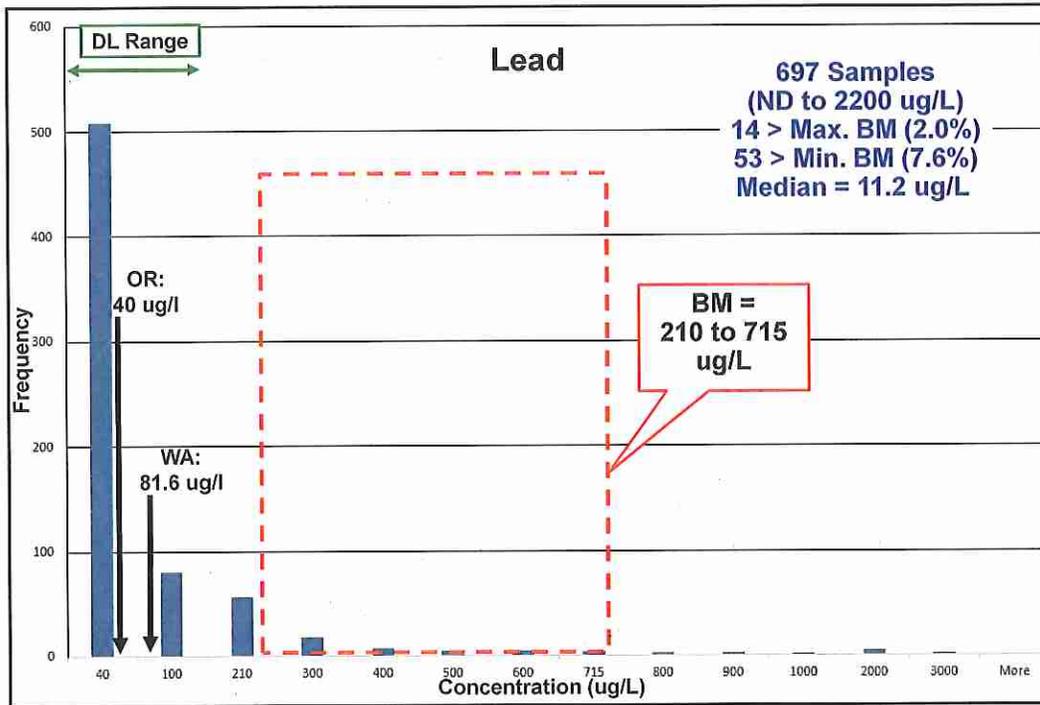
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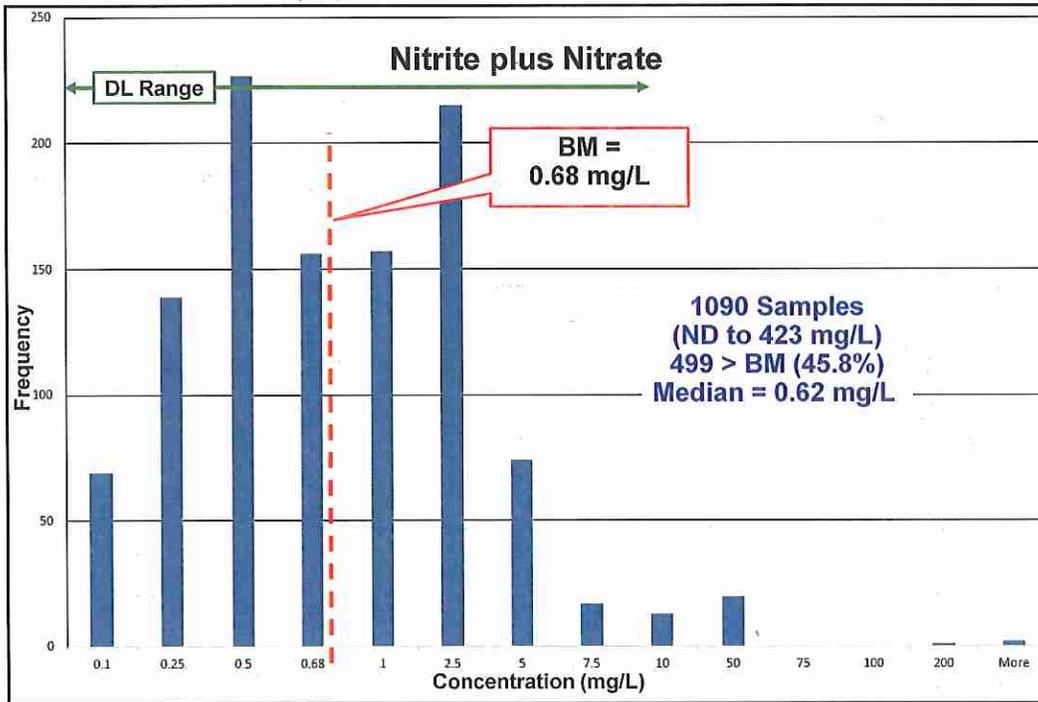
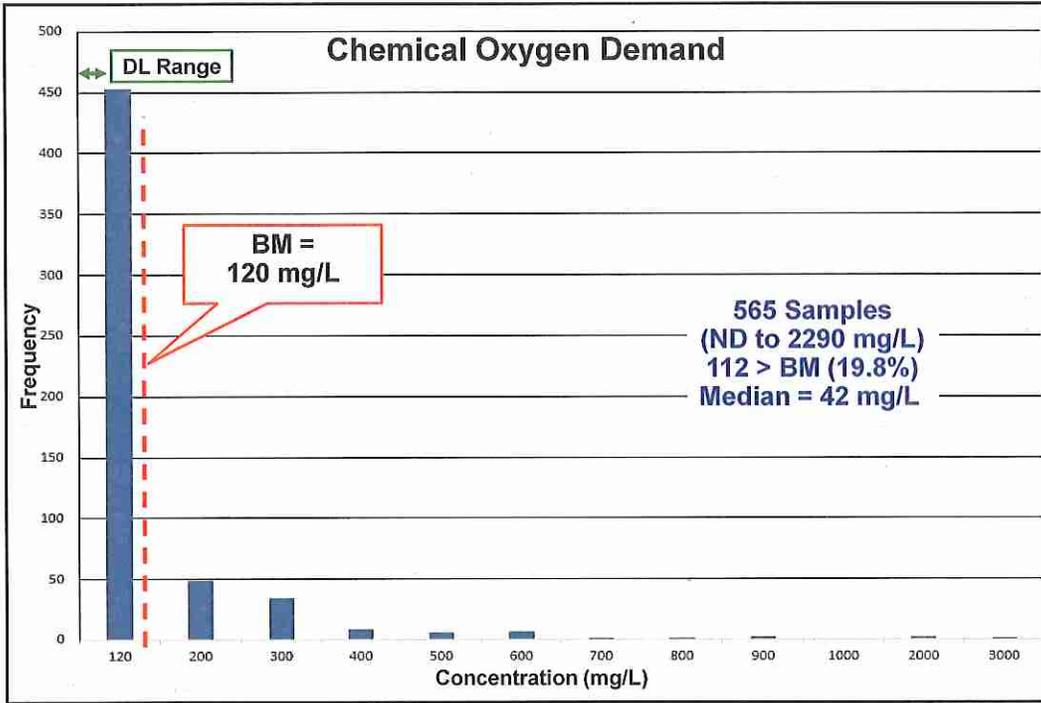
Benchmark Data Summary (January 1, 2012 to November 18, 2015)

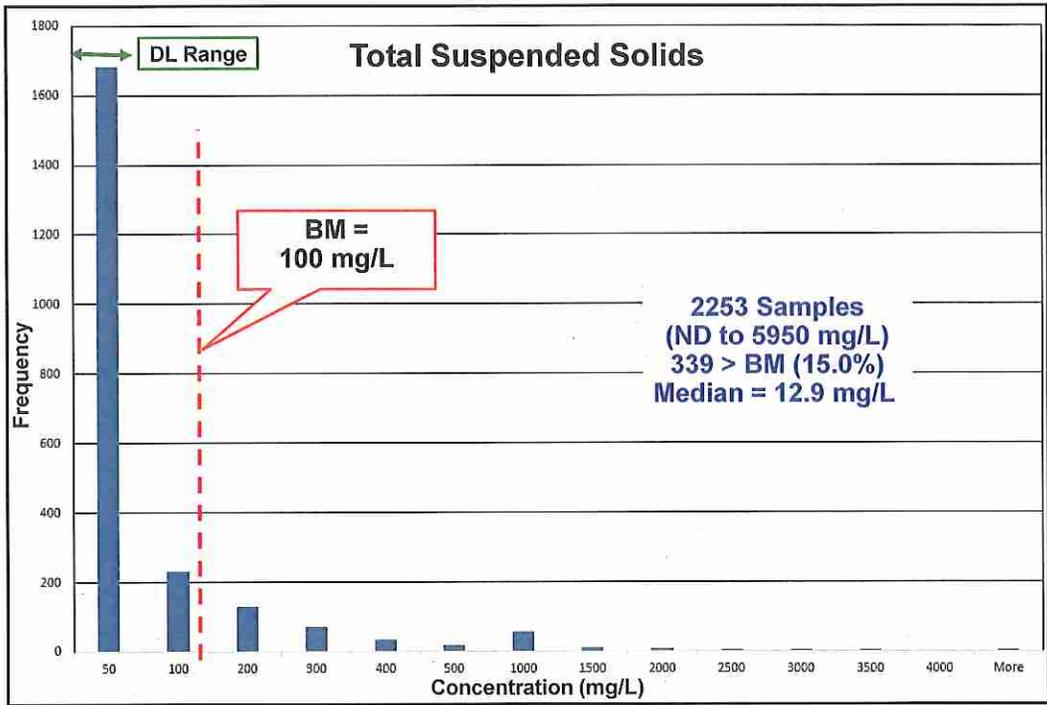
Benchmark Parameter	Units	No. Data Points	Min.	Max.	Median	Benchmark Limit
Aluminum	ug/l	1627	< 5.0	490,000	360	750
Arsenic	ug/l	75	< 1.0	88.3	10	340
Cadmium	ug/l	70	< 0.5	10	1	0.9 to 21.6
Copper	ug/l	475	< 1.0	20,000	29	3.8 to 51.7
Lead	ug/l	697	< 5.0	2,200	11	210 to 715
Magnesium	mg/l	70	< 0.5	70.6	5.0	0.064
Mercury	ug/l	69	< 0.0002	0.5	0.2	1.7
Selenium	ug/l	70	< 1.0	20	8	5
Silver	ug/l	70	< 1.0	22.7	5.0	0.1 to 17.3
Zinc	ug/l	2002	< 1.0	219,000	89	40 to 390
BOD5	mg/l	23	< 2.0	117	18.8	30
COD	mg/l	565	< 5.0	2,290	42	120
Cyanide	mg/l	70	< 0.005	10	0.005	0.022
Hardness	mg/l	1841	< 5.0	4,830	200.0	NA
Nitrate plus Nitrite	mg/l	1090	< 0.1	423	0.62	0.68
Nitrogen, Ammonia	mg/l	71	< 0.05	1.00	0.20	3.1
Oil and Grease	mg/l	46	< 1.0	8.2	5.0	15 daily max 10 monthly ave
pH	S.U.	193	4	10	7.6	6.5 to 9.0
Phosphorus	mg/l	112	< 0.2	23	0.54	2
Total Suspended Solids	mg/l	2253	< 1.0	5,950	12.9	100

**Bold = Exceeds Benchmark (or lowest Benchmark Value if Benchmark is a Range based on Hardness)**









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**Storm Water – ZINC (ug/L)**

STATE	MIN	MEDIAN	MAX
OH	< 1	89	219,000
CA	2	157	146,000,000
WA	0.002	139	130,000

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### Storm Water – COPPER (ug/L)

STATE	MIN	MEDIAN	MAX
OH	< 1	29	20,000
CA	0.1	13	1,500,000
WA	0.01	22	11,000

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### Storm Water – LEAD (ug/L)

STATE	MIN	MEDIAN	MAX
OH	< 5	11	2,200
CA	1	4	3,600,000
WA	0.006	12	3,730

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## Storm Water – TSS (mg/L)

STATE	MIN	MEDIAN	MAX
OH	< 1	12.9	5,950
CA	0.1	41	24,000
WA	NA	NA	NA

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## Benchmark Issues

- **Benchmarks NOT limits, BUT... not correcting exceedance IS violation**
- **Mitigate & explain exceedances**
  - Properly implemented BMPs
  - **NOT** industrial activity (metal building)
  - **Naturally occurring** background
  - Off-site neighbor source(s)

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## Benchmark Issues

- Very low = **“Set up for failure?”**
- Natural background? **✗**
- Off-site storm water **✗**



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## Benchmark Issues



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*“... engage in an **iterative process** in which measures are ... implemented ... until ... **completely effective** (2009 USEPA)”*

- How many “iterations”? **✗**
- What’s “completely effective”?

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## Enforcement Inspection

- **March 26, 2014 OCAPP webinar**
  - “Inspection and Compliance for Industrial Storm Water Permit Holders: What You Need to Know”
  - Speaker: Harry Kallipolitis
  - <http://www.youtube.com/watch?v=A06yRilxVP8>
  - <http://epa.ohio.gov/Portals/41/webinar/March%2026%202014%20Industrial%20Storm%20Water.pdf>

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## Inspection Triggers

- **Unauthorized release or discharge**
- **Violation of numeric effluent limit**
- **An inspection finds that control measures not properly operated and maintained**
- **Significant change in facility operation changes the quantity or nature of pollutants discharged**
- **Exceedance of benchmarks**

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## Enforcement Inspection

- It's the **OPTICS**
  - Clean up "bone yard"
  - Visible BMPs



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## Zinc By The Numbers

- Ohio benchmark = **0.04 - 0.39 mg/l**
- USEPA benchmarks
  - **0.04 – 0.26 mg/l** for freshwater
  - **0.09 mg/l** for saltwater
- USEPA freshwater std. = **0.12 mg/l** ❌

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**Benchmark = 0.04 - 0.39 mg/l**

- Ohio aquatic OMZM/A = 0.39 mg/l
- Ohio aquatic IMZM = 0.78 mg/l
- Ohio River human health OMZA = 9.1 mg/l
- Columbus water = 0.219 – 0.902 mg/l
- Secondary MCL = 5 mg/l

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## Zinc Sources

- Galvanized building materials
- City water
- Dripping automobile fluids
- Tire powder
- Moss killers
- Paints
- Wood preservatives
- Historical fill



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## Some Zinc Controls

- Replacing galvanized material
- Fence in grass
- Zinc-free sealer or paint
- Off-site parking
- Catch basin filters
- Sediment traps or basins
- Zinc-free tires?
- Outdoor sweeping/vacuuming

Suggested Practices to Reduce Zinc Concentrations in Industrial Stormwater Discharges

Water Quality Program



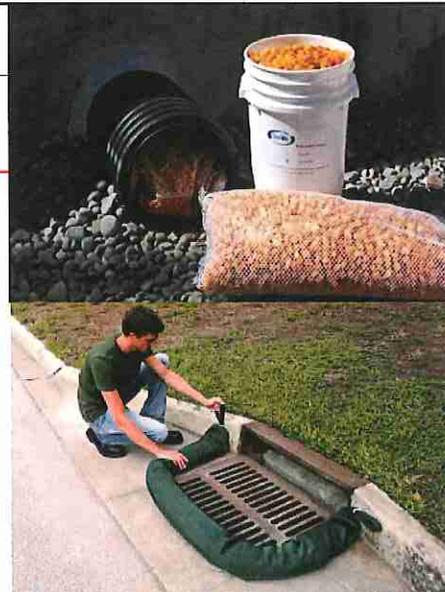
June 2004  
Publication Number 04-10-015



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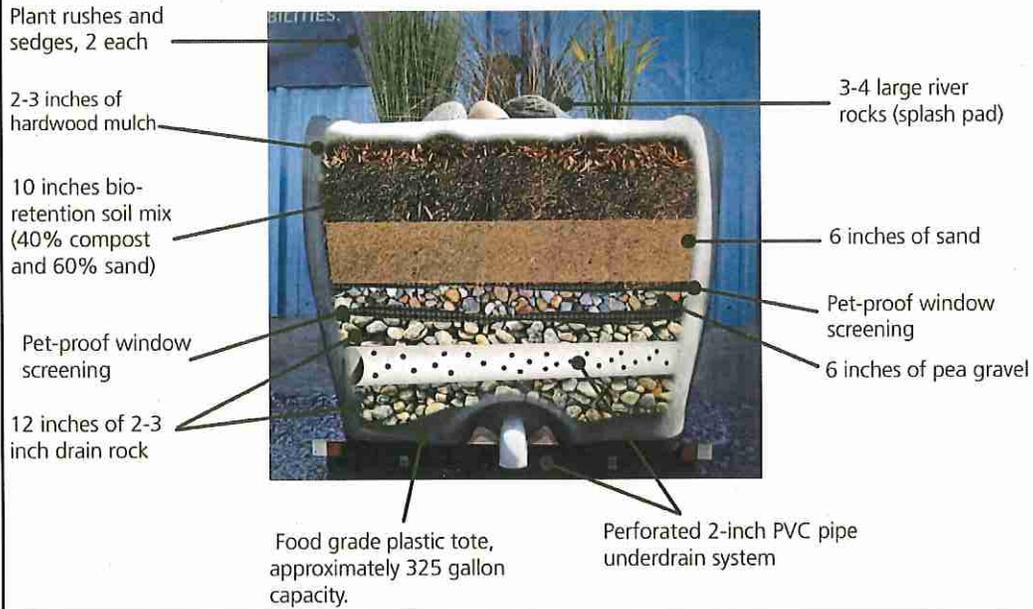
## Zinc Controls

- Absorbents
  - MetalZorb®
  - Ultratech 9454
- Grattix



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## Cross Section of a Grattix



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## Ohio's 6<sup>th</sup> SWGP

- Adopt US EPA's 2015 MSGP?
- Lower benchmarks? ❌
- Quarterly sampling (< 30 minutes) ❌
- TMDL and/or WQL (Section 6.2.4) ❌
- Documents easily available to public

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Water Hardness Range <b>OHIO</b>	Lead (mg/L)	Zinc (mg/L)	Freshwater Hardness Range <b>US EPA</b>	Lead (mg/L)	Zinc (mg/L)
0-25 mg/L	0.021	0.04	0-24.99 mg/L	0.014	0.04
25-50 mg/L	0.035	0.05	25-49.99 mg/L	0.023	0.05
50-75 mg/L <b>Saltwater 0.09</b>	0.049	0.08	50-74.99 mg/L	0.045	0.08
75-100 mg/L <b>WA 0.117</b>	0.063	0.11	75-99.99 mg/L	0.069	0.11
100-125 mg/L <b>OR 0.12</b>	0.077	0.13	100-124.99 mg/L	0.095	0.13
125-150 mg/L	0.184	0.16	125-149.99 mg/L	0.122	0.16
150-175 mg/L	0.227	0.18	150-174.99 mg/L	0.151	0.18
175-200 mg/L	0.272	0.20	175-199.99 mg/L	0.182	0.20
200-225 mg/L	0.320	0.23	200-224.99 mg/L	0.213	0.23
225-250 mg/L	0.368	0.25	225-249.99 mg/L	0.246	0.25
250-275 mg/L <b>CA 0.26</b>	0.416	0.27	250+ mg/L	0.262	0.26
275-300 mg/L <b>0.410</b>	0.464	0.29			
300-325 mg/L	0.522	0.31			
325-350 mg/L	0.576	0.34			
350-375 mg/L	0.631	0.36			
375-400 mg/L	0.687	0.38			
400+ mg/L	0.715	0.39			

## Ohio's 6<sup>th</sup> SWGP

- **More prescriptive**
  - **“Cleaning catch basins ... depth of debris reaches two-thirds (2/3) of the sump...and... debris at least six inches below the lowest outlet pipe.” (Sec. 2.1.2.3)**



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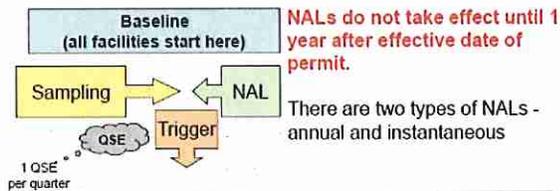
## California Today ...



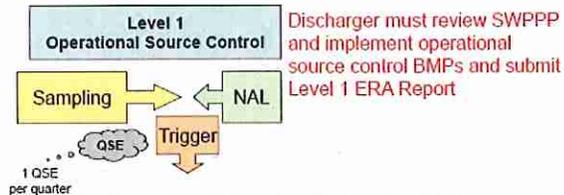
- **MSGP from Hell effective July 1, 2015**
- **Quarterly sampling (within 4 hours)** ✖
- **Benchmark=Numeric Action Level (NAL)**
  - **Instant Max. NAL = O&G, TSS, pH** ✖
  - **By SIC - Annual NALs**

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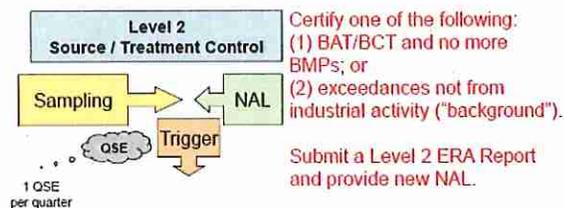
### EXCEEDANCE RESPONSE ACTIONS



YEAR  
**1**



**2**

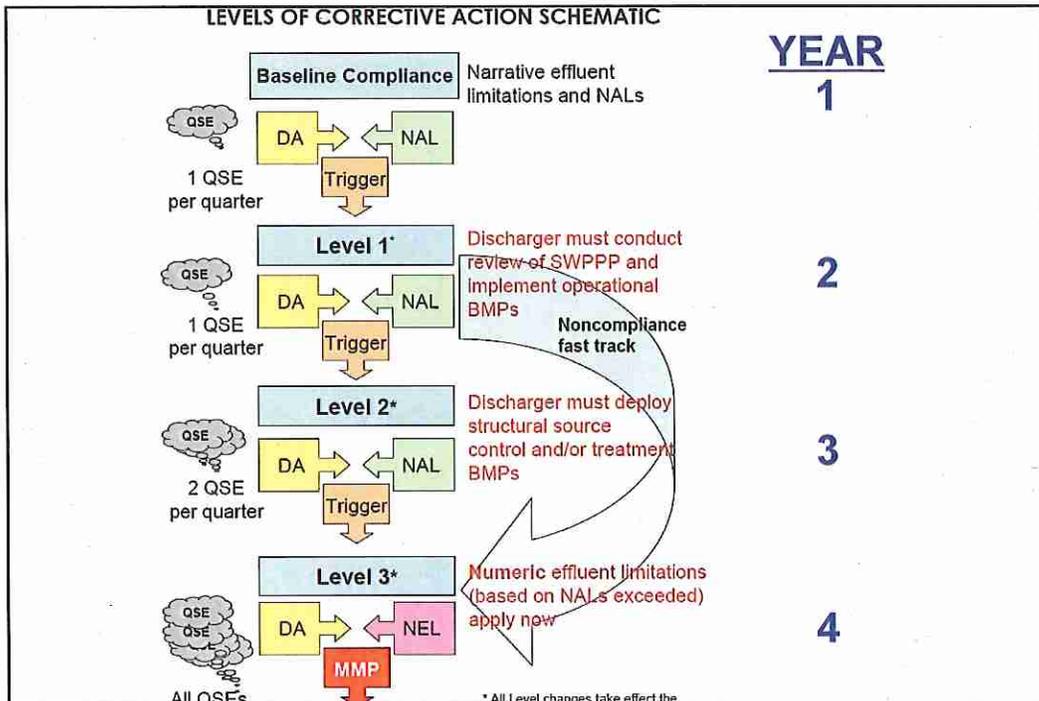


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## California General Permit

- Exceedance Response Action (ERA) plan
- ✘ ➤ Demonstration Technical Reports
- ✘ ➤ Design standards for treatment BMPs
- Natural background pollutant source demonstration
- Qualified Industrial Storm Water Practitioner (QISP) ✘

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## Final Thoughts



- “Menu” with a bite...
- Adopt all future USEPA MSGPs 
- Increased liability to enforcement
- The future promises to be **BRUTAL...**

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## Burning Questions



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# Ohio Updates

Cindy Hafner  
Chief Legal Counsel  
Ohio EPA  
614-644-2274  
[Cindy.hafner@epa.ohio.gov](mailto:Cindy.hafner@epa.ohio.gov)



# US Army Corp of Engineer

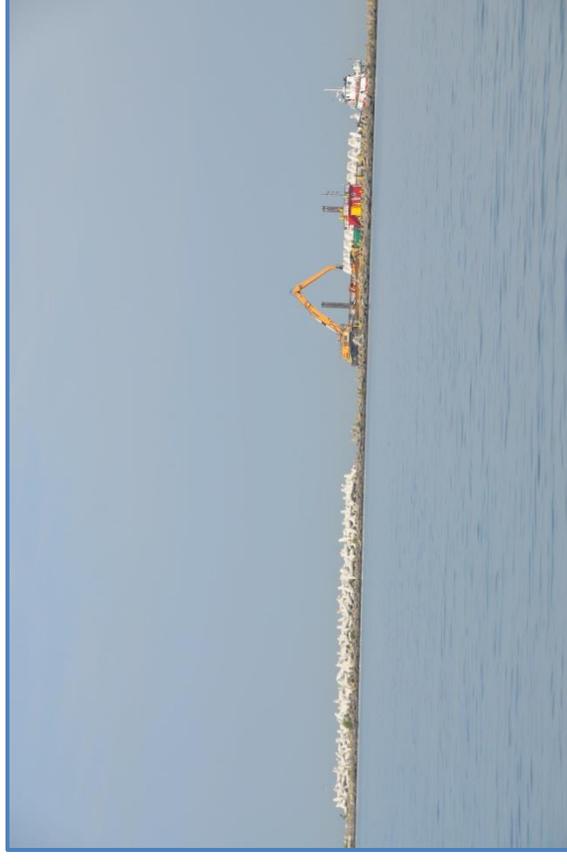
## Dredging Cleveland Harbor

- 6 miles of Cleveland Harbor dredged annually
- USACE tests sediment for contaminants
- Ohio 401 Certification necessary for Lake Disposal
- Disagreement over cleanliness of 145,000 yds<sup>3</sup> in last mile
  - PCB levels too high
  - Potential effect on PCB levels in Walleye
- 401 required dredge material disposal in CDF – not Lake Erie

# US Army Corp of Engineer

## Dredging Cleveland Harbor

- Ohio EPA filed suit in 2015 requesting preliminary injunction to dredge in 2015
  - Court agreed and ordered USACE to dredge
- Ohio EPA ordered to set aside money to pay difference while litigation on merits move forward
- Completing record



# US Army Corp of Engineer Dredging Cleveland Harbor



DEPARTMENT OF THE ARMY  
BUFFALO DISTRICT CORPS OF ENGINEERS  
1778 NIAGARA STREET  
BUFFALO, NEW YORK 14207-3199

SENT TO  
ATTENTION OF

August 19, 2015

Office of Counsel

Mike Foley  
County of Cuyahoga  
Department of Sustainability  
2079 East Ninth Street  
Cleveland, Ohio 44115

Re: Freedom of Information Act Request  
Our File No. FP-15-026543 – FP-15-0012

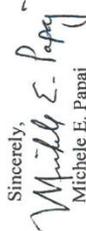
Dear Mr. Foley:

This is in response to your recent letter requesting information regarding numerous data and documents relating to the sampling of sediments in Cleveland Harbor from January 1, 2012 through the present.

In the Code of Federal Regulations, 28 C.F.R. §16.10 under (i) Advance payments (2) it states that when a component determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. Please note that the estimated amount of the fee for your request will be approximately \$413,106.00. 

Because this request is considered complex, the response time for fulfilling your request will be considerably more than 20 business days.

If you wish to discuss your request, please contact me at 716-879-4184 or via email at Michele.e.papaj@usace.army.mil.

Sincerely,  
  
Michele E. Papaj  
Freedom of Information Act Coordinator

# US Army Corps Dredging Cleveland Harbor

- 2016 dredging nothing has changed
  - Technical debate over cleanliness of dredge in “money mile”
- President’s budget sought \$9 million in Cleveland Harbor, would fund CDF disposal
- Without state or delegation knowledge, requested a reduction in budget to an amount that will only pay for open lake disposal
- Still in record completion, document production
- Status conference March 23<sup>rd</sup>

January 22, 2016

The Honorable Jo-Ellen Darcy  
Assistant Secretary of the Army  
Department of the Army, Civil Works  
108 Army Pentagon  
Washington, DC 20310

Dear Assistant Secretary Darcy:

We demand that the U.S. Army Corps of Engineers (USACE) include \$2 million in additional funds in its Fiscal Year (FY) 2016 Work Plan for dredging at the Cleveland Harbor. The USACE has failed to provide sufficient funding to fully dredge the shipping channel of the Cuyahoga River. This failure to adequately fund dredging of the Cleveland Harbor is contrary to the President's FY2016 budget request. We therefore demand the USACE to include at least \$2 million for this project from the unallocated \$273 million included in the FY2016 Omnibus Appropriations bill for USACE's operation and maintenance of Federal harbor and channel projects.

The FY2016 Omnibus bill reduced funding for the Cleveland Harbor dredging project to \$5.94 million; this was \$3.6 million below the President's budget request. We are disappointed that the Corps' request to reduce funding was done without consultation and coordination with the Ohio delegation, the State of Ohio, or the Port of Cleveland.

As you know, the Ohio Environmental Protection Agency has determined that the contaminant levels in the dredged sediment USACE seeks to dispose of in Lake Erie poses a threat to both the City of Cleveland's drinking water supply and Lake Erie's aquatic populations. We believe that absent a State Water Quality certification, the Corps is unable to place the dredged material in Lake Erie. Furthermore, the FY2016 Omnibus bill also prohibits funds to be used for open lake placement of dredged material absent approval from the State of Ohio.

Because a State Water Quality certificate has not been issued, we believe that placement of the dredged material in the Port's combined disposal facility (CDF) must be at federal cost. In order to ensure the Port's continued operation and the safe management of dredged material, we are requesting the Corps provide the necessary funding to complete the Port's dredge management plan for FY2016.

Thank you for your consideration of our request.

Sincerely,

  
Sherrod Brown  
U.S. Senator

  
Rob Portman  
U.S. Senator



# Legal Process Improvement

- LEAN to improve efficiency
- Trade Secret determination in Public Records process
- Verified Complaints
- Audit Privilege
- Administrative Hearing Process



# TMDLS

- Fairfield County Ohio Supreme Court Decision said TMDL must be established by rule making
- TMDL status unclear
- USEPA can do them, confirmed by Chesapeake Bay case.
  - SCOTUS did not take up hearing 3<sup>rd</sup> district Circuit Court of Appeals case.
- State legislative solution preferable

# WOTUS

- Rule is still stayed
- 6<sup>th</sup> Circuit Court of Appeals ruled February 22<sup>nd</sup>, 2016 it had jurisdiction rather than hearing in multiple district courts.
- Ohio is a party Attorney General DeWine decided to pursue on own initiative

# Clean Power Plan

# U.S. EPA Carbon Regulation of Power Sector

- **Two actions designed to significantly reduce carbon emissions from the power sector**
  - Carbon Pollution Standards –new, modified and reconstructed sources
  - Clean Power Plan (CPP) –existing sources
    - Federal Plan proposal and model rule
- **U.S. EPA’s stated CPP goals are to**
  - Achieve significant carbon emission reductions in 2030
  - Deliver an approach that gives states and utilities time to preserve ample, reliable and affordable power
  - Spur increased investment in non-carbon based renewables

# U.S. EPA's Clean Power Plan

*Final Rule - October 23, 2015*

- U.S. EPA rule requires a 32% reduction in emissions of CO<sub>2</sub> across the country.
- Establish carbon dioxide emissions rates for coal and gas power plants that reflect “best system of emission reduction” (BSER)
- In the final rule, U.S. EPA identified three “Building Blocks” and calculated performance rates using these assumptions
  - Block 1: Improve heat rate efficiency at individual units
  - Block 2: Increase existing NGCC generation
  - Block 3: Increase non-carbon based generation

*Block 4: Energy Efficiency has been removed from consideration as BSER in the final CPP.*



# Ohio's CPP Goals

Each state is tasked with developing a plan to reach their respective target.

	Rate Based (lbs CO <sub>2</sub> /MWh)	Mass Based (tons CO <sub>2</sub> )
• 2012 Baseline	1,900	102,239,220
• Proposed CPP	1,338	-
• Interim Period 2022-2029	1,383	82,526,513
• Final Goal 2030+	1,190	73,769,806

*Between 2005 and 2014 Ohio has already experienced a reduction in CO<sub>2</sub> emissions of 30% as a result of market forces and federal regulations including the Mercury and Air Toxics Standard (MATS).*

# Final CPP Plan Options

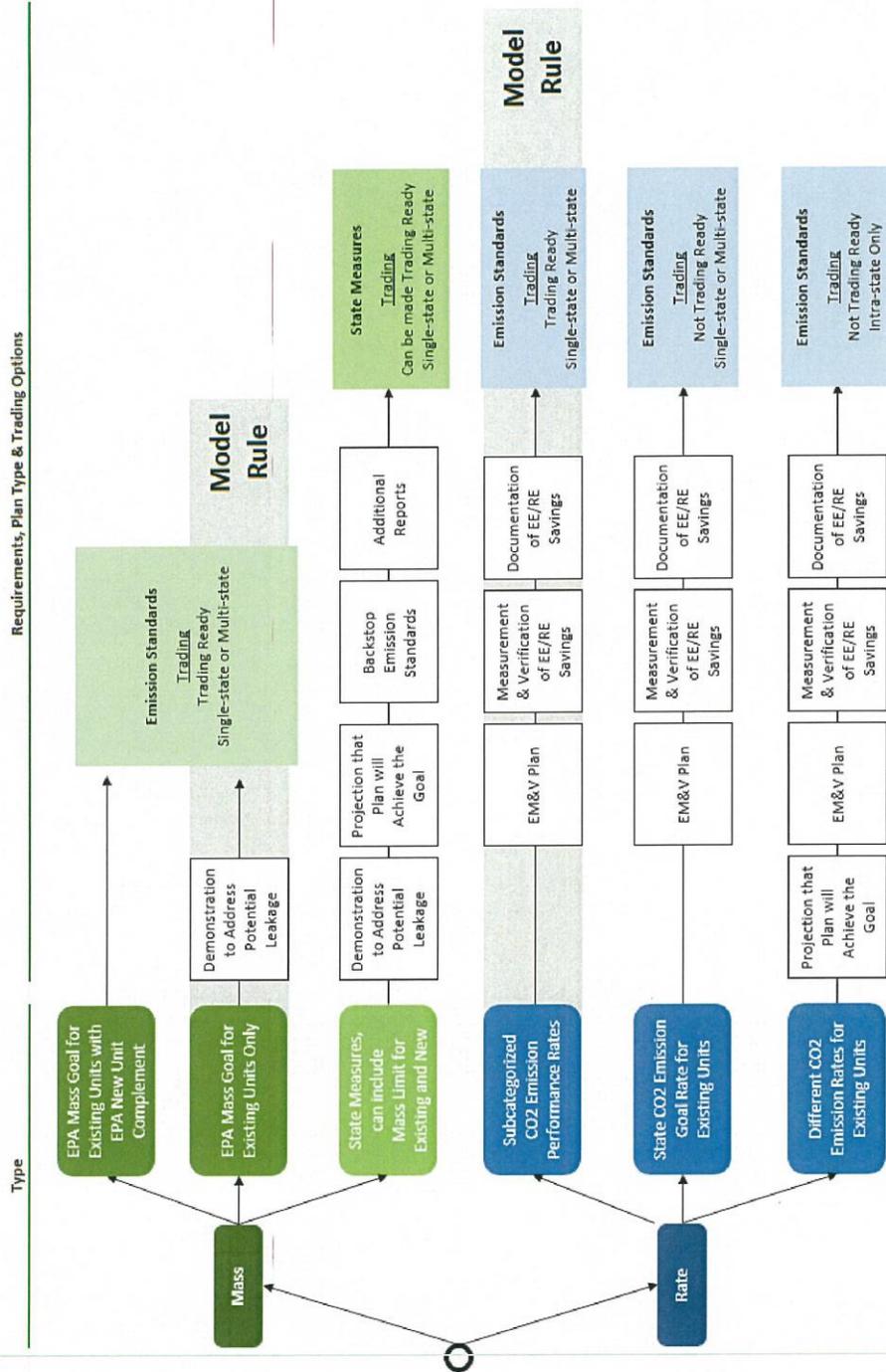
The final CPP provides seven pathways a state can take:

- State Plan
  - Three rate-based options – one based on MR
  - Three mass-based options – one based on MR
- Federal Plan

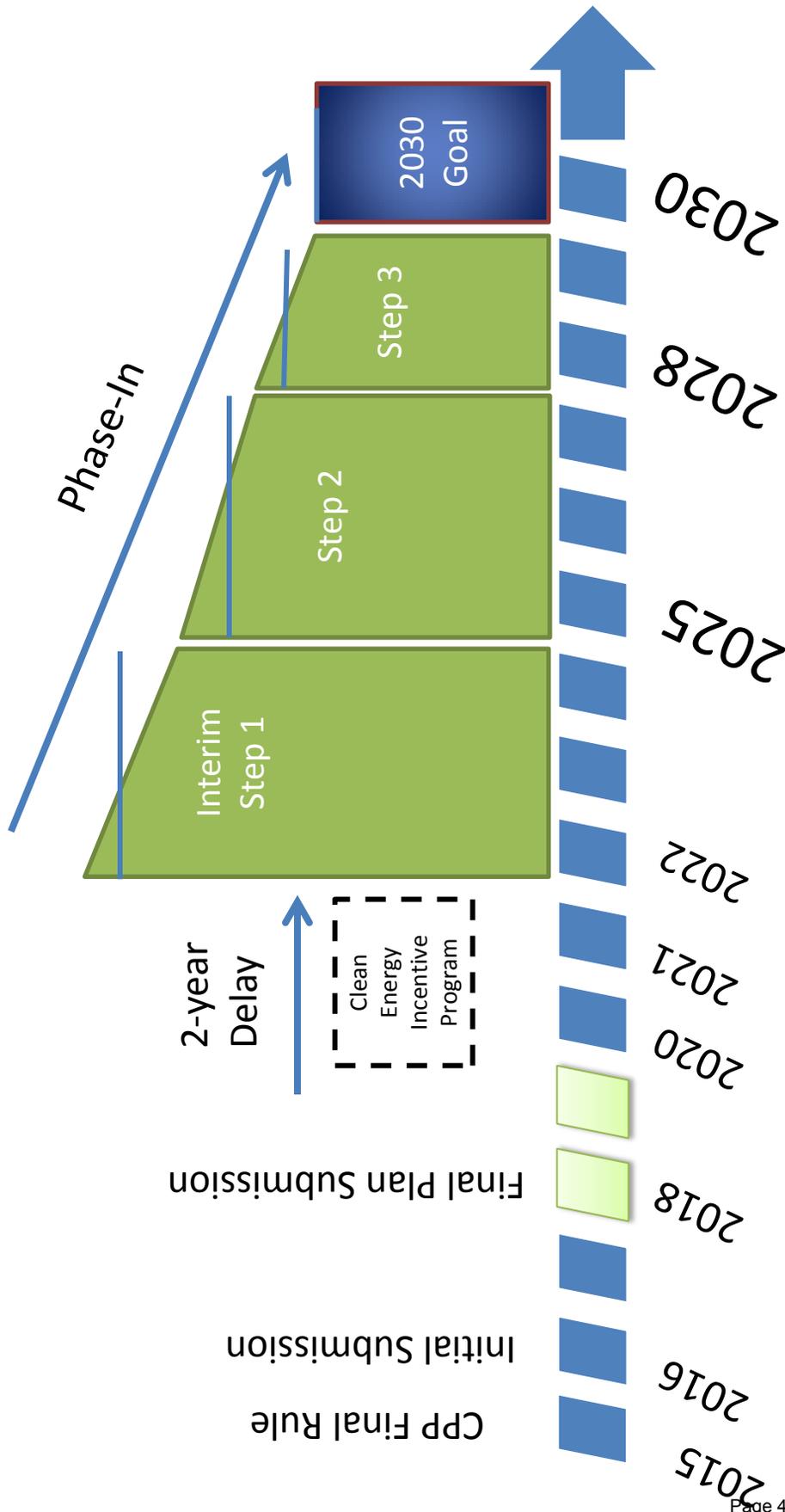


# More State Options, Lower Costs

- This chart shows some of the compliance pathways available to states under the final Clean Power Plan. Ultimately, it is up to the states to choose how they will meet the requirements of the rule
- EPA's illustrative analysis shows that nationwide, in 2030, a **mass-based approach is less-expensive** than a rate-based approach (\$5.1 billion versus \$8.4 billion)
- Under a mass-based plan, states that anticipate continuing or expanding investments in energy efficiency have unlimited flexibility to leverage those investments to meet their CPP targets. EE programs and projects do not need to be approved as part of a mass-based state plan, and EM&V will not be required
- For states currently implementing mass-based trading programs, the "state measures" approach offers a ready path forward
- Demand-side energy efficiency is an important, proven strategy that states are already widely using and that can substantially and cost-effectively lower CO<sub>2</sub> emissions from the power sector



# Clean Power Plan Timeline



# Legal Challenge

- On October 23, 2015, Ohio and 27 other states (or entities) filed Petitions for Stay and Expedited Review asserting that:
  - EPA lacks authority under CAA Section 111(d) to require states to fundamentally restructure their electric grids by requiring them to use less coal-fired energy and replace it with new non-carbon based generation.
  - It also requires states to regulate coal-fired power plants under CAA Section 111(d) even though the EPA already regulates those same plants under CAA Section 112. Double regulation is prohibited by the CAA.
- The Stay was denied but the Expedited Review was accepted.
  - June 2, 2016 – oral arguments.

# Legal Challenge

- States request stay from U.S. Supreme Court in light of denial by D.C. Court of Appeals
- By 5-4 decision, on February 9, 2016, U.S. Supreme Court issues stay – work on plan is placed on hold

- For more information and the latest updates on Ohio EPA's 111(d) progress: [www.epa.ohio.gov/dapc/111drule.aspx](http://www.epa.ohio.gov/dapc/111drule.aspx)
- Blog on details of Legal maneuvering <http://www.freshlawblog.com/2016/02/10/how-challengers-obtained-the-stay-that-put-us-epas-clean-carbon-plan-on-hold/#more-5064>

# Sebring

- Class III PWS exceeded lead levels for June – September 2015
- Should have notified homeowners within 30 days ~ mid September to October 2015
- Did not notify OEPA of lead level results and sampling information necessary to conclude level was exceeded
- Did not issue public education on lead in drinking water for consumers.
- Inspection reports noted corrosion control system not operating, in 2015, OEPA notified operator to evaluate and resume corrosion control treatment.



# Sebring

- January Central Office learns and NOV's issued and City told to provide testing, provide filters and bottled water, offer blood testing, evaluate exposure, revoked operator certification – find a new one
- OEPA offered financial assistance to city
- February 29<sup>th</sup>, 2016 issued order to bring PWS back into compliance.



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## COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP, Counsel to the OMA  
March 4, 2016

### A. ADMINISTRATIVE

#### 1. Ohio EPA Activities of Note

##### a. Ohio EPA Official Adam Ward Resigns

Adam Ward has left Ohio EPA to join American Municipal Power as assistant vice president of environmental affairs and policy. Ward was with Ohio EPA for 20 years, most recently as Assistant Chief of the Ohio EPA Division of Air Pollution Control and in charge of Ohio EPA's development of a plan to comply with the Clean Power Plan.

##### b. Universal Waste

OMA representatives have had several meetings with Ohio EPA to discuss the possible expansion of the scope of Ohio's universal waste rule, which is an exception from the hazardous waste rules. OMA had petitioned Ohio EPA approximately two years ago to add paint residue waste to the list of universal waste, as is the practice in Texas. Ohio EPA never formally acted on OMA's request and never responded in writing.

On February 15, 2015, at Ohio EPA's request, OMA submitted draft regulatory language for Ohio EPA's review to implement a regulatory change to add paint and paint waste to the designation of universal waste. On February 9, 2016, OMA met with Ohio EPA to discuss a proposed rule for paint and paint waste. Ohio EPA has indicated that they will be drafting a proposed rule this spring.

##### c. Village of Sebring Drinking Water (Lead) Violations

Ohio EPA issued a Notice of Violation to the Village of Sebring on January 21, 2016, after Director Craig Butler learned that Sebring had failed to properly notify its customers of elevated lead levels in certain homes and repeatedly failed to provide timely and accurate information to the Ohio EPA Northeast District Office. Ohio EPA issued emergency orders prohibiting Sebring's water treatment plant operator from operating any public water system in Ohio and revoking his license. Two Ohio EPA Central Office employees have been fired and a Northeast District Office manager demoted for their reported mishandling of Sebring's violations. As a result of Ohio EPA's own internal review of protocols and timelines, Ohio EPA has made revisions to its operating procedures involving lead in drinking water.

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2. Modification of Ohio's 401 Water Quality Certification for Nationwide Permits

Ohio EPA has public noticed a new 401 Water Quality Certification for Nationwide Permits, which implements a new method to determine eligibility for coverage with regard to stream quality. Ohio EPA asserts that the new method of designating high quality sub-watersheds is based upon sampling already conducted by Ohio EPA and will eliminate the need for applicants to spend time sampling when data already exists. A public hearing was held on January 11, 2016, and comments were due by January 19, 2016.

3. New Model General Permits for Miscellaneous Metal Parts and Products Coating Lines

On September 30, 2015, Ohio EPA DAPC issued four new model general permits (MGPs) (3.10 through 3.13) in place of seven existing MGPs (3.1 through 3.7) for miscellaneous metal parts painting lines. Ohio EPA revised the new MGPs based upon public comments received in June 2014. Upon renewal, companies with an older version of an MGP can choose to apply for the new MGP, or may apply for an individual permit requesting the old set of terms and conditions.

4. Revisions to OAC Rule 3745-33 (Ohio NPDES Permits)

Ohio EPA has announced that it is considering the following revisions to OAC Chapter 3745-33, the rule governing Ohio NPDES permits:

a. General

- Updates to reference citations and rule format, adding clarifying language and reorganization to OAC 3745-33-02; 3745-33-06; 3745-33-09; and 3745-33-10

b. 3745-33-01 Definitions

- Adding language for narrative reasonable potential

c. 3745-33-03 Permit applications

- Adding more detail on information required in NPDES permit applications
- Changing the rule so that any application that, on its face, fails to provide Ohio EPA with requested information may be considered incomplete rather than defective

d. 3745-33-04 Permit actions

- Changing the rule to allow Ohio EPA to issue permits if the applicant is exceeding authorized discharge levels, as long as authorized discharge levels can be met in the future (to be consistent with ORC 6111.03)
- Adding permit owner transfers as minor modifications

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- e. 3745-33-05 Authorized discharge levels
  - Changing the rule so that mass and concentration limits do not always need to be based on the same permit averaging periods for nutrients
- f. 3745-33-07 Establishing permit conditions
  - Including pollutants, as determined by the director to need limits through an antidegradation review and other parameters as determined by the director to have the reasonable potential to cause or contribute to an excursion above water quality standards, in the list of conditions that require final effluent limitations
  - Adding that when data used to determine PEQ values are invalid or unrepresentative for a group five parameter and the director makes an exception to the effluent limitation, the parameter shall be considered a group four parameter
  - Evaluating reasonable potential procedures for noncontact cooling water to ensure consistency with federal regulations
  - Evaluating whole effluent toxicity testing requirements to ensure consistency with federal regulations
  - No planned changes to Ohio's variance language

Comments submitted during Ohio EPA's Early Stakeholder Outreach period were due to Ohio EPA by February 8, 2016. Ohio EPA plans to release a draft version of the rules for interested party review and comment in the spring of 2016.

5. US EPA SIP Call (Startup, Shutdown & Malfunction Rules Notice of Deficiency)

On June 12, 2015, US EPA issued a final SIP Call to Ohio and 35 other states identifying specific rules that US EPA believes no longer comply with the Clean Air Act. Ohio's specific rules and paragraphs called out by US EPA are:

- a. OAC 3745-14-11(D) (NOX-RACT Portland Cement Kilns)
- b. OAC 3745-15-06(C) (General Rules – Malfunction of Equipment)
- c. OAC 3745-15-06(A)(3) (General Rules – Malfunction of Equipment)
- d. OAC 3745-17-07(A)(3)(c) (Particulate Matter)
- e. OAC 3745-17-07(B)(11)(f) (Particulate Matter)

Despite Ohio EPA's objections to US EPA's proposal, US EPA did not modify the proposal. The Ohio Attorney General's Office has joined with other states to appeal US EPA's action to the D.C. Circuit Court of Appeals.

Regardless of Ohio's appeal to the D.C. Circuit, Ohio EPA must address the SIP Call by November 2016. Ohio EPA will be hosting meetings for interested parties to discuss possible options for moving forward. The first meeting was held on December 18, 2015.

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6. Proposed Water Quality Standards Rules – OAC Chapter 3745-1

Ohio EPA has issued a proposed rulemaking of selected water quality standards rules pertaining to documents referenced in OAC Chapter 3745-1, water quality criteria, and methodologies used to develop water quality criteria. Potentially impacted entities may include facilities that discharge or plan to discharge wastewater or entities seeking permission to physically impact water bodies. Specifically, Ohio EPA is proposing revisions to:

- a. 3745-1-03 Analytical methods and availability of documents
- b. 3745-1-33 Water quality criteria for the lake Erie drainage basin
- c. 3745-1-35 Site-specific modifications to criteria and values
- d. 3745-1-37 Methodology for deriving bioaccumulation factors
- e. 3745-1-39 Methodology for development of wildlife criteria for the Lake Erie drainage basin

Ohio EPA will hold a public hearing on the proposed rule on April 5, 2016 at 10:30 am, and is accepting public comments until 5:00 pm on April 5, 2016.

7. Draft OAC Rule 3745-21-07 – Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards

On February 11, 2016, Ohio EPA refiled OAC 3745-21-07 with JCARR after making additional changes to the proposed language original provided to JCARR on July 13, 2015.

8. Rule Language Changes to OAC 3745-31

The Ohio EPA Division of Air Pollution Control has announced to-be-refiled rule language for rules governing its Permits-to-Install New Sources and Permit-to-Install and Operate Program. The changes incorporate SB 265 language, incorporate additional exemptions, and clarify site preparation activities. The comment period expired on January 7, 2016. Rules affected by the changes include:

- a. OAC 3745-31-01 Definitions
- b. OAC 3745-31-03 Exemptions and Permits-by-Rule
- c. OAC 3745-31-05 Criteria for Decision by the Director
- d. OAC 3745-31-06 Completeness Determinations, Processing Requirements, Public Participation, Public Notice and Issuance
- e. OAC 3745-31-11 Attainment Provisions – Ambient Air Increments, Ceilings and Classifications
- f. OAC 3745-31-13 Attainment Provisions – Review of Major Stationary Sources and Major Modifications, Stationary Source Applicability and Exemptions
- g. OAC 3745-31-14 Attainment Provisions – Pre-application Analysis
- h. OAC 3745-31-33 Site Preparation Activities Prior to Obtaining a New Permit-to-Install or PTIO

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2. US EPA Activities of Note

a. Resignation of US EPA Regional Administrator Susan Hedman

US EPA Region 5 Administrator Susan Hedman resigned, effective Monday, February 1, 2016, over controversy surrounding a drinking water crisis in Flint, Michigan. As Region 5 Administrator, Hedman oversaw US EPA operations in six states, including Ohio and Michigan. Bob Kaplan has been designated as acting Regional Administrator.

Approximately 8,000 children aged five or younger in Flint, Michigan were potentially exposed to lead after the city switched its drinking water source from the Detroit water system to the Flint River and failed to treat the new source water to control for corrosion. The corrosive drinking water caused lead to leach from drinking water pipes into Flint's drinking water supply. US EPA officials reportedly learned in early 2015 that Flint was not practicing corrosion control treatment and did not promptly take steps to notify Flint residents.

b. Hydrofluorocarbons (HFCs)

On November 9, 2015, EPA published a proposed rule in the Federal Register to amend the Clean Air Act section 608 refrigerant management program regulations. The existing regulations require that persons servicing or disposing of air-conditioning and refrigeration equipment observe certain service practices to reduce emissions of ozone-depleting refrigerant.

The proposed rule would update the existing requirements and extend them to non-ozone-depleting substitute refrigerants, such as hydrofluorocarbons. Hydrofluorocarbons are used as refrigerants, aerosol propellants, solvents, and fire retardants. The major emissions source of hydrofluorocarbons is their use as refrigerants. The proposed updates include:

- i. strengthening leak repair requirements;
- ii. establishing recordkeeping requirements for the disposal of appliances containing five to 50 pounds of refrigerant;
- iii. changes to the technician certification program; and
- iv. changes for improved readability, compliance, and restructuring of the requirements.

The public comments period for the proposed rule expired on January 8, 2016.

**B. JUDICIAL**

1. Supreme Court Stays the Clean Power Plan

On February 9, 2016, the U.S. Supreme Court in a 5-4 decision issued a stay of the implementation of the Clean Power Plan, pending ongoing related litigation in the U.S. Court of Appeals, D.C. Circuit. The stay will remain effective until the D.C. Circuit resolves the merits of the case and the Supreme Court resolves any appeals of the D.C. Circuit decision. The D.C.

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Circuit is expected to hear the case in June 2016, and a decision on the merits is anticipated in the fall of 2016. In the meantime, States will not be required to meet the September 6, 2016 deadline for submitting initial state implementation plans.

The Clean Power Plan seeks to limit carbon dioxide emissions from existing power plants by the year 2030. Following US EPA's publication of the Clean Power Plan on October 23, 2015, twenty-seven states (including Ohio) and various industries and businesses filed suit to challenge the Plan in the D.C. Circuit. In late January, the D.C. Circuit declined the petitioners' request to stay the Clean Power Plan.

Long-term implications of the Supreme Court stay are uncertain. The stay provides only interim relief, and gives no certainty that the Clean Power Plan will ultimately be struck down. However, some analysts believe the granting of the stay indicates how the Supreme Court may ultimately rule.

## 2. Passing of Supreme Court Justice Antonin Scalia

On February 12, 2016, U.S. Supreme Court Justice Antonin Scalia passed away in his sleep from natural causes at the age of 79. Justice Scalia was a conservative leader of the Court known for his belief that justices should follow a literal interpretation of the Constitution, rather than apply a more modern interpretation. A battle over Justice Scalia's replacement on the bench likely looms. Republican leaders believe that the nomination should come from the next president in office, while Democrats have called for the seat to be filled immediately. President Obama has stated his intent to nominate a replacement.

## 3. Sixth Circuit Court of Appeals Air Pollution Decisions

On November 2, 2015, the Sixth Circuit joined the Third Circuit in holding, in two parallel class action interlocutory appeals, that the Clean Air Act does not preempt state common law tort claims related to air pollution.

In *Merrick v. Diageo Americas Supply, Inc.*, a proposed class of local property owners asserted claims for negligence, nuisance, trespass, and injunctive relief against Johnny Walker and J&B brand whiskey distilleries in Louisville, Kentucky, for allegedly having excess ethanol emissions that caused the growth of a specific type of mold on neighboring properties. The properly owners relied on a local ordinance that prohibited air pollution causing "injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public."

In *Little v. Louisville Gas & Electric Co.*, a proposed class of local residents asserted claims for violations of the federal Clean Air Act and the Resource Conservation and Recovery Act, as well as state common law claims for nuisance, trespass, negligence, negligence per se, and gross negligence, relating to dust and coal ash emissions from a coal-fired power plant.

In both cases, the Sixth Circuit upheld the lower court ruling and held, similarly to the Third Circuit in *Bell v. Cheswick Generating Station*, that the local residents' common law

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claims were not preempted by the federal Clean Air Act. In *Merrick*, the Sixth Circuit pointed to the express “Savings clause” in the Clean Air Act granting states the right to “adopt or enforce” common law standards to air emissions, including state common law claims adjudicated by the courts. The Sixth Circuit further looked to the legislative history of the Clean Air Act, in which Congress indicated that it did not intend to preempt state common law claims for air pollution, but rather, specifically reserved all other rights and remedies available under other federal and state laws.

#### 4. WOTUS Rule to be Considered by the Sixth Circuit

On February 22, 2016, a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit ruled (2-1) that the Sixth Circuit, not the lower District Court, was the appropriate venue for consideration of challenges to the Waters of the United States (“WOTUS”) final rule published by U.S. EPA and the U.S. Army Corps of Engineers in June 2015. The WOTUS rule attempts to define, by regulation, which waters and wetlands fall within the reach of certain Clean Water Act provisions pertaining to permitting and state water quality certification rules. This current decision ends a four-month period during which the final rule had been stayed (representing the panel’s conclusion that the challengers demonstrated a likelihood of success on the merits), but the merits have not yet been considered.

The merits of the case are now likely to be heard by the same three-judge panel. If the substance of the WOTUS rule is invalidated by the panel, there may possibly be a rehearing en banc before the entire Sixth Circuit. Once finally decided by the Sixth Circuit, the case will likely proceed to the U.S. Supreme Court.

**TO: OMA Environment Committee**  
**FROM: Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: March 8, 2016**

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### **Overview**

The General Assembly returned to Columbus in late January after its holiday break. Environmental discussions continued to be dominated by federal regulations most significantly the Clean Power Plan. Environmental issues within the state continue to be most impactful on the regulatory side. The Agency and Director Butler have taken some criticism over the handling of some lead pipe and contaminated water issues over the past month. However most of that appears to be subsiding at this point in March.

### **General Assembly News and Legislation**

#### **House Bill 349 – State Emissions Plan**

Representatives R. Smith (R-Bidwell) and Ginter (R-Salem) introduced HB 349 which requires the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency. There is a concern if this bill gets enacted that the General Assembly may not approve the agency's plan. If that happens there is a real chance Ohio would be forced to comply with the federal plan. The bill had a third hearing in December.

#### **Senate Bill 269 – Public Water System Lead Contamination**

Senate Minority Leader Schiavoni introduced SB 269 in response to the Sebring water crisis. The bill would require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may effect the system's drinking water, to require the Director of Environmental Protection to provide the notice if the public water system fails to provide it, to require employees of the Environmental Protection Agency to provide continuing assistance to a public water system that fails to provide the required notice of lead contamination, and to require the Director to adopt rules that increase the monitoring frequency for lead and copper under specified circumstances. The bill has not had any official hearings in Senate Committee.

#### **Environment MBR**

With Governor Kasich on the campaign trail, the MBR process created under his administration is not going to be as robust in 2016 as in previous years. Agency's are looking at some policy changes and are expected to introduce some smaller less controversial bills than in past years. There is still some speculation whether an environment bill will be introduced and what will be contained in that bill. With the General Assembly only expected to be in Columbus for about 15 days in the spring, it will be challenging to pass any major reforms prior to the general election in November.

### **Regulations**

#### **Ozone – U.S. EPA**

Last fall the Obama administration and U.S. EPA announced the final ozone rule which established a new ground-level ozone standard for the country. The rule tightened the already stringent standard of 75 parts per billion (ppb) down to 70 ppb.

The administration had threatened to set the standard at 65 or even 60 ppb. Thank you to OMA members who made Ohio's manufacturing voice heard during the OMA led campaign to fight the ozone rule here in Ohio.

Litigation continues at the federal level as do discussion regarding background ozone which complicates the matter further for manufacturers operating in areas of high foreign ozone.

#### U.S. EPA 111(d)

Last August the U.S. EPA proposed its final rules for carbon emissions from the nation's power plants. The rules were proposed under section 111(d) of the Clean Air Act.

The rule proposes a national reduction in power plant carbon emissions by 2030, from a base year of 2012. This means a 37% reduction for Ohio.

EPA revised the building block model in response to legal uncertainties. The new "building blocks" are: reducing the carbon intensity of electricity generation by improving the heat rate of existing coal-fired power plants; substituting increased electricity generation from lower-emitting existing natural gas plants for reduced generation from higher-emitting coal-fired plants; and substituting increased electricity generation from renewable energy sources.

The timetable for implementing these vast rules is aggressive: States will be required to submit a final plan, or an initial submittal with an extension request, by September 6, 2016. Ohio EPA has indicated it will be seeking an extension from the federal government, which would set Ohio's rulemaking a year behind the federal schedule as currently published.

Last month The Supreme Court of the United States granted a stay of the Obama administration's Clean Power Plan (CPP) regulation of greenhouse gas (GHG) emissions from the electric utility sector. That decision delays the implementation of the rule until the courts have the opportunity to determine the plan's legality.

The case against the plan is pending before the D.C. Circuit Court, where arguments will be heard June 2. A decision is possible in 2016, but might not be made until 2017.

Last week the OMA joined more than 160 business groups throughout the country in filing an amicus brief in the U.S. Court of Appeals for the D.C. Circuit in support of a lawsuit by states and industry to overturn U.S. EPA's "Clean Power Plan."

The brief outlines major legal and economic concerns with the rule, arguing that U.S. EPA trampled the rights of states to determine their own energy mix and implement environmental standards in a manner tailored to their own circumstances.

The court is likely to issue a decision later this year. From there, the challenge is expected to make its way to the U.S. Supreme Court, which previously issued a stay to halt all implementation and enforcement actions on the rule until it has the opportunity to hear the case.

In December Ohio EPA and the Public Utilities Commission of Ohio (PUCO) jointly held an informational kick-off meeting to discuss the state's planning for federal Clean Power Plan (CPP) compliance. Ohio EPA Director Craig Butler led the discussion along with PUCO Commissioner Asim Haque.

There will be at least five regional hearings in the early part of 2016 to allow stakeholders to weigh in on the issue. Ohio EPA and the PUCO provided this document of implementation issues to consider. Ohio EPA has not commented whether the decision by the Supreme Court changes the timeframe of the regional meetings.

#### Waters of the U.S. Stay

A divided Sixth Circuit issued a nationwide stay against the enforcement the so-called “waters of the United States” regulation. The regulation was issued by the U.S. EPA and the U.S. Army Corps of Engineers. The regulations defined the scope of “waters of the U.S.” to be subject to federal regulatory jurisdiction under the Clean Water Act.

#### Universal Waste

At the end of 2012 Ohio EPA solicited comments through the early stakeholder outreach program on the expansion of universal waste in Ohio. The agency wanted to examine whether additional hazardous wastes should be designated as universal wastes and specifically if hazardous waste aerosol cans and spent antifreeze should be designated universal wastes. The OMA submitted initial comments on this topic requesting certain paint and paint related wastes.

The OMA was approached by Ohio EPA to see what sort of backing the expansion of universal waste would have among members. Last year the OMA put together a working group to work with Ohio EPA on this topic. The group submitted a document to Ohio EPA last fall and submitted rule language earlier this year.

Most recently the group sent clarifying information to the agency describing the different types of wastes that are expected to be covered under the rule change. At last contact the agency is working on draft rules for aerosol cans, spent antifreeze, and paint and paint related wastes.

#### National Pollutant Discharge Elimination System (NPDES) permit program

Ohio EPA has announced its Early Stakeholder Outreach (ESO) process for Chapter 3745-33 of the Ohio Administrative Code which contains the administrative and technical requirements for writing and obtaining wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program.

Ohio EPA will begin drafting rules in the near future.

#### **Other Notes**

##### Ohio EPA vs. U.S. Army Corps of Engineers

Ohio EPA and the Army Corps continue to do battle over the dredging of the Cuyahoga river and the Cleveland harbor. Ohio EPA maintains that the dredge material is too toxic for open lake disposal. The Corps continues to insist that the dredge material is safe for open dumping. Most recently a judge sided with Ohio EPA requiring the materials be stored in containers as it had been for years.

This year the Corps requested less for funds and voluntarily cut their budget, which is unheard of for a government agency, in order to win the battle with Ohio EPA. It is extremely important that the dredging take place each year because of the importance of the river for manufacturing facilities located inland from the Port.

Ohio EPA is hosting a dredged material workshop in May. The purpose of the workshop is to assist in efforts to help identify and develop ideas that would benefit Ohio by reusing dredge materials.

#### Lead Contamination

Ohio EPA has been under pressure regarding the Village of Sebring. Lead was found in the village drinking water. There was a problem in notifying the village regarding the contamination in a timely manner. In the light of Flint, Michigan's issues Ohio EPA responded by firing several employees and demoting others.

#### Ohio EPA Open Houses

Ohio EPA announced they will begin holding open houses in each of the district offices. These meetings will be led by Director Butler. The first meeting is planned at the central office 1:00-5:00 p.m. on March 24, 2016.



# Ohio Legislative Service Commission

## Bill Analysis

Helena Traner

### **Sub. H.B. 349**

131st General Assembly  
(LSC 131 1721-2)  
(As Proposed)

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## **BILL SUMMARY**

- Prohibits the Director of Environmental Protection from submitting a state plan regarding greenhouse gas emissions to the U.S. Environmental Protection Agency (USEPA) without the express approval of the General Assembly.
- Specifies that a state plan approved by the General Assembly remains in effect only to the extent that specific federal emission guidelines are in effect.
- Requires the Director to submit a timely initial submittal and a progress report to the USEPA as required by applicable federal regulations.
- Specifically requires the Director to develop, evaluate, and provide a proposed state plan for consideration to the General Assembly.
- Requires the proposed state plan to maximize flexibility for the state and minimize adverse impacts on the cost and reliability of electricity, employment, and the economy of Ohio.
- Requires the Director, before submitting the proposed state plan to the General Assembly, to develop and evaluate four specified state plan options.
- Requires the Director, with respect to each state plan option, to analyze eight factors, including projected impacts on energy cost and reliability, market-based considerations in achieving performance standards, and negative impacts to the competitiveness of manufacturing in Ohio.
- Requires the Director to satisfy all applicable federal requirements regarding public comment and involvement when developing the proposed state plan.

- Requires the Director to provide the proposed state plan with a report containing the state plan options and their analyses to the General Assembly in sufficient time to meet any deadlines established by USEPA.
- Declares an emergency.

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## CONTENT AND OPERATION

The bill prohibits the Director of Environmental Protection from submitting a state plan, or a part of a plan or revision, regarding greenhouse gas emissions to the U.S. Environmental Protection Agency (USEPA) without the express approval of the General Assembly.<sup>1</sup> It also specifies that a state plan approved by the General Assembly under the bill remains in effect only to the extent that specific federal emission guidelines are in effect.<sup>2</sup>

The bill then requires the Director to submit a timely initial submittal and a progress report to the USEPA as required by federal regulations governing emission guidelines for greenhouse gas emissions and compliance times for electric utility generating units that specify what must be included in an initial submittal. The federal regulations refer to greenhouse gases and define what constitutes those gases. The bill specifically requires the Director to develop, evaluate, and provide a proposed state plan for consideration to the General Assembly.<sup>3</sup> The proposed state plan must maximize flexibility for the state and minimize adverse impacts on the cost and reliability of electricity, employment, and the economy of Ohio consistent with applicable law.<sup>4</sup>

The bill requires the Director, before submitting the proposed state plan to the General Assembly, to develop and evaluate all of the following state plan options:

(1) An option that is identical to USEPA's final model federal implementation plan and trading rules;

(2) An option that is consistent with and no more stringent than emission guidelines established in federal regulations;

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<sup>1</sup> R.C. 3704.10(G).

<sup>2</sup> R.C. 3704.10(H).

<sup>3</sup> R.C. 3704.10(A).

<sup>4</sup> R.C. 3704.10(B).

(3) An option that requires no greater reduction in aggregate emissions than the level that the USEPA found could be achieved at power plants in Ohio through heat rate improvement measures; and

(4) An option that is less stringent than the emission guidelines to the extent the Director finds, for power plants on a case-by-case basis or for classes of power plants, that any of the following applies:

--There is an unreasonable cost of control resulting from a plant's age, location, or basic process design;

--It is physically impossible to install necessary control equipment; or

--Other factors exist that are specific to the power plant or class of power plants that make application of a less stringent standard significantly more reasonable.<sup>5</sup>

The bill also requires the Director, with respect to each state plan option described above, to analyze all of the following factors:

(1) Whether legislation or other changes to state law are required;

(2) Consumer impacts, including any disproportionate impacts of energy price increases on lower-income individuals;

(3) Nonair quality health and environmental impacts;

(4) Projected impacts on energy cost and reliability;

(5) Market-based considerations in achieving performance standards;

(6) Impacts of closing a generating unit, including economic consequences such as expected job losses or shifts at the unit and in fossil fuel production areas and any other worker dislocations;

(7) Negative impacts to the competitiveness of manufacturing in Ohio; and

(8) Revenue impacts on affected municipal corporations, townships, counties, and school districts.<sup>6</sup>

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<sup>5</sup> R.C. 3704.10(C).

<sup>6</sup> R.C. 3704.10(D).

The bill requires the Director to satisfy all applicable federal requirements regarding public comment and involvement when developing the proposed state plan.<sup>7</sup> Finally, it requires the Director to provide the proposed state plan together with a report containing the state plan options and their analyses to the General Assembly in sufficient time to meet any deadlines established by USEPA.<sup>8</sup>

Stating that the time-consuming development of a response to federal regulations governing carbon dioxide emissions must be commenced immediately in order to ensure the protection of the health and safety of Ohio's citizens, the bill declares an emergency.<sup>9</sup>

H0349-PROP-131.docx/emr

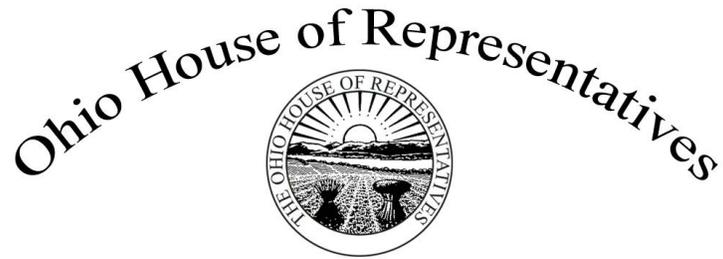
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<sup>7</sup> R.C. 3704.10(E).

<sup>8</sup> R.C. 3704.10(F).

<sup>9</sup> Section 2.





**State Representative Ryan Smith  
93<sup>rd</sup> Ohio House District**

**State Representative Tim Ginter  
5<sup>th</sup> Ohio House District**

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**Substitute House Bill 349 - Sponsor Testimony  
Ohio House Energy and Natural Resources Committee  
November 17, 2015**

Chairman Landis, Ranking Member O'Brien, and members of the House Energy and Natural Resources Committee, thank you for giving us the opportunity to offer sponsor testimony on Substitute House Bill 349.

In August of this year, the United States Environmental Protection Agency (USEPA) issued final regulations, called the Clean Power Plan, requiring states to submit plans to reduce carbon emissions from power plants. These regulations are designed to change how electricity is produced by requiring less use of coal (which currently supplies nearly 70% of Ohio's electricity) and more of alternative sources, such as wind and solar. The Clean Power Plan could have a dramatic effect on the cost and reliability of electricity in the state. A recent economic impact study of the final rule shows Ohio electricity rates will likely rise by an annual average of 15% and peak at 21%.<sup>i</sup> Under the Clean Power Plan, if a state does not submit a satisfactory plan under a tight schedule, the EPA will impose one of its own. Ohio and 26 other states have challenged the Clean Power Plan in court, but the litigation will take years, and many of the USEPA deadlines will come before it is completed.<sup>ii</sup>

In response to this reality, this legislation will require that the Ohio EPA obtain an extension of USEPA's initial September 6, 2016 deadline for submission of a state plan. It will require the Ohio EPA to develop, evaluate and provide a proposed state plan for consideration by the General Assembly. This plan will seek to maximize flexibility for the state and minimize adverse impacts on the cost and reliability of electricity, employment and economic status of the state. The bill also requires that before proposing a state plan, the Ohio EPA will develop and evaluate four specific options that address certain features of USEPA's guidelines. Each of these options will evaluate a range of specified factors such as impacts on cost and reliability of energy, employment, manufacturing competitiveness, lower-income communities, and revenues of governmental entities and school districts. This bill will ensure no state plan can be submitted to the USEPA without express approval of the General Assembly. It will also make it so any state

plan would no longer remain in effect if USEPA's Clean Power Plan regulations are invalidated by the courts.

In summary, this legislation will provide important options to the state during the litigation and will help prevent the USEPA from imposing unreasonable or unlawful requirements on Ohio through its own plan. Thank you for your time and thoughtful consideration. We urge support of Substitute House Bill 349. We would be happy to answer any questions that the committee may have.

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<sup>i</sup> <http://www.americaspower.org/sites/default/files/NERA%20CPP%20Final%20Nov%207.pdf>

<sup>ii</sup> [http://www.eenews.net/interactive/clean\\_power\\_plan](http://www.eenews.net/interactive/clean_power_plan)

# Manufacturers to Challenge EPA Ozone Regulation in Court

## Americans Across the Country Will Feel Costs of Expensive, New Regulation

by Mallory Micetich [ email ]

December 23, 2015

Washington, D.C., December 23, 2015 – National Association of Manufacturers (NAM) Senior Vice President and General Counsel Linda Kelly issued the following statement announcing the Manufacturers' Center for Legal Action's (MCLA) challenge to the Environmental Protection Agency's (EPA) new ozone regulation:

“The EPA’s ozone regulation, which could be one of the most expensive in history, is unworkable and overly burdensome for manufacturers and America’s job creators. Manufacturers across the United States need regulations that provide balance and allow us to be globally competitive.

“Further, our air quality is improving, and ozone levels are down more than 30 percent since 1980, yet the Administration insists on moving forward with tightening an already stringent standard. The MCLA and the NAM will continue to fight this new standard that inflicts undue pain on the companies that build things in America.”

The Manufacturers' Center for Legal Action serves as the leading voice of manufacturers in the courts, representing the 12 million men and women who make things in the United States. The MCLA strategically engages in litigation as a direct party, intervenes in litigation important to our manufacturers and weighs in as amicus curiae on important cases. To read more about the MCLA, [click here](#).

For more information about the effects this ozone regulation has on manufacturers, visit [our website](#).

*The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.09 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. For more information about the Manufacturers or to follow us on Shopfloor, Twitter and Facebook, please visit [www.nam.org](http://www.nam.org).*

## ***Attorney General DeWine Files Challenge to Clean Power Plan***

10/23/2015

(COLUMBUS, Ohio)—Ohio Attorney General Mike DeWine, along with attorneys general and regulators from 23 other states, today filed a legal challenge to the sweeping “Power Plan” rule imposed by the Obama Administration. The rule, announced earlier in 2015 but finally published in the Federal Register this morning, was promulgated by the United States Environmental Protection Agency.

“The so-called ‘Power Plan’ hits Ohio hard. It will dramatically increase Ohioans’ electric rates while at the same time offering less reliable service and few tangible environmental benefits,” said Attorney General DeWine. “Once again, the Obama Administration has imposed another rule that vastly oversteps the authority granted by law. I have filed legal challenges to such rules in the past, and I believe today’s challenge of this illegal rule will also succeed against this power grab.”

The rule purports to require states to reorganize their energy economies in order to reduce carbon emissions from electricity-generating plants. Ohioans will be required to slash their consumption of electricity from these sources by 37 percent below 2005 levels over the next 15 years. The rule is estimated to cost over \$25 billion annually, and these costs will ultimately be paid by consumers.

The rule will also disproportionately affect coal power producers, likely causing job losses in the coal industry.

Currently, Ohio families and businesses get well over half of their electricity from coal.

States have argued to the EPA for more than a year that the rule is illegal for multiple reasons. In particular, the EPA lacks authority under Section 111(d) of the Clean Air Act to force States to fundamentally restructure their electric grids by requiring them to use less coal-fired energy and build costly and less reliable wind and solar facilities. As a result, the rule effectively requires a “cap-and-trade” system without statutory authority and that had been specifically rejected by a Democratically-controlled Congress. The rule is also illegal because it seeks to require States to regulate coal-fired power plants under Section 111(d) of the Clean Air Act even though the EPA already regulates those same plants under Section 112 of the Act. Double regulation is prohibited by the Clean Air Act.

In addition to Ohio, the states challenging the rule include Arizona, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin, and Wyoming.

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### ***Media Contacts***

Dan Tierney: 614-466-3840

Lisa Hackley: 614-466-3840

# *Supreme Court Deals Blow to Obama's Efforts to Regulate Coal Emissions*

By ADAM LIPTAK and CORAL DAVENPORT FEB. 9, 2016



Steam rises from the stacks of the coal-fired Jim Bridger Power Plant outside Point of the Rocks, Wyo., in 2014. Credit Jim Urquhart/Reuters Advertisement

WASHINGTON — In a major setback for [President Obama's climate change](#) agenda, the [Supreme Court](#) on Tuesday temporarily blocked the administration's effort to combat global warming by regulating emissions from coal-fired power plants.

The brief order was not the last word on the case, which is most likely to return to the [Supreme Court](#) after an appeals court considers an expedited challenge [from 29 states](#) and dozens of corporations and industry groups.

But the Supreme Court's willingness to issue a stay while the case proceeds was an early hint that the program could face a skeptical reception from the justices.

The 5-to-4 vote, with the court's four liberal members dissenting, was unprecedented — the Supreme Court had never before granted a request to halt a regulation before review by a federal appeals court.

"It's a stunning development," Jody Freeman, a Harvard law professor and former environmental legal counsel to the Obama administration, said in an email. She added that "the order certainly indicates a high degree of initial judicial skepticism from five justices on the court," and that the ruling would raise serious questions from nations that signed on to the landmark Paris climate change pact in December.

In negotiating that deal, which requires every country to enact policies to lower emissions, Mr. Obama pointed to the power plant rule as evidence that the United States would take ambitious action, and that other countries should follow.

The White House said in a statement that it disagreed with the court's decision and remained confident that it would ultimately prevail. "The administration will continue to take aggressive steps to make forward progress to reduce carbon emissions," it said.

Opponents of Mr. Obama's climate policy called the court's action historic.

"We are thrilled that the Supreme Court realized the rule's immediate impact and froze its implementation, protecting workers and saving countless dollars as our fight against its legality continues," said Patrick Morrissey, the attorney general of West Virginia, which has led the 29-state legal challenge.

"There's a lot of people who are celebrating," said Jeff Holmstead, a lawyer with Bracewell & Giuliani, a firm representing energy companies, which are party to the lawsuit. "It sends a pretty strong signal that ultimately it's pretty likely to be invalidated."

The challenged regulation, which was [issued last summer by the Environmental Protection Agency](#), requires states to make major cuts to greenhouse gas pollution created by electric power plants, the nation's largest source of such emissions. The plan could transform the nation's electricity system, cutting emissions from existing power plants by a third by 2030, from a 2005 baseline, by closing hundreds

of heavily polluting coal-fired plants and increasing production of wind and [solar power](#).

“Climate change is the most significant environmental challenge of our day, and it is already affecting national public health, welfare and the environment,” Solicitor General Donald B. Verrilli Jr. wrote in a brief urging the Supreme Court to reject a request for a stay while the case moves forward.

The regulation calls for states to submit compliance plans by September, though they may seek a two-year extension. The first deadline for power plants to reduce their emissions is in 2022, with full compliance not required until 2030.

The states challenging the regulation, led mostly by Republicans and many with economies that rely on coal mining or coal-fired power, sued to stop what they called “the most far-reaching and burdensome rule the E.P.A. has ever forced onto the states.”

A three-judge panel of the United States Court of Appeals for the District of Columbia Circuit in January unanimously refused to grant a stay.

The court did expedite the case and will hear arguments on June 2, which is fast by the standards of complex litigation.

The states urged the Supreme Court to take immediate action to block what they called a “power grab” under which “the federal environmental regulator seeks to reorganize the energy grids in nearly every state in the nation.” Though the first emission reduction obligations do not take effect until 2022, the states said they had already started to spend money and shift resources.

[Eighteen states](#), mostly led by Democrats, opposed the request for a stay, saying they were “continuing to experience climate-change harms firsthand — including increased flooding, more severe storms, wildfires and droughts.” Those harms are “lasting and irreversible,” they said, and “any stay that results in further delay in emissions reductions would compound the harms.”

In a second filing seeking a stay, coal companies and trade associations represented by Laurence H. Tribe, a law professor at Harvard, said the court should act to stop a “targeted attack on the coal industry” that will “artificially eliminate buyers of coal, forcing the coal industry to curtail production, idle operations, lay off workers and close mines.”

The E.P.A., represented by Mr. Verrilli, called the requests for a stay “extraordinary and unprecedented.” The states challenging the administration’s plan, he said, could point to no case in which the Supreme Court had “granted a stay of a generally applicable regulation pending initial judicial review in the court of appeals.” In a later brief, the states conceded that point.

Mr. Verrilli said judicial review of the plan, including by the Supreme Court, will be complete before the first deadline for emissions reductions in 2022.

“There is no reason to suppose that states’ duties under the rule will be especially onerous,” Mr. Verrilli wrote. “A state can elect not to prepare a plan at all, but instead may allow E.P.A. to develop and implement a federal plan for sources in that state.”

The two sides differed about whether current declines in coal mining and coal-fired power generation are attributable to the administration’s plan. “Some of the nation’s largest coal companies have declared bankruptcy, due in no small part to the rule,” a group of utilities told the justices.

A coalition of environmental groups and companies that produce and rely on wind and [solar power](#) said other factors were to blame for coal’s decline.

“These changes include the abundant supply of relatively inexpensive natural gas, the increasing cost-competitiveness of electricity from renewable generation sources such as solar and wind power, the deployment of low-cost energy efficiency and other demand-side measures, and increasing consumer demand for advanced energy,” they wrote

## FREQUENTLY ASKED QUESTIONS

### About the Supreme Court's Stay of the Clean Power Plan

#### What exactly did the Supreme Court do?

The Supreme Court granted a stay of EPA's Clean Power Plan rule, 80 Fed. Reg. 64,662 (Oct. 23, 2015) (the "Rule"). As of the issuance of the Court's order on Feb. 9, 2016, the Rule is not in effect at this time.

#### For how long is the Rule stayed?

The Rule is stayed through the entirety of the pending D.C. Circuit case and until the Supreme Court disposes of any subsequent petition for certiorari. Specifically, the stay is in effect until the earliest of the following occurs: 1) the D.C. Circuit decides the case and no petition for certiorari is filed; 2) the D.C. Circuit decides the case, a petition for certiorari is filed, and the Supreme Court denies the petition; or 3) the D.C. Circuit decides the case, a petition for certiorari is granted, and the Supreme Court decides the merits of the case.

#### What is the effect of the stay on the Rule's deadlines?

Any deadlines that fall during the time in which the stay is in place are not in effect during the pendency of the stay. Ultimately, we believe the stronger legal position is that, if the Rule survives this litigation, all deadlines should be tolled by the amount of time the Supreme

Court's stay is in place. The Supreme Court's order does not explicitly address that situation, but that is the relief that both the applicants and EPA understood to be on the table. *See* EPA Response in 15A773 at 70 (Feb. 4, 2016); State Reply in 15A773 at 30 (Feb. 5, 2016). Furthermore, tolling is the usual practice in cases like this. *See Michigan v. EPA*, No. 98-1497, Dkt. 524995 (June 22, 2000) (tolling deadline for submission of state implementation plans in light of stay). And the D.C. Circuit recently adopted an identical approach in the Cross-State Air Pollution Rule litigation. However, it is possible that EPA will try to argue, we believe inappropriately, that deadlines are not tolled if the stay is ultimately lifted and could attempt to use its authority to "FIP" a state as leverage to keep states working on plans in the interim.

What is the effect of the stay on the model federal plans and the CEIP?

EPA likely is legally permitted to complete the rulemaking process for the model federal plans and the CEIP, but as long as the stay remains in place, it will be unable to impose a FIP on any state. EPA may choose to halt the rulemaking process voluntarily so it does not create a rule that it then must revise or withdraw in light of pending proceedings.

What is the effect of the stay on the timeline for the judicial proceedings?

The stay does not change the briefing schedule in the D.C. Circuit. Argument in that court will be heard on June 2, with a decision likely in 2016. Depending on how quickly the D.C. Circuit issues its decision and resolves any petitions for rehearing, if certiorari is sought and granted, it is possible the Supreme Court could hear argument in the case late in the 2016 Term (meaning early 2017); however, it is at least equally likely that Supreme Court review would not occur until the 2017 Term (beginning in the fall of 2017).



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

January 21, 2016

Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Attn: Docket ID No. EPA-HQ-OAR-2015-0199

**RE: Ohio EPA Comments on U.S. EPA's October 23, 2015 Proposed Rule "Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations" [80 FR 64966]**

Dear Ms. McCarthy:

The Ohio Environmental Protection Agency (Ohio EPA) is providing comment on the above referenced U.S. EPA proposed rule regarding the federal plan, model trading rules, and changes to the framework regulations regarding greenhouse gas emissions from existing fossil fuel-fired electric generating units (EGUs) under section 111(d) of the Clean Air Act (CAA). Ohio EPA appreciates the opportunity to comment on this proposal.

Ohio EPA provided extensive technical and legal comments on the proposed Clean Power Plan (CPP) [79 FR 34830] and we are still concerned that implementing the CPP is not within U.S. EPA's authority under the stationary source control program of section 111(d) of the CAA.

Ohio utilities have significantly reduced carbon dioxide emissions from electric generation from 2005. Since 2005, Ohio has reduced carbon dioxide emissions from coal-based electricity generation from roughly 136 million tons to 95 million tons in 2014. These reductions were accomplished without a federal mandate to reduce emissions of carbon dioxide.

As with our comments on the original proposed CPP, our comments on the proposed Federal Plan shall in no way be interpreted as Ohio concurring with the CPP or federal plan and we urge U.S. EPA not to move forward with this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Butler", is written over a circular stamp or seal.

Craig W. Butler  
Director

Cc: Robert Hodanbosi, Chief, Ohio EPA Division of Air Pollution Control



## U.S. EPA Announces Final Clean Power Plan

On August 3, 2015 U.S. EPA released the final version of the Clean Power Plan (CPP) under section 111(d) of the Clean Air Act (CAA) which regulates CO<sub>2</sub> emissions from existing coal-fired and natural gas-fired electricity generating units (EGUs). Concurrent with the CPP release was the final version of the New Source Performance Standards (NSPS) for fossil-fuel fired power plants under 111(b) of the Clean Air Act and the proposed the Federal Implementation Plan (FIP) and Model Rules for states that do not submit an acceptable implementation plan under 111(d).

### Timing

Submittals	Dates
State Plan or initial submittal with extension request	September 6, 2016
Progress Update, for states with extensions	September 6, 2017
State Plan, for states with extensions	September 6, 2018
Milestone (Status) Report	July 1, 2021
Interim and Final Goal Periods	Reporting
Interim goal performance period (2022-2029)	
- Interim Step 1 Period (2022-2024)	July 1, 2025
- Interim Step 2 Period (2025-2027)	July 1, 2028
- Interim Step 3 Period (2028-2029)	July 1, 2030
Interim Goal (2022-2029)	July 1, 2030
Final Goal (2030)	July 1, 2032 and every 2 years beyond

### Ohio Targets

	Rate Based (lbs CO <sub>2</sub> /MWh)	Mass Based (tons CO <sub>2</sub> )
2012 Baseline	1,900	102,239,220
Proposed CPP	1,338	-
Interim Period 2022-2029	1,383	82,526,513
Final Goal 2030+	1,190	73,769,806

### What is Ohio doing?

- Analyzing the final rule and exploring appropriate next steps for Ohio.
- Developing comments to U.S. EPA on their proposed Federal Plan and Model Rules.
- Pursuing a 2-year state plan extension request.
- Conducting outreach and engagement efforts for Ohio.

### Would you like to provide input?

- Please submit to Ohio EPA at [111drulecomments@epa.ohio.gov](mailto:111drulecomments@epa.ohio.gov).
- Relevant information for Ohio interested parties regarding the CPP – [epa.ohio.gov/dapc/111drule.aspx](http://epa.ohio.gov/dapc/111drule.aspx)
- U.S. EPA’s Clean Power Plan – <http://www2.epa.gov/cleanpowerplan>



## Planning Objectives & Discussion Questions for Clean Power Plan Information Session

### Planning Objectives

- ✓ Provide the best scenario for energy generators and users across Ohio, including both commercial and residential customers, electricity generators, renewables and energy efficiency.
- ✓ Design a program with minimal impact on wholesale electricity and natural gas costs.
- ✓ Design a program that continues or enhances reliability and continuity of Ohio power.
- ✓ Retain and foster new electricity generation within Ohio.
- ✓ Develop a plan that prioritizes Ohio.
- ✓ Retain flexibility to meet each of the above objectives.

### Discussion Questions

#### *Compliance Targets/Timeline*

- ❖ Should the state plan use rate-based (expressed in pounds of carbon dioxide emissions per megawatt-hour) or mass-based (total tons of carbon dioxide) targets? Why or why not?
- ❖ How should allowances be allocated under a mass-based approach?
- ❖ Should new natural gas plants be included within a mass-based target?
- ❖ Is the compliance timeline reasonable? If not, how could it be improved?

#### *Trading of Allowances or Credits*

- ❖ Should Ohio adopt a trade-ready program without a formal multi-state agreement?
- ❖ Should Ohio join a formal multi-state trading collaborative?
- ❖ Should Ohio manage carbon emissions without trading at all?

#### *Energy Efficiency & Renewables*

- ❖ How can the state best use renewable energy in meeting its compliance obligations?
- ❖ How can the state best use energy efficiency in meeting its compliance obligations?
- ❖ Should the state participate in the Clean Energy Incentive Program?

#### *Compliance Pathways*

- ❖ What compliance pathway(s) represents the least-cost option for Ohio?
- ❖ How can Ohio best maintain a diverse generation base?
- ❖ How can Ohio ensure electric reliability both in the short term and throughout the compliance period?

#### *Outreach and Engagement*

- ❖ How can Ohio best reach out to vulnerable communities and those directly impacted by the Clean Power Plan? How can Ohio ensure that their concerns are taken into consideration?
- ❖ How can Ohio ensure that these communities are not disproportionately impacted by the state plan?



## Early Stakeholder Outreach — Ohio NPDES Permits Rules OAC 3745-33-01, -02, -03, -04, -05, -06, -07, 09 and -10

*Ohio EPA prepares early stakeholder outreach fact sheets to ensure stakeholders are brought into the review process as early as possible and to obtain additional input and discussion before development of interested party draft rules.*

### What does OAC 3745-33 cover?

Chapter 3745-33 of the Ohio Administrative Code (OAC) contains the administrative and technical requirements for writing and obtaining wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program.

### Why are these rules being sent out for Early Stakeholder Outreach?

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. In response to Executive Order 2011-01K, Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional interested party notification and request for information will allow for early feedback before the rule language has been developed by the Agency.

### What changes are being considered?

Ohio EPA is reviewing this chapter as part of the five year rule review requirements in Ohio Revised Code 119.032. At this time, the Agency is considering the following revisions:

#### General

- Updates to reference citations and rule format, including adding clarifying language and reorganization to the following rules:
  - 3745-33-02 Ohio NPDES permit required
  - 3745-33-06 Treatment and disposal standards and permit limits
  - 3745-33-09 Pollutant minimization programs
  - 3745-33-10 Applicability of rules and procedure

#### 3745-33-01 Definitions

- Adding language for narrative reasonable potential.

#### 3745-33-03 Permit applications

- Adding more detail on what information is required in NPDES permit applications.
- Changing the rule so that any application that on its face fails to provide Ohio EPA with requested information may be considered incomplete rather than defective.

### How can I provide input?

The Agency is seeking stakeholder input on the rules. When preparing your comments, be sure to:

- explain your views as clearly as possible;
- describe any assumptions used;
- provide any technical information and/or data used to support your views;
- explain how you arrived at your estimate for potential burdens, benefits or costs;
- provide specific examples to illustrate your views; and
- offer alternatives.

Written comments will be accepted through close of business February 8, 2016. Please submit input to:

By email: [dsw\\_rulecomments@epa.ohio.gov](mailto: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, OH 43216-1049

### What if I have questions?

For more information about the rules, please contact:

Eric Nygaard

(614) 644-2024

[eric.nygaard@epa.ohio.gov](mailto:eric.nygaard@epa.ohio.gov)

## Early Stakeholder Outreach — OAC 3745-33

### 3745-33-04 Permit actions

- Changing the rule to allow Ohio EPA to issue permits if authorized discharge levels are being exceeded by the applicant, as long as authorized discharge levels can be met in the future. This is consistent with ORC 6111.03.
- Adding permit owner transfers as minor modifications.

### 3745-33-05 Authorized discharge levels

- Changing the rule so that mass and concentration limits do not always need to be based on the same permit averaging periods for nutrients.

### 3745-33-07 Establishing permit conditions

- Including pollutants determined by the director to need limits by an antidegradation review and other parameters as determined by the director to have the reasonable potential to cause or contribute to an excursion above water quality standards in the list of conditions that require final effluent limitations.
- Adding that when data used to determine PEQ values are invalid or unrepresentative for a group five parameter and the director makes an exception to the effluent limitation, the parameter shall be considered a group four parameter.
- Evaluating reasonable potential procedures for noncontact cooling water to ensure consistency with federal regulations.
- Evaluating whole effluent toxicity testing requirements to ensure consistency with federal regulations.
- No changes will be made to Ohio's variance language at this time.

### **Who will be regulated by these rules?**

Any applicant for an NPDES permit will be impacted by these rules. This includes publicly owned treatment works, businesses and industries that have point source discharges to waters of the state.

### **What is the rulemaking schedule?**

The Agency is planning to release a draft version of the rules for interested party review and comment in the spring of 2016.

### **What input is the Agency seeking?**

The following questions may help guide you as you develop your comments.

- Is the general regulatory framework proposed the most appropriate? Should the Agency consider any alternative framework?
- What options are available for improving the existing rules?
- Are there considerations the Agency should take into account when updating the existing rules?
- Is there any information or data the Agency should be aware of when developing new or amended language?

Ohio EPA would especially like to hear information regarding the following from stakeholders who may be impacted by this program.

- Does this regulatory program have a positive impact on your business? Please explain how.
- Does this regulatory program have an adverse impact on your business? If so, please identify the nature of the adverse impact (for example, license fees, fines, employer time for compliance).

### **How can I get more information?**

- This factsheet is available on the Division of Surface Water website at [www.epa.ohio.gov/dsw/dswrules.aspx](http://www.epa.ohio.gov/dsw/dswrules.aspx).
- For additional background information on the NPDES program, please visit the NPDES web page at: <http://www.epa.state.oh.us/dsw/permits/index.aspx>
- The existing rules in OAC Chapter 3745-33 are available at: <http://www.epa.ohio.gov/dsw/dswrules.aspx>.

SAVE THE DATE • MAY 11, 2016

# Dredged Material Make it Your BUSINESS

## DIGGING UP IDEAS WORKSHOP

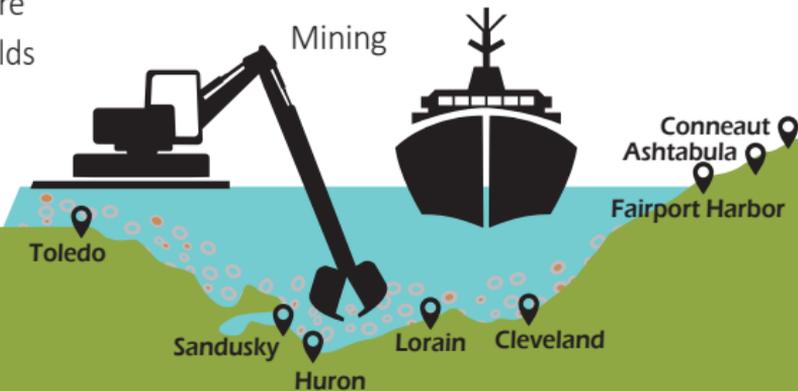
**LOCATION:** Lorain County Community College

Don't miss this opportunity to explore ways Ohio can repurpose dredged material from Lake Erie's harbors – join policymakers in discussing what you need to make your dredged material product or idea a reality.

**WHO SHOULD ATTEND?** Anyone with ideas.  
Seeking participation from experts in:

Materials Management  
Construction  
Engineering  
Green Building  
Landscaping & Nursery  
Landscape Architecture  
Turfgrass  
Agriculture  
Brownfields

Brick & Clay Products  
Transportation & Logistics  
Economic Development  
Site Development  
City & Regional Planning  
Parks & Natural Areas  
Habitat Creation &  
Restoration  
Mining



**MORE INFORMATION TO COME**

<http://epa.ohio.gov/div/dredge>

## SAVE THE DATE • MAY 11, 2016

*Each year, harbors on Ohio's north shore must be dredged to keep the shipping channels open so commodities/vessels can move in and out of the ports. Much of the dredged material is currently dumped in the open waters of Lake Erie. However, with the 2015 passage of Ohio Senate Bill 1, that will no longer be an option after July 1, 2020.*

With proper characterization and handling, uncontaminated dredged material can be repurposed to improve the environment and the economy. Those uses include beach and nearshore nourishment, habitat creation and restoration, landscaping, road construction, land reclamation, landfill cover and in the manufacture of marketable products such as concrete, bricks, blocks, aggregate and topsoil.

Public, private and nonprofit stakeholders in and around the harbor areas are in an ideal position to help identify and benefit from developing viable dredged material uses. The first step is recognizing that the material is a valuable resource with real economic value.

To assist these efforts, the State will help identify potential end uses of the dredged material based on preliminary geotechnical and chemical characteristics. With the State's help, the public and private sector in the region will then be able to capitalize on the environmental and economic opportunities created by this resource.

### **MORE INFORMATION TO COME**

<http://epa.ohio.gov/cfr/dredge>



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Dear Business Representative:

Ohio EPA Director Craig Butler invites you to attend an open house event from 1:00-5:00 p.m. on March 24, 2016 at the agency's central office, 50 W. Town Street, Columbus, Ohio. Director Butler will share his priorities, answer your questions and discuss his initiative to consolidate Ohio EPA's business and community assistance resources under our newly reorganized Division of Environmental and Financial Assistance.

### **Who should attend?**

This is the first in what we hope will be a series of open house events planned for various locations around Ohio. Our upcoming event is targeted to businesses that interact with Ohio EPA's Central District Office, including those in Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway and Union counties. We think this event will be particularly helpful to small and medium-sized businesses needing help with environmental compliance.

### **Why attend?**

Attendees will learn more about how Ohio EPA is improving its operations to better assist you in meeting your environmental compliance and sustainability goals. You will have an opportunity to interact directly with our Central District Office leadership and gain helpful insight on how to effectively work with district office inspection and permitting staff. Program staff from the air, water and waste divisions will also be on hand during informal breakout sessions to answer your specific questions on regulatory compliance and permitting. You will also hear directly from small business owners about effective strategies and resources available to you for troubleshooting and resolving issues.

### **How do I register?**

This event is free, but space is limited. We hope you will join us to get information, resources and connections to help your business succeed. To register, go to <https://www.surveymonkey.com/r/oepaopenhouse>.

If you have questions, feel free to contact Laurie Stevenson, Chief, Division of Environmental and Financial Assistance at [laurie.stevenson@epa.ohio.gov](mailto:laurie.stevenson@epa.ohio.gov) or by phone at 614-644-2344.

## Environment

### [OMA Joins Dozens in Amicus Brief Against Clean Power Plan](#)

February 26, 2016

This week the OMA joined more than 160 business groups throughout the country in filing an [amicus brief](#) in the U.S. Court of Appeals for the D.C. Circuit in support of a lawsuit by states and industry to overturn U.S. EPA's "Clean Power Plan."

The brief outlines major legal and economic concerns with the rule, arguing that U.S. EPA trampled the rights of states to determine their own energy mix and implement environmental standards in a manner tailored to their own circumstances.

The court is likely to issue a decision later this year. From there, the challenge is expected to make its way to the U.S. Supreme Court, which previously issued a stay to halt all implementation and enforcement actions on the rule until it has the opportunity to hear the case.

### [Ohio EPA Launches STREAMS Surface Water Permitting System](#)

February 26, 2016

Ohio EPA recently launched its new [Surface Water Tracking, Reporting and Electronic Application Management System](#) (STREAMS). The goal of the system is to reduce turnaround time for surface water discharge general permits to two business days.

The new STREAMS system uses a smart document online that catches errors before the application is complete, and documents are submitted electronically to the agency, minimizing data entry time. Payments can be made electronically, and permit holders can also submit monitoring reports electronically.

Every general permit is still reviewed by agency staff to ensure the applicant meets the criteria to qualify, but STREAMS makes the permitting processing more efficient, shaving valuable days off the process.

### [Central Ohio EPA Open House with Director Butler](#)

February 26, 2016

Ohio EPA Director Craig Butler is holding an open house event from 1:00-5:00 p.m. on March 24, 2016 at the agency's central office, 50 W. Town Street, Columbus, Ohio. Director Butler will share his priorities, answer questions and discuss his initiative to consolidate Ohio EPA's business and community assistance resources under its newly reorganized Division of Environmental and Financial Assistance.

This is the first of what Ohio EPA hopes will be a series of open house events planned for various locations around Ohio. This first event is targeted to businesses that interact with Ohio EPA's Central District Office, including those in Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway and Union counties. This event should be particularly helpful to small and medium-sized businesses that seek environmental compliance assistance.

[Go here to learn more and register.](#)

### [Air Report Due Next Week](#)

February 12, 2016

Friendly reminder: For regulated entities, there are a number of Ohio EPA environmental air compliance reports coming due in the coming months. The next one is the Permit Evaluation Report – Air Services (PER).

This report is required of all facilities that have had a PTIO issued that was effective during the reporting period. Don't forget to check the issued PTIO for reporting requirements that may need to be met as part of completing the PER. The PER is due on February 16 for facilities with a reporting period of January 1 to December 31.

If you need assistance, please visit [Ohio EPA Air Services](#) or contact: Air Services Access: [Linda Lazich](#) (614) 644-3626; Air Services Software Support, Emissions Reporting or Facility Profile: [Safaa El-Oraby](#) (614) 644-3571; eBusiness Center PIN or Password: eBiz Helpdesk (877) 372-2499.

### [Ohio EPA Publishes New Resource Guide](#)

January 22, 2016

Ohio EPA's Division of Environmental & Financial Assistance has just published its [Resource Guide](#), an overview of technical, compliance and financial

assistance programs and resources to help Ohio communities and businesses with their environmental needs.

### [Ohio EPA Calls for Comment on Wastewater Discharge Permitting](#)

January 8, 2016

Ohio EPA has announced its [Early Stakeholder Outreach](#) (ESO) process for Chapter 3745-33 of the Ohio Administrative Code which contains the administrative and technical requirements for writing and obtaining wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program.

This is an opportunity to shape the rules before EPA staff draft language. By sharing your comments early in the process, Ohio EPA can consider potential impacts.

ESO comments are due by Monday, February 8, 2016 via [email](#), fax (614) 644-2745, or mail: Rule Coordinator, Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, OH 43216-1049

Contact OMA's [Rob Brundrett](#) to share your thoughts on this issue.

### [Hazardous Waste Reports Due to Ohio EPA March 1](#)

January 8, 2016

Ohio EPA 2015 Hazardous Waste Reports are due on March 1, 2016. This report is required of any facility that generated more than 2200 pounds of hazardous waste (or 2.2 lbs. of acute hazardous waste) in any calendar month in 2015.

For 2015 there are no changes to the reporting process, which means no changes to the eBusiness Center data entry screens or paper forms. The only change for this year's report is the exclusion of the Waste Code U202. This code, indicating saccharin, is no longer considered a hazardous waste.

Ohio EPA is encouraging all businesses that have filed on paper, to consider using the eDRUMS reporting site. The eDRUMS software has many features that help you prepare the report quickly and more accurately than on paper, including the ability to copy a previous year's report as a starting point for a new report, even if you haven't filed electronically in the past.

If you have questions please contact [Thomas Babb](#), Ohio EPA Hazardous Waste Report Coordinator, at (614) 914-2527.

### [WestRock's Bulzan Given OMA's Babington Award](#)

December 11, 2015



Pictured: Rob Brundrett, OMA director, Public Policy Services, and Joe Bulzan, Environmental Manager, WestRock, Coshocton

The OMA staff has an award, the Babington, that it presents to member volunteers who make an exceptional contribution on behalf of Ohio's manufacturers. OMA director of Public Policy Services, Rob Brundrett, selected Joe Bulzan, Environmental Manager, WestRock, Coshocton, to receive this recognition during OMA's board of directors meeting this week.

Joe has chaired the OMA environment committee since 2006, providing countless hours of volunteer service to lead the committee through many complex policy issues, including boiler MACT, Ohio air regulation, federal ozone rules, water nutrient issues and more.

Coincidentally, the OMA Babington award is named for Bill Babington, plant manager of the former Stone Container plant in Coshocton, now WestRock, for his selfless volunteerism on behalf of Ohio's manufacturers through the OMA.

Joe will pass the committee chair gavel at the [March 8, 2016](#) OMA environment committee meeting. All members can join the committee and participate in meetings in person and by phone, or simply monitor activity through email. Sign up at [My OMA](#).

## [House Continues to Debate General Assembly Role in Clean Power Plan Compliance Plan](#)

December 11, 2015

The House Energy and Natural Resources Committee continued its hearings on [House Bill 349](#), which would require Ohio EPA to submit a state plan for federal Clean Power Plan compliance to the General Assembly before submitting it to the U.S. EPA.

The Buckeye Institute [testified](#): “The bill rightly requires the General Assembly to approve a final state plan, which will enhance transparency and accountability in Ohio’s section 111(d) compliance process.”

Chairman [Al Landis](#) (R-Dover) indicated that it is his intent to have Ohio EPA testify on the bill. With the House concluding its business for the year this week, the bill will likely have its next hearing in the new year.

## [Ohio EPA and PUCO Hold Kick-off Meeting on Clean Power Plan](#)

December 4, 2015

This week Ohio EPA and the Public Utilities Commission of Ohio (PUCO) jointly held an [informational kick-off meeting](#) to discuss the state’s planning for federal [Clean Power Plan](#) (CPP) compliance. Ohio EPA Director Craig Butler led the discussion along with PUCO Commissioner Asim Haque.

Butler told stakeholders that Ohio will submit an application for an extension to develop its state implementation plan.

There will be at least five regional hearings in the early part of 2016 to allow stakeholders to weigh in on the issue. Ohio EPA and the PUCO provided this document of [implementation issues to consider](#).

**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on March 7, 2016

- HB61**      **LAKE ERIE FERTILIZER-DREDGING** (BUCHY J, HALL D) To generally prohibit the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, and to prohibit a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries.  
*Current Status:* 3/17/2015 - Referred to Committee Senate Agriculture  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-61>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/2015, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB101**      **HAB MITIGATION** (HALL D) To establish requirements governing the training of employees of publicly owned treatment works and public water systems to monitor and test for harmful algae, the development of emergency plans by certain public water systems to respond to harmful algal blooms, and the development of an early warning system for harmful algal blooms.  
*Current Status:* 3/24/2015 - House Agriculture and Rural Development, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-101>
- HB214**      **PUBLIC IMPROVEMENT-PIPING MATERIAL** (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.  
*Current Status:* 6/9/2015 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349**      **STATE EMISSIONS PLAN** (SMITH R, GINTER T) To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.  
*Current Status:* 12/8/2015 - House Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB377**      **PRIVATE EMPLOYEES-REQUIRED DUES** (BRINKMAN T) To prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition.  
*Current Status:* 12/1/2015 - House Commerce and Labor, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-377>

- HCR11**      **GOVERNOR-WATER QUALITY EFFORTS** (HALL D) To commend Governor John Kasich on his efforts to improve the water quality of Lake Erie and to affirm the Governor's ability to form an interstate compact with other states in furtherance of this objective.  
*Current Status:* 1/26/2016 - Senate Agriculture, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-11>
- HCR27**      **WATER QUALITY IMPROVEMENT** (PATTERSON J, HILL B) To commend Ohio's agriculture community, educational institutions, and environmental advocacy organizations on their efforts to improve the water quality of Lake Erie and its tributaries and to encourage them as well as state, county, and municipal leaders to continue to work towards continued water quality improvement.  
*Current Status:* 9/30/2015 - Referred to Committee House Agriculture and Rural Development  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-27>
- SB1**        **GREAT LAKES-HARMFUL ALGAE** (GARDNER R, PETERSON B) To transfer the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.  
*Current Status:* 4/2/2015 - **SIGNED BY GOVERNOR**; eff. 7/3/2015  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-1>
- SB16**      **WATERSHEDS-FERTILIZER APPLICATION** (BROWN E) To require applicators of fertilizer or manure to comply with specified requirements and to authorize the Director of Environmental Protection to study and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.  
*Current Status:* 2/10/2015 - Senate Agriculture, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-16>
- SB46**      **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47**      **DEEP WELL BRINE 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:* 2/18/2015 - Referred to Committee Senate Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB114**     **MICROCYSTIN LEVELS-PUBLIC WATER** (SKINDELL M) To establish requirements and procedures pertaining to levels of microcystin in public water systems.  
*Current Status:* 3/10/2015 - Referred to Committee Senate Health and Human Services

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-114>

**SB150**      **MOTOR FUEL DISPOSAL (HITE C)** To create a qualified immunity for the dispensing of incompatible motor fuel.

**Current Status:** 6/24/2015 - Senate Civil Justice, (Second Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-150>

**SB269**      **PUBLIC WATER SYSTEM-LEAD CONTAMINATION (SCHIAVONI J)** To require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may effect the system's drinking water.

**Current Status:** 2/10/2016 - Referred to Committee Senate Energy and Natural Resources

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-269>

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# Policy Goal:

## **Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations**

Effective standards and regulations:

- Provide clarity, predictability and consistency
- Are based on scientific consensus
- Provide for common sense enforcement
- Incorporate careful cost-benefit analysis as part of the policymaking process

Manufacturers urge policymakers to exercise restraint in establishing state environmental (and other) regulations that exceed federal standards, and to avoid doing so altogether without clear and convincing evidence that more stringent regulations are necessary. At the same time, manufacturers understand that fair and reasonable regulations must be balanced with responsible stewardship of our natural resources.

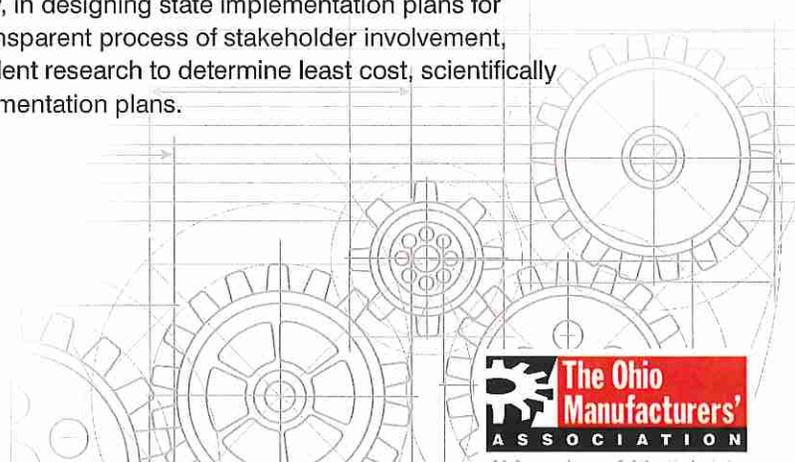
Industry leads the way in solid waste reduction and recycling. Reduction and recycling include source reduction activities, reuse, recycling, composting and incineration. Industry is an enormous consumer of recycled materials, such as metals, glass, paper and plastics; manufacturers thus are strong advocates for improving recycling systems in Ohio and the nation.

In addition, industry works hard to ensure safe and healthy manufacturing environments, as well as to inform consumers through appropriate product labeling.

Looking forward, the state should resist calls for state level efforts that deviate from federal regulations, such as product composition mandates, extended producer liability policies, or product labeling mandates. Such requirements are best addressed at the federal level rather than through a patchwork of differing state-level requirements.

The state should expand opportunities for industry to reuse non-harmful waste streams. Beneficial reuse policies can result in less waste and more recycling of industrial byproducts. Likewise, Ohio should continue to expand recycling programs that provide feedstock for the state's industrial processes.

The Ohio Environment Protection Agency, in designing state implementation plans for new federal regulations, should use a transparent process of stakeholder involvement, supplemented by investment in independent research to determine least cost, scientifically sound and technologically feasible implementation plans.



# Midwest Environmental Compliance Conference

CHICAGO MARRIOTT O'HARE

November 2-3, 2016

## CHICAGO – November 2-3, 2016

You won't want to miss the 2nd Annual Midwest Environmental Compliance Conference, November 2-3, 2016 at the Chicago Marriott O'Hare, Chicago, Illinois.

*This conference, will provide a regional perspective on the RCRA, Air and Wastewater compliance issues you care about every day, including enforcement and policy/regulation changes.*