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Proponent Testimony on Senate Bill 2
Director Craig W. Butler
House Energy and Natural Resources Committee
April 25, 2017

Chairman Landis, Vice-Chair Hagan and members of the House Energy and Natural Resources Committee, I am Craig Butler, Director of Ohio EPA. I appreciate the opportunity to testify in support of Senate Bill 2, sponsored by Senator Hite. Thank you, Senator Hite, for your sponsorship of this bill, as well as your assistance and guidance in working to improve this bill through stakeholder meetings over the past year. Senate Bill 2 is focused on Governor Kasich's and my continued efforts to protect Ohioans and the environment, improve water quality in Ohio, and eliminate regulatory burdens where appropriate.

This is a broad bill that continues to build on the Governor's commitment to protect Lake Erie while also addressing critical concerns in surface water, drinking water and solid waste. My testimony will focus on giving you an overview of the key issues:

Protecting Lake Erie and Encouraging Better Use of Dredged Materials

As discussed in Senator Hite's testimony, the statutory changes in Senate Bill 2 will give the Ohio Lake Erie Commission, established in 1997, a clear direction to protect Lake Erie and help Ohio meet its commitments under the binational Great Lakes Water Quality Agreement. This agreement calls for reducing phosphorus in Lake Erie's Western Basin by 40 percent, and the Lake Erie Commission will focus its effort and resources on this important goal. The Commission will also help identify and support programs to enable the beneficial use of dredged materials. Meeting this important 40 percent reduction goal will require the effort and collaboration of many state agencies, federal agencies, local governments, and non-government organizations. Aligning the Lake Erie Commission's mission and actions will be an important step in streamlining Ohio's efforts.

Reducing nutrients into Lake Erie is a priority to decrease the occurrence of harmful algal blooms. As part of this effort, Senate Bill 1 from the 131st Ohio General Assembly enacted in 2015 prohibited open lake disposal of dredged material to Lake Erie by July 1, 2020. When the open lake disposal prohibition takes effect, alternative outlets must be available for the 1.5 million cubic yards of dredged material that is dredged each year from our navigational channels. An example to help put this in perspective: 55 percent of the material dredged each year comes from Toledo Harbor. It would take 114,750 dump trucks lined up for 625 miles (from Columbus almost to Boston) to hold all the dredged material that is taken out of Toledo Harbor each year.

Identifying beneficial uses for this material is critical to ensuring that the Army Corps of Engineers will be able to meet its Congressionally mandated requirement to effectively and efficiently conduct its navigational dredging. Ohio EPA has been actively developing a dredged material beneficial use strategy with the primary goal of helping to develop private sector business opportunities around the beneficial use of dredged material. In May of last year, we held a dredged materials workshop directed at the private sector with more than 150 participants from private, public and nonprofit stakeholders to discuss possibilities for using this material in a beneficial way. It was also helpful for the Agency to get a better understanding of the obstacles, real or perceived, that the private sector has about using dredged material. Some of the ideas from this workshop have been incorporated into Senate Bill 2.

During the Governor's State of the State events this year in Sandusky, Ohio EPA announced the funding of \$1 million for the engineering and design of wetland projects in the Sandusky Bay. The focus of this project is to beneficially use dredged material to develop wetlands. This project is intended to improve water quality and reduce nutrients which will also fight harmful algae blooms in the Sandusky Bay and the Western Lake Erie Basin.

Senate Bill 2 will provide me with the authority to develop rules regarding beneficial use of material dredged from federal navigation channels during harbor or navigation maintenance activities. In addition, it directs Ohio EPA to develop rules containing the criteria under which dredged material would not be a "waste" but will also be protective of human health and the environment.

Improving Water Quality in Ohio – Drinking Water

Following the passage of House Bill 512 last year, which is considered historic with Ohio leading the nation in protecting drinking water, Senate Bill 2 is also focused on strengthening Ohio's program to protect the safety of drinking water in our communities. This bill addresses three specific issues to ensure Ohioans have access to safe and reliable drinking water. Behind me I have real-life examples of the problems we are trying to prevent with the new provisions in Senate Bill 2 (see poster boards). First, Senate Bill 2 will require financial assurance for new or modified community water systems. The financial assurance will be in an amount equal to fifteen percent of the cost of the system or part owned by the owner or operator, but not to exceed one hundred thousand dollars. This language is important to ensure safe drinking water for residents in mobile home parks and other public water systems owned and operated by private entities.

Unfortunately, we find examples of residents who have been forced to go without water or are provided unsafe water for extended periods of time due to an owner's unwillingness or inability to repair the water system. When this occurs, considerable state and local resources have been expended to respond and provide emergency safe drinking water to these residents when catastrophic or repeated problems occur and the owners refuse to fix the system or fail to have the money reserved to do so.

Senate Bill 2 will also allow me to seek receivership through a court order to tap into these funds to resolve issues if a public water system is operating in a way that presents a threat to public health, and the owner refuses to fix the problem.

Additionally, Senate Bill 2 will require public water systems to demonstrate technical, financial, and managerial capability by implementing an asset management program. What we envision is that each public water system will complete an inventory and evaluation of assets, operation and maintenance programs, emergency preparedness programs, and long-term planning for funding, infrastructure replacements and capacity projections.

I again refer to the real-life examples of why this issue must be a priority. An asset management program is a sound strategy for any business, but it is critical for public water systems. We have found that water systems without asset management programs have endured significant problems with extended periods of water use restrictions or no water at all due to issues such as deferred maintenance, lack of management oversight, and no historical records of water lines or maps of service areas.

At the end of the day, we understand and know how complex running and managing a public water system can be and that issues often arise that threaten a system's ability to provide quality, uninterrupted service. And while no one wants these situations to occur, having the tools and funding in place to fix problems quickly is paramount and is why we are asking public water systems to do both of these actions.

Improving Water Quality in Ohio – Surface Water

Ohio EPA's Certified Water Quality Professional Program was created in the last operating budget to improve efficiencies in the 401 water quality certification process by certifying qualified environmental professionals, not government regulators, to accurately characterize wetlands and streams for permitting purposes. The modifications to the certified water quality professional program in Senate Bill 2 are designed to strengthen and improve the program based on input from stakeholders. Some of the changes require the establishment of a multi-sector workgroup to assist in the development of rules, a ninety-day timeline to act on a section 401 water quality certification if a certified water quality professional conducts the stream or wetland assessment, and authorizes the director to require public disclosure of all certified water quality professionals.

One final "clean up" surface water issue, Senate Bill 2 will also address a problem raised by U.S. EPA regarding dischargers to privately owned treatment works. Ohio law currently does not allow the director to require a permit from an entity discharging into a privately owned treatment works, contrary to federal code which provides U.S. EPA clear authority to require such a permit. Senate Bill 2 will address this concern for the regulated community.

Protecting the Environment

Senate Bill 2 creates common sense regulations to help protect the environment by establishing regulatory oversight of Construction and Demolition Debris (C&DD) processing facilities that are currently unregulated. On the positive side, Ohio has seen, and fully supports, a burgeoning construction and demolition debris recycling industry develop in recent years, which has diverted a significant amount of material from landfills.

While the overwhelming majority of C&DD transfer and recycling facility owners operate legitimate facilities, there are instances where material is collected and abandoned, or the facility is operating as an open dump. Since the transfer and recycling facilities are not currently regulated, the cost of cleanup and mitigating potential hazards falls to local communities, solid waste management districts and Ohio EPA. Ohio EPA is currently dealing with such an example in Northeast Ohio. Senate Bill 2 will subject these processing facilities to licensing, financial assurance and siting requirements.

Senate Bill 2 clarifies Ohio EPA's authority to address abandoned landfills by outlining the legal authority to gain site access, test for hazards, and do necessary work to protect human health and the environment. Ohio contains hundreds of old landfills that were closed prior to modern day regulations and many do not have a primary caretaker or responsible party. Ohio EPA's CLOSER Program was established to address closure and post-closure care issues at these sites. But while the CLOSER program exists to address immediate concerns, Ohio statute isn't exactly clear on granting the necessary authorities to get on the site, test for hazards, and do the necessary work to protect human health and the environment. Senate Bill 2 makes that authority stronger, thus allowing for a more efficient CLOSER program to protect Ohio communities and the environment. The best example of the need for this legislation was the Fallsburg Landfill. The landfill was an improperly closed and abandoned construction & demolition debris (C&DD) landfill located in Licking County, outside of Newark. An underground heating incident ("fire") with subsidence was first noticed by the Licking County Health Department in April 2014. Ohio EPA's abandoned landfill program mobilized contractors to assess the extent of the fire, and ultimately install a final cover.

Before I close, I want to thank Senator Hite, his staff, and Ohio EPA staff for conducting numerous meetings throughout last summer and fall to engage stakeholders and encourage support of these important environmental issues. That hard work allowed Senate Bill 2 to unanimously pass with bi-partisan support through the Senate.

As evidenced in my testimony today, Senate Bill 2 will continue to protect Ohioans and our environment. This is common sense legislation that is needed to provide balance between helping communities and businesses address water quality issues and streamlining burdensome rules. Thank you again for the opportunity to testify today. I look forward to answering any questions.