

Environment Committee

October 18, 2012

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2012 Environment
Committee Calendar

Thursday, October 18

OMA Environment Committee Meeting Sponsor:



One Firm WorldwideSM



OMA Environment Committee

October 18, 2012

Agenda

Welcome & Roll Call

Legislative Update – Rob Brundrett, OMA

Counsel's Report – Frank Merrill, Bricker & Eckler

Special Guest Speaker

- **John Schierberl, Supervisor, Program Development and Material Conservation and Reuse Unit, Ohio EPA**

Lunch

Committee Meetings begin at 10:00 a.m. and conclude by 1:00 p.m. Lunch will be served.

Please RSVP to attend meetings by contacting Judy: jthompson@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.

Bio – John Schierberl, Ohio EPA

Contact Information:

John Schierberl, Ohio EPA

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Email: John.Schierberl@epa.state.oh.us

John Schierberl has been with Ohio EPA for 21 years. He graduated from Virginia State University with a degree in geology and received his master's degree in natural resources policy and planning from The Ohio State University. Prior to working for Ohio EPA, John worked for seven years with Roadway Express, a trucking company in Akron, and served four years in the United States Air Force. John's current position with the agency is Supervisor within the Program Development and Material Conservation and Reuse Unit.

To: OMA Environment Committee
From: Rob Brundrett, OMA Staff
Re: Environment Policy Update
Date: October 18, 2012

Overview

The General Assembly has been out on summer recess since June. The legislators did make a brief appearance in September to pass the public pension reform bills. However it was right back to the campaign trail immediately following the votes. Overall the latest edition of the General Assembly has not passed many bills impacting environmental policy important to the state. Agency rules and regulations continue to be the arena that provides the biggest impact on environmental issues. The legislature will continue to be quiet through early November. Lame duck session in December will provide the last opportunity for legislators and interest groups to push one last amendment or bill through the process.

General Assembly News

Ohio House Agriculture and Natural Resources Committee

Chairman Dave Hall who is currently running for reelection has been mentioned as the possible successor to Speaker Batchelder in three years. This is something that should be followed and OMA staff will continue to monitor the jockeying taking place in the Republican caucus for leadership posts next General Assembly and beyond.

Vice Chair Andy Thompson represents portions of Carroll, Harrison, Belmont, Noble, and Washington counties. His district was altered with the last round of redistricting. He has a tough reelection race. His opponent is a former corrections officer who lost his job due to laws that prevent classified employees for running for public office.

Ranking Member Teresa Fedor who used to be the Minority Leader in the Ohio Senate is running unopposed for reelection in her Toledo area district. She will continue to be a strong voice in the House Democratic caucus.

Ohio Senate Agriculture, Environment, and Natural Resources Committee

Chairman Cliff Hite is running for an unexpired term ending December 13, 2014. The former House member is running unopposed.

Vice Chairman Tim Schaffer is not up for reelection this cycle.

Ranking Member Lou Gentile is in a tough reelection campaign. The Senate Republicans have targeted his district as a potential pick-up. The Republicans have a large cash advantage, and have focused a lot of their resources on this district. Senator Gentile's district leans democrat, but with the Senate Republicans focusing on the race; what should have been a sure thing is no longer for Senator Gentile.

Pending Legislation of Importance

Senate Bill 253

It is important to continue monitoring [Senator Peggy Lehner's](#) (R-Kettering) [Senate Bill 253](#), which would create post-consumer recycling liability for manufacturers of certain electronic products. Additionally, the measure allows an advisory council to recommend other products for inclusion in the mandate.

Earlier this year, the OMA delivered a letter to the sponsor and chairman of the committee to communicate opposition to this mandate. Although this bill is unlikely to move while the manufacturing community roundly opposes it, it is imperative that the bill continues to be monitored through lame duck.

House Bill 112

[Representatives Cheryl Grossman's](#) (R-Grove City) and [Tom Letson's](#) (D-Warren) [House Bill 112](#), which would require including a bittering agent in engine coolant and antifreeze is also still floating in the House of Representatives. The bill was voted out of committee but has not received a floor vote by the entire House of Representatives. OMA will continue monitoring and fighting this bill through the fall and winter. Representative Grossman, who is part of the republican leadership team, has taken a very active role in advocating for this bill's passage.

129th General Assembly Review

HB10 REMEDIATION OF CONTAMINATED SITE (SEARS B) To authorize refundable tax credits for the completion of a voluntary action to remediate a contaminated site and for the return of such sites to productive use, and to exempt persons through 2017 who have issued covenants not to sue under the Voluntary Action Program from certain fees and penalties for one year after the issuance of such a covenant.

Current Status: 3/2/2011 - House Ways and Means, (Fifth Hearing)

HB133 OIL AND GAS LEASING/DRILLING ON STATE LAND (ADAMS J) To create the Oil and Gas Leasing Board and to establish a procedure by which the Board may enter into leases for oil and gas production on land owned or under the control of a state agency for the purpose of providing funding for capital and operating costs for the agency.

Current Status: 6/30/2011 - SIGNED BY GOVERNOR; Eff. 9/30/2011

HB473 GREAT LAKES COMPACT (WACHTMANN L) To establish a program for the issuance of permits for the withdrawal and consumptive use of waters from the Lake Erie basin and to establish other requirements related to the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact.

Current Status: 6/4/2012 - SIGNED BY GOVERNOR; Eff. 9/4/2012

HCR9 PROPOSED AIR POLLUTION TRANSPORT RULE (THOMPSON A) To urge the Congress, the President of the United States, and the United Environmental Protection Agency to immediately suspend the Proposed Air Pollution Transport Rule.

Current Status: 5/17/2011 - REPORTED OUT, House Agriculture and Natural Resources, (Third Hearing)

SB22 NPDES PERMITS SEWAGE SYSTEMS (SCHAFFER T) To require the Director of Environmental Protection to consider, to the extent allowable under the Federal Water Pollution Control Act, specified factors before issuing NPDES permits for sewerage systems, requiring and approving long-term control plans for wet weather discharges from sewerage systems, and enforcing provisions of that Act as applied to sewerage systems.

Current Status: 6/30/2011 - SIGNED BY GOVERNOR; Eff. 9/30/2011

SB290 RECYCLING (JONES S) To exempt source separated recyclable materials from the definition of "solid wastes" and to prohibit a solid waste management district from spending district money to purchase or operate assets for recycling purposes when two

or more privately owned companies offer to provide or are providing recycling services for recyclable materials that are generated in the district.

Current Status: 2/14/2012 - Senate Agriculture, Environment & Natural Resources, (Second Hearing)

SB294 ENVIRONMENTAL PROTECTION LAW (SCHAFFER T) To revise the laws governing environmental protection.

Current Status: 6/5/2012 - SIGNED BY GOVERNOR; Eff. 9/5/2012

Litigation

Cross-State Air Pollution Rule

The U.S. Court of Appeals for the District of Columbia voted to overturn the U.S. EPA's Cross-State Air Pollution Rule (CSAPR). The decision was a significant victory for utility companies that operate coal fired plants. The 2011 rule would have set new limits on sulfur dioxide and nitrogen oxide emissions.

The appeals court decision found that the EPA exceeded its regulatory authority under the federal Clean Air Act. The EPA was directed to review the rule and to continue enforcing the Clean Air Interstate Rule set in 2005.

Beneficial Use

This summer the Ohio EPA began reaching out for early stakeholder feedback regarding a possible rule package centered on beneficial use. Beneficial use is the use of industrial byproducts to replace or supplement a raw material or competing product.

The OMA has submitted a letter requesting that as Ohio EPA moves forward with the drafting of any rules the Association have a seat at the table to ensure any impacts on the manufacturing industry be minimal.

Primary Headwater Habitats

Earlier this year Ohio EPA refiled a package of water regulations with the Common Sense Initiative (CSI) at the urging of numerous business groups including the OMA. Included in that set of proposed rules were new state water quality standards and language to clarify requirements currently in place.

Over the summer several working meetings were convened and CSI concluded their review of the proposed rules. Ohio EPA is going to withhold portions of the rule package but is moving forward with their new regulations on primary headwater habitats. The OMA has again signed on with business groups opposing the filing and the increased regulations.

Recently the OMA was notified by the Governor's office that these rules were going to be put on hold. However it is important that these are discussed and a position surrounding the rules should be taken. Future action by Ohio EPA is still a viable possibility.

Environment Management

Recycling Market Development Grants Available from Ohio EPA

To boost recycling activity in Ohio, the Ohio EPA will offer [grant funding](#) to Ohio businesses that propose to create infrastructure for successful markets of recyclable materials and related products. The grant program seeks proposals involving materials collected or processed in Ohio.

Business applicants will be required to work under contract with an eligible governmental agency serving as a “pass-through agency” for documenting and receiving funds. Any cooperating enterprise (private sector business) must commit to matching funds. Grants up to \$250,000 will be available, with greater or lesser amounts available depending on specific projects.

Interested parties can attend an informational meeting at 10:00 a.m. at the Ohio Department of Natural Resources, 2045 Morse Road, Building E, Columbus, in the assembly center. (Those attending should bring photo I.D.) Contact [Chet Chaney](#), environmental supervisor, Ohio EPA to learn more.

10/12/2012

OU Leads Workshop on Greenhouse Gas

Ohio University Voinovich School's Consortium for Energy, Economics & the Environment put on a one-day [workshop](#) focused on the [U.S. EPA's Greenhouse Gas Reporting Program](#). The school is developing an informative exchange among Ohio business and state agencies affected by the reporting program.

Attendees heard from speakers on topics such as energy efficiency, implementing sustainable energy strategies, and state and federal emissions reporting policies.

09/21/2012

Federal Regulations Costing Manufacturing Big Dollars

Late last month the Manufacturers Alliance for Productivity and Innovation (MAPI) released a

[study](#) describing the impact of federal regulations on the nation's manufacturers. The study focuses on the impact that major regulations have on the manufacturing sector.

These regulations have increased over the last three administrations from an average of 36 new regulations annually under President Clinton to 72 new regulations per year under President Obama. The major regulations issued since 1993 have cost manufacturing an estimated \$265-\$500 billion.

09/07/2012

Court Kills Cross-State Air Pollution Rule

This week, the U.S. Court of Appeals for the District of Columbia voted to overturn the U.S. EPA's Cross-State Air Pollution Rule (CSAPR). The decision was a significant victory for utility companies that operate coal fired plants. The 2011 rule would have set new limits on sulfur dioxide and nitrogen oxide emissions.

President and CEO of the National Association of Manufacturers, Jay Timmons, [commented](#) on the ruling: “Costly and excessive regulations are harming manufacturers’ ability to compete. Today the federal court agreed that the EPA had overstepped its reach with the CSAPR regulation.”

The appeals [court decision](#) found that the EPA exceeded its regulatory authority under the federal Clean Air Act. The EPA was directed to review the rule and to continue enforcing the Clean Air Interstate Rule set in 2005. Read more at the [EPA's website](#).

08/24/2012

Ohio EPA Extends Stakeholder Comment Period on Beneficial Reuse Rules

Ohio EPA has extended the period for stakeholders to provide comment on its plans to revise [beneficial reuse rules](#). Comments are now due by August 31. Beneficial reuse rules govern industrial byproducts and the ways they can be reused. Contact [Ryan Augsburger](#) at the OMA to have your say.

07/27/2012

Public Policy Priorities

2012-2013

Manufacturing is the engine that drives Ohio's economy, and the mission of the Ohio Manufacturers' Association is to protect and grow Ohio manufacturing. In a fiercely competitive global economy—where the need for continuous quality improvement, enhanced efficiency and productivity, and constant innovation is relentless—every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness.

Ohio manufacturers need public policies that help create global competitive advantage, attract investment and promote growth. These policies span a broad spectrum of conditions that shape the business environment within which manufacturers operate. Major policy goals include the following:

- An Effective, Competitive Ohio Tax System
- An Efficient, Effective Workers' Compensation System
- Access to Reliable, Economical Energy
- A Fair, Stable, Predictable Civil Justice System
- Clear, Consistent, Predictable Environmental Regulations
- A Modernized Transportation Infrastructure
- An Educated, Highly Skilled Workforce

POLICY GOAL:

An Effective, Competitive Ohio Tax System

For Ohio to be successful in a global economy, the state's tax structure must encourage investment and growth and be competitive nationally and internationally. A globally competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity and (d) transparency. Economy of collections and convenience of payment also are important considerations.

Generally, manufacturers support efforts to broaden the tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. Where needed, government incentives are best structured as grants rather than as tax credits. And, in general, earmarking and dedicating tax revenues should be discouraged.

Good tax policy also generates necessary revenues to support the essential functions of government. To ensure transparency regarding the true cost of government and the rate of its growth, however, funding government programs with fee revenue instead of general fund revenue should be discouraged. Good budgeting and spending restraint at all levels of government are vital to ensure a competitive tax environment.

Major tax reforms approved by the Ohio General Assembly in 2005 have led to significant improvements to a tax system that was for many years widely regarded as outdated. Reforms included reducing overall tax rates, eliminating tax on investment, broadening the tax base, providing more stable and predictable revenues, and simplifying compliance. While progress has been made, additional policy reforms are needed to support manufacturing competitiveness, economic growth and prosperity in Ohio.

Tax policy priorities include the following:

- **Preserve the integrity of Ohio's 2005 tax reforms**, including a zero-tolerance response to any efforts via legislation or the court system to carve out exemptions or credits to (a) avoid paying the Commercial Activities Tax (CAT) or (b) earmark any portion of CAT revenues for specific government services.
- **Improve Ohio's tax appeals process**, which due to bad economic conditions and subsequent state budget cuts, staffing cutbacks and increased caseloads, has contributed to such a backlog of cases at the Ohio Board of Tax Appeals that it routinely takes two years to advance from the date of filing an appeal to the date of the first hearing.
- **Preserve the repeal of Ohio's estate tax**, which for so long served as a disincentive for business owners to invest in existing businesses and as an impediment to the capital formation that is so vital to Ohio's economy.
- **Streamline and simplify the sales tax**, which over time has become riddled with exemptions, carve-outs and credits that result in some taxpayers subsidizing exempted taxpayers. Exemptions, carve-outs and credits should be reviewed periodically for economic justification.

- **Promote taxpayer uniformity.** Consolidate and streamline the collection of municipal income tax by creating a uniform statewide municipal tax code, with uniform definitions of taxable income, consistent rules and regulations and a generic municipal income tax form.
- **Lower the effective tax rate in Ohio by reducing the number of government entities that are taxing jurisdictions.** This will help address the problem of pancaking state and local state taxes, which puts Ohio at a competitive disadvantage with many other states.

POLICY GOAL:

An Efficient, Effective Workers' Compensation System

The Ohio Manufacturers' Association works with its member companies, the Ohio Bureau of Workers' Compensation (BWC or Bureau), and the Ohio General Assembly to continually improve processes for injured workers and employers and to drive system costs down. An efficient and effective workers' compensation system is built on the following principles:

- Injured workers will receive fair and timely benefits they need for getting back to work quickly and safely.
- All businesses will pay fair workers' compensation rates commensurate with the risk they bring to the system.
- Workers' compensation rates will be driven by actuarial data, and the state's workers' compensation insurance system will remain stable, solvent and actuarially sound.
- Workers' compensation rates will not be structured in a way that punishes one class of employers to benefit another (such as the historical subsidization of group-rated employers by non-group-rated employers).
- The Ohio Bureau of Workers' Compensation will deploy best-in-class disability management practices to drive down costs for employers and improve service for injured parties.

These outcomes would be good for manufacturers and good for Ohio's overall economy.

Workers' compensation policy priorities include the following:

- **Design and deploy a competitive process that requires Managed Care Organizations (MCOs) to (a) meet rigorous performance standards established by the BWC and (b) compete on price for contracts with the BWC.**
- **Eliminate the "reasonable suspicion" standard from Ohio's rebuttable presumption drug statute.**
- **Incorporate the Louisiana Pacific standards of "voluntary abandonment" for benefits.**
- **Improve claims management processes, transparency and accountability associated with Ohio's Self-Insured Employers' Guaranty Fund.**
- **Require credentialing/certification of all claims management personnel based on accepted private insurance industry standards.**
- **Establish retirement benefit offsets and/or age or number-of-weeks caps for permanent total disability (PTD) awards.**

- **Require claimants to show new and/or changed circumstances when filing for permanent total disability (PTD) or permanent partial disability (PPD) benefits more than once.**
- **Require Industrial Commission hearings to be recorded** to improve consistency in outcomes.
- **Allow telephonic hearings for permanent partial disability (PPD) claims to lower transaction costs.**
- **Establish an impairment standard (no consideration of non-medical factors) for permanent partial disability (PPD) cases.**
- **Terminate the compensation paid for temporary total disability (TTD) effective the date determined by the medical evidence establishing maximum medical improvement.**
- **Specify that if a temporary total disability (TTD) claim is suspended due to a claimant's refusal to provide a signed medical release or attend the employer's medical examination, the claimant forfeits his or her right to benefits during the period of the suspension.**
- **Allow employers to pay compensation and medical bills without losing the right to contest a claim (payment without prejudice).**
- **Require permanent partial disability (PPD) claims to be resolved by choosing either the claimant's medical exam determination or the defendant's medical exam determination—explicitly prohibiting an averaging of, or compromise between, the two.**
- **Require MCOs to demonstrate their medical arrangements and agreements with a substantial number of medical, professional and pharmacy providers participating in the BWC's Health Partnership Program.** These providers should be selected on the basis of access, quality of care and cost, rather than solely claimant preference. The focus should be on getting injured workers back to work quickly and safely, benefitting both the employee and the employer.
- **Allow the BWC to require claimants to pay out-of-plan co-payments for selecting medical providers outside the approved MCO panel of providers,** beginning the 46th day after the date of injury or the 46th day after starting treatment. However, employees should be allowed to use a provider outside the approved panel if they are located in certain parts of the state or outside the state where approved MCO providers cannot reasonably be accessed.
- **Allow the BWC to modify existing rules for the Bureau's Health Partnership Program to include administrative and financial incentives that reward high-performing MCOs and other providers.** Possible incentives include bonus payments to providers who greatly exceed quality benchmarks established by the BWC to help reduce costs without sacrificing quality of services or outcomes.

- **Collect and include in the BWC's healthcare data program annual data measuring the outcomes and savings of MCOs and other providers participating in the Health Partnership Program.** This data should be made available to employers and the public. The more performance data that are collected, the more efficient and effective the system will become.
- **Allow the BWC to recoup treatment costs from claims that ultimately are denied under BWC law.** The Bureau should be able to request that an employee's personal insurance or third-party payer reimburse the BWC for treatment amounts the Bureau paid on behalf of the employee. These payments should be deposited in the Surplus Fund Account. This will ensure injured workers will receive the treatments they need in a timely manner, while providing the Bureau a path to recoup payments that ultimately should not have been paid out by the system.
- **Allow the BWC to develop new rules permitting the BWC to pay for certain medical services within the first 45 days of an injury.** This would ensure that injured employees receive treatment regardless of whether their claims are eventually denied in the process. Also allow the Bureau to create rules allowing for immediate payment of prescriptions in certain circumstances. If a claim is ultimately disallowed, the services paid must be charged to the Surplus Fund Account as long as the employer pays its assessments into the Surplus Fund Account in the State Insurance Fund.
- **Require injured workers to participate in the treatment process in a timely manner.** Employees who refuse or unreasonably delay required treatment such as rehabilitation services, counseling, medical exams or vocational evaluations without a valid reason should forfeit their right to have the claim considered or to receive any compensation or benefits during the period of non-cooperation.

POLICY GOAL:

Access to Reliable, Economical Energy

Energy policy can enhance—or hinder—Ohio's ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing. State and federal energy policies must strike an effective balance between (a) ensuring access to reliable, economical sources of energy and (b) conserving energy to protect and preserve our natural resources.

The Ohio Manufacturers' Association's energy policy advocacy efforts are guided by these principles:

- Predictable, stable energy pricing achieved through effective energy rate design attracts job-creating capital investments.
- A modernized energy infrastructure will help maximize energy supplies and stabilize energy pricing and reliability.
- Strategic and operational collaboration among utilities, government and manufacturers and their supply chains produces better economic outcomes than do confrontational and adversarial regulatory proceedings.
- Ohio's traditional industrial capabilities enable global leadership in energy technology innovation and manufacturing.
- Sustainability requirements can create profitable new market opportunities but must be economically feasible.
- Effective government regulation recognizes technical and economic realities.

Shaping energy policy in Ohio that aligns with these principles will support manufacturing competitiveness, stimulate economic expansion and job creation, and foster environmental stewardship.

Energy policy priorities include the following:

- **Design an economic development discount rate for energy-intensive manufacturers that makes Ohio competitive with other states.** This refers to a discount off an electric utility's tariff rate to incentivize capital investment and job creation.
- **Revise PUCO rules to remove barriers to the use of self-help strategies and to enhance reliability.**
- **Revise PUCO rules governing energy efficiency – including cogeneration and demand-side management – to achieve least-cost implementation and to incentivize interested parties to undertake innovative and least-cost efficiency projects.**
- **Ensure that electric distribution utilities comply with Ohio's three percent cost cap for renewable energy in a least-cost manner** so customers are not forced to pay above-market prices for renewable energy.

- **Ensure rigorous PUCO monitoring and regulation of dealings between electric distribution utilities and their affiliates.**
- **Remove/mitigate barriers electric distribution utilities have created to inhibit/prevent shopping and ensure consumers have the information and tools they need to understand and take full advantage of market opportunities.**
For example, utilities should (a) be required to explain how customers' peak load contribution, which is used by suppliers to price competitive generation contracts, is calculated; (b) provide the calculated peak load contribution not just to suppliers but also to customers; and (c) be held accountable for errors that affect the value to customers of competitive supply contracts. The PUCO also should require utilities to develop interactive tools that help demonstrate the "price to compare" and make apples-to-apples comparisons between competitive supply offers.
- **Ensure close coordination among the PUCO, PJM Interconnection, Ohio EPA, the Ohio Power Siting Board and Ohio manufacturers to ensure least-cost and most efficient use of generation and transmission resources.**
- **Adopt a state-level consumer advocacy role with PJM Interconnection regarding critical transmission issues and needs.**

POLICY GOAL:

A Fair, Stable, Predictable Civil Justice System

A state's legal climate can be a major inducement or a major deterrent to business investment, growth and job creation. For manufacturers to invest and grow in Ohio, and to compete globally, Ohio's civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

The OMA supports policy reforms that strike a reasonable balance between protecting consumers without overly burdening businesses that provide needed jobs, while also positioning Ohio advantageously relative to other states. We encourage policymakers to evaluate all proposed civil justice reforms by considering these questions:

- Will the policy fairly and appropriately protect and compensate injured parties without creating a "lottery mentality"?
- Will the policy increase—or decrease—litigation burdens and costs?
- Will the policy promote—or reduce—innovation?
- Will the policy attract—or discourage—investment?
- Will the policy stimulate—or stifle—growth and job creation?

Most importantly, we encourage our public-sector partners to ask themselves: "Will my position on critical tort reform issues enhance—or undermine—Ohio's competitiveness in the global economy?"

Civil justice reform policy priorities include the following:

- **Preserve Ohio's tort reform gains of the last decade**, in areas such as punitive damages, successor liability, collateral sources and statute of repose, which have helped strike a reasonable balance between protecting consumers without unduly burdening businesses that provide needed jobs, while positioning Ohio as an attractive state for business investment.
- **Require asbestos claimants to make certain disclosures pertaining to claims that have been submitted to asbestos bankruptcy trusts** to prevent "double dipping" without limiting or delaying the ability of asbestos claimants to seek recovery for their injuries.
- **Enact TIPAC legislation (Transparency in Private Attorney Contracting) that requires public disclosure of most large contingency-fee contracts between government and personal injury attorneys** to address concerns about the propriety of contingency-fee arrangements for the prosecution of public claims.
- **Require consistent language when statutes intend to explicitly create a private right of action** (i.e., a right to file suit) to curtail court rulings that result in unexpected liability for companies.

- **Amend Rule 68 of the Ohio Rules of Civil Procedure to mirror Rule 68 of the Federal Rules of Civil Procedure**, which makes a plaintiff who rejects a defendant's settlement offer liable for the defendant's post-offer costs if the plaintiff does not improve on the offer at trial.
- **Reject any efforts to codify in Ohio statute the *cy pres* doctrine**—an existing tool that permits, but does not require, a judge and the parties to a class action lawsuit to donate all undistributed class action proceeds to a charity or other non-profit organization.
- **Reject legislation to enact a state false claims act.** A bill was introduced in the 129th Ohio General Assembly (SB 143) that would allow individuals with knowledge of possible fraudulent activity to (a) file suit in state courts against companies doing business with public entities and (b) recover a portion of the money recovered by the State. Under this bill, false claims suits could be filed against any business selling services or goods to state government. While fraud against the government is not to be condoned, there are preferable alternatives to creating a whole new category of state-level lawsuit.

POLICY GOAL:

Clear, Consistent, Predictable Environmental Regulations

Where environmental standards and regulations are concerned, manufacturers have a critical need for the following:

- Clarity, predictability and consistency
- Policies that reflect scientific consensus
- Commonsense enforcement
- Careful cost-benefit analysis as part of the policymaking process

Manufacturers also urge policymakers to exercise restraint in establishing state environmental standards and regulations that exceed federal standards and regulations, and to avoid doing so altogether without clear and convincing evidence that more stringent standards or 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.

Environmental policy priorities include the following:

- **Expand the focus of Ohio's state implementation plan for attaining National Ambient Air Quality Standards (NAAQS) and for reducing releases of substances regulated by EPA to the environment (air, water and land) beyond industrial sources to also include controls for non-industrial and mobile sources of releases.**
- **Revise existing statute to allow companies to appeal Ohio EPA Notices of Violation (NOVs) to Ohio's Environmental Review and Appeal Commission.**
- **Require Ohio EPA to evaluate and use best practices for implementation of federal environmental regulations** to avoid putting Ohio manufacturers at a competitive disadvantage because they face greater regulatory burdens than competitors from other states do based on Ohio EPA's stricter interpretation of federal regulations.
- **Give companies whose environmental permits are appealed by third parties the option, for a fee, of a "fast track" process and expedited resolution of the appeal,** which otherwise can discourage investors because Ohio's appeals process can go on for years.

- **Expand opportunities for industry to reuse non-harmful waste streams.** Beneficial reuse policies can result in less waste and more recycling of industrial byproducts.
- **Review Ohio's solid waste regulations, including procedures for disposing universal waste streams, to ensure safe and uniform disposal practices that are consistent with best practices used in other states.**
- **Reject state-level efforts to implement product composition mandates.** Such standards and requirements are best addressed at the federal level rather than through a patchwork of differing state-level requirements.
- **Reject extended producer responsibility policies that would shift responsibility for recycling certain consumer products from consumers to manufacturers.**

POLICY GOAL:

A Modernized Transportation Infrastructure

To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the State must continue to invest in updating and expanding Ohio's multi-modal transportation infrastructure, including roads, bridges, rails and ports. Continued investment in these resources will be critical to providing Ohio businesses with flexible, efficient, cost-effective shipping options.

Transportation infrastructure policy priorities include the following:

- **Modify Ohio's rules and regulations** to allow greater flexibility and efficiency in the truck permitting process and to ensure Ohio's truck permitting standards and processes are competitive with other states with regard to requirements, fees and responsiveness.
- **Enhance shipping flexibility by supporting the federal Safe and Efficient Transportation Act.** This bill would allow states to tailor regulations to meet state-level transportation needs linked to a state's particular economic assets and strengths.

POLICY GOAL:

An Educated, Highly Skilled Workforce

A robust economy requires an adequate, reliable supply of skilled workers who have the technical knowledge and skills required to meet global standards for quality and productivity, and who are able to think critically, work collaboratively and drive innovation. Sustained growth in manufacturing productivity will require not only a new generation of globally competent workers interested in the variety of roles within manufacturing careers but also incumbent workers willing to embrace lifelong learning so they can continuously upgrade their competencies to keep pace with technological advancements and global competition.

Workforce development policy priorities include the following:

- **Expand the use of the National Association of Manufacturers' "Manufacturing Skills Certification System."** This system of nationally portable, industry recognized, "stackable" credentials is applicable to all sectors in the manufacturing industry. The credentials validate foundational skills and competencies needed to be productive and successful in entry-level positions in any manufacturing environment. Credentials can be earned from both secondary and postsecondary educational programs.
- **Expand the use of cooperative education, internships and apprenticeships.** These experiential learning programs enhance talent recruitment and retention because participating students are exposed to company-specific, real-world job expectations and experiences. Students develop strong leadership and management skills by working closely with company staff who serve as their mentors/supervisors, and participating companies benefit from reduced recruitment and training costs.

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on October 15, 2012

- HB10** **REMEDICATION OF CONTAMINATED SITE (SEARS B)** To authorize refundable tax credits for the completion of a voluntary action to remediate a contaminated site and for the return of such sites to productive use, and to exempt persons through 2017 who have issued covenants not to sue under the Voluntary Action Program from certain fees and penalties for one year after the issuance of such a covenant.
Current Status: 3/2/2011 - House Ways and Means, (Fifth Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_10
- HB133** **OIL AND GAS LEASING/DRILLING ON STATE LAND (ADAMS J)** To create the Oil and Gas Leasing Board and to establish a procedure by which the Board may enter into leases for oil and gas production on land owned or under the control of a state agency for the purpose of providing funding for capital and operating costs for the agency.
Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Eff. 9/30/2011
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_133
- HB231** **LAKE ERIE WATERS (WACHTMANN L)** To establish a program for the issuance of permits for the withdrawal and consumptive use of waters from the Lake Erie basin.
Current Status: 7/15/2011 - **VETOED BY GOVERNOR**
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_231
- HB257** **LAKE ERIE WATERS (MURRAY D)** To establish a program for the regulation of withdrawals and consumptive uses of waters from the Lake Erie basin.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_257
- HB304** **LAKE ERIE OIL/NATURAL GAS (ANTONIO N)** To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 4/18/2012 - House Agriculture and Natural Resources, (First Hearing)
More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HB_304
- HB473** **GREAT LAKES COMPACT (WACHTMANN L)** To establish a program for the issuance of permits for the withdrawal and consumptive use of waters from the Lake Erie basin and to establish other requirements related to the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact.
Current Status: 6/4/2012 - **SIGNED BY GOVERNOR**; Eff. 9/4/2012
More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HB_473
- HB480** **BPA EXPOSURE HAZARDS (DRIEHAUS D, RAMOS D)** Regarding the possible hazards of fetal exposure to the chemical bisphenol-A (BPA).
Current Status: 3/14/2012 - Referred to Committee House Health and Aging
More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HB_480
- HB596** **OIL-GAS LAW CHANGES (HAGAN R)** To revise the requirements concerning an oil and gas permit application, an oil and gas well completion record, designation of trade secret protection for chemicals used to drill or stimulate an oil and gas well, and disclosure of chemical information to a medical professional, to require an owner to report all chemicals brought to a well site, and to make other changes in the Oil and Gas Law.
Current Status: 10/4/2012 - Introduced
More Information: No link available
- HCR9** **PROPOSED AIR POLLUTION TRANSPORT RULE (THOMPSON A)** To urge the Congress, the President of the United States, and the United Environmental Protection Agency to immediately suspend the Proposed Air Pollution Transport Rule.

Current Status: 5/17/2011 - **REPORTED OUT**, House Agriculture and Natural Resources, (Third Hearing)

More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_9

HCR49 **MERCURY AND AIR TOXICS STANDARDS RULE** (THOMPSON A) To urge the Congress of the United States to adopt S.J. Resolution 37, which disapproves the United States Environmental Protection Agency's Mercury and Air Toxics Standards Rule.

Current Status: 5/23/2012 - Referred to Committee House Agriculture and Natural Resources

More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HCR_49

HR48 **STREAM PROTECTION RULE** (LANDIS A) To express opposition to the implementation of the stream protection rule and environmental impact statement of the Office of Surface Mining, Reclamation, and Enforcement in the U.S. Department of the Interior.

Current Status: 6/23/2011 - Re-Referred to Committee

More Information: http://www.legislature.state.oh.us/res.cfm?ID=129_HR_48

SB22 **NPDES PERMITS SEWAGE SYSTEMS** (SCHAFFER T) To require the Director of Environmental Protection to consider, to the extent allowable under the Federal Water Pollution Control Act, specified factors before issuing NPDES permits for sewerage systems, requiring and approving long-term control plans for wet weather discharges from sewerage systems, and enforcing provisions of that Act as applied to sewerage systems.

Current Status: 6/30/2011 - **SIGNED BY GOVERNOR**; Eff. 9/30/2011

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_22

SB140 **BITTERING AGENT IN ENGINE COOLANT** (BACON K, SKINDELL M) To require the inclusion of a bittering agent in engine coolant and antifreeze.

Current Status: 11/15/2011 - Senate Judiciary, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_140

SB186 **WITHDRAWALS OF LAKE ERIE WATERS** (SKINDELL M) To establish a program for the regulation of withdrawals and consumptive uses of waters from the Lake Erie basin.

Current Status: 6/15/2011 - Referred to Committee Senate Agriculture, Environment & Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_186

SB290 **RECYCLING** (JONES S) To exempt source separated recyclable materials from the definition of "solid wastes" and to prohibit a solid waste management district from spending district money to purchase or operate assets for recycling purposes when two or more privately owned companies offer to provide or are providing recycling services for recyclable materials that are generated in the district.

Current Status: 2/14/2012 - Senate Agriculture, Environment & Natural Resources, (Second Hearing)

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_290

SB294 **ENVIRONMENTAL PROTECTION LAW** (SCHAFFER T) To revise the laws governing environmental protection.

Current Status: 6/5/2012 - **SIGNED BY GOVERNOR**; Eff. 9/5/2012

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_294

SB328 **GOVERNOR'S AWARD-ENVIRONMENTAL STEWARDSHIP** (BALDERSON T) To establish the Governor's Award for Environmental Stewardship to be awarded annually to the company or person involved in the oil and gas industry that best represented wise environmental stewardship during the previous one-year period.

Current Status: 5/23/2012 - Referred to Committee House Agriculture and Natural Resources

More Information: http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_328

- SB378** **OIL-BRINE STORAGE TANK REQUIREMENTS** (SCHIAVONI J) To revise the required setback distance of a well from an occupied dwelling and to establish oil and brine storage tank requirements.
 Current Status: 10/4/2012 - Introduced
 More Information: No link available
- SB379** **OIL-GAS LAW** (SKINDELL M) To revise the requirements concerning an oil and gas permit application, an oil and gas well completion record, designation of trade secret protection for chemicals used to drill or stimulate an oil and gas well, and disclosure of chemical information to a medical professional, to require an owner to report all chemicals brought to a well site, and to make other changes in the Oil and Gas Law.
 Current Status: 10/4/2012 - Introduced
 More Information: No link available



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COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP, Counsel to the OMA
October 18, 2012

ADMINISTRATIVE

A. Ohio EPA Activities of Note

1. Ohio EPA Early Stakeholder Outreach Proposals

a. Water Quality Standards. OAC Rule 3745-1-35 contains the procedural requirements for developing site-specific modifications to water quality criteria and values in other water rules. In 2008, Ohio EPA released a draft version of this rule and received public comments. This rule and twenty others were filed with JCARR on December 28, 2011, but, at the request of OMA and others, were withdrawn from the rulemaking process on February 1, 2012 to allow for the rules to go through the Common Sense Initiative process.

Ohio EPA is working to draft new language that will, among other things, regulate for the first time primary headwater streams and require mitigation for some impacts. On September 13, 2012, OMA and other business trade groups submitted a letter to the Director of Ohio EPA requesting that Ohio EPA reconsider its position and indicated that the business trade groups will oppose this rule package. Ohio EPA has also received letters in opposition to this rule package from members of the General Assembly, including Senator Niehaus, the Speaker and the Leadership of the Ohio House of Representatives, and the House Representatives of the Appalachia region in Ohio.

b. Beneficial Use Rules. Ohio EPA has been seeking early stakeholder input on an approach to promote responsible and beneficial use of industrial by-products. Ohio EPA's proposed concept requires the "industrial by-product" to meet the definition of solid waste, industrial waste or other waste. Ohio EPA is considering a three-tiered approach for beneficial use approvals. The first tier would consist of pre-approved uses authorized in rule. The second tier would consist of industrial by-products being evaluated and approved under a general permit. The third tier would consist of individual permits for industrial by-products not qualifying for a general permit or for which one has not yet been developed.

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c. Asbestos Emission Control Rules. Ohio EPA is considering modifying the definition of “facility” in OAC 3745-20-01 to clarify that residential structures are exempt from the asbestos rules.

d. Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards Rules. OAC Chapter 3745-21 contains rules establishing reasonable available control technology (RACT) requirements for sources in various industries emitting volatile organic compounds (VOC). These industries include, but are not limited to: certain types of printing industries, various forms of surface coating industries, petroleum storage in fixed and variable roof tanks, solvent cleaning operations, product coating operations, bakery operations, and gasoline dispensing facilities. VOC’s are a precursor chemical which, in combination with nitrogen oxides, can form ozone. Ohio EPA has not proposed any substantive changes to these rules and will be accepting comments and questions on these rules until October 12, 2012.

2. Proposed Rules

a. Water Quality Trading Program Rules. Water quality credit trading is a tool for achieving water quality improvements. Because sources in a watershed can face very different costs to control the same pollutant, trading programs are used to allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollution reductions from another source at a lower cost. A public hearing on the proposed rules was held on August 21, 2012, and the rules were adopted on October 11, 2012 (eff. November 1, 2012).

b. Storm Water Program Rule. While there are no major revisions planned for this rule, the rule package includes a “Business Impact Analysis” (BIA) under the Common Sense Initiative (CSI). According to the BIA, U.S. EPA estimated that the average cost of an individual industrial permit application would be \$1,007.00; average group application cost of \$74.00 per facility; and \$350.00 fee. At least one OMA member has noticed that the estimated cost to perform quarterly sampling and visual sampling is upwards of \$30,000.00 a year, and during the debate over this general permit earlier cost estimates averaged between \$9,600.00 to \$12,000.00 per year in additional cost. Comments on the rules were due on October 15, 2012.

3. Ohio EPA’s Compliance Assurance through Enforcement Program

On June 15, 2012, Ohio EPA released internally a guideline for use by Ohio EPA staff in handling enforcement and compliance matters (see copy attached). The guideline lists the follow as the general hierarchy of enforcement (in increasing order of severity):

- Inspection or Warning Letter Identifying a Risk of a Potential Violation

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- Notice of Violation (“NOV”) Letter
- Advanced Warning Letter
 - Program Chief’s Warning Letter
 - Director’s Warning Letter
 - Bilateral Compliance Agreements (BCAs)
- Administrative Enforcement
 - Unilateral Director’s Final Findings and Orders
 - Expedited Settlement Agreement (“ESA”)
 - Conditioned Licenses
 - Negotiated Director’s Final Findings and Orders
- Referral to Ohio Attorney General for Enforcement
- Referral to US EPA

The guideline includes a new enforcement/compliance tool known as an “Expedited Settlement Agreement” (ESA). These agreements will include a nominal penalty, in the range of \$500.00 (minimum) to a maximum of \$10,000 or \$20,000 (depending on the program). The agreement will require prompt, documented abatement of the violations and an agreement that the regulated entity will not contest the settlement agreement. The ESA timeline is sixty (60) days from the date of the regulated entity’s receipt of the offer to resolve violations through an ESA to the date of the signed agreement and receipt of penalty.

This guideline also includes appendices for each program with examples of “general noncompliance” and “significant noncompliance” and the criteria used for determining the amount of an administrative penalty. The guideline also includes the acknowledgement by Ohio EPA that it should not leverage its permitting authority to improve its position in an on-going enforcement action unless directed otherwise by statute or rule.

4. Ohio EPA Point Source/Urban Runoff Nutrient Workgroup.

Ohio EPA has established a Point Source/Urban Runoff Nutrient workgroup to evaluate actions to reduce phosphorus and nutrient loadings to Ohio’s waterways. OMA participated in this workgroup, which also included representatives from businesses, municipalities and environmental groups. The workgroup report was released by the Director of Ohio EPA on August 21, 2012, and a follow up meeting with all interested parties (including non-point source groups like the agricultural community) has tentatively been scheduled for November 14, 2012.

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B. U.S. EPA Activities of Note

1. Boiler MACT

On December 23, 2011, U.S. EPA issued proposed revisions to its Boiler MACT, which was originally issued on March 21, 2011. Upon issuance of the original Boiler MACT, U.S. EPA issued a notice of reconsideration of some of the provisions of the standards. Public comments on the revised Boiler MACT were due on February 21, 2012.

On January 9, 2012, the D.C. District Court vacated U.S. EPA's previous stay of the March 21, 2011 Boiler MACT, which had been issued to allow for the reconsideration process. On January 19, 2012, U.S. EPA issued a statement that it will not enforce the March 2011 Boiler MACT until the rules are finalized later this year. The final rules were forwarded to OMB on May 17, 2012 and are expected to be released any day now.

2. U.S. EPA 2013 Enforcement Initiatives

On April 30, 2012, U.S. EPA released its enforcement initiatives for fiscal year 2013, which began on October 1, 2012. U.S. EPA's overall enforcement goals for FY 2013 are to:

- Aggressively go after pollution problems that make a difference in communities.
- Reset its relationship with states to ensure delivery on joint commitment to a clean and healthy environment.
- Improve transparency.

To implement these enforcement goals, U.S. EPA has identified the following initiatives:

- Keeping raw sewage and contaminated storm water discharges out of our waters
- Cutting animal waste to protect surface and ground waters
- Reducing widespread air pollution from the largest sources, especially the coal-fired utility, cement, glass, and acid sectors
- Cutting toxic air pollution that affects communities' health
- Assuring energy extraction sector compliance with environmental laws
- Reducing pollution from mineral processing operations

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JUDICIAL

A. Federal Cases

1. Summit Petroleum v. EPA (6th Cir. August 7, 2012)

The court addressed under what circumstances multiple, separate sources of air pollution constitute a single “facility” for purposes of an air permit. At issue was a natural gas sweetening plant operated by Summit Petroleum in Rosebush, Michigan, as well as production wells, flares, and subsurface pipelines that are connected to the plant. The wells are various distances from the plant, from a range of five hundred feet to over eight miles away. Significantly, Summit does not own the land between the individual wells and the plant, or the property between the wells. In addition, there is no common boundary among the wells or in between the wells.

Often, EPA aggregates multiple sources of pollution owned by a single entity when the sources are contiguous or adjacent to each other. The court determined that the meaning of the word “adjacent” is unambiguous, and should be accorded a plain, dictionary meaning in the regulation on what constitutes a “facility”. Thus, the court concluded that adjacency truly relates to physical proximity and ordered that Summit’s facilities should be assessed for purposes of aggregation under the ordinary understanding of the requirement that plants and facilities be located on adjacent (i.e., physically proximate) properties. Under the court’s decision, EPA will have to reconsider whether Summit is required to obtain one permit for its plant, production wells, and flares.

2. Texas v. EPA (5th Cir. August 13, 2012)

The court overruled the rejection by U.S. EPA of a novel Texas air permitting program that had been perceived as less burdensome by the business community. Texas first proposed the flexible permit program for approval by EPA in 1994. The program allows a facility, which is a minor source of emissions, to obtain a permit with a set emissions cap. So long as the facility does not exceed the aggregate limit identified in the permit, the facility may make modifications without additional regulatory review. After a 15-year delay, and legal action to force EPA to make a decision, EPA finally proposed disapproving the program in 2009 and issued final disapproval of the program on July 15, 2010. However, because numerous flexible permits were issued to facilities since 1994, the disapproval raised the possibility that each of those facilities could face fines or other enforcement actions without regard to emissions levels.

Texas sought review of the disapproval by the Fifth Circuit. Over a dissent, two judges agreed with Texas that EPA should not have disapproved the flexible permit

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program. The court took EPA to task on several aspects of its treatment of the request for approval by Texas.

First, the court emphasized that the regulation of air pollution under the Clean Air Act is a system of mutual federal and state cooperation. As noted by the court, the federal government supplies “the goals and basic requirements” of pollution control panels, “but the states have broad authority to determine the methods and particular control strategies they will use to achieve the statutory requirements.” Thus, “the prevention and control of air pollution are ‘the primary responsibility of States and local governments.’” Second, the court excoriated EPA for not timely making a decision on the flexible permit program. Under the Clean Air Act, EPA is required to make a decision within 18 months of its submission.

As a consequence, the court sent Texas’s flexible permit back to EPA for further consideration and possible approval based on the directives in its opinion.

3. EME Homer City Generation v. EPA (D.C. Cir. August 21, 2102)

This decision addresses the legality of EPA’s most recent attempt to regulate sulfur dioxide and nitrogen oxides produced mostly by coal-fired electric generating power plants in states roughly east of the Mississippi River. This regulation, known alternatively as the Transport Rule, the Cross-State Air Pollution Rule, or most affectionately, the ghoulish “CSAPR,” was designed to replace the George W. Bush-era Clean Air Interstate Rule, or “CAIR,” which had been previously rejected by the appellate court. In turn, CAIR had been designed to replace the 1990’s-era NO_x SIP Call rule.

A number of industry groups, and most significantly the State of Texas, challenged EPA on whether it exceeded its statutory authority to issue CSAPR. In a lengthy opinion, the appellate court agreed with those challenges, and determined that CSAPR exceeded the statutory authority given to EPA by Congress in two ways. First, the Clean Air Act permits EPA to only require an upwind state to reduce its own significant contribution to a downwind state’s inability or difficulty to comply with pollution reduction. Instead of doing this, EPA attempted to require upwind states to reduce more than its significant contribution of air pollution in order to compensate for other downward states. Second, under the Clean Air Act, states are authorized in the first instance to create their own solutions to implement reductions to air pollution within the broad outlines of a program instituted by EPA. Instead, under CSAPR, EPA promulgated a program and immediately attempted to implement it with federal programs, without permitting states to choose their own implementation program.

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The D.C. Circuit Court clearly scrutinized EPA for its failure to observe the cooperative relationship between the states and the federal government that is mandated in the Clean Air Act. The court observed:

Congress set up a federalism-based system of air pollution control. Under this cooperative federalism approach, both the Federal Government and the States play significant roles. The Federal Government sets air quality standards for pollutants. The States have the primary responsibility for determining how to meet those standards and regulating sources within their borders.

Recognizing that EPA failed to respect these principles, the court completely vacated CSAPR and ordered EPA to design a completely new rule. In the interim, the court ordered EPA to continue administering the formerly vacated CAIR, which, while considered unlawful, is the best alternative until EPA proposes a rule that meets statutory muster.

4. Coalition for Responsible Regulation, Inc. v. EPA (D.C. Cir. June 26, 2012)

In a highly-anticipated opinion, the D.C. Circuit Court of Appeals upheld U.S. EPA's rules regulating greenhouse gas (GHG) emissions from major stationary sources and its determination that GHG emissions endanger public health and welfare by contributing to climate change. The court upheld U.S. EPA's "endangerment" finding which has led to the requirement of BACT for GHG emissions for all new air permits for major sources.

B. State Cases

1. Columbus Steel Castings Co. v. Nally (Franklin County Ct. of App., Sept. 27, 2012)

The court of appeals affirmed ERAC's finding that the Director of Ohio EPA impermissibly included new, substantive requirements in CSC's Title V permit. The new permit terms and conditions involved "reasonable available control measures" (RACM) for fugitive dust and CSC's Preventative Maintenance and Malfunction Abatement Plan (PMMAP). ORC §3704.036(K) prohibits the imposition of "new substantive" requirements beyond the federally enforceable requirements in a facility's Title V permit. The court agreed with ERAC that these terms and conditions were both "new" and "substantive".

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2. Rumpke Sanitary Landfill, Inc. v. Colerain Twp. (Ohio Sup. Ct. September 5, 2012)

Ohio Supreme Court rules that private landfills are not exempt from local township zoning as a “public utility.” The court noted that such facilities have no public regulation or oversight of their rates and charges, there is no requirement that all solid waste delivered to the landfill be accepted for disposal, and there is no public right to demand and receive the landfill’s services.

3. Oxford Mining Company, LLC v. Nally
(ERAC, Sept. 12, 2012)

ERAC granted Appellant’s motion for summary judgment in this case involving Ohio EPA’s use of a Primary Headwater Habitat water quality use designation in Appellant’s 401 Water Quality Certification. Appellant argued that Ohio EPA failed to follow the proper procedures (i.e., public hearings and specific water designations) when it allegedly created a primary headwater habitat designated use. ERAC agreed in granting Appellant’s motion for summary judgment on the issue. The case is scheduled for a *de novo* hearing later this year on the remaining issues.



January 27, 2012

Director Scott Nally
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

Dear Director Nally,

We write to you today regarding the Draft Surface Water Rules (rules) that were filed on December 28, 2011. We appreciate Ohio Environmental Protection Agency's (Ohio EPA) hard work and diligence in drafting these rules. However, the groups represented on this letter are disappointed in the manner that the rules were filed as it appears to be in stark contrast with the intent of Governor Kasich's *Common Sense Initiative* (CSI).

As you are aware, Governor Kasich quickly formed CSI shortly after he took office. The purpose of this initiative is to create a transparent regulatory framework that is responsive to the regulated community. The Governor's Executive Order creating CSI specifically stated that Ohio's regulatory processes should be based on transparency, accountability and performance and that the regulated community, Ohio's businesses, should be a partner with state agencies in developing a regulatory framework.

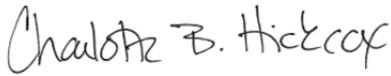
Given the importance that has been placed on the CSI process and the willingness of the Kasich Administration to work with regulated businesses, the signers of this letter, and the thousands of Ohio businesses we represent, find it disturbing that Ohio EPA would file these complex rules just three days before the CSI process took effect. Ohio EPA has acknowledged that these rules are the most extensive revisions in the 30 year history of regulated community including increasing the cost of doing business in Ohio. To file these rules so close to the start of the full CSI program instead of waiting until the first of the year gives the impression that Ohio EPA does not want these rules to go through the increased scrutiny regarding CSI. We strongly believe that Ohio EPA should provide the information necessary to assess the full impact of these rules on the cost of doing business.

Therefore, we respectfully ask that you pull the rules and refile them so that they may go through the full CSI process including increased outreach to stakeholders and deeper analysis of the economic impact. By doing so you will allow the regulated community to play an active role in crafting these rules through substantive discussions and within the spirit of the Governor's vision for the rulemaking process.


We look forward to working with Ohio EPA throughout this process and we thank you for your attention to this very important issue.

Sincerely,

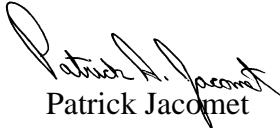




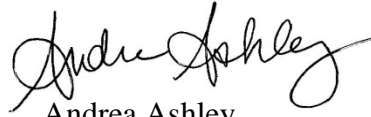
Charlotte Hickcox
Director, Energy and Environmental Policy
Ohio Chamber of Commerce



Vincent J. Squillace
Executive Vice President
Ohio Home Builders Association



Patrick Jacomet
Executive Director
Ohio Aggregates & Industrial Minerals
Association



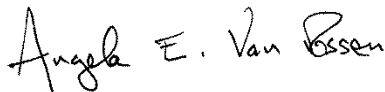
Andrea Ashley
Vice President of Government Relations
Associated General Contractors (AGC) of Ohio



Kevin Schmidt
Director, Public Policy Services
Ohio Manufacturing Association

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Cheri A Budzynski
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Angela Van Fossen
Director, Legislative & Environmental Affairs
Ohio Contractors Association



Chris Ferruso
Legislative Director
NFIB/Ohio



Dave Sobochan
President
NAIOP

cc: Speaker William Batchelder, Ohio House of Representatives
President Tom Niehaus, Ohio Senate
Senator Frank LaRose, JCARR Chair
Representative Ross McGregor, JCARR Vice Chair
Craig Butler, Ohio Governor's Office
Mark Hamlin, Ohio Lt. Governor's Office



September 13, 2012



Director Scott Nally
Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, OH 43215



**RE: Ohio EPA's Notice of Intent to Issue Comprehensive Water Rules:
Response of Ohio's Impacted Businesses**

Director Nally:



On behalf of the Ohio Chamber of Commerce, Ohio Coal Association, Ohio Aggregates & Industrial Minerals Association, Ohio Contractors Association, Ohio Home Builders Association, Associated General Contractors of Ohio, Flexible Pavements, NAIOP, Ohio Manufacturers' Association, Ohio Oil & Gas Association, Ohio Petroleum Council and our members, please accept this letter as our collective response to Ohio EPA's recent decision to move forward with a comprehensive water rules package ("2012 Water Rules"). As you know, collectively, our trade associations represent thousands of businesses and industries that provide jobs and tax bases in every county and corner of Ohio.



We support common sense regulation; however, we cannot and do not support unnecessary regulation that serves only to hamper our members' businesses without any justifiable environmental necessity or legal need. That is why, for almost ten years, our associations have steadfastly communicated to Ohio EPA that its proposed comprehensive water rules are unnecessary, unreasonable and unlawful. During that time, our members have participated in several workgroups, attended various hearings, produced hundreds and hundreds of pages of comments and have spent hundreds of thousands of dollars in resources to demonstrate to Ohio EPA that these rules are not necessary. While Ohio EPA has proposed various iterations of its rule package over the years, Ohio EPA's fundamental concepts and goals underlying the rules have remained intact and have always been, and continue to be, unacceptable to Ohio's businesses. The 2012 Water Rules are no exception.



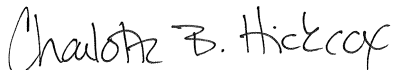
While we appreciate your agency's efforts to work with some of our associations in a discreet workgroup this year, collectively our associations had no real voice or legitimate opportunity to effectuate change via this process. More fundamentally, such a workgroup cannot serve to resolve the fundamental issue of whether or not Ohio EPA should move forward with the most sweeping and comprehensive water rule package in thirty years when Ohio EPA, itself, acknowledges that Ohio's current water rules are effective and water quality throughout the state is improving.



We understand that Ohio EPA intends to move forward with the majority of its 2012 Water Rules within the next thirty days. On behalf of our thousands of members, we oppose that decision as one that will only serve to damage Ohio's business backbone without any corresponding, needed environmental benefit. As such, we respectfully request that you reconsider your position. If Ohio EPA does move forward with the 2012 Water Rules, we will, as a group and individually, oppose this regulatory overreach.

Thank you in advance for your anticipated attention to this critical matter.

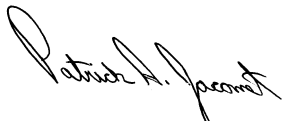
Respectfully,



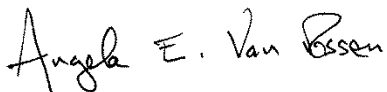
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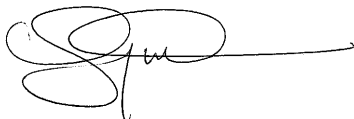
Mike Carey
President
Ohio Coal Association



Patrick Jacomet
Executive Director
Ohio Aggregates & Industrial Minerals Association



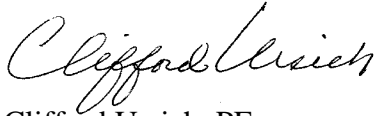
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Clifford Ursich, PE
President & Executive Director
Flexible Pavements of Ohio



Dave Sobochan
President
NAIOP



Robert Burndeett
Director, Public Policy Services
Ohio Manufacturing Association



Terry Fleming
Executive Director
Ohio Petroleum Council



Thomas E. Stewart
Executive Vice President
Ohio Oil & Gas Association

cc: Craig Butler, Ohio Governor's Office
Mark Hamlin, Ohio Lt. Governor's Office
Speaker Bill Batchelder, Ohio House of Representatives
President Tom Niehaus, Ohio Senate
Minority Leader Armond Budish, Ohio House of Representatives
Minority Leader Eric Kearney, Ohio Senate
Members of JCARR
Members of House Agriculture and Natural Resources Committee
Members of Senate Agriculture, Environment and Natural Resources Committee

Chapters 3745-1, 3745-32 and 3745-45 of the Ohio Administrative Code**Summary of Rule Language Changes and Related Issues
Discussed During a Series of Meetings with Interested Parties**Background

On December 28, 2011, Ohio EPA originally filed proposed rule revisions to OAC Chapters 3745-1, 3745-32 and 3745-45 with the Joint Committee on Agency Rule Review (JCARR). The Ohio EPA withdrew those rules on February 1, 2012 from JCARR's jurisdiction. In April a workgroup was formed with representatives from trade and industry associations, Ohio Department of Transportation, environmental consulting firms, environmental organizations, CSI Office and Ohio EPA. The workgroup discussed the legal, technical and scientific aspects of the major features of the rules. Members of the workgroup were also asked to provide information that will assist the Agency in completing the Common Sense Initiative Business Impact Analysis Form. The workgroup held five meetings from April 2012 through June 2012. This document summarizes the outcome of those meetings; it has been revised to reflect comments made by workgroup members at or following the final meeting on August 16th.

Next Steps

Ohio EPA has made a number of changes in the rule packages based upon the workgroup meetings, the written comments supplied by workgroup members and additional technical review. Those changes are summarized in the following table and the major issues are discussed in more detail below. A list of rules where no changes were made is also provided. We anticipate completing the Common Sense Initiative Business Impact Analysis Form in August and filing these rules for interested party review in early September.

The following rules have been changed since the version released in December 2011.

Rule Number	Rule Title	Changes from December 2011 rules
3745-1-03	Analytical methods and availability of documents	Misc. grammatical edits and citation updates
3745-1-05	Antidegradation	Misc. grammatical edits and citation updates
3745-1-07	Beneficial use designations	Adjustment to PHWH Class III
3745-1-35	Site-specific modifications to criteria and values	See separate rule filing ¹
3745-1-41	Water quality criteria for recreation use designations	Removed thallium criteria ²
3745-32-01	Definitions	Misc. grammatical edits and citation updates
3745-32-02	Applicability	Adjustments to permit by rule provisions
3745-32-03	Individual state water quality permit application requirements and procedures	Misc. grammatical edits and citation updates

¹ After vetting the rule content and proposed changes with the workgroup rule 3745-1-35 is being handled through a separate rulemaking process.

² The 2-route of exposure thallium human health criterion will be removed because U.S. EPA withdrew their previously published reference dose for thallium. There is no other credible human toxicity value with which to calculate a criterion.

The following rules have not been changed since the version released in December 2011.

Rule Number	Rule Title
3745-1-01	Purpose and applicability
3745-1-02	Definitions
3745-1-04	Criteria applicable to all waters
3745-1-05	Antidegradation
3745-1-31	Lake Erie standards
3745-1-32	Ohio river standards
3745-1-33	Water quality criteria for the lake Erie drainage basin
3745-1-34	Water quality criteria for the Ohio river drainage basin
3745-1-36	Methodologies for development of aquatic life criteria & values
3745-1-37	Methodology for deriving bioaccumulation factors
3745-1-38	Methodologies for development of human health criteria & values
3745-1-39	Methodology for the development of wildlife criteria for the lake Erie drainage basin
3745-1-40	Water quality criteria for water supply use designations
3745-1-42	Water quality criteria for the base aquatic life use designation
3745-1-43	Water quality criteria for the tiered aquatic life use designations
3745-32-04	State water quality permit and isolated wetland permit antidegradation review requirements.

Description of Changes from December 2011 Proposed Rules

1. OAC 3745-1-07(F)(9)(d) – (Primary Headwater Habitat aquatic life use designation)

Changes: Ohio EPA will revise the method document referenced in this paragraph to reflect what was discussed with the workgroup. The major change allows the permit applicant the option of using level 2 assessment results to distinguish Class IIIb Primary Headwater Habitat streams from Class IIIa streams. Headwater Macroinvertebrate Field Evaluation Index scores greater than or equal to 27 will be considered Class IIIb streams unless a different conclusion is drawn from level 3 assessment work.

NOTE: The method document (Field Evaluation Manual for Ohio's Primary Headwater Habitat Streams) is part of the rule by reference and is subject to public review and comment during the rule making period.

A change will also be made in paragraph (d)(iii)(b)(ii) which describes the characteristic fauna of Class IIIb streams:

(ii) A macroinvertebrate community consisting of at least four cold water taxa from table 7-2 and also having two or more of the following attributes:

(A) Six or more cold water macroinvertebrate taxa listed in table 7-2 of this rule;

(B) ~~Six~~ **Seven** or more taxa from the insect orders Ephemeroptera, Plecoptera and Trichoptera;

(C) ~~Six~~ **Seven** or more sensitive macroinvertebrate taxa.

Reason for Changes: The business community has raised concerns with the time and expense associated with level 3 assessment methods. Creating a “bright line score” using faster and less expensive sampling methods will lessen the burden on businesses. The score value is conservative enough to adequately assure protection of the Class IIIb stream resource.

Ohio EPA did additional data analysis with an expanded data set and concluded that the number of EPT taxa and number sensitive macroinvertebrate taxa characteristic of Class IIIb streams should be increased from six to seven taxa for both indicators.

2. OAC 3745-32-02 Applicability (Section 401 dredge & fill permit program)

Changes: The rule changes shown below (strikeout and highlighted text) carve out situations that will be permitted by rule or through a general permit. These situations are restricted to waters deemed outside the jurisdiction of the Clean Water Act yet still covered under Ohio law as waters of the state. The term “isolated stream” is sometimes used to refer to these situations.

- (A) Any applicant for a federal license or permit to conduct any activity which may result in a discharge of dredged or fill material to a navigable water as that term is defined and interpreted under the Federal Water Pollution Control Act shall apply for and obtain a state water quality permit from the director.
- (B) Every person that proposes to discharge dredged or fill material into a lake or stream, other than (1) a Class I primary headwater habitat stream or (2) Class II primary headwater habitat streams totaling less than 300 linear feet, or a lake as those terms are defined or described in rules 3745-1-02 and 3745-1-07 of the Administrative Code ~~into a stream or a lake as those terms are defined in rule 3745-1-02 of the Administrative Code~~ that is determined by the United States army corps of engineers to be outside of the jurisdiction of the Federal Water Pollution Control Act shall apply for and obtain an individual state water quality permit from the director.
- (C) Every person that proposes to discharge dredged or fill material into a total of 300 linear feet or less of Class II primary headwater habitat stream(s) as that term is defined or described in rules 3745-1-02 and 3745-1-07 of the Administrative Code, that is determined by the United States army corps of engineers to be outside of the jurisdiction of the Federal Water Pollution Control Act shall apply for and obtain coverage under a general state water quality permit from the director.
- (D) Permit by rule.
- All discharges of dredged or fill material that are not covered by permit requirements pursuant to paragraphs (A) through (C) of this rule are permitted by rule so long as the following conditions are followed:
- ~~All other discharges of dredged or fill material not otherwise regulated under paragraphs (A) or (B) of this rule are permitted by rule so long as the following conditions are followed:~~
- (1) The dredged or fill material is free from toxic pollutants;
 - (2) Best management practices are followed to prevent or reduce sediment impacts to downstream water resources; and
 - (3) The activity complies with other applicable laws and any other governmental approvals necessary for the proposed activity.

Reason for Changes: The business community questioned the need to regulate isolated streams because they often have relatively low resource value and have limited connection to downstream waters. In response to these points Ohio EPA has changed the permit by rule language to cover isolated Class I PHWH streams. In addition, isolated Class II PHWH streams will be covered through a general permit. Ohio EPA believes isolated class III PHWH streams have higher aquatic resource value and thus the individual permitting process should apply.

Miscellaneous Clarifications and Grammatical Changes:

Rule:	Change:	Reason:
3745-1-03	In paragraph (B)(1), revised the date from 2011 to 2012.	Reference the most recent version of the Code of Federal Regulations.
	In paragraph (B)(2), revised the date from 2011 to 2012.	Reference the most recent version of federal statutes.
	In paragraph (B)(3)(c), revised the version of the manual from 3.0 to 3.1.	Reference the most recent version of the Field Evaluation Manual for Ohio's Primary Headwater Habitat Streams.
	In paragraph (B)(3)(j), revised the date from 2009 to 2012.	Reference the most recent version of the Manual of Ohio EPA Surveillance Methods and Quality Assurance Practices.
3745-1-05	In paragraph (A)(27), revised the date from 2011 to 2012.	Reference the most recent version of the Code of Federal Regulations.
3745-32-01	In paragraph (G), revised the date from 2011 to 2012.	Reference the most recent version of the Federal Water Pollution Control Act.
3745-32-01	In paragraph (R), revised the date from 2011 to 2012.	Reference the most recent version of the Rivers and Harbors Act.
3745-32-03	In paragraph (B)(4), revised the version of the manual from 3.0 to 3.1.	Reference the most recent version of the Field Evaluation Manual for Ohio's Primary Headwater Habitat Streams.

Completion of Business Impact Analysis (BIA) Forms and Related Issues

The workgroup was also convened for the purpose of engaging members of the regulated community and environmental groups in discussions of the impact of the rules on Ohio businesses and Ohio's economy. Ohio EPA withdrew these rules from the rulemaking process in February in order to reconsider rule content and to apply the Common Sense Initiative (CSI) framework (Executive Order 2011-01K). The CSI process aims to balance critical rule objectives with the cost of compliance and requires the submission of the Business Impact Analysis form.

Identification of business sectors impacted and draft answers on the CSI BIA form

Ohio EPA drafted answers to all BIA questions and made the information available to workgroup members in May. The majority of member feedback was general in nature and very few specific costs were provided. Ohio EPA will consider the information provided in drafting the final BIA documents. Two primary conclusions were drawn from the dialogue on the adverse impact of these rules on businesses. First, the coal industry is impacted by the PHWH classification; however, very little useful information was supplied to quantify the extent of business impact on the coal industry. Second, while the Ohio Department of Transportation had serious problems with the 2010 version of the WQS and 401 rule packages, a majority of these problems were effectively addressed in the 2011 rule package³. Considerably less time was devoted to the discussion of impacts on other business sectors including the shale gas industry, commercial and residential development and entities holding wastewater discharge permits. The Agency will proceed with compiling answers to BIA questions using information from workgroup members and other sources. The CSI office, the regulated community and the public will have the opportunity to review and comment on these forms during the IPR comment period.

PHWH stream mileage and business impacts arising from the PHWH classification system

Ohio EPA heard claims made by workgroup members that the total mileage of PHWH streams in Ohio, and especially in southeast Ohio, is far greater than Ohio EPA estimates. However, no credible data or information was produced to support these statements. Records of actual stream miles delineated on project sites larger than 40 acres were outside the expected range of Ohio EPA estimates⁴ less than ten percent of the time. The Agency intends to proceed with completing the CSI BIA forms using our current knowledge of the extent of PHWH stream classes in Ohio. We will make all pertinent information on stream mileage estimates available for review and further comment during the rule making process.

³ See August 25, 2012 letter from Director Wray to Director Nally (copy attached).

⁴ Primary Headwater Stream Rapid Assessment Study. 2001. Statistical Consulting Service, Department of Statistics, The Ohio State University prepared for Ohio EPA.

**OHIO DEPARTMENT OF TRANSPORTATION**

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223

JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

August 25th, 2012

Mr. Scott Nally, Director
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

RE: Letter of Support for Proposed OAC Amendments and New Rules Addressing: 3745-1/ Water Quality Standards, 3745-1-05 Antidegradation, and 3745-32/ Section 401 Water Quality Certifications

Dear Director Nally,

The Ohio Department of Transportation (ODOT) appreciates the opportunity to participate in the rule workgroup meetings. Ohio EPA has made great improvements in the rule package since it was first proposed in 2011. We support our sister state agency's intention of moving forward with the proposed rule package. ODOT must take a moment to commend Ohio EPA on the great improvements that have been made to the draft rules that both continue to protect the environment while increasing the clarity, predictability, and opportunity for compliance. Some of these beneficial changes include:

- The inclusion of public safety as a defensible justification for the lowering of water quality
- Providing definitions of jurisdictional ditch, roadside ditch, captured stream
- Separating the language and rules that govern pollutant loading vs. dredge and fill permitting activities
- The creation of a tiered approach to PHWH cold water streams including revision to the tables of respective cold water fauna and simplified methodology for determining stream quality
- The reconsideration of the proposed 3745-1-56 stream mitigation rules and associated guidance document which were not ready for implementation.
- Removal of the Drainage Use designations and Navigation use designation

We look forward to reviewing the proposed rules during the public comment period, and will provide comments as necessary.

We look forward to continuing to work with the OEPA to successfully implement the Section 401 program in a manner that promotes regulatory flexibility and expedites delivery of transportation projects while ensuring environmental protection.

Respectfully,

A handwritten signature in black ink that reads "Jerry Wray/gw".

Jerry Wray, Director
Ohio Department of Transportation

JW:JB:JT:TH:mkp

c: File, Director's Office

WWW.TRANSPORTATION.OHIO.GOV

ODOT IS AN EQUAL OPPORTUNITY EMPLOYER AND PROVIDER OF SERVICES

Attachment A to Trade Association Coalition Comments
Ohio EPA's Draft Rule Changes to the Surface Water Quality Rule Package

Comparison Chart

This chart summarizes specific rule changes in Ohio EPA's proposed Comprehensive Water Rules which either conflict with, expand upon, or are more stringent than, Federal law or contain significant provisions not present in Federal law.

Ohio EPA Proposed Rule	Federal Law	Comparison to Federal Law
State Water Quality Permit Program, O.A.C. Chapter 3745-32 et. seq.		
Chapter 3745-32, State Water Quality Permit Program	None.	More expansive than Federal water law. Ohio's new permitting program is more stringent than other states which do not appear to regulate isolated streams, with the exception of potentially North Carolina.
3745-32-01(A), 12-digit hydrologic unit watershed	None.	Definition not present in Federal water law.
3745-32-01(E), discharge of fill material	33 CFR 323.2(f)	More expansive than Federal water law. Contains language not included in Federal law, such as including the addition of fill material into waters of the state "for the purpose of creating uplands, changing the elevation of land beneath the waters of the state, or creating impoundments of water." Also includes bulkheads, fills, and sanitary landfills in examples which are not found in Federal definition. Moreover, definition applies to "waters of the state" which Ohio EPA has significantly expanded beyond Federal "waters of the U.S."
3745-32-01(H), fill material	33 CFR 323.2(e)	More stringent than Federal water law. Ohio definition includes filling of an aquatic area "for any purpose".
3745-32-01(J), local drainage pattern	None.	Definition not present in federal water regulation.
3745-32-01(K), loss of use or elimination of use	None.	Definition not present in Federal water law.

Attachment A to Trade Association Coalition Comments
Ohio EPA's Draft Rule Changes to the Surface Water Quality Rule Package

Comparison Chart

3745-32-01(L), minimal degradation alternative	None.	Definition not present in Federal water law.
3745-32-01(N), non-degradation alternative	None.	Definition not present in Federal water law.
3745-32-01(O), non federally protected waters	None.	More expansive than Federal water law.
3745-32-01(Q), outstanding national resource waters	40 CFR Pt. 132, App. E	More stringent than Federal water law. Defines ONRW to mean surface waters with national ecological or recreational significance whereas Federal law defines them to mean water with "exceptional" recreational or ecological significance.
3745-32-01(S), preferred alternative	None.	Definition not present in Federal water law.
3745-32-01(T), state water quality permit	None.	More expansive than Federal water law.
3745-32-02, applicability	33 USC 1341 et seq.	More expansive than Federal water law.
3745-32-03(A), individual state water quality permit application requirements and procedures	None.	More expansive than Federal water law. Duplicates permit/licensing procedures by requiring applicants for Federal permits/licenses to submit separate application for State permit.
3745-32-03(B)(2)(a), application requirements, correspondence with ACOE	None.	Conflicts with Federal water law. Requires State water quality permit applicants to include correspondence from ACOE regarding jurisdictional status of waters; however, ACOE does not render such determinations for all features which Ohio EPA deems "waters of the state".

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Ohio EPA's Draft Rule Changes to the Surface Water Quality Rule Package

Comparison Chart

3745-32-03(B)(2)(a), application requirements, use attainability analysis	131.10(g),(k)	More expansive than Federal water law. Requires use attainability analysis for streams, such as isolated streams, not covered by Federal Water Pollution Control Act.
3745-32-03(B)(2)(d), application requirements, mitigation proposal	33 CFR 332.7(a), 40 CFR 230.97	More stringent than Federal water law. Requires permit application contain a specific detailed mitigation proposal setting forth the "legal mechanism" for "protection in perpetuity." Federal law requires "long-term protection", not perpetual protection, and ACOE requests, not requires, such protection mechanism. Additionally, Federal law requires "real estate instrument or other available mechanism" not a "legal mechanism". Finally, the proposed regulation provides more stringent protection to mitigation facilities than natural ones without justification.
3745-32-03(B)(4), use attainability analysis	40 CFR 131.10(g),(k)	More expansive than Federal water law. Requires use attainability analysis for streams, such as isolated streams, not covered by Federal Water Pollution Control Act. Also, more expansive than current Ohio EPA required documentation.
3745-32-03(C), criteria for decision by director	33 USC 1341	More expansive than Federal water law.
3745-32-03(G), expiration and renewal	33 USC 1322, 33 CFR 325.2	Inconsistent with Federal water law; more stringent than current practice. Allowing only 1 renewal period of 5 years is more stringent than current practice. In addition, some projects cannot be completed and reclaimed in 10 years.
3745-32-03(J)	33 USC 1313(c)	More expansive than Federal water law.
3745-32-04, state water quality permit and	40 CFR 131.6(d),	Adds complexity to State law.

Attachment A to Trade Association Coalition Comments
Ohio EPA's Draft Rule Changes to the Surface Water Quality Rule Package

Comparison Chart

isolated wetland permit antidegradation review requirements	40 CFR 131.12, 40 CFR 132.1, 40 CFR 132.4(c) and App. E	Contains confusing cross-references and applicability requirements regarding antidegradation.
3745-32-04(D)(2)	None.	More expansive than Federal water law. Federal law does not require cumulative impact analyses for isolated streams.
3745-32-04(E)(3)(a).	33 CFR 332.1	More stringent than Federal water law.
3745-32-04(E)(3)(b)	None	Not present in Federal water law.
3745-32-04(H)	33 CFR 325.2	More stringent than ACOE's procedures; Not present in Federal water law for isolated streams. Ohio EPA requires written public comments be forwarded to applicants and requires applicants to respond to written public comments. ACOE permitting procedures only state that applicants can respond to comments voluntarily. Federal law does not require public involvement process for isolated streams.
Antidegradation Rule, O.A.C. 3745-1-05		
3745-1-05(B)(2)(b)	None.	More expansive than Federal water law.

Attachment A to Trade Association Coalition Comments
Ohio EPA's Draft Rule Changes to the Surface Water Quality Rule Package

Comparison Chart

3745-1-05(C)(1)(c)(ii)	33 USC 2317	Inconsistent with Federal water law.
3745-1-05(C)(6)(a), (c)	None.	Ohio EPA requires antidegradation reviews for wetlands to include an evaluation of impacts and loss of use to ensure there is no net loss of wetland use. Federal law requires – as ACOE goal – no “overall net loss” of “wetlands base”.
3745-1-05(C)(6)(a), (c)	None.	Not present in Federal water law.
<u>Stream Mitigation Rule, O.A.C. 3745-1-56</u>		
Generally	40 CFR Pt. 230, 33 CFR Pt. 332	No separate Federal stream mitigation rule.
3745-1-56(B)	None.	Not present in Federal water law.
3745-1-56(C)	None.	Not present in Federal water law.
3745-1-56(D)	None.	Not present in Federal water law.
3745-1-56(D)(4)(d)	40 CFR 230.93(f), 33 CFR 332.3(f)	More stringent than Federal water law.
3745-1-56(D)(4)(e)	None.	More stringent than Federal water law.
3745-1-56(E)	None.	Not present in Federal water law.

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Ohio EPA's Draft Rule Changes to the Surface Water Quality Rule Package

Comparison Chart

Water Quality Standards, O.A.C. Chapter 3745-1 et. seq.		
3745-1-01(B)	33 USC 1251	More stringent than Federal water law. Applies to "all surface waters in Ohio" which is broader than Federal waters.
3745-1-01(C)(1)(a)	None.	Not present in Federal law. Including potential uses of water in beneficial use designations does not appear in Federal water law.
3745-1-01(C)(3)(a)	40 CFR 131.12	More stringent than Federal water law.
3745-1-01(D)(1)	40 CFR Pt.132, App. E	More stringent than Federal water law. Federal law requires that "the criteria applicable to the designated use are achieved in the water and that any designated use of a downstream water is protected."
3745-1-01(E)(3)	None.	Not present in Federal water law.
3745-1-02(B)(3), acute aquatic criterion	None.	No similar definition in Federal water law.
3745-1-02(B)(21), cold water fauna	None.	No similar definition in Federal water law.
3745-1-02(B)(31), Ditch maintenance program	None.	No similar definition in Federal water law.
3745-1-02(B)(55), lake	None.	No similar definition in Federal water law.
3745-1-02(B)(86),	No general	No similar definition in Federal water law.

Attachment A to Trade Association Coalition Comments
Ohio EPA's Draft Rule Changes to the Surface Water Quality Rule Package

Comparison Chart

stream	definition.	
3745-1-07(F)(7), limited warmwater habitat	None.	No similar designation in Federal water law.
3745-1-07(F)(8), lake habitat	None.	No similar designation in Federal water law.
3745-1-07(F)(9), primary headwater habitat	None.	No similar designation in Federal water law.
3745-1-07(H), navigation use	None.	Similar language does not appear in Federal water law. Unspecified U.S. EPA guidance cited by Ohio EPA.
3745-1-40, water quality criteria for water supply use designations	40 CFR 131 et seq., 40 CFR 141 et seq., 40 CFR 143.3,	<p>More stringent than Federal standards with respect to phosphorus and silver.</p> <p>Water supply use criteria based on National Primary Drinking Water Regulations ("NPDWR"). The Ohio EPA rules differ from NPDWR in the following ways:</p> <p>(1) Ohio EPA includes a phosphorus standard; there is no Federal phosphorus standard in the NPDWR.</p> <p>(2) Ohio EPA includes a silver standard; at the Federal level, the silver standard is a contained in the non-enforceable Secondary Drinking Water Regulations.</p>
3745-1-42, water quality criteria for the base aquatic life use designation	40 CFR 131.10, allowing states to specify water quality criteria for different uses	<p>More stringent than Federal water law and U.S. EPA's National Recommended Water Quality Criteria with respect to Nonylphenol.</p> <p>No Federal standard that matches the IMZM (maximum within the mixing zone).</p>



William G. Batchelder
Speaker, Ohio House of Representatives

Matt Huffman
Majority Floor Leader

John Adams
Majority Whip

Louis W. Blessing
Speaker Pro Tempore

Barbara R. Sears
Assistant Majority Floor Leader

Cheryl L. Grossman
Assistant Majority Whip

September 26, 2012

Director Scott Nally
Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, OH 43215

Director Nally:

Rules governing Ohio's water quality have been determined by federal and state law since 1977. These laws are rigorous and have been strictly followed by regulators and businesses alike. The process is detailed, expensive and based on a lengthy certification program.

Alarming, if the new Ohio EPA water rules are proposed they will be much more stringent than existing federal rules already in place under the Clean Water Act. Criteria in the proposed "2012 Water Rules" are a complicated and costly set of two sections: Water Quality Standards and changes to the 401 Water Quality Certification Program. The rules are not mandated by the U.S. EPA and pose great risk to Ohio's business community that will directly impact desperately needed jobs in Ohio.

For the past ten years, the Ohio business community objected to these rules because they completely lack environmental and legal justification. Further, there is no assessment in place to measure the rules' overall economic impact to the business community, but it is clear from the opposition of the business community that these rules will directly impact Ohio jobs. Notwithstanding the negative impact on Ohio jobs that this rule would create, after participation in numerous working groups, committee hearings, and hundreds of thousands of dollars spent on alternatives by the business community, the Ohio EPA is still moving forward without justifying why such comprehensive and complex rules are even necessary.

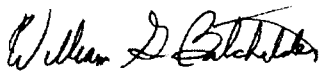
www.house.state.oh.us
77 S. High Street, Columbus, Ohio 43215-6111
614-466-8140

The rules offer a one size fits all approach that does not take into consideration the environmental differences across the state. Finally, eleven of Ohio's largest business trade organizations, representing thousands of businesses, already requested the Ohio EPA reconsider moving forward with the 2012 Water Rules.

With nationwide unemployment still at its highest level in years, state government should not be adding more unnecessary regulations that will keep people from going to work. Yet that is, the exact result of the 2012 Water Rules if finalized.

As members of the Leadership of the House Majority in the Ohio House of Representatives, we respectfully urge you – director of Ohio's Environmental Protection Agency – to reconsider your position and take immediate action to ensure the regulatory road blocks to Ohio's economic prosperity are lifted.

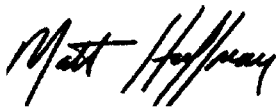
Sincerely:



William G. Batchelder
Speaker, Ohio House of Representatives



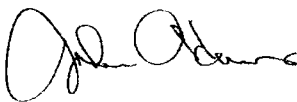
Louis W. Blessing
Speaker Pro Tempore



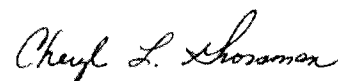
Matt Huffman
Majority Floor Leader



Barbara R. Sears
Assistant Majority Floor Leader



John Adams
Majority Whip



Cheryl L. Grossman
Assistant Majority Whip

CC: Governor John Kasich
Matt Carle, Director of Legislative Affairs, Office of Governor John Kasich



Tom Niehaus

President
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September 28, 2012

Director Scott Nally
Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, OH 43215

Director Nally:

I understand the Ohio EPA is considering releasing an extensive water quality rule package in the very near future.

I am writing to ask that you hold this rule package to allow for more discussion with the Ohio businesses that will bear the burden of these proposed rules. While I confess I am not familiar with all the details of the proposed rules, I do understand they are much more stringent than those required by the U.S. EPA.

This initiative seems contrary to the Governor and Lt. Governor's Common Sense Initiative.

Our current laws are rigorous and have been instrumental in improving the quality of the state's water and protecting important natural resources over the last 35 years.

Criteria in the proposed "2012 Water Rules" are a complicated and costly set of two sections: Water Quality Standards and changes to the 401 Water Quality Certification Program. The rules are not mandated by the U.S. EPA, so I am not sure what the impetus is for Ohio taking action now. These rules pose great risk to Ohio businesses.

The Ohio business community has tried to work with the Ohio EPA through several administrations. They objected to these rules for the past 10 years because there appears to be no environmental or legal justification. There is no assessment in place to measure the rules' overall economic impact on businesses, something new Joint Committee on Agency Rule Review guidelines will require.

After participation in numerous working groups, committee hearings, and hundreds of thousands of dollars spent on alternatives by the business community, the Ohio EPA is still moving forward without justifying why such comprehensive and complex rules are needed in the first place.

Governor Kasich is committed to making Ohio a business-friendly state. This rule package seems to ignore that mission. I believe it is possible for the EPA to balance its mission to protect the environment with the need to ensure a reasonable regulatory climate for business. These rules do not seem to do that.

I know your staff has dedicated a tremendous amount of time to this effort, and I know you want to support their efforts. However, I respectfully urge you to reconsider your position and take immediate action to ensure the regulatory road blocks to Ohio's economic prosperity are lifted.

Sincerely,

A handwritten signature in cursive script that reads "Tom Niehaus".

Senator Tom Niehaus
Senate President



October 4, 2012

Director Scott Nally
Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, OH 43215

Director Nally:

As Representatives of the Appalachia region across Ohio, a region that for years has been hardened with economic struggle, we urge you to reconsider your position on the proposed "2012 Water Rules". These proposed rules would severely affect numerous industries throughout the region and bring hardships to countless families who are already hurting.

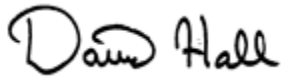
The stringent rules currently in place on Ohio's water quality have been followed by industries in the Appalachia region since they were set in place in 1977. Not only would these new set of rules be more stringent than existing federal rules already in place, but they would bring significant costs to Ohio's business community and families throughout the region.

Ohio, along with the entire nation, is still recovering from extreme levels of unemployment and economic hardships; the Appalachia region is no exception. We cannot afford to cripple the recovery of a region by adding more unnecessary regulations that will only hurt the people in the region.

We understand that the Speaker and Leadership of the Ohio House of Representatives also signed a letter. We stand with them in their opposition to these proposed rules. As members of the House Majority in the Ohio House of Representatives and Representatives of the Ohio Appalachia region, we respectfully urge you – director of Ohio's Environmental Protection Agency – to reconsider your position and take immediate action to ensure the regulatory road blocks to Ohio's economic prosperity are lifted.

**www.house.state.oh.us
77 S. High Street, Columbus, Ohio 43215-6111
614-466-8140**

Sincerely:



Dave Hall
State Representative



Brian Hill
State Representative



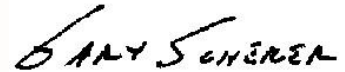
Al Landis
State Representative



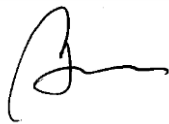
Andrew Thompson
State Representative



Ryan Smith
State Representative



Gary Scherer
State Representative



Bill Hayes
State Representative

CC: Governor John Kasich
Matt Carle, Director of Legislative Affairs, Office of Governor John Kasich

**Ohio Environmental Protection Agency
Standard Operating Procedures**

Compliance Assurance through Enforcement Program

This directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to Ohio EPA personnel to achieve a uniform Compliance Assurance through Enforcement Program for Ohio EPA. This directive does not have general application and is not being enforced as having the force of law, nor does it create or extend any legal rights or defenses to persons regulated by Ohio EPA.

I. GENERAL GOALS OF COMPLIANCE ASSURANCE THROUGH ENFORCEMENT

The purpose of Ohio EPA's Compliance Assurance through Enforcement Program is to ensure that the public benefits of environmental protection established in Ohio EPA's rules, permits, orders and licenses are properly achieved and maintained. The four general goals of Ohio EPA's Compliance Assurance through Enforcement Program are:

- Ensuring that violators return to compliance in a timely manner and giving them the tools and information necessary to help prevent violations from occurring;
- Ensuring that Ohio EPA complies with Ohio Rev. Code Section 119.14 by providing additional enforcement tools instead of penalties to abate first-time paperwork violations committed by businesses.
- Deterring violations and ensuring that violations have consequences which may include penalties; and
- Mitigating environmental and programmatic harm caused by violations.

Achieving the first goal, by ensuring that violators return to compliance in a timely manner and giving them the tools and information necessary to prevent violations, will have the greatest impact on maintaining the public health and welfare benefits of environmental protection. Providing tools instead of penalties, such as notices, warning letters, and the offering of technical assistance, will allow Ohio EPA to meet the second goal of complying with the General Assembly's directive that penalties for first-time paperwork violations committed by businesses should be waived (with some exceptions). The third goal, deterring violations and ensuring consequences for violations, is also a necessary component of a successful compliance assurance through enforcement program. If violators suffer no disadvantage from their violations, but instead are allowed to benefit economically from them, there will be no incentive to comply, and complying entities will suffer a competitive disadvantage. Achieving the final goal, by mitigating environmental and programmatic harm caused by violations, maintains the public health and welfare benefits of environmental protection while holding violators financially accountable for their violations.

A. Objectives for Achieving Goals of Compliance Assurance through Enforcement

The following objectives underlie the Ohio EPA's Compliance Assurance through Enforcement Program:

1. Achieving compliance with Ohio's environmental laws is a primary focus of Ohio EPA.
2. Compliance assurance methods range *from* technical assistance, education and outreach *to* civil and criminal enforcement through referral to the Ohio Attorney General, with several steps in between depending upon specific circumstances.
3. In selecting a compliance assurance method, the primary objective is to select the tool that is most likely to result in timely compliance and the best environmental protection.
4. Providing access to an online compliance database available to the agency and to the public through Ohio EPA's webpage which will provide for transparency, accountability and improved compliance.
5. Priority of compliance inspections should be principally based on five criteria:
 - Reduction of risk to public health and welfare;
 - Pollution prevention or waste minimization;
 - Preservation of the integrity of the regulatory structure;
 - US EPA priorities as expressed in delegation agreements and grant obligations; and
 - Deterrence.

II. COMPLIANCE ASSURANCE THROUGH ENFORCEMENT TOOLS

Within the legal constraints of the various programs, the following tools should be used as needed by each Ohio EPA division to obtain timely compliance and to deter future violations. These tools do not necessarily need to be used in a linear fashion but should be employed strategically in a manner calculated to timely return an entity to compliance and provide for deterrence:

- Inspection or Warning Letter Identifying a Risk of a Potential Violation
- Notice of Violation ("NOV") Letter
- Advanced Warning Letter
 - Program Chief's Warning Letter
 - Director's Warning Letter
 - Bilateral Compliance Agreements (BCAs)
- Administrative Enforcement
 - Unilateral Director's Final Findings and Orders
 - Expedited Settlement Agreement ("ESA")
 - Conditioned Licenses
 - Negotiated Director's Final Findings and Orders
- Referral to Ohio Attorney General for Enforcement.
- Referral to US EPA

1. Inspection or Warning Letter Identifying a Risk of a Potential Violation

An inspection or warning letter identifying a risk of a potential violation is an informal tool that may be used for ensuring continued compliance. This inspection or warning letter will typically be written by inspectors to inform the regulated entity of apparent conditions that could likely lead to a violation if not addressed soon and request preventive actions. An inspector may choose to issue this letter to address conditions that could lead to violations that are few in number, minor, and easily corrected in a limited time with minimal oversight by Ohio EPA.

Inspection or warning letters should include technical assistance advice particularly when compliance challenges may be due to inexperience or misinformation. For a complex or multi-media issue, the agency may need to refer the regulated entity to a specific person at Ohio EPA or a technology that may assist the regulated entity in resolving the issue and preventing its reoccurrence. In that instance, the letter should include an explanation of the deficiency, the name of a contact person with a telephone number and/or e-mail address for the regulated entity to contact for assistance, a suggested timeline for obtaining technical assistance, and a general description of Ohio EPA's Compliance Assurance through Enforcement Program including consequences of future non-compliance.

If a more severe compliance tool is used against the regulated entity at a later date, the deficiency that generated an inspection identifying a risk of a potential violation should not be cited. This tool should not be used when a regulated entity has violated rules or laws, although Ohio EPA should always be willing to offer technical assistance when possible.

2. Notice of Violation ("NOV") Letter

A notice of violation (NOV) letter is a means for Ohio EPA to inform a regulated entity that violations of statutes, rules, orders or permits have occurred. A NOV letter includes a listing of the violations at the facility, a reference to a possible civil penalty, a description of the steps the regulated entity should take to return the facility to compliance in a timely manner or a request for a compliance plan and schedule to be submitted in a timely manner.

A NOV letter is to be issued to the regulated entity no later than twenty-one (21) days after discovering a violation.

An exit conference should be held with the regulated entity at the conclusion of any inspection whenever possible to summarize the results of an inspection and the actions that need to be taken by the regulated entity. The exit conference should include technical compliance assistance whenever possible, especially when compliance issues may be due to inexperience or misinformation. It is also acceptable to have the exit conference by phone if the regulated entity is not available. For a complex or multi-media issue, an inspector may need to refer the regulated entity to a specific person at Ohio EPA or another agency or business with the expertise to assist the regulated entity in resolving either the violation or the conditions that could likely lead to a violation if not addressed soon. In that instance, the NOV letter should include an explanation of the compliance issue, the name of a contact person and telephone number and/or e-mail address for the regulated entity to contact for assistance, a suggested

timeline for obtaining technical assistance, and a general description of Ohio EPA's Compliance Assurance through Enforcement Program including consequences of future noncompliance.

If the inspector determines that a regulated entity has committed a violation that reaches the level of significant noncompliance (as defined in the Program Specific Enforcement Policy under Section III) or otherwise needs to be tracked through the agency's enforcement program, and such violation has not been abated within forty-five (45) days of its discovery, the inspector should promptly arrange a compliance conference where representatives of the regulated entity and Ohio EPA meet to review and discuss the violations and the regulated entity's compliance efforts. Such compliance conference should be held within thirty (30) days of the expiration of the forty-five (45) day period referenced above.

All violations of Ohio's environmental laws alleged by Ohio EPA and its inspection designees should be cited appropriately in written correspondence and forwarded to the regulated entity, and filed in accordance with the guidelines of Ohio EPA's Compliance Assurance through Enforcement Program.

3. Advanced Warning Letters and Bilateral Compliance Agreements (BCA)

a. Program Chief's Warning Letter

A Program Chief's Warning Letter may be sent to a company for reasons including the following:

- i. The violation(s) resulted in minimal or no environmental harm and the company quickly returned to compliance. In this situation, the purpose of the warning letter is to reinforce the seriousness, to prevent recurrence of the violation(s) that have been corrected, and to remind the company of its obligations under Ohio's environmental laws.
- ii. The violation(s) resulted in minimal or no environmental harm, but the company has yet to demonstrate it has abated the violation(s) or has failed to submit an acceptable plan to return to compliance or the additional information requested by the agency. In this situation, the purpose of the warning letter is to give the violator one last chance to comply without additional escalated enforcement action being recommended to the Director to address noncompliance.

b. Bilateral Compliance Agreements

This compliance tool is a letter of agreement signed by the Division Chief and the regulated entity that memorializes steps that will be taken in an agreed schedule to address noncompliance. This tool has historically been used by the Division of Drinking and Groundwater and has proven to be an effective tool to address violations that are relatively simple to correct thus avoiding the need to pursue a more formal enforcement response. It is recognized that this agreement is not, for practical purposes, enforceable. Accordingly, if the entity fails to fulfill the agreed to commitments in the BCA, it is expected that the program recommend pursuing a more escalated enforcement tool such as Findings and Orders or AGO referral.

c. Director's Warning Letter

A Director's Warning Letter may be appropriate following a compliance conference when the regulated entity needs to be placed on notice that Ohio EPA is on the verge of going to the next stage in the enforcement process which could include a recommendation to the Director that enforceable orders including a financial penalty and/or a referral to the Ohio Attorney General be pursued. This tool may also be helpful if getting the attention of a regulated entity's corporate management may result in more timely compliance. This letter is not a final action of the Director.

4. Expedited Settlement Agreement ("ESA")

An Expedited Settlement Agreement ("ESA") is an enforcement tool where the Director of Ohio EPA offers an expedited settlement agreement that includes a nominal penalty, in the range of a minimum of \$500.00 to a maximum of \$10,000 or \$20,000 (depending on the program) in exchange for prompt, documented abatement of the documented violations and an agreement that the regulated entity will not contest the settlement agreement. The regulated entity is not required to admit or deny committing the specific violations under this program. The Expedited Settlement Agreement provides the regulated entity with an incentive for prompt compliance with Ohio's environmental laws and reduces the time and resources spent on contested cases. These will be issued under Ohio Rev. Code § 3745.01 and the applicable program's enforcement authority as a final action.

When a program's enforcement staff determines that a regulated entity's noncompliance requires a formal enforcement response and identifies an ESA as the appropriate enforcement tool, the enforcement staff and its legal counsel should prepare the proposed ESA for review and approval by the Enforcement Coordinator, Program Chief, the program's supervising attorney, the Deputy Director of Legal Affairs (sometimes referred to as the Director's Chief Legal Counsel) and the Director. This referral package should be submitted to the official review and approval/sign-off process within sixty (60) days of the Enforcement Committee's determination that an ESA is the appropriate enforcement tool. Official in-house approval of a final settlement, in the form of an ESA, may occur after signing by the regulated entity's representative if its terms are within the parameters of the proposed ESA.

A. Eligibility

An ESA may be appropriate when a violation, or a series of violations, is significant enough to warrant a financial penalty of at least \$1,000 (before discounting) and the needed injunctive relief to abate the violation, or series of violations, is both apparent and minimal. The compliance action must be able to meet the ESA timeline, which is sixty (60) days, calculated *from* the date of the regulated entity's receipt of the offer to resolve violations through an ESA to the date of the signed agreement and receipt of the penalty. If the violations cannot be expected to be abated within 60 days of receipt of the Director's Invitation to Negotiate (ITN), then the ESA is not an appropriate compliance tool to address the violations at issue. An ESA may also be appropriate when a regulated entity has already abated the violation(s) in response to an inspection or the receipt of an NOV or when there are no actions which need to be taken to abate the violation(s).

B. ESA Guidelines

1. A compliance schedule not to exceed sixty (60) days of receipt of the Director's Invitation to Negotiate (ITN) that clearly spells out the steps necessary to bring the entity back into compliance. (Note: there is an opportunity to toll the 60-day requirement if an ability to pay request has been promptly submitted until such time as Ohio EPA makes a determination on such request.)
2. The minimum amount of a cumulative penalty (after discounting) shall be \$250.00 and the maximum amount shall be \$10,000.00 or \$20,000 (depending on the program) for all cumulative violations.
3. The public benefit of quick compliance that justifies offering a discount from the standard penalty calculation must be documented in the case materials and in the ESA offer letter to the regulated entity.
4. A rejected ESA shall be immediately placed into an escalated enforcement category such as Findings and Orders, or referral to the Ohio Attorney General or US EPA, unless new information is obtained by Ohio EPA indicating that escalated enforcement is inappropriate.
5. Ohio EPA may offer an ESA for a particular violation only one time. Thus, for example, if an entity violates a PTI requirement and the matter is resolved through an ESA, subsequent violations of the same PTI requirements by the same entity will not be eligible for an ESA.
6. Ohio EPA has the discretion to offer an ESA to resolve a violation, or series of violations, even when such an offer was previously rejected to resolve a different violation, or series of violations.
7. An ESA shall always be drafted to require the regulated entity to waive its administrative and judicial review rights for the matters resolved therein.
8. An ESA shall always be drafted to allow the regulated entity to sign the document without admitting or denying the allegations contained therein.
9. An ESA shall always be drafted to require Ohio EPA to waive any further enforcement action by Ohio EPA against the regulated entity pertaining to the allegations contained therein.
10. An ESA shall always be drafted to require the regulated entity to waive any objections that it may have regarding jurisdiction of Ohio EPA.
11. Penalties and discounts will be identified in program specific addendums.
12. An ESA should not contain obligations that require the regulated entity to perform any additional corrective actions beyond the abatement that is required to be completed within the ESA's initial 60-day period.

C. Procedures

After determining that a violation, or a series of violations, is eligible and that compliance may be achieved in a timely manner through an ESA, the program should prepare the following documents:

1. A cover briefing memo to the Director of Ohio EPA recommending the ESA with supporting documentation, including:
 - a. A description of the alleged violation(s);
 - b. The regulated entity's compliance history;
 - c. The original penalty range and its statutory authority;
 - d. The proposed discounted penalty;
 - e. The reasons for offering a discounted penalty; and
 - f. The general ESA program requirements including benefits and settlement deadlines;
2. A proposed ITN to the regulated entity offering to resolve the alleged violation, or series of violations, through an ESA, including:
 - a. A description of the alleged violation(s);
 - b. The regulated entity's compliance history;
 - c. The original penalty range and its statutory authority;
 - d. The proposed discounted penalty;
 - e. The reasons, including public benefits, for offering a discounted penalty;
 - f. The general ESA requirements including benefits and settlement deadlines; and
 - g. Ohio EPA's compliance plan for the regulated entity if the ESA is not voluntarily accepted.
3. An ESA, including the following information: (current boilerplate)
 - a. The authority of Ohio EPA for the ESA;
 - b. The purpose and benefits of the ESA;
 - c. A description of the alleged violation(s);
 - d. A description of the corrective actions that must be completed as a condition of the ESA being executed;
 - e. Ohio EPA's reservation of rights;
 - f. A "no admission" statement for the regulated entity;
 - g. A waiver of administrative or judicial review of ESA;
 - h. Effective date; and
 - i. Signature lines.

5. Director's Final Findings and Orders (Traditional In-House Settlement)

A five-year statute of limitations applies to environmental violations for which Ohio EPA will seek a civil penalty. In order to ensure that the agency brings enforcement actions within the five year time frame, time-specific performance standards are required for cases in which a civil penalty is being sought, either in-house or through referral to the Ohio Attorney General. When a program's enforcement staff determines that a regulated entity's noncompliance requires a formal enforcement response and identifies Director's Final Findings and Orders as the

appropriate enforcement tool (either consensual or unilateral), the enforcement staff and its legal counsel should prepare Proposed Director's Findings and Orders for review and approval by the Enforcement Coordinator, Program Chief, the program's supervising attorney, the Deputy Director of Legal Affairs (sometimes referred to as the Director's Chief Legal Counsel) and the Director. This referral package should be submitted to the official review and approval/sign-off process within ninety (90) days of the Enforcement Committee's determination that Director's Final Findings and Orders are the appropriate enforcement tool. Official in-house approval of a final settlement, in the form of Director's Final Findings and Orders, may occur after signing by the regulated entity's representative if its terms are within the parameters of the Proposed Director's Findings and Orders.

From the date of approval of the Proposed Findings and Orders by the Director, Ohio EPA has nine (9) months to negotiate a final settlement. If Ohio EPA is unable to reach a settlement within the nine-month period, a referral to the Ohio Attorney General should be made unless information has been obtained that would deem the referral or its timing to be inappropriate.

6. Referral to the Ohio Attorney General for Enforcement

A five-year statute of limitations applies to environmental violations for which Ohio EPA will seek a civil penalty. In order to ensure that the agency brings enforcement actions within the five year time frame, time-specific performance standards are required for cases in which a civil penalty is being sought, either in-house or through referral to the Ohio Attorney General.

When a program's enforcement staff determines that a regulated entity's noncompliance requires a formal enforcement response and identifies referral to the Ohio Attorney General as the appropriate enforcement tool, the enforcement staff and its legal counsel should prepare a referral package for review and approval by the Enforcement Coordinator, Program Chief, the program's supervising attorney, the Deputy Director of Legal Affairs (sometimes referred to as the Director's Chief Legal Counsel) and the Director. This referral package should be submitted to the official review and approval/sign-off process within ninety (90) days of the Enforcement Committee's determination that referral to the Ohio Attorney General is the appropriate enforcement tool. In order for the agency to meet its compliance and enforcement goals, the referral letter to the Ohio Attorney General should include a request that, if it is determined that sufficient evidence supports the referred violation(s), a complaint be filed in the proper court within one year if settlement is not achieved.

7. Referral to US EPA

In some instances, referral of an enforcement case to US EPA Region 5 may be appropriate for some Ohio EPA programs. Ohio EPA may also jointly enforce a case with US EPA or request other assistance from US EPA. Timelines for referring a matter to US EPA Region 5 should not exceed the timelines for referring a matter to the Ohio Attorney General.

8. Criminal Enforcement

When a violation is determined to potentially reach a level that warrants criminal investigation, the program's enforcement staff will request the Office of Special Investigations (OSI) to conduct an investigation per the procedures outlined in the Memorandum of Agreement between OSI and the Ohio EPA programs.

9. Supplemental Environmental Projects

See Ohio EPA's existing policy on Supplemental Environmental Projects.

10. Compliance and Enforcement Plan Requirement

If the inspector determines that a regulated entity has committed a violation that reaches the level of significant noncompliance (as defined in the Program Specific Enforcement Policy under Section III) or otherwise needs to be tracked through the agency's enforcement program, the inspector should within thirty (30) days of such determination draft and submit a Proposed Compliance and Enforcement Plan (as defined in Chapter II, Section 10 below) to the program's Enforcement Committee, or its designee. The Enforcement Committee, or its designee, shall consider the proposed plan and either adopt or modify the plan within thirty (30) days of receiving it and submit a recommended Compliance and Enforcement Plan to the program's supervising attorney for final review and approval. The Enforcement Committee, or its designee, should ensure that the approved Compliance and Enforcement Plan is available to the appropriate agency staff members, including the agency's Chief Legal Counsel, by having it posted in the confidential section of the Ohio EPA Compliance Database so that it can be enforced in a timely manner and that agency staff members are held accountable for its proper execution. The agency's Chief Legal Counsel may recommend revisions to the submitted plan to meet the agency's enforcement objectives as articulated by the Director. The timely drafting and submittal of a Proposed Compliance and Enforcement Plan in response to a violation that reaches the level of significant noncompliance is critical to the success of the agency's enforcement program.

This plan should include the following information:

- A. A description of the most recent violation, or series of violations;
- B. The regulated entity's compliance history, including prior instances of noncompliance such as specific dates and violations cited in notices of violations during the previous five year period;
- C. The enforcement tools utilized;
- D. An assessment of the cooperativeness of the regulated entity, with summaries of previous interactions;
- E. A description, or estimate, of the environmental harm resulting from the regulated entity's noncompliance;
- F. A description of the abatement options required to resolve the noncompliance;
- G. A description of any additional monitoring and/or testing required for the entity to demonstrate compliance;

- H. A recommendation for enforcement action to be taken, with timelines;
- I. If Ohio EPA requires the regulated entity to engage in monitoring and/or testing and submit results to Ohio EPA in conjunction with any enforcement action, the Compliance and Enforcement Plan shall explain the goals and objectives of such monitoring and/or testing. Each written analysis by Ohio EPA of monitoring and/or testing data received shall promptly be added to the Compliance and Enforcement Plan as an addendum; and
- J. A description of any technical assistance to be provided to assist the entity in achieving compliance, including whether a referral to OCAPP would be appropriate.

The Compliance and Enforcement Plan shall be regularly updated to include a subsequent violation, series of violations, written analysis of any required monitoring or testing results, abatement of violations, and changes in enforcement strategies for timely compliance. The Compliance and Enforcement Plan should serve as a comprehensive history of the agency's attempts to achieve timely compliance and the regulated entity's successes and failures in achieving timely compliance. To that end, language from a previously approved Compliance and Enforcement Plan should not be removed. A copy of the Compliance and Enforcement Plan shall be included in the materials for the Director's review relating to a recommendation and/or request for an Expedited Settlement Agreement, Proposed and Final Director's Findings and Orders, and referral to the Ohio Attorney General or US EPA Region 5 for enforcement.

11. Prohibitions

Ohio EPA has a dual role: addressing non-compliance and issuing permits. Both are important in protecting public health and the environment. In the absence of a statute or rule that requires Ohio EPA to consider enforcement issues when issuing a permit or license, the agency should not leverage its permitting authority to improve its position in an on-going enforcement action.

III. PROGRAM SPECIFIC ENFORCEMENT GUIDANCE

The chief of each program shall maintain a current program-specific enforcement policy that is consistent with the general policy, subject to the Ohio EPA Director's approval, including the following components:

- A. A definition of "general noncompliance" including examples;
- B. A definition of "significant noncompliance" including examples;
- C. Criteria for evaluating the need for an administrative penalty;
- D. Criteria for determining the amount of an administrative penalty;
- E. A procedure for disclosing penalty calculations to a regulated entity;
- F. A procedure for submitting documents for inclusion in an agency-wide compliance database available to the public through Ohio EPA's webpage;
- G. A procedure for closing enforcement, including a "Return to Compliance Letter" to be sent to the regulated entity and included in the agency-wide compliance database;
- H. Criteria for evaluating the program's compliance enforcement activities.

Each program-specific enforcement policy will be included in the general policy as an addendum.

IV. ADDENDUMS: PROGRAM-SPECIFIC ENFORCEMENT GUIDANCE

ADDENDUM A: AIR COMPLIANCE ENFORCEMENT GUIDANCE

1. A definition of “general noncompliance” including examples.

“General noncompliance” in the air pollution control program means the violation of a permit, rule, order or law that ordinarily does not require further enforcement action by the DAPC, other than a field office NOV letter. These are generally first-time, minor, and short-term excursions that involve negligible environmental harm. Examples of violations considered as “general noncompliance” include the following:

- a. A first-time open burning rule violation for a small fire that does not involve the burning of tires or other petroleum-based waste or does not result in a significant economic benefit to the violator;
- b. A first-time failure to obtain a PTI, PTO or PTIO prior to installing or operating an air contaminant source, excluding entities with knowledge of such rules, and that does not involve any violation of an emission limitation, control equipment requirement, or new source review (“NSR”) requirement;
- c. A first-time, isolated violation of any record-keeping or reporting requirement that does not result in any actual or possible environmental harm, in accordance with State law and Governor’s Executive Orders;
- d. A first-time failure to perform an asbestos survey and/or the failure to submit a notification prior to beginning any demolition or renovation operation, where there is substantial compliance with work practice requirements;
- e. A first-time violation of the requirements of the Risk Management Plan rules as determined during facility audits;
- f. An emission limitation violation where the correction to the violation involves establishing a higher emission limitation, which if originally applied to the violator, would not have resulted in any violation; and
- g. Any other violation deemed to be general noncompliance by the Chief of DAPC.

2. A definition of “significant noncompliance” including examples.

“Significant noncompliance” in the air pollution control program means the violation of a permit, rule, order or law that may require further enforcement action by the DAPC beyond a field office NOV letter. Examples of violations considered as “significant noncompliance” include the following:

- a. A violation of the open burning rules that involves a large fire, a fire involving the burning of tires or other petroleum-based waste, or results in a significant

- economic benefit to the violator.
- b. A repeat failure to obtain a PTI, PTO or PTIO prior to installing or operating an air contaminant source, any failure to obtain such permits involving entities with knowledge of such rules, and any such failure also involving the violation of an emission limitation, control equipment requirement, or NSR requirement.
- c. Repeated violations of a previously cited general noncompliance event.
- d. A failure to comply with the substantial requirements of an inspector's warning letter or NOV letter.
- e. A violation of the Stage I vapor balance rules for unloading of gasoline at a gasoline dispensing facility without the use of a vapor balance system.
- f. Any violation that meets the USEPA's criteria for a "high priority violator" ("HPV") as identified in the Workbook titled "The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)," June 23, 1999.
- g. Any violation resulting in a significant economic benefit, i.e., equal to or exceeding \$5,000.
- h. Malfunctions resulting in a documented health nuisance, i.e., ambient air concentrations, predicted from dispersion modeling, that would be considered to be a public health threat, including exceedances of the NAAQS or actual monitored violations directly attributable to the source.
- i. Any documented work practice violation of the asbestos emission control standards.
- j. Any violation of the asbestos inspection and notification requirements of the asbestos emission control standards where the amount of regulated asbestos-containing material cannot be determined.
- k. Any substantial violation of a Title V permit, synthetic minor PTI, or Federally Enforceable State Operating Permit ("FESOP").
- l. An emission or significant procedural violation continuing, or likely to continue regularly or intermittently for at least seven days and has not been adequately addressed or resolved by the violator.
- m. Any other violation deemed to be significant noncompliance by the Chief of DAPC.

3. Criteria for evaluating the need for an administrative penalty.

Administrative penalties are not needed in at least the following instances:

- a. First-time paperwork violations (excluding the failure to obtain permits) covered by State law and by the Governor's Executive Orders.
- b. Any nuisance case involving only odors.
- c. Asbestos notification cases where there is substantial compliance with work practice requirements and the violation is a first-time offense.
- d. First-time open burning violations not involving large fires or fires containing tires or other petroleum-based waste materials.
- e. Violations exceeding the five-year statute of limitations law.
- f. Violations for which an Enforcement Action Request was not submitted within 18

months of discovery.

- g. First-time, unknowing violations for installation or operation of an air contaminant source without applying for and obtaining installation and operating permits for sources otherwise in compliance with best available technology.

4. Criteria determining the amount of an administrative penalty.

Administrative penalties for cases to be resolved with administrative orders are to be determined using the appropriate penalty protocol, i.e., either USEPA's Clean Air Act Stationary Source Civil Penalty Policy or any special penalty worksheets developed by DAPC for special cases, such as risk management plan and stage II vapor control requirement violations. For other types of violations not covered by specific worksheets, the penalty factors are as follows:

- a. For open burning violations, the penalty amount is up to \$250 per violation per day for residential open burning, and up to \$1,000 per violation per day for non-residential open burning. For cases also having a significant amount of economic benefit, the previous penalty amounts should be increased by the amount of economic benefit accrued.
- b. For Stage I vapor balance system violations at gasoline dispensing facilities, the penalty amount is \$1,000 per violation for not using the vapor balance system or employing a defective vapor balance system while transferring gasoline.
- c. For government fleet violations, the penalty amount is up to \$5,000 per violation for not testing and certifying compliance for a particular year.

Administrative penalties for cases to be resolved with expedited settlement agreements ("ESAs") are to be determined using the appropriate penalty policy and then applying a discount to be determined in each specific case, but with a default value of 50 percent. For ESAs, DAPC applies a minimum penalty of \$500 (after discounting), and a maximum cumulative penalty of \$20,000 (after discounting). Per the general enforcement guidance, only violations involving a minimum penalty of \$1,000 (before discounting) will be candidates for ESAs.

5. A procedure for disclosing penalty calculations to a regulated entity.

For entities that will be receiving administrative orders from Ohio EPA, a penalty calculation worksheet is to be enclosed with the orders. This worksheet forms a basis for discussion of the penalty elements and for reaching settlement agreements. Penalty calculation worksheets are provided to regulated entities for all cases involving use of the USEPA's Clean Air Act Stationary Source Civil Penalty Policy and any special penalty worksheets developed by DAPC for special cases, such as risk management plan and stage II vapor control requirement violations. For other cases where a worksheet is unnecessary because the penalties are based on a fixed amount per violation, the derivation of the penalty amount will be identified in the findings section of the administrative orders.

For entities that will be receiving ESAs from Ohio EPA, a penalty calculation worksheet will be enclosed with the document being sent to the entity for signing. This worksheet will also summarize the penalty amount that would be due for the violation(s) should the ESA tool not be

pursued.

6. **A procedure for submitting documents for inclusion in an agency-wide non-compliance database available to the public through Ohio EPA's webpage.**

This procedure will be added to this Addendum upon development by the Ohio EPA task group established to formulate this procedure agency-wide.

7. **A procedure for closing enforcement, including a Resolution of Violations letter to be sent to the regulated entity and included in the agency-wide non-compliance database.**

Enforcement cases may be closed at both the field office and Central Office levels. At the field office level, cases may be closed when compliance is achieved after issuance of an NOV letter and no further enforcement action is appropriate under DAPC enforcement guidance. The decision to close an enforcement case at the field office level shall be made in concurrence with the Central Office enforcement contact person during regularly scheduled enforcement conference calls with each office, USEPA contacts and the Central Office enforcement contact person or at some other time. Cases at the Central Office level are closed at the time it is decided no further enforcement action is necessary or when administrative orders or an expedited settlement agreement are issued, or when referrals are made to the Attorney General's Office or USEPA.

Resolution of an enforcement case at the field office level is to be accompanied by a letter to the entity informing it that the violations have been addressed and no further action is contemplated by the field office in consultation with Central Office.

Closure of an enforcement case at Central Office with no further action will be accomplished through a similar letter from the Ohio EPA Legal Office indicating the resolution of the matter. For cases resolved by ESAs, the issuance of such agreements is the indication that the matter is settled because compliance is a requirement for issuance of such agreements. For cases resolved by administrative orders, the completion of all milestones therein shall be the entities indication that the matter is settled. In the case of administrative orders, entities may request termination of the orders to ensure closure. For cases resolved by a referral to the Attorney General's Office, the Ohio EPA Legal Office may send the entity a written notice that its violations have been referred to that office for enforcement action.

All Resolution of Violations letters are to be included in the agency-wide noncompliance database as developed by the Ohio EPA task group.

8. **Criteria for evaluating the program's compliance enforcement activities.**

The DAPC will establish goals for its compliance enforcement program at the beginning of each calendar year in consultation with the Director's Office. Example criteria that have traditionally been used to track activities and that can apply to future activities are as follows:

- a. The number of enforcement cases resolved.
- b. The number of administrative orders offered.
- c. The number of administrative orders issued.
- d. The number of expedited settlement agreements offered.
- e. The number of expedited settlement agreements issued.
- f. The number of enforcement cases pending.
- g. The facility compliance percentage statewide.
- h. The facility compliance percentages by field office.
- i. The timeliness of case resolutions in general.
- j. The timeliness of HPV case resolutions.
- k. The timeliness of ESA case resolutions.
- l. The number of full compliance evaluations conducted by each field office versus the commitment made to USEPA during grant development.
- m. The number of case resolutions at the Attorney General's Office.
- n. The number of "old" cases still pending at the end of each calendar year.

ADDENDUM B: DRINKING WATER COMPLIANCE ENFORCEMENT GUIDANCE

DRINKING WATER COMPLIANCE ENFORCEMENT POLICY

I. General Compliance Strategy

Enforcement actions within the Division of Drinking and Ground Waters (DDAGW) primarily focus on addressing Public Water Systems (PWS) that are considered to be in significant noncompliance. As of October, 2010, US EPA has begun implementing a new methodology called the Enforcement Targeting Tool (ETT) which is a scoring system that rates noncompliance and defines those systems that are considered to be in “significant noncompliance”. As a delegated program, we are using the ETT and its scoring methodology to drive our enforcement priorities. The ETT defines any system with a score greater than or equal to 11 to be in significant noncompliance.

Our goal will be to address public water system violations before they reach a score of 11. To meet USEPA requirements, DDAGW must address all systems with a score greater than or equal to 11. Currently we have approximately 10-15 systems per quarter with a score of 11 or greater that are not already in the process of being addressed. To address these systems, they must return to compliance or have a formal enforcement action taken. DDAGW will employ the following steps to address these systems to bring them back into compliance:

- i. The quarterly ETT sent by USEPA Region 5 will be used by DDAGW for developing the Compliance and Enforcement Plan (CEP). Once the list is verified, Central Office and the District Offices will work together to prepare a CEP for every unaddressed system with a score of 11 or greater within 30 days. The underlying violations should be verified by the appropriate office before inclusion in the CEP. In some cases, the case may be requested for immediate referral to CO for formal enforcement. The District will present the CEPs at a District Office Compliance Coordinator (DOCC) meeting within 60 days of the final quarterly ETT list. The plan will be finalized after the DOCC meeting. The plan may include the district executing a sanitary survey, LSSV, district office compliance meeting, warning letter, or referral for an enforcement action. CEPs will be updated and reheard periodically as determined during the DOCC meeting until the system has returned to compliance or the case is referred for enforcement.
- ii. If the system is still in noncompliance after the timeframes set forth in the CEP, the case will be referred to CO for formal enforcement. The EC will decide whether to prepare a BCA, a conditioned license, proposed F&Os or an ESA. Some cases may require immediate referral to the Attorney General’s Office.

1. BCAs will be employed if the EC believes the corrective actions necessary to abate the violations are straight forward and the PWS's actions and cooperativeness indicate that compliance can be achieved outside of an enforceable mechanism. BCA's should be to the Assistant Chief for sign off within 14 days of the EC meeting.
2. For those PWSs not addressed through a BCA, the following enforcement tools will generally be employed. For systems required to obtain a license, a conditioned license will be the primary enforcement tool. The conditioned license may contain an administrative penalty calculated in accordance with OAC Rule 3745-81-04, as recommended by the EC depending on the level of outreach conducted and the recalcitrance. For more complicated cases, Findings and Orders may be negotiated. For systems which failed to obtain their LTO or systems that are exempt from obtaining licenses, F&Os or an ESA will be the primary tools. If the noncompliance requires immediate resolution because of threats to human health or if a PWS demonstrates a level of recalcitrance such that negotiation is not appropriate, the case will be referred to the AGO. Enforcement actions should be drafted and to the appropriate CO supervisor within 21 days of the EC meeting.

B. Determining Significant Noncompliance.

- I. As set forth above, the definition of "significant noncompliance" for PWSs will be determined in accordance with US EPA's Enforcement Targeting Tool (ETT) which USEPA began using in October 2010. Any PWS with a score of 11 or greater is in "significant noncompliance."

DDAGW will do the following to minimize the number of systems over 10:

1. Routinely check for violations that should be rescinded for violations that were sent in error; (for example, a monitoring violation where the sample was collected but the results were not reported by the laboratory). A letter will be sent to the pws for inclusion in the non-compliance database and the violation rescinded in SDWIS with a notation if it was reported late. Laboratory reporting violations will be addressed separately.
2. Routinely check for violations where the system has returned to compliance (for example, the system has taken their next routine sample following a monitoring violation.) An AOX or SOX code indicating return to compliance will be entered in SDWIS, but a letter will not be sent to the system.

3. Run the Ohio ETT list regularly to anticipate the systems that will be on USEPA's quarterly list and conduct reminder phone calls to attempt to return these systems to compliance. CEP's may be started based on this list if it appears the system will be over 10 when USEPA's list is sent.
- J. Definition of "general noncompliance". Any PWS with a score of less than 11 will be considered "general noncompliance." As the systems in significant noncompliance are addressed, DDAGW's secondary focus will be on systems which fail to get their required license to operate and have other violations, and systems about to reach a score of 11 (8 – 10). DDAGW will use the mechanisms in A. to prevent significant noncompliance. DDAGW will address these sites with District Office Warning Letters, site visits, calls, meetings, etc.

C. Penalty Considerations.

- i. Criteria for evaluating the need for an administrative penalty. DDAGW has the ability to seek an administrative penalty as set forth in OAC Rule 3745-81-04. In addition, DDAGW may seek civil penalties of up to \$25,000.00 per day per violation. The enforcement committee hears each case and determines if an administrative penalty will be assessed unilaterally as part of a conditioned license or through normal unilateral Findings and Orders, or whether a civil penalty will be assessed and proposed as part of proposed Findings and Orders. When deciding on whether to pursue a penalty the EC will consider the amount of outreach and compliance assistance offered the owner, length of ownership and number of violations and the relative recalcitrance or cooperation of the owner.
- ii. Criteria for determining the amount of an administrative penalty. Administrative penalties are assessed per OAC Rule 3745-81-04. Civil penalties are calculated in accordance with DDAGW's civil penalty policy (attached).
- iii. Procedure for disclosing penalty calculations to a regulated entity. Civil penalty calculations and the Guide to the Enforcement Process (attached) are sent with the action if proposed. The rule is cited for unilateral penalties.

D. Compliance Database.

DDAGW will include all notices of violation, rescind letters, final enforcement actions, AGO referral letters and enforcement termination letters in the Agency non-compliance database.

E. Procedure for Closing Enforcement.

When a PWS complies with an enforcement action, a return to compliance letter or termination letter, whichever is most appropriate, will be sent before closing the case. This document will be included in the agency-wide compliance database. For actions on a License to Operate (LTO), a termination letter will not be sent as the Orders terminate upon renewal of the LTO or other subsequent LTO action.

F. Criteria for Evaluating the Program's Compliance Enforcement Activities.

Overall compliance rates are tracked through the Shared Goals. Shared Goals are set with USEPA, and DDAGW works to achieve the compliance rates. Quarterly, the compliance rates are assessed for progress. DDAGW regularly reports on the Shared Goals with USEPA. Compliance with the enforcement action will be tracked in SDWIS through compliance schedules. DDAGW can track the length of time from the EC meeting until drafts are circulated for comment and from proposal (ITN) until finalization. Once finalized, DDAGW tracks compliance with the terms of the orders and sends quarterly reports to the district for overdue and pending deadlines. Violations outside those addressed in the enforcement action or violations of the enforcement action will cause the system to be re-heard at the EC for escalated enforcement.

ADDENDUM C: SURFACE WATER COMPLIANCE ENFORCEMENT GUIDANCE

Compliance Strategy:

The Division of Surface Water (DSW) enforces several programmatic areas. The vast majority of our formal enforcement action resources are directed to the National Pollutant Discharge Elimination System (NPDES) program, with a lesser degree to the 401 wetland, storm water, pretreatment, Operator Certification, and PTI programs. Given the complexity of many of the regulated NPDES wastewater treatment facilities and their demand for skilled operational resources, it is very unlikely that any facility can go for an extended period of time without any violations. Coupled with the nature of Ohio's complex NPDES permits, many violations will be generated annually, and must be carefully tracked.

DSW monitors these violations through the USEPA generated Annual Noncompliance Report (ANCR), and our own realtime database for minor NPDES permits. For major NPDES permits, we follow the USEPA quarterly report, we typically are in the 7-8% range for SNC. Minor NPDES compliance however is an area for improvement.

Regarding minor NPDES permits, the ANCR indicates significant noncompliance (SNC) running at roughly 22% of our total universe of minors (3,023). To deal with this universe of non-compliant facilities we have prioritized those minor NPDES facilities with effluent related SNC, which is approximately 11%, or around 340 NPDES permitted facilities.

In January 2010, each district office (DO), with direction from DSW, CO, developed a district specific SNC reduction plan. DSW, CO developed a Six Month SNC report that is sent to each DO enforcement supervisor on a semiannual basis that is used to track progress and maintain oversight on SNC reduction efforts.

It should be noted that SNC designation under the NPDES permit program is, at times, a very dynamic/transitory process with facilities listed in one particular six month report, and then off the next. District staff are aware of those facilities who regularly appear on the SNC list, and those whom are typically compliant who may be on the SNC list.

Currently DO staff are fully engaged to complete a compliance plan for each facility in SNC by the end of September in accordance with the following:

MINORS IN SNC:

For those minors which we find often in SNC, or recall from previous SNC reports, a compliance plan will be required, and shall be developed with the suggested information as stated in CATE on page 8/9.

For those minor entities which have been listed, and would otherwise be considered typically compliant, DSW, recommends that a compliance plan will not be needed at this time. It's recommended to watch these facilities to see that they in fact do not remain on the list.

MAJORS IN SNC:

The DO will draft a compliance plan for any major facility found to be in SNC.

Compliance Plan Follow-Through:

Once the compliance plan has been established in accordance with CATE and DSW's Enforcement Management System (EMS) approved by USEPA, Region 5, the district shall be responsible for monitoring the facility's actions in relation to the compliance plan. As a general matter, if the facility fails to comply with the compliance plan and continues to be in SNC or the facility remains in SNC despite complying with the steps outlined in the compliance plan, the facility will be referred to DSW, CO for consideration of further enforcement action. Because these facilities, under these circumstances, will be considered in SNC, (and injunctive relief will exceed 60 days), they are ineligible for an Expedited Settlement Agreement under the Compliance Assurance through Enforcement Policy. Accordingly, formal enforcement will consist of either Director's Final Findings and Orders or a referral to the Attorney General's Office.

Findings and Orders

Historically, DSW has employed two types of Findings and Orders when addressing cases appropriate for administrative enforcement, (1) traditional Findings and Orders that go through Enforcement Committee and Director's Office signoff and (2) streamlined Findings and Orders for those cases that are strait forward and with so little variation that they are not heard at Enforcement Committee. In these streamlined cases, the Director has delegated authority to George Elmaraghy to sign the invitation letter on his behalf.

Conversion of Some Streamlined Cases to ESAs (non SNC)

Going forward, a number of cases that have historically been handled in the streamlined process will be appropriate candidates for the Expedited Settlement Agreement as these cases are typically penalty only or if injunctive relief is required it is typically achievable within 60 days. Examples of cases that were historically part of this streamlined process that will be good candidates for the ESA approach include PTI violations, operator certification reporting cases, MS4 reporting cases. Storm water construction permit violations may also be eligible for the ESA. It is anticipated that DSW will request a similar delegation from the Director to process these ESA cases in a similar fashion as was historically done under the streamlined approach.

Continued Use of Streamlined Findings and Orders

DSW envisions some continued use of the streamlined Findings and Orders for certain facilities that are in SNC and thus not eligible for an ESA. Minor NPDES facilities in SNC will be eligible for this approach based on the criteria reviewed by DSW/CO and the supervising attorney. The criteria shall be as follows:

1. If the permittee has been subject to a compliance plan, the permittee substantially complied with the plan but remains in SNC despite efforts to correct the problem;
2. If the permittee has not been the subject of a compliance plan, the permittee has been cooperative and proactive in attempting to address the noncompliance;
3. The facility has not been the subject of a previous formal enforcement action on the part of the Agency;
4. The noncompliance is limited to a single facility;
5. The facility is in compliance with operator certification requirements;
6. The District Office has, at a minimum, done a visual inspection of the receiving stream and did not observe evidence of water quality impacts (odors, sewage fungus, sludge in stream, distressed wildlife)
7. There is no evidence of the violations causing an impact to human health;
8. If the permittee is a private entity there is no evidence of significant economic benefit resulting from the noncompliance;
9. The injunctive relief can be implemented within 24 months.

If a case meets these criteria and a streamlined case is approved, DSW will seek a non-negotiable penalty of \$5,000.00 in each and every case. In doing so, the Division will only give a legal release to some of the violations at issue. This means that if the entity fails to comply with these Orders or continues to have violations, a subsequent enforcement case will include the remainder of the historical violations that were not waived.

Streamlined Orders in Other DSW Programs:

Streamlined Orders will be considered in all other DSW programs such as storm water NPDES permits (construction, municipal and industrial), operator certification, and PTIs, if the injunctive relief will take longer than 60 days but less than 12 months to complete and otherwise meets the applicable criteria set forth above. In these cases, the Division will typically pursue a civil penalty not to exceed \$5,000.00. DSW has developed some standard penalty calculations for some of these types of cases but will be developing some additional guidelines to address gaps in certain areas.

III. PROGRAM SPECIFIC ENFORCEMENT GUIDANCE

DEFINITIONS:

A) General non-compliance (Definition):

Typically any NPDES regulated facility that does not accumulate enough violations to place them into significant non-compliance, or one characterized with chronic single event violations. Other examples of general non-compliance could be, but not limited to, the actions the Division of Surface Water (DSW) may take against facilities / owners regarding the construction of a waste water treatment works without a Permit-to-Install (PTI), or filling wetlands and other waters of the state without a 401 certification that are of a nature that would normally not create significant permitting concerns, storm water NPDES violations, and operator certification violations.

B) Significant non-compliance (Definition):

NPDES:

USEPA has established a complex definition for SNC regarding Major NPDES facilities which are referenced in the April 2009 USEPA approved DSW's Enforcement Management System (EMS) that has been maintained since 1997.

ADMINISTRATIVE PENALTY:

A) Criteria for evaluating need for administrative penalty:

DSW has penalty authority per ORC 6111.09 to collect a civil penalty of not more than \$10,000 per day of violation. All cases that are referred for enforcement have enough violations that a penalty is always warranted.

Criteria for determining need for Administrative penalty:

Civil penalties are calculated using DSW's Penalty Calculating Worksheets. The worksheets are included in the April 2009 USEPA approved EMS. The worksheets are attached; the instructions are located in Chapter V.

B) Disclosing penalty calculations:

Civil penalty calculations are public record and are typically accompany the proposed Director's Final Findings and Orders and/or provided upon request.

C) Submission procedures for documents to be entered into the Agency-wide Compliance Data Base:

Currently DSW has submission procedures, in which all final enforcement actions are posted on DSW's website. DSW will transition this information over to the agency-wide compliance data base once it is available.

D) Procedure for closing Enforcement:

In January 2011, DSW implemented an improved enforcement database with very dynamic reporting capabilities. New reports are constantly being developed as new reporting information is requested. A new report will be generated to track when facilities have complied with their associated orders. A subsequent letter will be sent out once confirmed with district staff.

E) Criteria for evaluating the program's compliance/enforcement activities:

USEPA provides review and overall evaluation along with improvement goals during their triennial OECA State Review Framework. SNC annual average is tracked and compared with the national average. The last few years SNC for Major facilities has been reduced to, and remains at, half of the national average.

For minor facilities, each district office has established an SNC reduction strategy. SNC percentages are reviewed semi-annually.

Previously established goals pertaining to the number of orders to be issued each year have been maintained.

Compliance with final DFFOs is managed thru quarterly reports sent to the district offices.

ADDENDUM D: MATERIALS AND WASTE MANAGEMENT COMPLIANCE ENFORCEMENT GUIDANCE

I. DEFINITIONS

A. Significant Noncompliance

Hazardous Waste Program:

For the hazardous waste program, DMWM has determined that a Significant Non-Complier (SNC) is a violator that has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; is a chronic or recalcitrant violator; or deviates substantially from the terms of a permit, order, agreement or from hazardous waste statutory or regulatory requirements.

Each facility or location will have site specific circumstances associated with violations to consider when making a SNC determination. The following are examples of violations that cause either an actual exposure or a substantial likelihood of exposure to hazardous waste or generally constitute substantial deviations from the terms of a permit, order, agreement or other Ohio hazardous waste statutory or regulatory requirements and may warrant the violator being designated a SNC:

- a violator who is operating as a hazardous waste treatment, storage or disposal facility without a permit, in accordance with Ohio Revised Code (ORC) 3734.02(E) and (F);
- a violator who transported hazardous waste to a non-authorized facility, in accordance with ORC 3734.02(F);
- a violator who fails to substantially comply with hazardous waste generator requirements, e.g., waste evaluation, personnel training, inspections, container management, contingency plan, etc.; and
- a violator who is a repeat violator or is recalcitrant.

These examples are provided for illustration only and are not meant to comprise a complete list. Additional information regarding the definition of a SNC and examples of SNCs can be found in Ohio's Hazardous Waste Enforcement Response Policy. Other violations will be considered and discussed as part of a case-by-case analysis with the DMWM Enforcement Coordinator.

Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs:

While the Director has the authority to take enforcement action for any violation of rule or statute, for the solid waste, infectious waste, and construction and demolition debris programs, DMWM has determined that a SNC is a violator who has committed an egregious violation, is

recalcitrant and has committed persistent violations of a lesser nature, or has an ongoing violation that is not corrected within a specified time.

An egregious violation is a violation that deviates substantially from the terms of a permit, license, registration, order, agreement or other statutory or regulatory requirement or has the potential to cause harm to human health and the environment. Egregious violations typically include Category 1 violations, as defined in DMWM's Solid Waste, Infectious Waste, and Construction and Demolition Debris Civil Penalty Policy (Formerly DSIWM's Civil Penalty Policy 2004). Examples of egregious violations that may warrant the violator being designated a SNC include, but are not limited to:

- noncompliance with authorizing documents such as filling beyond permitted disposal limits ("overfill") or operating beyond authorized facility boundaries;
- failure to obtain authorizing documents prior to commencing operations;
- failure to comply with authorizing documents, including Director's orders or judicial orders;
- acceptance of hazardous waste at a solid waste or C&DD facility under certain conditions;
- failure to close a facility;
- failure to control fire;
- failure to abate nuisance conditions;
- failure to fund financial assurance;
- failure to pay disposal fees;
- failure to correct open dumping violations within a specified time, and
- other violations of a very high priority nature.

A recalcitrant or persistent violator is an entity that continually or consistently violates a requirement or group of requirements over a given time frame (Initially, DMWM has set this as repeated violations within a nine month period). It is not necessary for the violations to be of the same statute, rule or authorizing requirement, but violations are typically among those identified as Category 2 violations (i.e. operational, ground water, etc.). These may also include violations that have been corrected but later recur on a chronic basis and reveal a pattern of noncompliance.

These few examples are provided for illustration only and are not meant to comprise a complete list. Other violations will be considered and discussed as part of a case-by-case analysis with the DMWM Enforcement Coordinator.

B. General Noncompliance:

Hazardous Waste, Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs:

For the Hazardous Waste, Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs, DMWM has determined that a General Non-Complier refers to a violator who does not meet the criteria listed above for a SNC.

II. ADMINISTRATIVE PENALTIES

A. When is an Administrative Penalty Necessary?

DMWM has determined that administrative penalties are appropriate when violations have risen to the level of a SNC and have not been corrected or were corrected but caused significant harm to human health, the environment, or DMWM's regulatory program. Civil penalties will also be assessed when DMWM determines that a penalty is necessary to deter violators and potential violators from future violations of Ohio's environmental laws and regulations and to recover any economic benefit gained by the violator's illegal actions.

B. How are Administrative Penalties Calculated?

For the Hazardous Waste Program DMWM implements its enforcement procedures manual, which incorporates the U.S. EPA "RCRA Civil Penalty Policy." For the Solid Waste, Infectious Waste, and Construction and Demolition Debris Programs, DMWM has developed a penalty policy based on U.S. EPA's RCRA Civil Penalty Policy that specifically addresses the violations found in those program areas. For further details regarding penalty calculations please read the U.S. EPA RCRA Civil Penalty Policy and the DMWM Solid Waste, Infectious Waste, and Construction and Demolition Debris Civil Penalty Policy (Formerly DSIWM's Civil Penalty Policy 2004). DMWM also utilizes its enforcement procedures manual when considering penalties.

C. Disclosure of Penalty Calculations to Regulated Entities

In all instances where DMWM assesses an administrative penalty, DMWM will provide a worksheet that explains the DMWM's penalty calculations specific to an entity's violations. This penalty calculation worksheet will be transmitted with the Directors Final Findings and Orders initially sent to the violator.

III. ENFORCEMENT CLOSURE

To officially close out a violation or group of violations that have been abated, DMWM will send a Return to Compliance letter to the entity stating that DMWM considers the violations previously cited to be abated and that no further action is required. The Return to Compliance letter will be sent to the entity following DMWM's verification that the entity has abated the violation(s).

For entities subject to an escalated enforcement action that results in a Warning Letter, Expedited Settlement Agreement, Director's Final Findings and Orders, or Judicial Orders through the Ohio Attorney General's Office, DMWM will consider the escalated enforcement action closed on the effective date of one of the actions listed above, provided that the entity is complying with the requirements of those enforcement actions.

IV. COMPLIANCE DATABASE: Inclusion of Documents

Upon the completion of Ohio EPA's Compliance Database, DMWM District Offices and Central Office units will develop internal operating procedures that meet district and unit specific needs for uploading the following DMWM documents into the Compliance Database within the time frames described below.

Inspection Letter with Notice of Violation ("NOV"): An electronic copy of the official NOV sent to the violator will be placed on the public section of the Compliance Database within seven days after the issuance of the NOV.

Return to Compliance Letter ("RTC"): An electronic copy of the official RTC letter sent to the violator will be placed on the public section of the Compliance Database within seven days after the issuance of the RTC letter.

Escalated Enforcement Actions: An electronic copy of the official escalated enforcement action which includes Warning Letters, Expedited Settlement Agreements, Director's Final Findings and Orders, referrals to the Attorney General's Office ("AGO"), and Judicial Orders obtained by the AGO will be placed on the public section of the Compliance Database within seven days after the effective date of the escalated enforcement actions.

Compliance Enforcement Plan: An electronic copy of the compliance enforcement plan will be placed on the confidential section of the Compliance Database within sixty days after a SNC determination.

V. ENFORCEMENT PROGRAM EVALUATION

To determine the effectiveness of DMWM's compliance through enforcement program, DMWM's Enforcement Unit ("EU") Supervisor will on a yearly basis evaluate each case settled during the previous calendar year for adherence to enforcement performance standards and will prepare a report for the Manager of the Compliance Assurance Section. This report will identify the percentage of enforcement actions that met the internal performance standards and will provide a detailed explanation for those enforcement actions that did not adhere to the performance standards. Additionally, the EU supervisor shall provide tables identifying the average number of days to resolution of the enforcement action by case type and will provide a list of all cases settled during the year identifying the main issue of the case and the penalty amount obtained.

After reviewing the yearly case evaluations the Manager of the compliance assurance section and the EU Supervisor will discuss the results of evaluation and make changes as needed to improve enforcement performance.

Early Stakeholder Outreach Beneficial Use Regulatory Program Development

Why is the Agency seeking early stakeholder outreach?

Ohio EPA's Division of Materials and Waste Management (DMWM) and Division of Surface Water (DSW) are seeking additional early stakeholder input on an approach to promote responsible and beneficial use of industrial byproducts. The approach described here was developed in consideration of earlier comments received through outreach from 2006 related to developing a regulatory program for beneficial use of industrial byproducts in Ohio.

This early stakeholder outreach effort is an additional step added by Ohio EPA in response to Executive Order 2011-01K, to ensure stakeholders are brought into the review process as early as possible. This additional request for stakeholder input allows for early feedback and information sharing before rule language has been developed by the Agency.

Why develop a regulatory program for beneficial use?

There is increasing interest in beneficially using industrial byproducts currently being disposed in landfills. DMWM and DSW are suggesting the creation of a regulatory program to manage these industrial byproducts more sustainably. A beneficial use program may offer the following benefits:

- Provide byproduct generators with a science-based protocol for evaluating their byproducts.
- Assure potential users of the safety of these materials.
- Reduce disposal costs for generators.
- Provide sources of raw materials for end users.
- Extend the capacity of landfills and conserve resources.
- Make byproducts resources instead of waste.

What is beneficial use and what are industrial byproducts?

In general terms, beneficial use is considered the use of industrial byproducts to replace or supplement a raw material or competing product. Industrial byproducts generally refer to residual materials that could meet the regulatory definition of solid waste or industrial waste or the definition of waste in different regulatory programs. The beneficial use program would not change or replace existing beneficial use programs established in waste-specific reuse rules such as hazardous waste, scrap tires, compost, sewage sludge and clean hard fill.

What is being suggested?

DMWM is suggesting that beneficial use rules be created and organized into their own new program chapter.

The attached document, titled *Beneficial Use Rules Development Concepts*, contains a conceptual framework for the program being proposed by DMWM and DSW. The concepts include: who is required to obtain authorizations and permits; the authorization (permitting) structure; and characterization of industrial byproducts, among others. Please refer to the attachment for a brief overview of the concepts for which input is requested.

Who would be regulated by this new program?

The new regulatory program would only apply to those wishing to beneficially use industrial byproducts.

What is the rulemaking schedule?

DMWM and DSW will evaluate feedback and facilitate additional stakeholder engagement to further develop concepts. DMWM and DSW will then prepare a draft version of rules for interested party review.

Early Stakeholder Outreach for the Beneficial Use Rules

After incorporating input received from interested parties, Ohio EPA will start the rules filing process required by the Joint Committee on Agency Rule Review (JCARR). Visit JCARR's website for meeting dates and agenda items at <https://www.jcarr.state.oh.us/>.

What stakeholder input is the Agency seeking?

The Agency is seeking stakeholder input on the proposed concepts included in the attachment. General comments and specific factual information are welcome. When reviewing the concepts please consider the following:

- Is the general regulatory framework proposed the most appropriate framework? Is there any alternative framework that the Agency should consider?
- Are there options for improving a concept?
- Are there any considerations that should be taken when developing a specific concept?
- Is there any information or data the Agency should be aware of when developing concepts or rule language for a concept?

In addition, the Agency wants to hear from stakeholders who may be impacted by the new program. Ohio EPA is specifically asking for stakeholders to identify the following:

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

What should I consider as I prepare my comments?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burdens, benefits or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your views.
6. Offer alternatives.
7. Submit your comments by the comment period deadline.

How can I provide input on the beneficial use rules proposal?

If you have questions about the suggested concepts or desire more information, please contact DMWM's John Schierberl at john.schierberl@epa.ohio.gov.

DMWM and DSW request early stakeholder input on developing a beneficial use of industrial byproducts program in Ohio by the close of business on July 31, 2012.

Please submit input to:

Michelle Braun
P.O. Box 1049
Columbus, OH 43216-1049
michelle.braun@epa.ohio.gov

Chairman of the Board
RICK SCHOSTEK
Senior Vice President, Honda of America Manufacturing



President
ERIC L. BURKLAND

August 31, 2012

Michelle Braun
Ohio Environmental Protection Agency
Post Office Box 1049
Columbus, Ohio 43216-1049

Re: OMA's Comments on Beneficial Use Regulatory Program

Dear Ms. Braun:

The Ohio Manufacturers' Association (OMA) is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,000 manufacturers in every industry and in every county of Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

OMA participated in Ohio EPA's previous efforts to develop rules for the beneficial use of industrial by-products. We actively follow all the developments in this area because of the importance of this issue to our members. Regulation and further disposition of these materials significantly impact many OMA members, including foundries, steel manufacturers and brick and tile manufacturers. The beneficial use of industrial by-products in an environmentally safe manner is critical to many Ohio manufacturers, from both a generation/disposition standpoint and the ability to access such by-products as alternative raw material feedstock.

Any new rule package must provide flexibility to re-use these materials in a cost-effective manner. If a by-product is determined "non-toxic," as provided for in the Ohio Revised Code, then the new rules must include certainty that these materials can be reused in a proper regulated manner without enduring a drawn out bureaucratic paperwork maze.

OMA is currently reaching out to our members for suggestions on how to create a safe and workable program. We want to ensure that any new regulations address the concerns of manufacturers, Ohio EPA and the public. We certainly appreciated the opportunity to provide these comments and would like to be involved in Ohio EPA's rulemaking process on this subject moving forward. We welcome the opportunity to work with Ohio EPA in creating a workable, sustainable solution to this issue.

As Ohio EPA develops these rules or convenes work groups or interested-party meetings, please include the OMA in these developments, including me and our environmental counsel Frank L. Merrill at Bricker & Eckler. We look forward to working with Ohio EPA on this issue.

Sincerely,

Rob Brundrett
Director, Public Policy Services

cc: Frank L. Merrill, Esq.



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Beneficial Use Program

There is increasing interest in beneficially using industrial byproducts currently being disposed in landfills. DMWM and DSW are developing a Beneficial Use Program to regulate the use of industrial byproducts to replace or supplement a raw material or competing product. Industrial byproducts generally refer to residual materials that could meet the regulatory definition of solid waste or industrial waste or the definition of waste in different regulatory programs.

DMWM and DSW are currently seeking stakeholder input on an approach to promote responsible and beneficial use of industrial byproducts. Various approaches described in the [Early Stakeholder Outreach](#) were developed in consideration of earlier comments received through outreach from 2006 related to developing a regulatory program for beneficial use of industrial byproducts in Ohio. This Beneficial Use Program will not change or replace existing beneficial use programs established in waste-specific reuse rules such as hazardous waste, scrap tires, compost, sewage sludge and clean hard fill. It will replace for the most part the Integrated Alternative Waste Management Program (IAWMP) authorizations used for the last several years.

Beneficial Use Resource Links



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Tentative OMA Environment Committee 2013 Dates:

OMA ENVIRONMENT COMMITTEE

10:00 AM to 1:00 PM

Wed., Feb. 27, 2013

Thurs., June 13, 2013

Thurs., Oct. 24, 2013