

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

October 23, 2019

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**2019 Environment Committee
Calendar**
Meetings will begin at 10:00 a.m.

Be on the lookout for 2020 dates!

OMA Environment Committee Meeting Sponsor:





OMA Environment Committee

October 23, 2019

Agenda

Welcome & Roll Call	Chairman Julianne Kurdila, ArcelorMittal
Governor's PFAS Order	Member Discussion
Counsel's Report	Frank Merrill, Bricker & Eckler LLP
Guest Speakers	Todd Anderson, Deputy Director, Legal, Ohio Environmental Protection Agency Mark Johnson, Deputy Director Business and Regulatory Affairs, Ohio Environmental Protection Agency
Public Policy Report	Rob Brundrett, OMA Staff

Lunch

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

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

OMA Environment Committee Meeting Sponsor:





Todd Anderson – Deputy Director of Legal, Ohio Environmental Protection Agency

Todd Anderson, Deputy Director of Legal — Todd has been with the Agency since 1997. Todd graduated from the University of Maryland in 1986 with a Bachelor of Arts in economics and subsequently graduated from the University of Dayton School of Law in 1991.

**Mark Johnson, Deputy Director of Business and Regulatory Affairs
Ohio Environmental Protection Agency**

Mark Johnson is the Deputy Director of Business and Regulatory Affairs for Ohio EPA. As deputy director for business and regulatory affairs, Johnson will act as a primary contact for regulated entities to help coordinate permitting activities within the Agency, particularly for complex projects requiring multiple permits.

Johnson joined Ohio EPA in 2012 and has worked in the Division of Surface Water, Division of Drinking and Ground Waters, and Division of Environmental Response and Revitalization. Johnson has years of experience in oversight of staff, environmental regulations, environmental enforcement, environmental remediation, Brownfield redevelopment, and ecological restoration.

Johnson graduated from Kent State University with a Bachelor of Science degree in Conservation Biology.

Governor DeWine Orders Analysis of PFAS in Ohio Drinking Water

September 27, 2019

(COLUMBUS, Ohio) -- Ohio Governor Mike DeWine announced today that he has directed the Ohio Environmental Protection Agency (EPA) and Ohio Department of Health (ODH) to analyze the prevalence of per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water.

PFAS are manmade chemicals that are used in products such as carpeting, upholstery, cookware, food packaging, and firefighting foam. PFAS contamination from manufacturing operations and firefighting activities can migrate through soil, posing potential contamination threats to surface and ground waters.

Although the health impacts of PFAS are not fully known, some studies show that two specific chemicals within the PFAS family, PFOA and PFOS, could negatively impact health. There are currently no drinking water standards for PFAS compounds, but the U.S. EPA established a health advisory level of 70 parts per trillion for PFOA and PFOS in drinking water.

"Right now, we just don't know if these chemicals have a widespread presence in Ohio's water supply or not, and I've asked the directors of both the Ohio EPA and Ohio Department of Health to develop a plan to find out," said Governor DeWine. "This is important for both the protection of our natural resources and for public health, which is why we must more fully evaluate the prevalence of PFAS in our water."

Governor DeWine has asked the Ohio EPA and ODH to develop an action plan by December 1, 2019, to test public and private water systems that are near known sources of PFAS, such as firefighting training sites and manufacturing facilities. As part of the action plan, the agencies will also develop a strategy to work with communities and private well owners on appropriate response measures if high levels of PFAS are found.

Education and outreach materials to help Ohioans better understand PFAS compounds, associated health risks, and practical measures to reduce exposure will also be developed.

"Implementing a statewide action plan is important because it provides a pathway for ODH and Ohio EPA to work together and in partnership with key stakeholders to more fully evaluate the risks of PFAS and assist our communities in addressing these risks," said Ohio EPA Director Laurie Stevenson.

"We don't yet fully understand what health problems may be caused by PFAS or at what levels in the body," said ODH Director Amy Acton, MD, MPH. "Different chemicals in the PFAS family may cause different health problems, and some studies have shown a relationship between PFAS chemicals in the body and a higher chance of certain diseases."

On September 18, Governor DeWine, along with 14 governors, [sent a letter](#) to both the U.S. Senate and House Armed Services Committees calling for more comprehensive national legislation on PFAS and action to address PFAS contamination in and around military bases.

“It’s imperative that this issue not be left solely to the states to address,” said Governor DeWine. “As conveyed in our letter, while states are being responsive in evaluating PFAS risks, we are also in need of resources, guidance, and a commitment from the federal government to effectively address contamination from these persistent substances.”

To ensure that Ohio’s plan adapts as the science and national regulatory framework on PFAS unfolds, Governor DeWine has directed the Ohio EPA and ODH to continuously monitor emerging areas of national research related to adequate chemical substitutes for PFAS, soil remediation, and technologies to treat PFAS.



September 18, 2019

The Honorable James Inhofe
 Chairman
 Senate Armed Services Committee
 218 Russell Senate Office Building
 Washington, D.C. 20510

The Honorable Adam Smith
 Chairman
 House Armed Services Committee
 2216 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Jack Reed
 Ranking Member
 Senate Armed Services Committee
 218 Russell Senate Office Building
 Washington, D.C. 20510

The Honorable Mac Thornberry
 Ranking Member
 House Armed Services Committee
 2216 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Inhofe, Ranking Member Reed, Chairman Smith and Ranking Member Thornberry:

As you instruct your conferees to consider the Fiscal Year (FY) 2020 National Defense Authorization Act (NDAA), we, the undersigned governors, would like to highlight several key provisions related to per- and polyfluoroalkyl substances (PFAS) and urge you to include them in the final legislation.

PFAS are used in many nonstick coatings in consumer products, industrial processes, and firefighting foams often used by the military and at airports. These chemicals, which break down extremely slowly or not at all, can accumulate in our environment and in our bodies, and those that have been studied are associated with adverse health effects, such as liver damage, thyroid disease, and kidney and testicular cancers. Provisions in the current House and Senate measures will ensure the U.S. Department of Defense (DoD) mitigates the impacts of PFAS contamination, require the U.S. Environmental Protection Agency (EPA) to move more quickly to set PFAS health standards and protections, and provide much-needed resources and guidance as the federal government, states, and communities work to address contamination from these persistent substances.

At current and former military bases across the country, firefighting foam containing PFAS has been in use for many years to meet FAA firefighting standards at FAA controlled airports, and by extension at military airports. In many of these locations, PFAS have leached into groundwater, surface water, and

nearby private wells used for drinking water. According to the Government Accountability Office, there are at least 401 military sites with known or suspected PFAS contamination.¹

As governors, we are evaluating responses appropriate for our states, including in some cases developing or setting drinking water standards for PFAS, and deploying state funds to test, investigate, and remediate PFAS contamination caused by government and industrial uses. Nevertheless, federal action is needed to address PFAS, including contamination in and around military sites.

Our Congressional delegations have worked diligently to include important provisions in the House and Senate bills to require the DoD and EPA to investigate, monitor and clean up PFAS contamination originating from DoD activities. It is clear that many members of Congress on both sides of the aisle understand the urgent need to act to address these toxic PFAS chemicals. As governors whose residents are affected by these toxics, we urge development of a package that includes the strongest provisions from both the House and Senate bills, including the following that would:

- Require EPA to set an enforceable, nationwide drinking water standard under the Safe Drinking Water Act for PFOA and PFOS within two years of enactment, while preserving states' authority to enact their own, more stringent standards.
- Require the EPA to list PFAS chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) within one year.
- Require the EPA to revise the list of toxic pollutants under the Federal Water Pollution Control Act (commonly known as the Clean Water Act) to include PFAS and publish effluent and pretreatment standards.
- Phase out the use of PFAS in aqueous film forming foam (AFFF) as quickly as possible.
- Urge the DoD to finalize cooperative agreements with states and partner with governors to test, monitor, remove, and remediate PFAS contamination originating from DoD activities, including at decommissioned military installations and National Guard facilities. Require that if a cooperative agreement is not reached within one year of the request from a state, the Secretary of Defense must report to Congress with an explanation of why an agreement has not been reached. Remediation should satisfy both federal and state/local remediation targets.
- Grant the National Guard Bureau access to specific environmental remediation program funding in FY 2020.
- Authorize the U.S. Geological Survey (USGS) to develop advanced testing methods capable of detecting PFAS, and to conduct nationwide sampling for these chemicals – focusing first on areas near drinking water with known or suspected PFAS contamination.
- Require the DoD to treat and clean PFAS-contaminated water used for agricultural purposes.
- Require public disclosure, as part of Toxic Release Inventory (TRI) annual reports, when environmental releases of about 200 PFAS chemicals occur – including PFOS and PFOA.

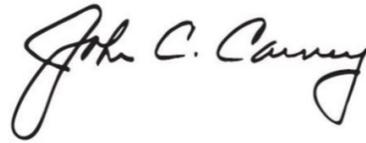
The FY2020 NDAA presents an opportunity to take historic steps forward to address PFAS contamination that is harming our states, and we ask you to include the strongest PFAS-related provisions in the final bill.

Sincerely,

¹ <https://www.gao.gov/products/GAO-18-700T>



Governor Gretchen Whitmer
State of Michigan



Governor John Carney
State of Delaware



Governor Charlie Baker
Commonwealth of Massachusetts



Governor Tim Walz
State of Minnesota



Governor Chris Sununu
State of New Hampshire



Governor Phil Murphy
State of New Jersey



Governor Michelle Lujan Grisham
State of New Mexico



Governor Andrew Cuomo
State of New York



Governor Roy Cooper
State of North Carolina



Governor Mike DeWine
State of Ohio



Governor Tom Wolf
Commonwealth of Pennsylvania



Governor Phil Scott
State of Vermont



Governor Ralph Northam
Commonwealth of Virginia



Governor Jay Inslee
State of Washington

A handwritten signature in black ink that reads "Tony Evers". The signature is written in a cursive style with a large initial 'T' and 'E'. The signature is contained within a thin black rectangular border.

Governor Tony Evers
State of Wisconsin



MEMORANDUM

TO: The Ohio Manufacturers' Association
FROM: Bricker & Eckler, LLP
DATE: October 8, 2019
RE: Governor DeWine Issues Order to Analyze PFAS in Ohio's Drinking Water

On September 27, 2019, Governor Mike DeWine announced that he has directed the Ohio Environmental Protection Agency ("Ohio EPA") and Ohio Department of Health ("ODH") to analyze the prevalence of per- and polyfluoroalkyl substances (collectively, "PFAS") in Ohio's drinking water systems ("[Governor's Order](#)"). PFAS are not currently regulated compounds in Ohio. According to the Governor, the current levels of PFAS in Ohio's water supply are unknown and an analysis "is important for both the protection of [Ohio's] natural resources and for public health."

I. Summary of Governor DeWine's Order

More specifically, Governor DeWine has directed the Ohio EPA and ODH to develop an "action plan" by December 1, 2019, with the focus of testing public and private water systems. Importantly, the Governor's Order specifically notes that water supplies "near known sources of PFAS, such as firefighting training sites and manufacturing facilities" are to be analyzed.

As part of this action plan, Ohio EPA and ODH are to develop a strategy to work with communities and private well owners on "appropriate response measures if high levels of PFAS are found." The Governor's Order further directs the agencies to develop education and outreach materials to assist Ohioans in better understanding PFAS compounds, any associated health risks, and practical measures to reduce exposure. Lastly, the Governor's Order directs Ohio EPA and ODH to continuously monitor emerging areas of national research as they pertain to adequate chemical substitutes for PFAS, soil remediation, and technologies to treat PFAS.

The Governor's press release comes on the heels of a [September 18, 2019 letter](#) sent by Governor DeWine to the U.S. Senate and House Armed Services Committees calling for more comprehensive national legislation on the regulation of PFAS. That letter was joined by fourteen other governors from across the country. According to the Governor, the evaluation of PFAS risks is an issue that requires the attention and resources of the federal government in addition to states in order to effectively address potential PFAS contamination.

II. What are PFAS?

The category of compounds known as "PFAS" represents a larger group of chemicals that include both perfluorooctane sulfonate ("PFOS") and perfluorooctanoic acid ("PFOA"), among

others. PFAS have been manufactured and used in a variety of industries around the globe since the 1940s, and are ubiquitous in the environment and found in products used on a daily basis. According to the United States Environmental Protection Agency (“US EPA”), PFAS compounds can be found in the following: (i) food packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in PFAS-contaminated soil or water; (ii) commercial household products, including stain- and water-repellent fabrics, nonstick products (e.g., Teflon), polishes, waxes, paints, cleaning products, and fire-fighting foams; (iii) workplaces such as production facilities or industries that use PFAS; (iv) drinking water typically localized and associated with a specific facility; and (v) living organisms, including fish, animals and humans, where PFAS have the ability to build up and persist over time.

According to US EPA, the concern with PFAS compounds – and specifically with PFOS and PFOA – is that they are very persistent in the environment and in the human body, as they do not break down and can therefore accumulate over time, which can lead to adverse human health effects.

Notably, the two main PFAS compounds have already been phased out of production in the United States (PFOS in 2002; PFOA in 2015), due to the commitment of eight major chemical manufacturers to participate in US EPA’s PFOA Stewardship Program and thereby eliminate the use of these PFAS compounds. However, these compounds are still produced in international markets and imported into the United States through consumer goods such as carpet, leather and apparel, textiles, paper and packaging, coatings, rubber and plastics.

III. Status of PFAS Regulation in Ohio and Across the Country

While Ohio is in the early stages of considering PFAS regulation, US EPA and a handful of states have already promulgated standards in an attempt to begin the process of regulating PFAS compounds.

US EPA has established health advisory levels for PFOS and PFOA at 70 parts per trillion for PFOS and PFOA in drinking water. US EPA has further announced that it is moving toward establishing enforceable maximum contaminant level (“MCL”) requirements for PFOS and PFOA in drinking water, defining those compounds as “hazardous substances” for purposes of CERCLA, and developing groundwater cleanup recommendations for contaminated sites and toxicity values for related substances.

States that have already promulgated guidelines or standards for PFOA and/or PFOS include Alaska, Maine, Minnesota, New Jersey, North Carolina, Texas, and Vermont, and a number of other states are moving towards similar action. Notably, existing state standards vary widely in terms of the numerical value of the standard, the process for developing the standard, and the manner in which the standard is to apply.

IV. Potential Impacts of the Governor's Order on Manufacturers

The Governor's Order raises numerous questions, while providing few answers. To name just a few of the questions raised:

- When determining which public and private water systems are to be tested, how will "near" be defined when considering the directive to test "near known sources of PFAS"?
- What constitutes "known" sources of PFAS? Will this be based on suspected use? Documented use? Current or historic use? Or will this be based on self-reported data or actual sampling data?
- Will sampling data include drinking water, ground water, or both?
- Which PFAS compounds are to be tested for?
- What sampling and analytical procedures are to be utilized?
- What constitutes "high levels of PFAS" when triggering the requirement for the agencies to work with communities and private well owners on appropriate response measures if high levels of PFAS are found, given the absence of a regulatory standard in Ohio?
- How will it be determined which communities and private well owners are to be involved if "high levels of PFAS" are triggered?
- Who will take the lead on and what will be the procedure for developing the education and outreach materials that Governor DeWine's Order requires?

The December 1, 2019 timeline imposed by Governor DeWine's Order presents a tight timeline for answering these many unknown questions associated with the Governor's Order.

Summary of Michigan PFAS Testing and Regulation

Stage 1: Executive Directive 2017-4 & Phase I Testing

Following discovery of PFAS contamination at the site of a former shoe factory and in water wells in and around an air force base in Michigan, *see* https://www.mlive.com/news/2017/11/michigan_pfas_response_team.html, on November 13, 2017, Michigan Governor Rick Snyder issued Executive Directive No. 2017-4, establishing the Michigan PFAS Action Response Team (MPART). MPART was to be made up of the directors of the following state agencies: Department of Environmental Quality, Department of Health and Human Services, Department of Military and Veteran Affairs, and Department of Agriculture and Rural Development (collectively, “MPART Team”). The Governor directed the MPART Team to reach out to the National Guard Bureau, the Department of Defense, Michigan’s local health departments, local public officials, and other relevant entities for information and cooperation on PFAS contamination issues.

The Executive Directive was designed to implement “the state’s action strategy” to “research, identify, and establish PFAS response actions relative to the discovery, communication, and mitigation of PFAS.” The Directive also permitted the MPART Team to, “as appropriate to perform its duties, make inquiries, conduct studies, consult with federal agencies, and receive comments from the public[,]” and to “consult with and retain outside experts to assist it with its obligations” under the Executive Directive. Ultimately, Governor Snyder directed the MPART Team to perform the following functions:

- A. Identify impacted locations and create and implement an action plan designed to assist state and local authorities in ensuring safe drinking water.
- B. Initiate environmental response protocols for all positively identified sites, specialized site plans are developed, and appropriate stakeholders are engaged in the response.
- C. Initiate public health protocols to ensure that all public health and medical stakeholder groups are informed and integrated to ascertain health implications.
- D. Perform state and local public outreach in order to ensure that residents in the impacted areas, including all members of the community, local government, corporate and non-profit partners, and impacted stakeholders are informed, educated, and empowered.
- E. Conduct both long-term mitigation planning, ensure resource requirements are identified and supported, and site contaminants are removed (where applicable).
- F. Establish a standard process for sharing pertinent information between all members.
- G. Establish routine communication protocols at the local, executive, and legislative levels as appropriate.
- H. Establish a public information protocol to effectively inform the community.

- I. Establish strong information sharing and communications processes with other state and federal entities involved in PFAS response activities.
- J. Collaboratively develop standards on health impacts for the affected population.
- K. Assess the status of any PFAS contaminated site and develop individualized response strategies.
- L. The Team may establish subcommittees among its members.
- M. Explore any avenues of funding for remediation efforts including federal grants, legislative appropriations, and private partners.
- N. The Team shall provide other information or advice as requested by the Governor.

After the issuance of this Executive Directive, MPART went about testing water supplies in Michigan in accordance with the directives stated in said Executive Directive. MPART split this testing into two phases. Phase I – classified as the “initial phase of statewide PFAS surveillance testing [that] was originally conceived as a multi-year project covering drinking water for approximately 75% of Michigan’s residents” – began in April 2018. Phase I was designed to test “community water supplies, schools on their own well(s), and water supplies for Michigan’s federally-recognized tribes who chose to participate in [the] survey.” In November of 2018, “sampling was expanded to also include child care providers and Michigan Head Start programs on their own well(s).” Source: <https://www.michigan.gov/pfasresponse/0,9038,7-365--495899--00.html>. At the completion of sampling in December 2018, the water of 7.7 million residents had been tested in the following breakdown:

- 1,112 Community Water Supplies
- 459 Schools on their own wells
- 152 Daycares and MI Head Starts
- 17 Tribal water systems

A report from the Department of Environment, Great Lakes, and Energy (“EGLE”) (the former Department of Environmental Quality) details the results of Phase I testing. *See 2018 PFAS Sampling of Drinking Water Supplies in Michigan*; Michigan Department of Environment, Great Lakes, and Energy, Project Number 60570309, dated July 26, 2019.

Stage 2: Executive Order 2019-3 & Phase II Testing

Following completion of Phase I testing, Michigan’s current chief executive Governor Gretchen Whitmer issued another decree related to PFAS in February 2019 – this time, an Executive Order. In that EO, Governor Whitmer established MPART as a permanent, enduring body that is to operate as an advisory board within the DEQ, now EGLE. Source: <https://www.mlive.com/news/2019/02/gov-whitmer-restructures-renames-department-of-environmental-quality.html>. The new MPART is staffed by, and consists of, the following public officials as its members:

1. The director of the Department, or the director's designee from within the Department.
2. The director of the Department of Health and Human Services, or the director's designee from within that department.
3. The director of the Department of Natural Resources, or the director's designee from within that department.
4. The director of the Department of Agriculture and Rural Development, or the director's designee from within that department.
5. The director of the Department of Transportation, or the director's designee from within that department.
6. The director of the Department of Military and Veteran Affairs, or the director's designee from within that department.
7. The director of the Department of Licensing and Regulatory Affairs, or the director's designee from within that department.

The Governor directed MPART to “research, identify, recommend, and implement PFAS response actions relative to the discovery, communication, and mitigation of PFAS” by doing the following:

1. Identify impacted locations and implement an action plan to assist state and local authorities to ensure the safety of Michigan's land, air, and water.
2. Assess the status of any PFAS contaminated site and develop individualized response strategies.
3. Continue to develop, as needed, environmental response protocols for all positively identified sites, as well as specialized site plans.
4. Continue to develop, as needed, public health protocols to ensure that public health and medical stakeholder groups are informed and integrated.
5. Develop routine communication and information-sharing protocols between all members and stakeholders.
6. Perform outreach to ensure all stakeholders in impacted areas are informed, educated, and empowered. Stakeholder outreach will include, but is not limited to, residents, community members, other partner organizations, tribal governments, local government officials, and other elected officials representing the impacted areas.
7. Perform outreach to ensure the general public is informed about PFAS contamination and the work of MPART.
8. Identify avenues of funding for PFAS identification and remediation efforts.
9. Create measurable goals and objectives along an established timeline.
10. Recommend changes in Michigan law.
11. Recommend structural changes necessary to address other threats to the environment, public health and safety, which MPART identifies while performing its duties.

12. Perform other duties as requested by the director of the Department or the governor.

Finally, Governor Whitmer directed “[a]ll departments, committees, commissioners, or officers of this state” to “give to MPART ... any necessary assistance required by MPART ... in the performance of the duties of MPART so far as is compatible with their duties and consistent with this order and applicable law.” Furthermore, the Governor declared that “[f]ree access ... be given to any books, records, or documents in [the departments, committees, commissioners, or officers’] custody relating to matters within the scope of inquiry, study, or review of MPART, consistent with applicable law.”

Following issuance of Executive Order 2019-3, EGLE began Phase II of its PFAS study. Phase II was designed to “sample non-community public water supplies which were not part of Phase I, to assess the potential for PFAS impact in drinking water for expanded at-risk populations.” In total, testing in Phase II was completed on the following:

- 7 Adult foster care providers
- 237 Children’s camps
- 302 Industries
- 162 Medical care facilities
- 5 Motels
- 26 Offices
- 5 Parks
- 1 Residential development (non-community water supply)
- 8 Seasonal Michigan Head Start programs that were not available during Phase I

This testing was conducted from May 2019 to October 2019, and as of the date of drafting, results are not yet available. Source: https://www.michigan.gov/pfasresponse/0,9038,7-365-86510_88061_92549_92526-495786--,00.html.

Also during the general timeframe of Phase II testing, EGLE began two more initiatives designed to target PFAS contamination: (i) Quarterly Monitoring, and (ii) Monthly Surface Water System Monitoring. The Quarterly Monitoring is designed to target “Public Water Supplies sampled during Phase I which had Total Tested PFAS levels of at least 10 ppt but did not exceed the USEPA LHA (70 ppt PFOS+PFOA).” According to EGLE, “[t]his sampling will be done for one year (four quarters) and will help determine if there are seasonal changes in PFAS levels for these 61 supplies, to help prioritize and direct next steps.” Source: <https://www.michigan.gov/pfasresponse/0,9038,7-365--496247--,00.html>. On the other hand, the Monthly Surface Water Monitoring is designed to target “Public Water Supplies sampled during Phase I of the Statewide PFAS Sampling Survey which utilize surface water as a source.” According to EGLE, “[t]his sampling will be done for six months and will help determine

if there are changes in PFAS levels for these 65 supplies over time, due to their use of surface water as a source.” Source: <https://www.michigan.gov/pfasresponse/0,9038,7-365--496248--00.html>.

Due to the recent nature of the establishment of these monitoring reports, no results are available as of the date of drafting.

Stage 3: Draft PFAS Regulation

Finally, just days ago, EGLE announced draft regulations governing PFAS contamination in drinking water supplies. Issued on October 11, 2019, the draft regulations cover 7 forms of PFAS. The limits, once enacted, would cover nearly 2,700 public water systems across the State of Michigan. The regulations establish the following levels as the Maximum Contaminant Level (MCLs) for the following 7 types of PFAS chemicals:

<u>Draft Regulations for PFAS MCL</u>	
Specific PFAS	Drinking Water MCL
PFNA	6 ng/L (ppt)
PFOA	8 ng/L (ppt)
PFHxA	400,000 ng/L (ppt)
PFOS	16 ng/L (ppt)
PFHxS	51 ng/L (ppt)
PFBS	420 ng/L (ppt)
GenX	370 ng/L (ppt)

According to EGLE’s website, the draft rules will follow Michigan’s Administrative Rules Process handled by the Environmental Rules Review Committee, Michigan Office of Administrative Hearings and Rules, and Joint Committee on Administrative Rules. The rule will also be subject to a public comment period beginning in late 2019. EGLE expects the rule will be finalized and adopted by April 2020. Source: <https://www.michigan.gov/egle/0,9429,7-135--509830--00.html>.

For Immediate Release

Contact: Jamie Karl
Managing Director, Communication Services
(614) 629-6821
jkarl@ohiomfg.com



Manufacturers' Statement on 'Dark Waters' Trailer

New effort aims to support Ohio River Valley job creators

COLUMBUS, Ohio – The Ohio Manufacturers' Association has announced an initiative to push back against Hollywood's growing use of "agenda-tainment" that targets local job creators. This follows the release of the "Dark Waters" trailer, an upcoming film based on *The New York Times Magazine's* profile of a trial attorney who spent years targeting a manufacturer that employs hundreds of Ohioans and West Virginians.

"Our communities and our industries are increasingly under attack from a well-coordinated network of Hollywood stars, big-funders, activists, and trial attorneys," said OMA President Eric Burkland.

"Agenda-tainment' films, like Dark Waters, are all about scoring political points. They ignore science and truth – and fabricate increasingly absurd events. By scaring the public, these films seek to hijack the public policy process so trial lawyers can profit.

"The Ohio Manufacturers' Association will not let Hollywood activists rewrite our story. Ohio River Valley manufacturers employ hundreds of thousands of hard-working men and women who are committed to the environment in which they live. In the weeks ahead, we intend to expose Dark Waters' troubling agenda and communicate the truth about the communities and job creators that are targeted."

###

The Ohio Manufacturers' Association is Ohio's largest statewide business association comprised solely of manufacturers. Established in 1910, the OMA's mission is protect and grow Ohio's manufacturing industry, while representing small and large manufacturers in every industrial sector. Manufacturing is Ohio's largest economic sector, employs more than 700,000 Ohioans, and contributes more than \$100 billion annually to the state economy. For more on the OMA, visit www.ohiomfg.com – or to follow us on [LinkedIn](#), [Twitter](#), and [Facebook](#).



COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP
Counsel to the OMA
October 23, 2019

A. Ohio EPA Activities of Note

1. Governor DeWine Issues PFAS Order

On September 27, 2019, Governor Mike DeWine announced that he has directed the Ohio Environmental Protection Agency (Ohio EPA) and Ohio Department of Health (ODH) to analyze the prevalence of per- and polyfluoroalkyl substances (collectively, PFAS) in Ohio's drinking water systems. PFAS are not currently regulated compounds in Ohio. The order directs Ohio EPA and ODH to develop an "action plan" by December 1, 2019, with the focus of testing public and private water systems, and specifically notes that water supplies "near known sources of PFAS, such as firefighting training sites and manufacturing facilities" are to be analyzed.

As part of this action plan, Ohio EPA and ODH are to develop a strategy to work with communities and private well owners on "appropriate response measures if high levels of PFAS are found." The governor's order further directs the agencies to develop education and outreach materials to assist Ohioans in better understanding PFAS compounds, any associated health risks and practical measures to reduce exposure. Lastly, the order directs Ohio EPA and ODH to continuously monitor emerging areas of national research as they pertain to adequate chemical substitutes for PFAS, soil remediation and technologies to treat PFAS.

The governor's order raises numerous questions, while providing few answers. A few of the questions raised include:

- When determining which public and private water systems are to be tested, how will "near" be defined when considering the directive to test "near known sources of PFAS?"
- What constitutes "known" sources of PFAS? Will this be based on suspected use? Documented use? Current or historic use? Or will this be based on self-reported data or actual sampling data?
- Will sampling data include drinking water, ground water or both?
- Which PFAS compounds are to be tested for?
- What sampling and analytical procedures are to be utilized?
- What constitutes "high levels of PFAS" when triggering the requirement for the agencies to work with communities and private well owners on appropriate response measures if high levels of PFAS are found, given the absence of a regulatory standard in Ohio?

- How will it be determined which communities and private well owners are to be involved if “high levels of PFAS” are triggered?
- Who will take the lead on and what will be the procedure for developing the education and outreach materials that Governor DeWine’s order requires?

The December 1, 2019, timeline imposed by Governor DeWine’s Order presents a tight deadline for answering many unknown questions associated with the Governor’s Order.

Recently, on October 11, 2019, the state of Michigan announced draft regulations governing PFAS contamination in public water supplies, which would establish MCLs for 7 forms of PFAS chemicals. Once enacted, the limits would cover nearly 2,700 public water systems throughout Michigan. Michigan’s process for developing these draft regulations, which began with an Executive Directive issued by Governor Rick Snyder on November 13, 2017, may be instructive. *See* Attachment 1 to this Counsel’s Report for more information detailing Michigan’s process.

2. Air Pollution Control Rules

On June 19, 2019, the Ohio EPA Division of Air Pollution Control published an early stakeholder outreach notification of its anticipated changes to Ohio Administrative Code Chapter 3745-15, the general provisions on air pollution control for the Ohio EPA.

The OMA submitted written comments notifying Ohio EPA of the significant and widespread impact across the state of these rules, as they are applicable to all sources of air pollution in the state, and requested to be included in any workgroups or future discussions on amendments to the rules. The OMA further emphasized its concern with the ambiguity in current OAC rule 3745-15-07 and requested more clarity in Ohio EPA’s future rulemaking, particularly pertaining to attainment and maintenance of the National Ambient Air Quality Standards and whether the rule is intended to regulate criteria air pollutants. In addition to submitting its own comments, the OMA teamed up with the Ohio Chemistry Technology Council and the Ohio Chamber of Commerce to ensure Ohio EPA is aware of the broad-based support from industry for more specific changes to the current rules.

3. Affordable Clean Energy Rules

Ohio EPA has announced that it is seeking stakeholder input on new rules it is developing as part of Ohio EPA’s plan for implementing US EPA’s Affordable Clean Energy rule (ACE) program in Ohio. The ACE rule was finalized by US EPA on July 8, 2019, and contains emission guidelines for greenhouse gas emissions from existing electric utility generating units under Clean Air Act section 111(d). Ohio EPA is considering the impact of U.S. EPA’s ACE rule on the development, submittal, and implementation of its state plan to establish performance standards for greenhouse gas emissions from certain fossil fuel fired electric utility generating units.

The new rules will apply to existing coal-fired electric utility generating units in Ohio. Ohio EPA is accepting comments through November 1, 2019.

4. Proposed Human Health Water Quality Criteria Rules

The Ohio EPA Division of Surface Water has proposed amendments to several rules within Ohio Administrative Code Chapter 3745-1, Ohio's water quality standards. Specifically, these rules include OAC 3745-1-32 (Ohio river standards), 3745-1-33 (water quality criteria for water supply use designation), and 3745-1-34 (water quality criteria for the protection of human health fish consumption).

Ohio EPA is proposing new criteria for the protection of human health to be consistent with US EPA's 2015 updates to 94 human health water quality criteria and the Ohio River Valley Water Sanitation Commission's ("ORSANCO") 2015 pollution control standards. Proposed changes include implementation of maximum contaminant levels statewide (previously only applied in the Ohio River Basin). In most instances, the proposed criteria are more stringent than both USEPA and ORSANCO values. Potentially impacted entities include any facility that discharges or plans to discharge wastewater containing one of the specific chemicals addressed by the proposed rule.

The OMA previously submitted written comments to Ohio EPA on April 30, 2019 during the early stakeholder outreach comment period, emphasizing Ohio EPA's failure to consider state-specific information when developing the proposed criteria and the agency's failure to consider the significant costs to industry that the proposed criteria will likely impose. The OMA intends to also submit comments to these proposed rules. The public comment period runs until December 4, 2019, on which day Ohio EPA will also hold a public hearing on the proposed rulemaking at 10:30 am.

B. U.S. EPA Activities of Note

1. U.S. EPA Finalizes the ACE Rule

On June 19, 2019, U.S. EPA revealed its final, much-anticipated Affordable Clean Energy Rule (ACE) to replace the Clean Power Plan previously promulgated by the Obama administration. The ACE rule targets coal-fired electric utility generating units, and promotes standards for reducing greenhouse gas emissions that the Trump Administration asserts are more achievable than those previously attempted by the Clean Power Plan. While both the Clean Power Plan and ACE rule were premised on U.S. EPA's grant of regulatory authority pursuant to Clean Air Act Section 111(d), U.S. EPA has taken the position that the performance standards considered by the Clean Power Plan went beyond U.S. EPA's authority pursuant to 111(d).

Under the ACE rule, states have broader discretion to draft their own standards and state implementation plans, but are restricted in adopting market-based approaches for averaging and trading of compliance measures between units. Therefore, standards are anticipated to vary from state to state, or from unit to unit within a given state. Notably, the ACE rule does not include changes to New Source Review for power plants, as initially proposed in 2018 – U.S. EPA has indicated it will proceed with a separate rulemaking for New Source Review.

The ACE rule requires states to submit their plans within three years of the final rule. Numerous legal challenges to the ACE rule are anticipated.

2. U.S. EPA Proposes to Deny New York’s Clean Air Act Section 126 Petition

On May 20, 2019, U.S. EPA issued a proposed denial of a petition submitted by the state of New York pursuant to Section 126 of the Clean Air Act. New York’s petition requested that U.S. EPA make a finding that emissions from more than 350 identified sources located in 9 different states, including Ohio, and from several industry sectors, significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards in certain areas of New York, in violation of the good neighbor petition of the Clean Air Act. On July 11, 2019, the OMA submitted comments in support of U.S. EPA’s proposed denial, noting that the significantly more stringent emissions limits on hundreds of stationary sources that New York’s petition seeks to impose are wholly unjustified and would be burdensome to Ohio’s manufacturing base. On September 20, 2019, U.S. EPA gave notice that it would issue its denial of the petition as a final action, and on October 18, 2019, U.S. EPA’s formal denial of the petition was published in the Federal Register (84 FR 56058).

3. US EPA and US Army Corps Repeal 2015 Clean Water Rule

On September 12, 2019, US EPA and the US Army Corps of Engineers released a new rule to repeal the Obama-era 2015 Clean Water Rule and restore prior regulations. The new repeal rule will go into effect 60 days following its publication in the Federal Register. Currently, the 2015 Clean Water Rule is effective in 22 states. The new repeal will create national uniformity by eliminating the state split and returning all 50 states to the 1986 WOTUS Rule and 2008 guidance document issued in the wake of the US Supreme Court’s Rapanos decision, until such time as a new rule is promulgated, anticipated in early 2020.

C. Judicial

1. U.S. Supreme Court Upholds Auer Deference

In its recent 5-4 decision in *Kisor v. Wilkie*, No. 18-15 (June 26, 2019), the U.S. Supreme Court upheld the precedent that governmental agencies are entitled to deference in interpreting their own regulations, while attempting to reinforce limits on this deference.

The level of deference courts provide to federal agencies in interpreting their own rules has broad-ranging impacts, particularly in the environmental context, where the agency's technical conclusions often govern agency decisions. Courts review challenges to agency interpretations of their own rules under the framework developed by the Supreme Court now known as "Auer deference," for the 1997 U.S. Supreme Court decision *Auer v. Robbins*, 519 U.S. 452. When Auer deference applies, a court will treat an agency's interpretation of an ambiguous rule as controlling, even if another interpretation is deemed better in the court's view.

Writing for the majority, Justice Kagan indicated that courts will now be obligated to perform "reviewing and restraining functions" through a three-step analysis: (i) is the regulation genuinely ambiguous; (ii) is the agency interpretation reasonable; and (iii) is the agency interpretation entitled to controlling weight? The majority noted that to overrule *Auer*, the Court would need to overturn 75 years of precedent. The swing vote was Chief Justice Roberts, whose view of the case is thought to have been swayed by his interest in upholding *stare decisis*, the legal doctrine that obligates courts to respect judicial precedent.

Notably, both the majority and concurring opinions in *Kisor* make clear that the Court's decision in *Kisor* concerns only Auer deference, and does not affect agency interpretations of statutory language under *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Now, following the *Kisor* decision, agency rule interpretations can be anticipated to be structured in a way that more closely follows the framework of the *Kisor* opinion, so as to withstand heightened scrutiny. The *Kisor* decision is also believed to potentially open the door for future challenges to agency deference.

2. Lake Erie TMDL Litigation Update

On February 7, 2019, environmental groups filed a federal lawsuit in the Northern District of Ohio against U.S. EPA, alleging that U.S. EPA has allowed Ohio EPA to evade its legal duty to address nutrient pollution, resulting in harmful algae blooms in the western basin of Lake Erie (Judge Carr, Case No. 3:19-cv-00295).

The Plaintiffs, Environmental Law and Policy Center and Advocates for a Clean Lake Erie, assert that Ohio EPA designated western Lake Erie as having "impaired" water quality pursuant to the Clean Water Act in May 2018, only after a previously-filed lawsuit by the same Plaintiffs before Judge Carr of the Northern District resulted in an April 2018 order requiring U.S. EPA to address Ohio's substantial noncompliance with the Clean Water Act (Case No. 3:17-cv-01514). Plaintiffs assert that Ohio EPA had an obligation pursuant to Section 303(d) of the Clean Water Act to remedy the impaired water quality of western Lake Erie by adopting a Total Maximum Daily Load ("TMDL") for the agricultural runoff pollution that eventually flows into western Lake Erie. The complaint alleges that U.S. EPA lacked a reasonable basis for approving Ohio EPA's 2018 Integrated Report, in which Ohio EPA designated western Lake Erie as a "low priority" for

establishing a TMDL. Plaintiffs seek a court order setting a compliance schedule with binding deadlines to address western Lake Erie's impairment under the Clean Water Act in order to ensure progress is made on protections for Lake Erie.

On May 20, 2019, US EPA filed a motion to dismiss Plaintiffs' claims, on the basis that (i) US EPA is not required to review the substance of a state's priority rankings when listing impaired waters, and (ii) US EPA had no duty to approve or disprove of Ohio's failure to submit a TMDL for western Lake Erie because Ohio's decision whether to complete a TMDL remains pending. Briefing is complete and the court held oral arguments on the motions on September 24, 2019. A decision of the court remains pending.

3. LEBOR Litigation Update

In a February 26, 2019, special election, Toledo's voters passed the Lake Erie Bill of Rights (LEBOR). The LEBOR is an amendment to the City of Toledo's Charter that creates a new cause of action for the violation of the right of Lake Erie and its watershed to "exist, flourish, and naturally evolve." On its own, LEBOR allows the City of Toledo or citizens of Toledo to bring a legal action for an alleged violation of Lake Erie's legal rights.

On February 27, 2019, *Drewes Farm Partnership v. City of Toledo* was filed in federal court in Toledo, challenging LEBOR to the extent it exceeds Toledo's limited authority to pass legislation and is in violation of state and federal preemption laws (Judge Zouhary, Case No. 3:19-cv-00434). Drewes also sought a preliminary injunction to stop the LEBOR from going into effect while the case is litigated, which was issued upon agreement of the parties on March 18, 2019. Motions to intervene were subsequently filed by the environmental group Toledoans for Safe Water (which the court denied) and the State of Ohio (which the court granted).

Plaintiff Drewes and Plaintiff State of Ohio each filed motions for judgment on the pleadings on June 6, 2019 and June 7, 2019, respectively, the briefing of which appears to have concluded. In its motion, the State argues that LEBOR conflicts with federal and state law and confers rights beyond the scope of Toledo's municipal authority. Similarly, Drewes argues that LEBOR is unconstitutional and is preempted by both federal and state law. In response, the City of Toledo argued that the Plaintiffs lack the standing to pursue their complaints, that their claims are not ripe for review, and that Plaintiffs fail to assert claims as necessary to invalidate the citizen initiative or electoral process through which LEBOR was passed. The court permitted Toledoans for Safe Water to file an amicus brief on the motions for judgment on the pleadings, which focuses on the fundamental right of local community self-government as a constitutional right. A decision from the court on the motions for judgment on the pleadings remains pending.

TO: OMA Environment Committee
FROM: Rob Brundrett
RE: Environment Public Policy Report
DATE: October 23, 2019

Overview

No new or major comprehensive environmental legislation has been introduced this General Assembly. Ohio played a secondary role in the state budget discussions that stretched past the June 30 deadline into mid-July. Several EPA changes were included in the bill, most notably LEBOR defense. H2Ohio received a funding commitment from the General Assembly and should begin to take a more solid shape this fall.

Governor DeWine asked Ohio EPA and the Ohio Department of Health to develop a plan to review PFAS in Ohio. PFAS has become a major flashpoint in environmental circles over the past year. This issue has the potential to impact manufacturers both through regulations and through legal challenges.

OMA continues to be heavily engaged at the agency level regarding rules and regulations that impact Ohio's manufacturers.

General Assembly News and Legislation

Senate Bill 2 – Statewide Watershed Planning

The bill's goal is to create a comprehensive statewide watershed planning structure to be implemented by local soil and water conservation districts to encourage efficient crop growth, soil conservation and water protection methods. The bill specifically states that it is the General Assembly's intent to collaborate with organizations representing agriculture, conservation, the environment, and higher education to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality.

The Senate sees the bill as a complementary piece of legislation to the work done in the budget on creating and funding H2Ohio. The House of Representatives has begun to hold hearings on the bill.

House Bill 7 – H2Ohio Trust Fund

The bill creates the H2Ohio Trust Fund for the protection and preservation, and restoration of the water quality of Ohio's lakes and rivers. It requires the Ohio Water Development Authority to act as trustee of the fund and grants them full powers to invest money. It also creates the H2Ohio Advisory Council to establish priorities for use of the fund for water quality initiatives.

The House initially removed most of the funding for H2Ohio from the state budget. However, the startup funding was reinserted during House and Senate discussions along with other H2Ohio framework provisions.

Senate Bill 50 – Increase Solid Waste Disposal Fee

Senator Eklund has reintroduced Senate Bill 50. The bill would increase one of the state fees levied on the transfer or disposal of solid waste in Ohio. The proceeds of this increase will be deposited into the Soil and Water Conservation District Assistance Fund. Last General Assembly the OMA worked with allies to oppose the fee increase. Recently the Soil and Water Conservation Districts have been the point agency on any new water programs to battle nutrient runoff. The bill has had two hearings. The budget bill provided increased state funding to the soil and water conservation districts.

House Bill 94 – Lake Erie Drilling Ban

HB 94 bans the taking or removal of oil or natural gas from and under the bed of Lake Erie.

House Bill 166 – State Operating Budget

Governor DeWine introduced his budget bill on March 15. Included in the budget bill was the framework for the new H2Ohio fund. That fund would be used to increase Ohio water quality throughout the state.

Originally introduced the initiative would provide funding of as much as \$900 million over ten years to protect Ohio's water quality spread over three agencies, EPA, Agriculture, and Natural Resources.

Investments would be made in programs affecting state waters including Lake Erie and other rivers, lakes, and waterways. Efforts could include pollution prevention, land-based management programs, water-based restoration programs, as well as science, research and measurement.

The General Assembly decided to fund the initiative with the \$172 million "H2Ohio fund," aimed at protecting Lake Erie, other state waterways, and community water projects. The administration has begun to form a strategy on how best to administer the dollars, while promising "more public discussions in the next few weeks."

Approximately \$46 million of the fund will be dedicated to wetland restoration to help to prevent nutrient run-off that contributes to algal blooms. The budget requires the Lake Erie Commission to coordinate with state agencies and boards to submit an annual report to the governor and legislature on H2Ohio spending during the prior fiscal year.

Also included in the state budget was an amendment that provided that nature or any ecosystem does not have standing to participate or bring an action in a court of common pleas, and prohibited any person on behalf of an ecosystem or nature from bringing or intervening in an action in such court. This amendment supported by the OMA was in direct response to the Lake Erie Bill of Rights which was passed earlier this year in Toledo.

Senate Bill 222 – Container Use Restriction

The Senate version of House Bill 242 also authorizes the use of an auxiliary container for any purpose; it also prohibits the imposition of a tax or fee on those containers and applies existing anti-littering laws to those containers.

House Bill 242 – Container Use Restriction

The bill authorizes the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.

This so-called bag bill is aimed at providing uniformity across the state regarding packaging and other products that have been ground zero for local government bans. The OMA provided strong support in committee.

House Bill 328 – PFAS Firefighting Foam

The bill prevents testing and training with firefighting foam with PFAS added.

Regulations

Ohio EPA Seeks Stakeholder Input on Affordable Clean Energy Rules

The Affordable Clean Energy rule (ACE) — finalized by the U.S. Environmental Protection Agency on July 8, 2019 — consists of emission guidelines for greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs) under the federal Clean Air Act. The rule will inform states on the development, submission, and implementation of state plans to establish performance standards for GHG emissions from certain fossil fuel-fired EGUs.

The new rules will be a part of Ohio EPA's plan for implementing the ACE program in the Buckeye State. Ohio EPA has issued an Early Stakeholder Outreach (ESO) to help develop the rules.

EPA Rescinds 2015 WOTUS Rule

In September, the U.S. EPA formally scrapped the Obama-era Waters of the United States (WOTUS) rule. While environmental groups are expected to fight the withdrawal of the rule in the courts — and California has threatened to sue the administration — EPA officials already have a narrower rule in the works. The OMA has formally supported the administration's proposed rule, which is more restrained and observes traditional limits on the scope of federal power.

OMA: Air Pollution Rules Need Clarity

This summer the OMA submitted comments in response to the Ohio EPA's air pollution rules. The comments were made as part of the agency's Early Stakeholder Outreach program.

The OMA used the opportunity to share its concern over ambiguity in the current air pollution rules, and suggested the need for more clarity — specifically regarding the attainment and maintenance of the National Ambient Air Quality Standards. Because of the significant impact that air pollution regulations can have on manufacturers, the OMA requested that the association “be included in any work groups or future discussions on amendments to these rules.”

OMA Files Comments on NY Ozone Air Quality Case

On March 12, 2018, the State of New York filed a petition under Section 126 of the federal Clean Air Act naming approximately 350 sources of nitrogen oxides emissions in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia as contributing to violations of the ozone air quality standards in New York. On May 20, 2019, U.S. EPA proposed to deny the petition. The OMA filed comments at U.S. EPA supporting the denial of the petition.

OMA Comments on Ohio EPA's Water Quality Standards – Human Health Criteria

In May the OMA submitted comments in response to Ohio EPA's draft revisions to Ohio's water quality standards for human health criteria set forth in Ohio Administrative Code Rules 3745-1-32, -33, and -34. Among the comments the OMA noted that the potential impacts of these draft rule amendments to the business community have the potential to be highly significant, particularly if more stringent permit limitations or permit limitations for entirely new criteria are imposed through NPDES permits directly or through more stringent indirect discharge limitations on discharges sent to POTWs.

OMA Comments on ORSANCO's Proposed Revisions to Pollution Control Standards

Earlier this year, the OMA submitted comments pertaining to the Ohio River Valley Water Sanitation Commission (ORSANCO) and potential revisions to the commission's pollution control standards (PCS).

In its comments, the OMA expressed concerns that differences between ORSANCO's standards and those of the Clean Water Act "can and do lead to confusion for the manufacturing community" and that "there is often no effective way to question or challenge the appropriateness or applicability of the underlying PCS in specific permitting situations." OMA recommended that the PCS should be removed from the ORSANCO program.

OMA Comments on Ohio EPA Biocriteria

Earlier this year the OMA submitted general comments in response to Ohio EPA's Early Stakeholder Outreach for its Application of Biological Survey Data to Development of Water Quality Based Effluent Limitations (OAC 3745-2-03).

The new rule is intended to provide clarification and additional detail regarding when and how the biocriteria narrative should be used, as well as define what information is needed by Ohio EPA in order evaluate a request to use the biocriteria narrative.

Ohio EPA Agency News

Governor Enters Fray on PFAS

Gov. Mike DeWine announced that he has directed state agencies to analyze the prevalence of per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water. This action followed a Sept. 18 letter from Gov. DeWine and 14 other governors to federal lawmakers, calling for more comprehensive federal legislation on PFAS standards.

The debate over PFAS has become controversial as plaintiffs' lawyers aggressively attempt to litigate against manufacturers.

New Movie Attacks Manufacturer, Ignores Science

The producers of an upcoming feature film that casts aspersions on a manufacturer in the Ohio River Valley region has just released the movie's trailer. The film ignores sound science and truth in order to foster a trial-lawyer agenda.

For years, the OMA has worked to improve Ohio's legal climate from junk lawsuits that allege injury without proving causation. The OMA will be communicating to set the record straight and rebut the myths of this Hollywood fantasy. In doing so, we will also be defending our region's job-creators and employees who make great products.

OMA Members and US EPA Region V Meeting

OMA has partnered with the law firm of Steptoe and Johnson to host a manufacturers' meeting with senior management of U.S. EPA Region V and Ohio EPA.

New date! The meeting will take place on Tuesday, November 19 from 9 a.m. to noon (Central time) at the U.S. EPA offices, 77 W Jackson Blvd, Chicago, IL 60604.

Representatives of U.S. EPA and Ohio EPA will provide updates on recent developments in all major program areas, followed by a Q & A session for the benefit of those in attendance.

Attendees of last year's meeting found it to be valuable in terms of learning more about Region V policies and practices and building relationships with EPA management and staff.

All OMA members are welcome; however, due to security and limited seating, please reserve your spot early. Please contact Rob Brundrett at the OMA to reserve your spot. Only those who RSVP can be admitted.



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S.B. 2

133rd General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Peterson and Dolan

Amanda George Goodman, Attorney

SUMMARY

Statewide Watershed Planning and Management Program

- Creates the Statewide Watershed Planning and Management Program for the improvement and protection of Ohio's watersheds to be administered by the Director of Agriculture.
- Requires the Director to categorize watersheds in Ohio and appoint at least one watershed planning and management coordinator (hereafter coordinator) in each categorized watershed region to coordinate watershed planning in the watershed.
- Requires a coordinator to perform certain duties in the watershed in which the coordinator is appointed, including assisting each soil and water conservation district to identify sources and areas of water quality impairment.
- Requires the Director, in conjunction with soil and water conservation districts, to collect and aggregate information on conservation practices utilized in Ohio that are funded by public money.
- Requires the Director to assist soil and water conservation districts in watershed planning and management.
- Requires a soil and water conservation district board to consult and work with the coordinator appointed to the watershed region in which the soil and water conservation district is located.

Intent statement

- States that it is the General Assembly's intent to collaborate with organizations representing agriculture, conservation, the environment, and higher education to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality.

Watershed pilot program

- Requires the Department of Agriculture, in consultation with the Lake Erie Commission and the Ohio Soil and Water Conservation Commission, to establish a pilot program that assists farmers, agricultural retailers, and soil and water conservation districts in reducing phosphorus in a watershed to be determined by the Department.
- Requires the funding to be used to support specified purposes, including equipment for subsurface placement of nutrients into the soil and equipment for nutrient placement based on geographic information system data.

Regional water and sewer districts

- Allows a regional water and sewer district to make loans and grants to and enter into cooperative agreements with any person (a natural person, firm, partnership, association, or corporation other than a political subdivision) rather than only with political subdivisions as in current law.
- Expands a district's authority to offer discounted rentals or charges established by a regional water and sewer district to any person who is of low or moderate income or qualifies for the homestead exemption, instead of only to those who are 65 or older and meet that criteria.

DETAILED ANALYSIS

Statewide Watershed Planning and Management Program

Creation

The bill creates the Statewide Watershed Planning and Management Program for the improvement and protection of Ohio's watersheds. The Director of Agriculture is to administer the program.¹

Watershed planning and management coordinator

Under the program, the Director must appoint at least one watershed planning and management coordinator in each watershed region categorized under the bill (see below) to coordinate watershed planning in the watershed. A coordinator must have experience or education related to water quality improvement or watershed planning and management.

A watershed planning and management coordinator must do all of the following in the watershed region in which the coordinator is appointed:

1. Assist each soil and water conservation district in identifying sources and areas of water quality impairment, including total phosphorous, dissolved reactive phosphorous, and nitrogen nutrient loading. A coordinator also may assist any Ohio political subdivision or

¹ R.C. 940.36(B)(1).

organization engaged in water quality improvement activities (hereafter organization) in the watershed region to address water quality impairment.

2. Assist each soil and water conservation district in collecting data for the purpose of quantifying water quality and nutrient best management practices in a statistically valid, randomized manner. The Director must use the data to establish a baseline of the nutrient best management practices that are being utilized in Ohio. The data and any associated records are not public records subject to disclosure under the Public Records Law.

The Director must undertake all actions necessary to ensure that assistance and available funding are provided for purposes of the data collection and establishing a baseline described above.

3. Engage in watershed planning, restoration, protection, and management activities, including assisting a political subdivision or organization in the watershed region in developing and formulating a nine-element plan or its equivalent. A nine-element plan generally means a strategic implementation plan that a political subdivision, organization, or individual engaged in water quality improvements may utilize to obtain federal funding for projects that address nonpoint source pollution (pollution from an undefined source, such as runoff from streets and highways).

4. Collaborate with state agencies engaged in water quality activities; and

5. Provide an annual report to the Director about water quality.²

The bill states that nothing in it can be construed to prevent or limit a watershed planning and management coordinator from providing assistance for projects or activities that have been determined to improve water quality impaired from point sources of phosphorus, dissolved reactive phosphorus, and nitrogen nutrients.³

Watershed regions

The Director must categorize watersheds in Ohio, identified by the specified U.S. Geological Survey six-digit hydrologic unit codes, into the following watershed regions:⁴

Watershed region	Watersheds included in the region
Region 1	Western Lake Erie Basin Watershed, hydrologic unit code 041000.
Region 2	1. Central Lake Erie Basin Watershed, hydrologic unit code 041100; and 2. Conneaut Creek Watershed, hydrologic unit code 041201.

² R.C. 940.36(A), (B)(2), and (C).

³ R.C. 940.36(E).

⁴ R.C. 940.36(D).

Watershed region	Watersheds included in the region
Region 3	<ol style="list-style-type: none"> 1. Wabash River Basin Watershed, hydrologic unit code 051200; 2. Great Miami River Watershed, hydrologic unit code 050800; and 3. Little Miami River Watershed, hydrologic unit code 050902.
Region 4	Scioto River Watershed, hydrologic unit code 050600.
Region 5	Muskingum River Watershed, hydrologic unit code 050400.
Region 6	Mahoning River Watershed, hydrologic unit code 050301.
Region 7	<ol style="list-style-type: none"> 1. Hocking River and Ohio River Tributaries Watershed, hydrologic unit code 050302; and 2. Raccoon Creek Watershed, hydrologic unit code 050901.

Data collection

As part of the Statewide Watershed Planning and Management Program, the Director, in conjunction with soil and water conservation districts, must collect and aggregate information on conservation practices utilized in Ohio that are funded by public money. The information collected and aggregated is not a public record subject to disclosure under the Public Records Law. However, the Director may share the information with state agencies and state institutions of higher education.⁵

Duties: Director of Agriculture and soil and water conservation district boards

The bill assigns additional duties to the Director and boards of supervisors of soil and water conservation districts. Under the Director's current duties regarding soil and water conservation districts, the Director must assist in expediting state responsibilities for watershed development and other natural resource conservation works of improvement. The bill does both of the following: (1) modifies the above duty by requiring the Director to assist in expediting state responsibilities for other soil and water conservation works of improvement, rather than natural resource conservation works of improvement, and (2) requires the Director to assist in watershed planning and management.⁶

It also requires a board to consult and work with the watershed planning and management coordinator appointed to the watershed region in which the soil and water conservation district is located.⁷

⁵ R.C. 940.36(B)(1).

⁶ R.C. 939.02(C).

⁷ R.C. 940.06(U).

Intent statement

The bill states that it is the General Assembly's intent to collaborate with both of the following to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality:

1. Organizations representing agriculture, conservation, and the environment; and
2. Higher education institutions engaged in water quality research.

The Director must undertake all actions necessary to ensure that assistance and available funding are provided for farmers who participate in the certification program.⁸

Watershed pilot program

The bill requires the Department of Agriculture, in consultation with the Lake Erie Commission and the Ohio Soil and Water Conservation Commission, to establish a pilot program that assists farmers, agricultural retailers, and soil and water conservation districts in reducing phosphorus and dissolved reactive phosphorous in a watershed to be determined by the Department. The Department must fund the program via appropriations under the Department's budget that support water quality initiatives. Program funding must be used to support the following:

1. Equipment for subsurface placement of nutrients into the soil;
2. Equipment for nutrient placement based on geographic information system data;
3. Soil testing;
4. Implementation of variable rate technology;
5. Equipment involved with manure transformation and manure conversion technologies;
6. Tributary monitoring;
7. Water management and edge-of-field drainage management strategies; and
8. Implementation of nutrient best management practices according to data collected by soil and water conservation districts.

The data and any associated records under the pilot program are not a public record subject to disclosure under the Public Records Law.⁹

⁸ R.C. 940.37.

⁹ Section 3.

Regional water and sewer districts

Cooperative agreements and loans and grants

The bill allows a regional water and sewer district to make loans and grants to and enter into cooperative agreements with any person (a natural person, firm, partnership, association, or corporation other than a political subdivision). Current law permits a regional water and sewer district to make loans and grants to and enter into cooperative agreements only with a political subdivision. Further, the bill authorizes a district to provide loans and grants for the design of water resource projects. Under current law, a district may provide loans and grants only for the acquisition and construction of water resource projects.¹⁰

Rental discounts

The bill expands the authority of a district to offer discounted rentals or charges for water resource projects, which include drinking water and sewer services. Under current law, a district is limited in its ability to offer discounts to persons who are 65 or older and who are of low or moderate income or qualify for the homestead exemption. The bill, instead, allows a district to offer discounts to a person of any age, provided the person is of low or moderate income or qualifies for the homestead exemption.¹¹

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Agriculture and Natural Resources	06-12-19
Passed Senate (32-0)	06-12-19

S0002-PS-133/ar

¹⁰ R.C. 6119.06 and 6119.09.

¹¹ R.C. 6119.011, 6119.09, and 6119.091.



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H.B. 7
133rd General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Ghanbari and Patterson

Amanda George Goodman, Attorney

SUMMARY

- Creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio's lakes and rivers.
- Requires the Ohio Water Development Authority (OWDA) to act as trustee of the H2Ohio Trust Fund and grants the OWDA full power to invest fund money.
- Creates the H2Ohio Advisory Council to establish priorities for use of the fund for water quality initiatives.
- Designates the Treasurer of State or the Treasurer's designee as the Executive Director of the fund and requires the Treasurer to provide for the coordination of efforts between the OWDA, the H2Ohio Advisory Council, and the Treasurer with respect to the fund.
- Authorizes the OWDA to disburse money from the fund (up to \$100 million per fiscal year) by issuing loans and awarding grants to applicants that are approved by the Council to address water quality issues in Ohio consistent with the priorities established by the Council.
- If fund money is disbursed specifically to the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency, requires the Directors of those state agencies to each prepare an annual plan detailing how the money will be spent.
- Requires the Council to review and approve each agency's annual plan or portions of the plan before the ODWA may disburse money to the agency.
- Requires the OWDA to make recommendations to the Treasurer of State regarding issuing obligations (revenue bonds) to raise money for deposit in the H2Ohio Trust Fund.

- Authorizes the Treasurer to issue revenue bonds to generate money for deposit in the H2Ohio Trust Fund to be disbursed by the OWDA for water quality initiatives.
- Specifies that the revenue bonds do not constitute debt for which the full faith and credit of the state may be pledged.
- Creates the H2Ohio Bond Service Fund consisting of all money received and required by the bond proceedings, and all other money transferred or allocated to or received for the purposes of that fund.
- Requires the Director of Natural Resources to establish a pilot program to study the environmental impact of water withdrawals on stream flow using continuous stream flow monitoring technology.

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DETAILED ANALYSIS

H2Ohio Trust Fund

Overview

The bill creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio’s lakes and rivers. The fund is in the custody of the Treasurer of State, but is not a part of the state treasury.

The existing Ohio Water Development Authority (OWDA) is the trustee of the fund and has full power to invest fund money. The OWDA is tasked with making recommendations to the Treasurer regarding the issuance of obligations (revenue bonds) to raise money for deposit in the H2Ohio Trust Fund. It also may engage in real property transactions and disburse money

from the fund (up to \$100 million per fiscal year), in the form of loans and grants, to applicants approved by the H2Ohio Advisory Council, which is created by the bill.

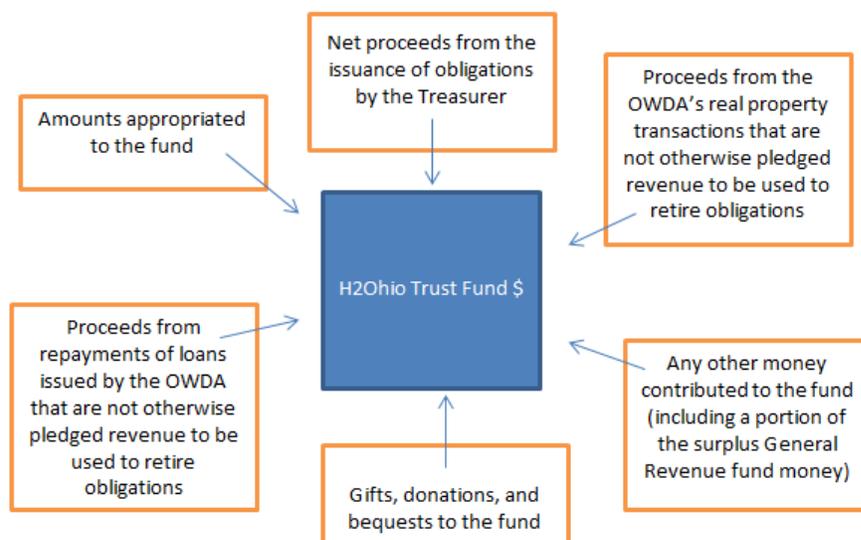
The Treasurer or the Treasurer's designee is the Executive Director of the fund and is tasked with issuing revenue bonds to provide revenue for deposit in the fund. The Treasurer or the Treasurer's designee also must provide for the coordination of efforts between the OWDA, the H2Ohio Advisory Council, and the Treasurer with respect to the fund.

The H2Ohio Advisory Council, which is created by the bill, is tasked with establishing priorities for use of the fund and notifying the OWDA as to what loans and grants should be disbursed from the fund to address water quality issues in Ohio. If the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency seeks disbursement from the fund, the Directors of those agencies each must prepare an annual plan detailing how the money will be spent and submit the plan to the Council. The Council must review and approve each plan or part of a plan before the OWDA may disburse money to an agency.

Based on the OWDA's recommendations, the Treasurer may issue revenue bonds to generate money for the fund. The revenue bonds are secured by pledged revenues, including loan repayments. The bonds are not general obligation bonds backed by the full faith and credit of the state.¹

H2Ohio Trust Fund: purposes

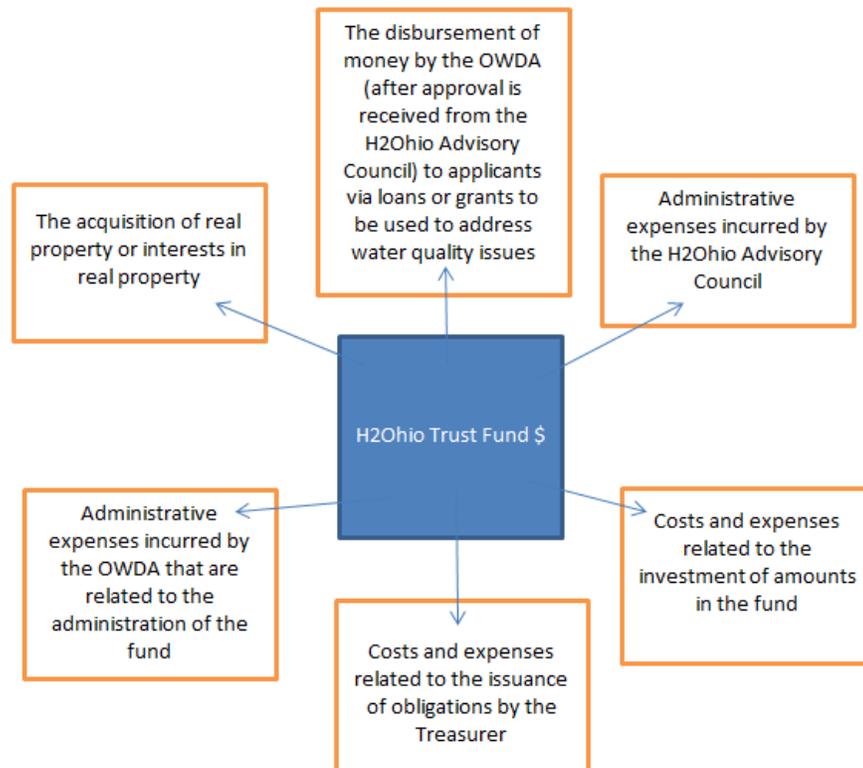
The H2Ohio Trust Fund consists of all of the following money sources:²



¹ R.C. 126.601 through 126.68.

² R.C. 126.601(A).

The fund may be used for any of the following purposes:³



H2Ohio Trust Fund: Investing authority

As indicated above, the OWDA is and acts as the fund's trustee and has full power to invest money in the fund. No purchase or sale of any investment can be made except as authorized by the OWDA.⁴ The OWDA and other fiduciaries must do both of the following:

1. Discharge their duties with respect to the fund for the fund's specified purposes and defray reasonable expenses of administering the fund with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.
2. Diversify the fund's investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

³ R.C. 126.601(B).

⁴ R.C. 126.601(C).

All investment earnings of the fund are credited to the fund.⁵

To facilitate investment of the fund, the OWDA may establish a partnership, trust, limited liability company, corporation, nonprofit corporation, or any other legal entity authorized to transact business in Ohio. In exercising its fiduciary responsibility with respect to the investment of the fund, the OWDA must give consideration to investments that enhance the general welfare of Ohio and its citizens where the investments offer quality, return, and safety comparable to other investments currently available to the OWDA. The OWDA must give equal consideration to investments otherwise qualifying that involve minority and women owned and controlled firms.⁶

The OWDA must adopt, in a regular meeting, policies, objectives, or criteria for the operation of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines. The OWDA must adopt any amendments and additions to the policies and criteria in a regular meeting as well and must publish its policies, objectives, and criteria at least once annually and make copies available to interested parties. In adopting policies and criteria for the selection of agents with whom the OWDA may contract for the administration of the fund, the OWDA must give equal consideration to all of the following that otherwise meet the policies and criteria established by the OWDA:

1. Minority owned and controlled firms;
2. Firms owned and controlled by women; and
3. Ventures involving minority owned and controlled firms and firms owned and controlled by women.

When reporting on the performance of investments, the OWDA must comply with the performance presentation standards established by the CFA Institute (formerly the Association for Investment Management and Research).⁷

All investments must be purchased at current market prices and the evidences of title of the investments must be given to the Treasurer, who is the designated custodian, or to the Treasurer's authorized agent. The Treasurer may deposit evidences of title of the purchased investments for safekeeping with an authorized agent who is a qualified trustee. The Treasurer or the agent must collect the principal, dividends, distributions, and interest as they become due and payable and place them when so collected into the fund.

The Treasurer must pay for investments purchased by the OWDA on receipt of written or electronic instructions from the OWDA or the OWDA's designated agent authorizing the

⁵ R.C. 126.601(C) and (G).

⁶ R.C. 126.601(D)(1) and (2).

⁷ R.C. 126.601(D)(3) and (4); see <https://www.cfainstitute.org/>.

purchase and pending receipt of the evidence of title of the investment by the Treasurer or the Treasurer's authorized agent.

The OWDA may sell investments held by the OWDA, and the Treasurer or the Treasurer's authorized agent must accept payment from the purchaser and deliver evidence of title of the investment to the purchaser after the OWDA or the OWDA's designated agent authorizes the sale. The sale proceeds must be deposited into the fund. The OWDA and the Treasurer may enter into agreements to establish procedures for the purchase and sale of investments and the custody of the investments.⁸

Any statement or financial position distributed by the OWDA must include the fair value, as of the statement date, of all investments held by the OWDA with respect to the bill's provisions.⁹

Other duties

As part of the OWDA's duties regarding the fund, the OWDA may do both of the following:

1. Appoint or provide for the appointment of agents, consultants, independent contractors, or any other type of administrative, investment, financial, or accounting experts as are necessary, in the judgment of the Board; and
2. Buy, sell, and lease real property or interests in real property.¹⁰

H2Ohio Trust Fund: Treasurer as Executive Director

The bill specifies that the Treasurer or the Treasurer's designee must act as the Executive Director of the H2Ohio Trust Fund and must provide for the coordination of efforts between the OWDA, the H2Ohio Advisory Council, and the Treasurer.

The Treasurer, acting as Executive Director of the fund, must submit to the Director of Budget and Management, by June 1 each year, a request for surplus revenue to be transferred to the H2Ohio Trust Fund in an amount determined by the OWDA. Prior to transfer, that amount must be approved by the Controlling Board.¹¹

Under current law, by July 31 of each year, the Director of Budget and Management must determine the surplus revenue that existed on the preceding June 30. The Director must then transfer the surplus from the General Revenue Fund (to the extent of the unobligated, unencumbered balance on the preceding June 30 in excess of 0.5% of the General Revenue Fund revenues in the preceding fiscal year) to the Budget Stabilization Fund and the Income Tax Reduction Fund. Currently, the surplus is first transferred to the Budget Stabilization Fund in an

⁸ R.C. 126.601(D)(5) and (6).

⁹ R.C. 126.601(F).

¹⁰ R.C. 126.65(D) and (E).

¹¹ R.C. 126.65(A) and (B).

amount necessary for the balance of that fund to equal 8.5% of the General Revenue Fund revenues of the preceding fiscal year. The remaining surplus is transferred to the Income Tax Reduction Fund.

The bill requires the Director of Budget and Management to transfer an amount that is up to the amount requested by the Treasurer to the H2Ohio Trust Fund (after transferring money to the Budget Stabilization Fund, but before transferring the surplus to the Income Tax Reduction Fund).¹²

H2Ohio Advisory Council

The H2Ohio Advisory Council, created by the bill, is not subject to sunset review¹³ and consists of the following 18 members:

1. The Director of Agriculture (or the Director's designee);
2. The Director of Environmental Protection (or the Director's designee);
3. The Director of Natural Resources (or the Director's designee);
4. The Executive Director of the Ohio Lake Erie Commission (who serves as a nonvoting, ex officio member);
5. Two members appointed by the President of the Senate (one member of the majority party and one member of the minority party) who serve at the pleasure of the President;
6. Two members appointed by the Speaker of the House of Representatives (one member of the majority party and one member of the minority party) who serve at the pleasure of the Speaker; and
7. Ten members appointed by the Governor with the advice and consent of the Senate (one who represents the interests of counties; one who represents the interests of townships; one who represents the interests of municipal corporations; one who represents the interests of public health; two who represent the interests of business or tourism; two who represent agricultural interests; one who represent statewide environmental advocacy organizations; and one who represents institutions of higher education).¹⁴

The ten members appointed by the Governor must reflect the demographic and economic diversity of the population of Ohio. Additionally, those members must be from geographically diverse areas of Ohio. Of the initial members appointed by the Governor, five are appointed for two years and five are appointed for one year. Thereafter, terms of office for

¹² R.C. 131.44(B)(1).

¹³ R.C. 126.61(F).

¹⁴ R.C. 126.61(A).

those members are four years. The Governor may reappoint a member to the Council.¹⁵ Members appointed by the Governor to represent the interests of institutions of higher education, counties, townships, and municipal corporations do not have a conflict of interest by virtue of their service on the Council.¹⁶

The legislative members of the Council are eligible to serve only so long as they are members of their respective chamber of the General Assembly.¹⁷

The Governor must appoint a member of the Council to serve as the Chairperson of the Council and the Executive Director of the Ohio Lake Erie Commission, unless appointed to be Chairperson, serves as the Vice-Chairperson of the Council. If the Executive Director is the Chairperson, the Council must annually select a person from among its members to serve as Vice-Chairperson. A majority of the voting members of the Council constitutes a quorum and a majority vote of that quorum of the members of the Council is necessary to take action on any matter.¹⁸

All members of the Council must file a disclosure statement with the Ohio Ethics Commission. Members of the Council serve without compensation for attending Council meetings, but receive their annual and necessary traveling and other expenses incurred in the performance of their official duties in accordance with the rules of the Office of Budget and Management.¹⁹

H2Ohio Advisory Council bylaws

The bill requires the H2Ohio Advisory Council to adopt bylaws governing its operation, including bylaws that establish all of the following:

1. The frequency of meetings;
2. Procedures for reviewing annual plans submitted by the Directors of Agriculture, Natural Resources, and Environmental Protection (see below);
3. Procedures for approving or disapproving annual plans submitted by those Directors, including a process for resubmitting disapproved plans or disapproved portions of plans;
4. Procedures for applicants to apply for loans and grants from the H2Ohio Trust Fund; and
5. Procedures for notifying the public how to apply for loans and grants from the fund;
6. A statewide strategic vision and comprehensive periodic water protection and restoration strategy that sets forth the priorities for use of the fund;

¹⁵ R.C. 126.61(B)(2).

¹⁶ R.C. 126.61(E).

¹⁷ R.C. 126.61(B)(1).

¹⁸ R.C. 126.61(C).

¹⁹ R.C. 126.61(D).

7. Any other policy or procedure that the Council determines is necessary to carry out its duties.²⁰

The Council may establish a subcommittee comprised of experts in the appropriate fields of science to advise the Council.²¹

H2Ohio Advisory Council – additional duties

The Council, in coordination with the Ohio Lake Erie Commission, also must submit an annual report to the General Assembly and the Governor within 90 days after the end of each fiscal year. The report must address activities undertaken with respect to the H2Ohio Trust Fund during the preceding fiscal year, and revenues and expenses for that year.²²

OWDA disbursement of funds

The bill requires the OWDA to disburse H2Ohio Trust Fund money, in accordance with the priorities established by the H2Ohio Advisory Council and after receiving notification from the Council that a use for the fund has been approved, for any of the following purposes:

1. Grants or loans, or purchases for the development and implementation of projects and programs, including remediation projects, that are designed to address water quality priorities;
2. Funding cooperative research, data gathering and monitoring, and demonstration projects related to water quality priorities;
3. Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, agriculture, institutions of higher education, environmental organizations, and water conservation districts; and
4. Other purposes, policies, programs, and priorities identified by the Ohio Lake Erie Commission in coordination with state agencies or boards responsible for water protection and water management, provided that the purposes, policies, programs, and priorities align with the Council's statewide strategic vision and comprehensive periodic water protection and restoration strategy.²³

At the end of each fiscal period, the OWDA must declare an amount of investment earnings of the fund that must be made available for disbursement in accordance with the bill's provisions. The OWDA cannot disburse an amount from the fund that is in excess of \$100 million each fiscal year.²⁴

²⁰ R.C. 126.62(A).

²¹ R.C. 126.62(B).

²² R.C. 126.63(C).

²³ R.C. 126.63(A).

²⁴ R.C. 126.63(B) and 126.65(F).

State agency plans

The Directors of the Department of Natural Resources, Department of Agriculture, and the Environmental Protection Agency must each prepare an annual plan detailing how H2Ohio Trust Fund money will be used by the agency if the OWDA disburses money to the agency. Each plan, at a minimum, must describe the following:

1. Funding priorities;
2. The specific programs, projects, or entities proposed to receive funding;
3. The internal controls and external accountability measures that will be put in place to ensure that the funding is properly used. The plans must include internal auditing mechanisms that the agency must conduct at least once every 12 months after a funded project is implemented to ensure the project achieves its intended water quality improvements; and
4. Mechanisms by which the agency will improve the water quality benefits of a funded project, or recoup funding, if an internal audit indicates that the project is not achieving its intended water quality improvements.²⁵

Each Director must deliver their respective annual plan to the H2Ohio Advisory Council by March 1 each year.²⁶ The Council must review and approve or disapprove, in whole or in part, each agency's annual plan in accordance with the Council's policies and procedures.²⁷ The OWDA cannot disburse money from the fund to an agency unless the Council approves the agency's plan, or the portion of the plan for which disbursement is sought.²⁸

Debt obligations

The bill requires the OWDA to make recommendations to the Treasurer of State regarding the issuance of obligations to generate money for the H2Ohio Trust Fund.²⁹

When requested to do so by the OWDA, the bill authorizes the Treasurer to issue obligations (also known as revenue bonds) in the amount requested by the OWDA³⁰ to pay for costs related to disbursing money from the H2Ohio Trust Fund for projects for the protection, preservation, and restoration of water quality, including projects for water pollution control and abatement.³¹

²⁵ R.C. 126.64(A).

²⁶ R.C. 126.64(B).

²⁷ R.C. 126.64(C).

²⁸ R.C. 126.64(D).

²⁹ R.C. 126.65(C).

³⁰ R.C. 126.67(B).

³¹ R.C. 126.66(H) and 126.67(A).

The revenue bonds are special obligation bonds and are not general obligations of the state. They do not constitute debt for which the full faith and credit of the state may be pledged. The holder or owner of the bonds has no right to have money obligated or pledged except for pledged revenues and other special funds provided for in the bond proceedings. Each issued bond must bear on its face a statement to that effect.³²

Net proceeds of the issued bonds must be deposited in the H2Ohio Trust Fund.³³ The Treasurer must enter into bond proceedings in the same manner as that of the proceedings entered into by the Department of Development when issuing revenue bonds for the existing Clean Ohio Revitalization Fund.³⁴

The Treasurer may pledge all, or a portion of, the pledged receipts to the payment of the debt service charges on issued bonds and for the establishment and maintenance of any reserves, as provided in the bond proceedings, and make other provisions in the bond proceedings with respect to pledge receipts. Pledged receipts means, unless otherwise provided in the bond proceedings, all of the following:

1. Repayments of loans made from the H2Ohio Trust Fund, including any interest;
2. Money received from the lease, sale, or other disposition or use of projects funded from the fund;
3. Accrued interest received from the sale of obligations;
4. Income from the investment of money in the fund;
5. Any gifts, grants, donations, or pledges, and receipts available for the payment of debt service; and
6. Additional or any other specific revenues or receipts lawfully available to be pledged, and pledged, pursuant to further authorization by the General Assembly, to the payment of debt service.³⁵

The bill authorizes the Treasurer to covenant in the bond proceedings, and those covenants are controlling, notwithstanding any other provision of law, that the state and applicable officers and state agencies, including the General Assembly, must maintain statutory authority for and cause to be collected any pledged receipts so long as any obligations issued are outstanding. The Treasurer may further secure obligations by a trust agreement between the state and a corporate trustee, which may be any trust company or bank with business in Ohio.³⁶

³² R.C. 126.67(G).

³³ R.C. 126.67(C).

³⁴ R.C. 126.66 and 126.67; See R.C. 122.658, not in the bill.

³⁵ R.C. 126.66(G) and 126.67(D).

³⁶ R.C. 126.67(E) and (F).

The bill creates the H2Ohio Bond Service Fund that consists of all money received and required by the bond proceedings, and all other money transferred or allocated to or received for the purposes of the fund, subject to any applicable provisions of the bond proceedings.³⁷

Stream Flow Monitoring Pilot Program

The bill requires the Director of Natural Resources to establish a pilot program to study the environmental impact of water withdrawals on stream flow using continuous stream flow monitoring technology. The study must conclude on or before December 31, 2021.

The Director must adopt policies and procedures for the administration and implementation of the pilot program and after the conclusion of the study, the Director must submit a report of the study's findings to the General Assembly.³⁸

Beginning on October 16, 2019, in accordance with Am. Sub H.B. 166 from the 133rd General Assembly, the Director must establish a pilot program to study the environmental impact of *oil and gas production operations* on stream flow using continuous stream flow monitoring technology. That study must conclude on or before December 31, 2020.³⁹ It is unclear how the pilot program established in this bill will impact the required Am. Sub. H.B. 166 pilot program.

HISTORY

Action	Date
Introduced	05-13-19
Reported, H. Finance	06-19-19
Passed House (90-3)	06-20-19

H0007-PH-133/ec

³⁷ R.C. 126.68.

³⁸ Section 3.

³⁹ Section 715.20, Am. Sub. H.B. 166 from the 133rd Ohio General Assembly.



**BEFORE THE STATE AND LOCAL GOVERNMENT COMMITTEE
OF THE OHIO HOUSE OF REPRESENTATIVES
REPRESENTATIVE SCOTT WIGGAM, CHAIRMAN**

**TESTIMONY
OF
ROB BRUNDRETT
DIRECTOR, PUBLIC POLICY SERVICES
THE OHIO MANUFACTURERS' ASSOCIATION**

JUNE 5, 2019

Mr. Chairman and members of the House State and Local Government Committee, my name is Rob Brundrett and I am director of public policy services at the Ohio Manufacturers' Association (OMA). Thank you for the opportunity to provide proponent testimony on House Bill 242.

The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,400 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the largest of the state's 20 primary industry sectors. Manufacturing contributed more than \$108 billion in GDP according to the most recent data. This amounts to nearly 18% of the state's economy. According to the most recent federal data, more than 700,000 Ohioans work in manufacturing.

Ohio is home to:

- 34 stationary paper manufacturers (more than any other state);
- 28 plastic bottle manufacturers (also more than any other state);
- 30 paper board container manufacturers (second most in U.S.);
- 28 plastics packaging film and sheet establishments (second most in U.S.); and
- 66 paper bag and coated-and-treated paper manufacturers (third most in U.S.).

These manufacturers alone produce more than \$5 billion in output for the Buckeye State. These same manufacturers employ more than 12,500 Ohioans with an average annual wage of nearly \$54,000. These are solid, family-sustaining jobs.

Moreover, these businesses supply packaging products to many of our state's other manufacturers in sectors such as food and beverage production, consumer products, and appliances. Additionally, manufacturing is an enormous consumer when it comes to utilizing recycled materials, fostering conservation and employing sustainable business practices.

Ohio manufacturers make a wide variety of world-class products. So when local jurisdictions in our state enact restrictions or outright bans on certain products or product content; or impose mandates to label certain products; or place a tax on certain products, it makes it very difficult for Ohio manufacturers to comply here at home, much less in the global economy.

This is why the OMA routinely advocates mitigating locally-imposed restrictions, mandates and taxes. In many cases these types of regulations are most appropriately adopted at the federal government level so as to not disadvantage businesses in one state over businesses in another state.

For these reasons, the OMA favors House Bill 242. We must ensure that taxes, fees and regulations on packaging are adopted uniformly and not via a cumbersome patchwork of local mandates that would make Ohio a less friendly climate for manufacturing.

We thank Representatives Lang and Jones for sponsoring this important legislation to protect and grow Ohio manufacturing. We urge your prompt passage of House Bill 242.

Thank you. I would be happy to answer any questions.



Early Stakeholder Outreach — New Rules for the Affordable Clean Energy Program

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

What would these new rules cover?

The Affordable Clean Energy rule (ACE), finalized by the United States Environmental Protection Agency on July 8, 2019 (84 FR 32520), consists of emission guidelines for greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs) under Clean Air Act (CAA) section 111(d) that will inform states on the development, submittal, and implementation of state plans to establish performance standards for GHG emissions from certain fossil fuel fired EGUs.

The new rules being developed in this rulemaking will be a part of Ohio EPA's plan for implementing the ACE program in Ohio.

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

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

What changes are being considered?

Ohio EPA is developing new rules in the Ohio Administrative Code as part of our program for implementing the ACE.

Who will be regulated by these rules?

The new rules will apply to existing coal-fired EGUs in the state of Ohio.

What is the rulemaking schedule?

Upon completion of the Early Stakeholder Outreach portion of this rulemaking, Ohio EPA will make any changes necessary to the rule language and make a draft of the rule language available to the public for a 30-day review.

What input is the Agency seeking?

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

- 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 (for example, license fees, fines, employer time for compliance).

How can I provide input?

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

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

Written comments will be accepted through close of business **Friday, November 1, 2019**. Please submit input to:

Mr. Paul Braun
Ohio EPA Division of Air Pollution Control
50 W. Town St., Suite 700
PO Box 1049
Columbus, Ohio 43216-1049
(614)644-3734
Paul.braun@epa.ohio.gov

What if I have questions?

These rules can be found on Ohio EPA's website for electronic downloading at: <https://epa.ohio.gov/dapc/DAPCrules#lt-112742673-early-stakeholder-outreach> or contact Mr. Braun (information provided above).



April 15, 2019

Filed electronically at www.regulations.gov
Docket No. EPA-HQ-OW-2018-0149

Re: OMA Comments on the U.S. Environmental Protection Agency's and U.S. Army Corps of Engineers' Proposed Rule, Revised Definition of "Waters of the United States" 84 Fed. Reg. 4154 (February 14, 2019)

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) (together, "the Agencies") proposed rule: Revised Definition of "Waters of the United States." 84 Fed. Reg. 4154 (Feb. 14, 2019) ("Proposed Rule").

The definition of "waters of the United States" is important to Ohio's manufacturing industry. The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents more than 1,400 members in every manufacturing industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that protect Ohio's citizens and resources.

The OMA supports the Agencies' proposed revisions to the definition of "waters of the United States" ("WOTUS"). The Proposed Rule strikes an appropriate balance between protecting waters and wetlands and providing clarity and predictability to stakeholders and regulators. For too long, the Agencies' regulations and guidance documents have steadily expanded the definition of WOTUS beyond statutory and constitutional limits, twice resulting in the Supreme Court rejecting their attempts to expand federal authority. The Proposed Rule would bring an end to this decades-long regulatory creep by, in particular, giving effect to statutory terms such as "navigable" and "waters" and respecting Congress' policy to "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution." 33 U.S.C. § 1251(b). The proposed definition also better aligns with Supreme Court precedent than current and prior agency interpretations of WOTUS and is appropriately grounded in science. The 2015 rule defining WOTUS recognized that the science can inform, but does not dictate, where to draw the line between federal and state authority over water resources. The Proposed Rule takes into account relevant scientific considerations, such as that connections between water features occur along a gradient, and appropriately makes a legal and policy determination to assert federal regulatory authority over only those features along the gradient that exert the strongest influence on downstream navigable waters.

Of particular importance to the OMA whose members are subject to regulation under the CWA, is the regulatory uncertainty and confusion that continues to result from existing definitions of WOTUS (both the definition in the 2015 rule and the pre-2015 definition). Under those definitions, the federal government can regulate a broad variety of water features that have little or no relationship to "navigable" waters, such as isolated ponds and ephemeral washes, which raises significant constitutional questions. It also leaves landowners guessing about whether waters are jurisdictional to the extent case-by-case subjective assessments are required to

determine jurisdiction. The Proposed Rule, by contrast, would alleviate these concerns by drawing clear lines between jurisdictional and non-jurisdictional waters.

Contrary to what critics are claiming, the Proposed Rule approach does not “roll back” or weaken environmental protections. Rather, the proposed definition is protective of water resources, while respecting the states’ traditional authority over land and water resources. When Congress enacted the Clean Water Act, it did not intend to subject all forms of water pollution in any water feature to federal regulatory authority. Rather, Congress distinguished between pollution of the Nation’s waters generally and a subset of those waters it referred to as “navigable waters.” Congress intended to protect all of the Nation’s waters from pollution through different federal, state, and local mechanisms, but only the “navigable waters” would be subject to federal regulatory authority. This basic structure is consistent with Congress’ express policy, in Clean Water Act section 101(b), to preserve and protect the states’ primary responsibility over abating water pollution and over the use and planning of land and water resources. It is important to underscore that even though some of the Nation’s waters are not subject to federal regulatory authority under the Clean Water Act, they are still protected under various federal, state, and local laws, such as the Resource Conservation and Recovery Act, the Safe Drinking Water Act, state wetlands protection statutes, and other laws.

While the OMA generally supports the Proposed Rule, we do have some suggestions to offer the Agencies to improve upon certain jurisdictional and non-jurisdictional categories and key terms that appear in those categories.

Stormwater Control Features: While we support the exemption of “stormwater control features,” for clarity, we recommend that “or otherwise manage” be included in the litany of excluded features. This catchall covers those unique and perhaps not yet developed control features that meet the intent of this exclusion but may not fit neatly into the prescribed list.

Waste Treatment Systems: We are supportive of the new definition of “waste treatment systems” and U.S. EPA’s long-standing exclusion of these systems from the definition of WOTUS. With that support in mind, we request that the definition of “waste treatment systems” be clarified to add the concepts of treatment and more broadly management of wastewater, so that the term waste treatment system includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey, retain, treat, concentrate, settle, or otherwise manage wastewater, or reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

Traditional Navigable Waters (TNWs): The Agencies have steadily expanded their interpretation of what constitutes TNWs, such as through Appendix D to the *Rapanos* guidance. The Proposed Rule carries forward those overly broad interpretations. The OMA recommends that the Agencies adopt an interpretation of TNWs that is more in line with what Congress had in mind when it enacted the CWA, which is Congress’s commerce power over navigation. The regulatory text of the TNW category should be amended to encompass “waters which are currently used, or were used in the past, or may be susceptible to use to transport interstate commerce” rather than applying more broadly to waters “used in interstate commerce.” Making this change would not mean that all non-navigable waters that are not used or capable of being used to transport interstate commerce are beyond the Clean Water Act’s reach. Non-navigable waters could still be jurisdictional under one of the other categories below. They just would not be TNWs. In addition to changing the regulatory text in this way, the Agencies should revoke or change Appendix D to the *Rapanos* guidance to make it clear that they are no longer interpreting TNW as broadly as they have over the past decade or so.

Tributaries: The “tributary” definition contains a number of important terms and statements that could benefit from additional clarification. First, the Agencies should make it clear that if a water feature meets the definition of “ephemeral,” it is not jurisdictional, even if it could conceivably be interpreted to fall into any of the other categories of WOTUS. Second, the Agencies should revise the definition of “intermittent” by clarifying what it means to flow “certain times of a typical year.” As currently drafted, it is not clear how exactly such determinations will be made or what sources of data or information regulators will use. By providing additional specificity, the Agencies can help ensure uniformity and predictability among approaches. The term “typical year” likewise needs further explanation because it is not clear, based on the preamble, how Corps districts will calculate what constitutes the “normal range of precipitation,” what data they will use, or how large a “particular geographical area” will be when they interpret and implement the “typical year” concept. Again, predictability and clarity are of utmost importance to our members.

Ditches: We support the Agencies’ proposal to generally exclude ditches from jurisdiction unless they were constructed in a jurisdictional tributary or jurisdictional wetland or they relocate or alter a jurisdictional tributary *and* they otherwise satisfy the requirements of the tributary definition. We also support the Agencies’ decision to place the burden of proof on the regulators to establish whether a ditch was, at some point in the past, constructed in a jurisdictional tributary or wetland or if it relocated or altered a jurisdictional tributary. However, we believe the Agencies can achieve that outcome without having to designate “ditches” as a standalone category of WOTUS. Having ditches as a separate category could create the impression that the default status of ditches is that they are jurisdictional. The Agencies can still assert jurisdiction over modified tributaries or ditches that are constructed in jurisdictional wetlands by including additional language in the “tributary” definition and/or in the ditch exclusion category or definition of “ditch.”

Thank you for the opportunity to provide comments on the proposed rule. We look forward to working with the Agencies throughout the rule process, and appreciate the opportunity to convey our thoughts. Should the Agencies have any questions regarding the OMA comments please do not hesitate to contact Rob Brundrett at 614-629-6814 and rbrundrett@ohiomfg.com.

Sincerely,



Rob Brundrett
Director, Public Policy Services



July 19, 2019

VIA Electronic Mail (paul.braun@epa.ohio.gov)

Mr. Paul Braun
Ohio EPA Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216-1019
paul.braun@epa.ohio.gov

Re: **Comments on Ohio EPA's *Early Stakeholder Outreach – OAC Chapter 3745-15 – General Provisions***

Dear Sir:

Pursuant to Ohio EPA's June 19, 2019 Public Notice, the Ohio Manufacturers' Association (OMA) is hereby providing Ohio EPA with written comments to Ohio EPA's Early Stakeholder Outreach notification pertaining to Ohio Administrative Code Chapter 3745-15, the general provisions on air pollution control for Ohio EPA.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. The OMA appreciates the opportunity to comment on these rules at this Early Stakeholder Outreach stage.

OAC Chapter 3745-15 Generally

The rules set forth in OAC Chapter 3745-15 are significant and have widespread impacts across the state, as they are applicable to all sources of air pollution in the state of Ohio. Consequently, any draft amendments to these rules that Ohio EPA proposes will be of great interest and import to the OMA and its members. The OMA therefore respectfully requests to be included in any workgroups or future discussions on amendments to these rules.

OAC 3745-15-07

More specifically, when considering updates to OAC 3745-15-07, the OMA offers several considerations for Ohio EPA to take into account. The rule as written is ambiguous in several important respects. When considering how to improve the current language of OAC 3745-15-07, the OMA urges Ohio EPA to consider and clarify the purpose of the rule, for example, how the rule relates to the attainment and

maintenance of the National Ambient Air Quality Standards (NAAQS), and whether the rule is intended to regulate criteria air pollutants.

OAC 3745-15-07 is incorporated into Ohio EPA's statement implementation plan ("SIP"), and measures to control non-criteria air pollutants may not legally be made part of a SIP. See EPA Memo from Michael James to EPA Regional Counsel, February 9, 1979. To the extent that OAC 3745-15-07 is intended to regulate criteria air pollutants, Ohio EPA should clarify how it relates to other limitations on criteria air pollutants, e.g., emissions authorized by rules, orders, or permit terms under the Clean Air Act or Ohio's Air Pollution Control laws and rules. OAC 3745-15-07(A) declares certain emissions to be a "public nuisance," and under longstanding Ohio law, "[w]hat the law sanctions cannot be held to be a public nuisance." *Allen Freight Lines v. Consol. Rail Corp.*, 64 Ohio St. 3d 274, 277, 595 N.E.2d 855, 857 (1992) (quoting *Mingo Junction v. Sheline*, 130 Ohio St. 34 (1935), at paragraph three of the syllabus).

Similarly, the rule should provide more certainty to regulated entities on how to comply with the rule. It is well-established law that before a regulated entity is subject to civil or criminal sanctions, it must be clear how the entity is expected to comply. See *United States v. Trident Seafoods Corporation*, 60 F.3rd 556 (9th Cir. 1995). However, as written, Ohio EPA's expectations for how a regulated entity is to comply with OAC 3745-15-07 are vague. For example, an entity that is in compliance with its emissions limits for criteria air pollutants should also be in compliance with the rule. However, the rule as written fails to provide clarity to regulated entities in this regard. This is particularly important because regulated entities can become unwitting targets of citizen suit actions for pollutants and activities that cannot legally be regulated under the nuisance rule by virtue of its inclusion in the SIP.

The OMA would like to thank Ohio EPA for the opportunity to comment. We look forward to working with the agency as these comments are taken under consideration and at future stages of this rulemaking.

Sincerely,



Rob Brundrett
Director, Public Policy Services

cc: Julianne Kurdila, Committee Chair
Christine Rideout Schirra, Esq.

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

Ohio Administrative Code Chapter 3745-15 –
General Provisions on Air Pollution Control

Early Stakeholder Outreach
July 23, 2019

**Comments of the Ohio Chemistry Technology Council,
the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association
on Ohio EPA's Early Stakeholder Outreach**

I. Introduction

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association respectfully submit the following comments in response to Ohio EPA's Early Stakeholder Outreach on Ohio Administrative Code Chapter 3745-15. The Ohio Chemistry Technology Council represents the interests of over 80 chemistry industry-related companies doing business in Ohio. The Ohio Chamber of Commerce represents the interests of over 8,000 member companies, including manufacturers, utilities, and small businesses. The Ohio Manufacturers' Association represents the interests of over 1,400 member companies to protect and grow Ohio manufacturing. The Commenters' members are regulated by Ohio's Clean Air Act State Implementation Plan (SIP) and have a direct and substantial interest in the provisions of Chapter 3745-15.

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

The definitions in Rule 15-01 should be modified where necessary to reconcile them with the federal Clean Air Act definitions of those terms. For example, Paragraph (B) of Rule 15-01 provides the same definition for "air pollutant" and "air contaminant." Instead, Ohio EPA should have separate definitions of "air pollutant" (which should be defined consistently with Clean Air Act § 302) and "air contaminant" (which is defined in section 3704.01 of the Revised Code). "Air pollutant" is a term of art defined under the Clean Air Act. Similarly, the definition of "ambient air quality standards" in paragraph (E) should be modified to have the same definition as under the Clean Air Act, as is mandated by section 3704.03(D) of the Revised Code. The definition of "facility" in paragraph (O) should be modified to be consistent with the federal definition for purposes of NSR and Title V, or it should be limited in context so as not to create conflicting definitions. And the definition of "source" in paragraph (W) should be reconciled with the federal definition of "source."

Prior to the most recent amendments to Rule 15-01, paragraph (AA) (previously numbered as paragraph (BB)) was titled "Incorporation by reference" and explicitly stated that the referenced materials "are hereby made a part of the regulations in this chapter." Ohio EPA modified the title to "Referenced materials" and removed the incorporation language from the paragraph. Moreover, Ohio EPA modified the sentence "Material is *incorporated* as it exists on the effective date of this rule" to instead say "Material is *referenced* as it exists on the effective date of this rule." (Emphasis added.) This suggests

the paragraph's references to "incorporated" materials in paragraph (AA) and subparagraph (AA)(2) are errors. If that is the case, Ohio EPA should edit Rule 15-01, existing paragraph (AA), as follows:

(AA) Referenced materials. This chapter includes references to certain subject matter or materials. The text of the referenced materials is not to be treated as if it were included in the rules contained in this chapter. Information on the availability of the referenced materials, as well as the date of and/or the particular edition or version of the material is included in this rule. For materials subject to change, only the specific version specified in this rule are ~~incorporated~~ referenced. Material is referenced as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not included unless and until this rule has been amended to specify the new dates. * * *

(2) ~~incorporated~~ List of referenced materials. * * *

III. Amendments to Ohio Adm.Code 3745-15-03

Rule 15-03 contains a typographical error in subparagraph (D)(1)(b), which Ohio EPA should correct as follows:

(D) Permit evaluation report. * * *

(1) Pursuant to paragraph (A) of this rule, each permit described under paragraph (B)(2) of this rule shall require the owner or operator to submit a permit evaluation report, in a form and manner prescribed by the director, which identifies, at a minimum, the following: * * *

(b) Additional information or corrections to air contaminant sources identified in the permit evaluation ~~permit report~~.

IV. Amendments to Ohio Adm.Code 3745-15-04

Ohio EPA should amend paragraph (A) to specify that any testing requirements imposed under this rule must be consistent with test methods specified by applicable federal or Ohio rules. Additionally, Ohio EPA should revise the "Rule Amplifies" citation at the bottom of this rule to cite R.C. 3704.03(I), (J), and (L), not R.C. 3704.03(F).

V. Amendments to Ohio Adm.Code 3745-15-05

Much of Rule 15-05 restates the de minimis exemption found in Section 3704.011. Paragraph (B) of the rule paraphrases paragraph (A) of the statute. Paragraph (C) restates the exceptions to the exemptions found in subparagraphs (A)(1) through (5) of the statute, with one clarification (explaining how to determine the total emissions from a group of

similar sources). Paragraph (D) of the rule largely restates paragraph (C) of the statute, with one clarification (explaining that maintaining records to demonstrate emissions below the de minimis threshold does not eliminate the other limitations to the exemption). Paragraph (F) of the rule largely restates the first sentence of the second paragraph of paragraph (C) of the statute.

Rather than requiring regulated owners/operators to compare Section 3704.011 and Rule 15-05 to determine how they differ, Ohio EPA should remove the portions of Rule 15-05 that simply restate statutory law. However, it should retain the clarifications in paragraphs (C) and (D) and supplement them with cross-references to the statutory provisions they elucidate. Ohio EPA should, instead, rewrite Paragraph (B) to state: “This rule provides clarification regarding the manner in which the Ohio environmental protection agency applies the exemption described in section 3704.011 of the Revised Code.”

If Ohio EPA chooses not to delete the unnecessary and redundant text in Rule 15-05, it should correct the typographical error currently found in subparagraph 15-05(C)(2), shown below:

- (C) The exemption contained in paragraph (B) of this rule shall not apply to a source if any of the following applies: * * *
- (2) ~~The source is subject to a~~An emission limit adopted by the director to achieve and maintain the national ambient air quality standards or a rule adopted by the director to protect public health and welfare limits the emissions from the source to less than ten pounds per day of an air pollutant or restricts the operation of the source in a manner equivalent to an emission limit of less than ten pounds per day.

Lastly, Paragraph (H) begins by stating that Rule 15-06 should not “be construed to exempt any source from requirements of the CAA, including its being considered for purposes of determining whether a facility constitutes a major source or is otherwise regulated under Chapter 3745-77 of the Administrative Code or any requirement to identify insignificant activities and emissions levels in a title V permit application.” This portion of paragraph (H) paraphrases the language in subparagraph (B)(2) of the statute. Paragraph (H) of the rule goes on to say that it “does not exempt any source that is a part of a major new source or major modification that would be required to meet any requirements under applicable state or federal regulations.” This second sentence is unlawful, to the extent that it would require an air contaminant source that is part of a major new source or major modification to comply with Section 3704.011 of the Revised Code or rules adopted under it. The plain language of R.C. 3704.011(A) exempts air contaminant sources with emissions of any air contaminant below 10 pounds/day, and emissions of hazardous air pollutants below 1 ton/year, from *all* air permitting obligations. We would amend paragraph (H) as follows:

- (H) Nothing in this rule shall be construed to exempt any source from requirements of the CAA, including its being considered for

purposes of determining whether a facility constitutes a major source or is otherwise regulated under Chapter 3745-77 of the Administrative Code or any requirement to identify insignificant activities and emissions levels in a title V permit application. In addition, this rule does not exempt any source that is a part of a major new source or major modification that would be required to meet any requirements under applicable ~~state or~~ federal regulations.

VI. Amendments to Ohio Adm.Code 3745-15-06

In June 2015, the previous Administration issued a State Implementation Plan (SIP) call concluding that several provisions in Ohio's SIP, including Rule 15-06(A) and (C), "are substantially inadequate to meet CAA [Clean Air Act] requirements" (80 Fed. Reg. 33,840, 33,967 (June 12, 2015)) because they provide "automatic exemptions from applicable emission limitations during SSM [startup, shutdown, and malfunction] events" or give state EPA directors discretion to grant "exemptions from applicable emission limitations during SSM events" (80 Fed. Reg. at 33,845). The SSM SIP Call directed Ohio to submit revisions to correct these deficiencies by November 2016. See 80 Fed. Reg. at 33,848.

In June 2016, Ohio EPA requested early stakeholder input on Ohio's response to the SSM SIP Call. The Ohio Chemistry Technology Council (OCTC), the Ohio Chamber of Commerce (Ohio Chamber), and the Ohio Manufacturers' Association (OMA) submitted comments. In October 2016, Ohio EPA released draft amendments to Rule 15-06 and other rules in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call. OCTC, the Ohio Chamber, OMA, and API Ohio submitted comments in response to those draft amendments. Ohio EPA later released revised draft amendments to the SSM rules, and OCTC, the Ohio Chamber, and OMA submitted additional comments on those revised draft amendments. Copies of each set of those earlier comments are attached as Attachments A, B, and C.

As expressed in those earlier comments, the 2015 SSM SIP Call was premised on an aggressive and legally incorrect interpretation of the Clean Air Act's definition of "emission limitation," and on a misreading of the SIP control strategy options other than "emission limitations" that Clean Air Act § 110 provides. It imposed an extreme view of the meaning of "continuous" compliance that would, as a practical matter, make unavoidable malfunctions illegal. Such an extreme position not only seemed contrary to legislative intent, but also conflicted with Constitutional law.

Several organizations agreed and filed petitions challenging the SSM SIP Call. After the current administration took office in 2017, EPA asked the Court to continue oral argument and place the case in abeyance while the new administration reviews and (potentially) reconsiders the SIP Call. The court granted that motion. EPA's most recent status report to the court states that EPA continues to review the SIP Call. See *Envtl. Comm. of the Florida Elec. Power Coordinating Grp. v. U.S. EPA*, Case No. 15-1239 (and consolidated cases), Respondent EPA's Status Report (May 9, 2019). Ohio EPA has paused its response to the SSM SIP Call while EPA decides how to proceed.

We urge Ohio EPA to move forward with its amendments to Rule 15-06, so that “malfunctions” are not equated with “violations” and the rule is otherwise easier to interpret and follow. Ohio’s malfunction rule was poorly drafted in 1971. Decades after it was promulgated, Ohio EPA has come to interpret it as equating all “malfunctions” with “violations” that must be immediately self-determined and immediately self-reported. This is often impracticable and unnecessary. Our prior comments recommended that, among other things:

- Ohio EPA should not make malfunction reporting contingent upon a legal conclusion or an admission that the reporting source has “violated” applicable law.
- Ohio EPA can best resolve U.S. EPA’s stated objections to the provisions in Rule 15-06 (A) (scheduled maintenance of air pollution control equipment) and (C) (Director’s discretion in response to malfunction events) by simply converting the existing criteria into mandatory work practices.
- Ohio EPA should take the opportunity provided by the SSM SIP Call to streamline the existing rules and remove ambiguous, undefined, redundant, and unnecessary language.

We ask Ohio EPA to take those prior comments into account as it moves forward with this rulemaking.

VII. Amendments to Ohio Adm.Code 3745-15-07

Ohio EPA should revise the “Rule Amplifies” citation at the bottom of the rule to cite R.C. 3704.03(E), not R.C. 3704.03(F). Ohio EPA’s authority to adopt “rules for the prevention or control of odors and air pollution nuisances” is set forth in R.C. 3704.03(E). We would also encourage Ohio EPA to add a comment to that Rule to clarify that Rule 15-07 does not fit any necessary State Implementation Plan element set forth in Clean Air Act § 110 or 40 CFR Part 51.

Additionally, Ohio EPA should consider limiting the nuisance rule to prevention or control of odors. Although section 3704.03(E) of the Revised Code authorizes Ohio EPA to promulgate “rules for the prevention or control of odors and air pollution nuisances,” it does not *require* Ohio EPA to do so. Mass emissions of criteria pollutants, HAPs, NSPS pollutants, NSR pollutants, and air toxics are already subject to appropriate limits established under federal and Ohio law. Emissions that are specifically authorized by such source-pollutant specific regulations should not be deemed harmful under the separate and vague nuisance criteria.

In accordance with Section 110 of the Clean Air Act, by virtue of its inclusion in the state implementation plan (SIP), the nuisance rule cannot be a measure to regulate non-criteria air pollutants. (Memo from Michael A. James, Associate General Counsel, Air, Noise and Radiation Division, EPA, to Regional Counsels re: Status of State/Local Air Pollution Control Measures Not Related to NAAQS (Feb. 9, 1979), *available at* https://www3.epa.gov/ttn/naaqs/aqmguide/collection/Doc_0062_VOC570209791.pdf). With respect to criteria air pollutants, at the very least, Ohio EPA should clarify that paragraph (A) does not include emissions authorized by and in compliance with rules, orders, or permit terms under the Clean Air Act or the Ohio Air Pollution Control Act, and

does not include emissions or entities that are otherwise regulated under state and federal law. Paragraph (A) declares certain emissions to be a “public nuisance,” and under longstanding Ohio law, “[w]hat the law sanctions cannot be held to be a public nuisance.” *Allen Freight Lines v. Consol. Rail Corp.*, 64 Ohio St. 3d 274, 277, 595 N.E.2d 855, 857 (1992) (quoting *Mingo Junction v. Sheline*, 130 Ohio St. 34 (1935), at paragraph three of the syllabus). In addition, regulated entities must know what the law requires before they can be subject to criminal or civil sanctions. See *United States v. Trident Seafoods Corporation*, 60 F.3d 556, 559 (9th Cir. 1995).

VIII. Amendments to Ohio Adm.Code 3745-15-08

Rule 15-08 currently prohibits the concealment or dilution of air contaminant emissions that “would otherwise violate Chapter 3704., 3714., 3734., 3745., 6109., or 6111. of the Revised Code or any rule adopted thereunder.” Chapters 3714 (construction and demolition debris), 3734 (solid and hazardous wastes), 6109 (safe drinking water), and 6111 (water pollution control) are irrelevant to the purposes of this Chapter. This is an air pollution program rule, promulgated under R.C. 3704.03. Accordingly, it should not apply beyond the Ohio Air Pollution Control Act, Chapter 3704 of the Revised Code. Ohio EPA should amend this rule to eliminate the references to Chapters 3714, 3734, 6109, and 6111.

IX. Amendments to Ohio Adm.Code 3745-15-09

Section 106.03 of the Ohio Revised Code lists several factors that a state agency must consider before determining whether an “existing rule needs to be amended or rescinded.” R.C. 106.03(B). One of those factors is “[w]hether the rule duplicates, overlaps with, or conflicts with other rules *** .” R.C. 106.03(A)(5). Rule 15-09 does not duplicate another rule, but it does duplicate a statute. Section 1.50 of the Revised Code states that, “[i]f any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.” Section 1.41 of the Revised Code makes R.C. 1.50 equally applicable to agency regulations. See R.C. 1.41 (“Sections 1.41 to 1.59, inclusive, of the Revised Code apply to all statutes, subject to the conditions stated in section 1.51 of the Revised Code, *and to rules adopted under them.*”) (emphasis added). Rule 15-09 repeats the language of R.C. 1.50 almost word-for-word. Because Rule 15-09 is duplicative and unnecessary, Ohio EPA should rescind it.

X. Conclusion

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers’ Association appreciate the opportunity to comment on potential improvements to Ohio Adm.Code Chapter 3745-15. The Commenters look forward to the opportunity to work with Ohio EPA as it progresses with this rulemaking.

Very truly yours,

Robert L. Brubaker

Eric B. Gallon

Counsel for
The Ohio Chemistry Technology Council
and The Ohio Chamber of Commerce

Frank L. Merrill

Environmental Counsel for
The Ohio Manufacturers' Association



July 11, 2019

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: **Docket ID No. EPA-HQ-OAR-2018-0170**

Dear Administrator Wheeler:

The Ohio Manufacturers' Association (OMA) is writing in support of the Environmental Protection Agency's (EPA) proposed denial of the petition submitted by the state of New York pursuant to Section 126 of the Clean Air Act (CAA). (84 Fed. Reg. 22787, May 20, 2019). The OMA represents over 1,400 manufacturers in every industry throughout Ohio, and is dedicated to protecting and growing manufacturing in Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. The petition targets numerous facilities in Ohio, including facilities owned and/or operated by members of the OMA, and also more generally raises concerns as a matter of policy. Accordingly, the OMA appreciates the opportunity to comment on the petition.

New York's petition requests that the EPA make a finding that emissions from more than 350 identified sources located in the states of Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia from several different industry sectors significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in Chautauqua County and the New York Metropolitan Area (NYMA), in violation of the good neighbor provision of the CAA. As EPA correctly notes, the burden is on the petitioner in the first instance to demonstrate that the statutory threshold has been met. The OMA agrees with EPA's conclusion that New York has not met its statutory burden to demonstrate that the group of identified sources emits or would emit in violation of the good neighbor provision for the 2008 or 2015 ozone NAAQS in Chautauqua County and the NYMA.

CAA Section 126 first requires New York to demonstrate that issues with ozone attainment exist downwind; only then may New York assert and attempt to justify a claim against upwind sources. As EPA finds, New York has failed to demonstrate that it has attainment issues as required by Section 126. The petition fails to include any analysis to indicate that Chautauqua County may be violating or have difficulty

maintaining the 2008 or 2015 ozone NAAQS either currently or in a relevant future year. Instead, the petition simply points to a previous designation of nonattainment, and includes no projections or any other analyses to illustrate future air quality problems. Similarly, New York fails to meet its burden to demonstrate that the NYMA will have a nonattainment or maintenance problem in the NYMA in any relevant future year regarding the 2008 (and, we believe, 2015) ozone NAAQS. New York fails to use observed and modeled future air quality concentrations to evaluate whether there will be air quality issues in future years, in support of its petition.

EPA also correctly concludes that the petition likewise fails to demonstrate any link between non-attainment in New York with any one or more particular upwind sources with regard to the respective NAAQS in either Chautauqua County or NYMA. The petition is insufficient to show that any source or group of sources in any of the named states will significantly contribute to nonattainment or interfere with maintenance in Chautauqua County or the NYMA relative to the 2008 and 2015 ozone NAAQS. Nor has New York provided any justification that its identification of such a large, undifferentiated number of sources located in numerous upwind states constitutes a “group of stationary sources” within the context of Section 126(b). While the petition asks EPA to evaluate and implement source-specific emissions limits for each source, it fails to demonstrate cost-effective emission controls that could be deployed. New York completely fails to justify its assertion that the named facilities should make certain reductions, instead arbitrarily naming facilities that appear to have larger emissions than other facilities. Petitioner’s failure to demonstrate how relevant cost and air quality factors should be weighed to determine an appropriate level of control for the named sources is an additional, independent basis for denial of the petition. Consequently, the OMA supports EPA’s proposal to deny the petition as to all named sources in all named upwind states because New York has not met its burden to demonstrate that the sources emit or would emit in violation of the good neighbor provision with respect to either the 2008 or 2015 ozone NAAQS.

Additionally, New York’s petition ignores the effectiveness of the economic investment by Ohio sources in controlling NOx emissions to satisfy federal requirements such as the Cross State Air Pollution Rule (CSAPR) and state requirements to install the best available technology for certain new projects. Indeed, based on the latest available emissions inventory and air quality modeling data, EPA already has determined that CSAPR alone fully addresses interstate transport issues for the 2008 ozone NAAQS (81 FR 65878, December 6, 2018). It would be poor public policy to decide that investments made in reliance on the sufficiency of these measures are now inadequate.

In light of the above, the significantly more stringent emissions limits on hundreds of stationary sources that the petition seeks to impose are wholly unjustified. These stringent emission limits would be burdensome to Ohio’s manufacturing base, could indirectly increase costs on millions of consumers, and overall hamper economic development while providing no meaningful environmental benefit, all for no justifiable reason. As EPA’s own projections show, existing regulatory requirements are serving to

achieve decreases in ambient air quality concentrations of criteria pollutants as intended.

For all of the above reasons, the OMA supports EPA's proposed denial of New York's petition.

The OMA thanks EPA for the opportunity to comment on the proposed denial and for its consideration of these comments.

Sincerely,



Rob Brundrett
Director, Public Policy Services

cc: Julianne Kurdila, Committee Chair
Christine Rideout Schirra, Esq.



May 1, 2019

VIA Electronic Mail (dsw_rulecomments@epa.ohio.gov)

Rule Coordinator
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1019

Re: Ohio EPA's Draft Revisions to OAC Chapter 3745-1, Water Quality Standards – Human Health Criteria

Dear Sir/Madam:

Pursuant to Ohio EPA's Public Notice, issued on April 2, 2019, The Ohio Manufacturers' Association (OMA) is hereby providing Ohio EPA with written comments to Ohio EPA's draft revisions to Ohio's water quality standards for human health criteria set forth in Ohio Administrative Code Rules 3745-1-32, -33, and -34.

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

As an initial matter, the OMA requests clarity on the numeric criteria imposed by the draft rule amendments. Are the criteria Ohio EPA is proposing to adopt within OAC 3745-1-32, -33, and -34 consistent across the board with U.S. EPA's 2015 updated chemical criteria, ORSANCO's 2015 Pollution Control Standards, and MCLs promulgated under the Safe Drinking Water Act? The OMA would appreciate more information on whether Ohio EPA considered the unique conditions and characteristics of Ohio's waters in particular when developing these proposed criteria. Furthermore, did Ohio EPA evaluate the population likely to be consuming this water, or organisms from these waters, in Ohio in particular? The OMA requests further clarity on the agency's justification for these proposed numeric criteria in particular and whether they are uniquely suited to Ohio's waters in particular.

Additionally, the OMA appreciates the assessment in the Common Sense Initiative Business Impact Analysis of the potential impacts of these draft rule amendments on the business community. However, the OMA notes that the potential impacts of these draft rule amendments to the business community have the potential to be highly significant, particularly if more stringent permit limitations or permit limitations for entirely new criteria are imposed through NPDES permits directly or through more stringent indirect discharge limitations on discharges sent to POTWs. The majority of Ohio's current limitations are less stringent than the draft revisions. Consequently, additional treatment technology may be required to be installed, monitoring requirements may be heightened, and costs to operate and maintain infrastructure will go up.

The OMA is concerned that these potential impacts have not been well quantified. The discussion in the Business Impact Analysis gives little guidance in this regard, stating that “permit limits are dependent on a multitude of factors and may not always be directly correlated to this specific type of water quality criterion, therefore the impact on stakeholders is somewhat varied and difficult to estimate.” Has Ohio EPA evaluated the costs that industry will face when meeting these draft criteria (both direct and indirect dischargers), and the other social costs or benefits of their adoption? Has Ohio EPA evaluated whether, even with installation of additional treatment technology, the draft revisions to the criteria could be achieved? The OMA requests clarity in this regard, and additional clarity on how Ohio EPA intends to implement these rules when drafting permit limits, in order to give the business community a greater understanding of these potential impacts.

In addition to being incredibly significant to individual dischargers, these impacts could also be widespread. The agency has estimated at least 151 permitted dischargers that could be negatively affected by these draft rule amendments, affecting industries across the state. Could the agency explain further how this number was derived?

Lastly, the OMA further seeks a better understanding of the ways in which the agency will work with permittees to reduce these potentially significant impacts. Does Ohio EPA intend to impose timelines for achieving these limits through insertion of schedules of compliance into NPDES permits? What sort of timelines would the agency generally impose in these instances? What other methods does Ohio EPA intend to use to work with affected parties?

The OMA would like to thank Ohio EPA for the opportunity to comment on the draft revisions to Ohio’s water quality standards for human health criteria. We look forward to working with the agency as these comments are taken under consideration and at future stages of this rulemaking.

Sincerely,



Rob Brundrett
Director, Public Policy Services

cc: Julianne Kurdila, Committee Chair
Christine Rideout Schirra, Esq.



Proposed Rules – Human Health Water Quality Criteria (OAC 3745-1-32, 33, 34)

Water Quality Standards – Human Health Criteria (OAC Chapter 3745-1)

What does OAC Chapter 3745-1 cover?

Ohio Administrative Code (OAC) Chapter 3745-1 contains Ohio’s standards for water quality. Water quality standards are state regulations or rules that protect lakes, rivers, streams and other surface water bodies from pollution. These rules contain: beneficial use designations such as warmwater aquatic life habitat, public water supply and primary contact recreation; numeric values and narrative statements (water quality criteria) protective of the beneficial use designations; and procedures for applying the water quality criteria to wastewater discharges. This rulemaking involves numeric water quality criteria for the protection of human health.

Which water quality standards rules are under review at this time?

This rulemaking includes the review of criteria dealing with human health in the following rules:

- 3745-1-32: Ohio river standards.
- 3745-1-33: Water quality criteria for water supply use designation.
- 3745-1-34: Water quality criteria for the protection of human health [fish consumption].

What changes are being proposed?

Ohio EPA is proposing new criteria for the protection of human health in order to be consistent with U.S. EPA’s 2015 updates to 94 human health water quality criteria, and ORSANCO’s 2015 pollution control standards (PCS). Proposed changes include: implementing maximum contaminant levels (MCLs) statewide, where they were previously only applied in the Ohio River Basin; and the following table:

RULE (OAC)		MCL	ORSANCO VALUE	U.S. EPA VALUE
3745-1-32:				
INTAKE	More stringent of...	X	X	X [fish + DW value]
ELSEWHERE	More stringent of...		X	X [fish + DW value]
3745-1-33:				
OHIO RIVER	More stringent of...	X	X	X [fish + DW value]
LAKE ERIE	More stringent of...	X		X [fish + DW value]
3745-1-34:				
OHIO RIVER	More stringent of...			X [fish only value]
LAKE ERIE	More stringent of...			X [fish only value]*

* 3745-1-34, Lake Erie values: U.S. EPA’s 1 route exposure values are only used if they are more stringent than the Great Lakes Initiative (GLI) numbers in 40 C.F.R. Part 132.

Are there changes from the April 2019 draft rule revisions?

Yes, Ohio EPA removed the draft fish consumption value for Manganese and changed the units for Dioxin in the Ohio River standards rule.

Who will be regulated by these rules?

Water quality standards are used in the implementation of Clean Water Act programs such as the National Pollutant Discharge Elimination System (NPDES) permits, Section 401 Water Quality Certifications and Total Maximum Daily Load (TMDL) reports. Potentially impacted entities may include facilities that discharge or plan to discharge wastewater containing any of the specific chemicals listed in these rules.

What additional information is the Agency seeking?

The Agency is seeking comments from interested stakeholders (public, local officials, industry sectors, other state agencies, consultants and environmental organizations) who may be impacted by these rule revisions. General comments and specific factual information are welcome.

How are the amendments formatted in the proposed rules?

Text that is considered for deletion is identified in strikeout font; new text is underlined.

What is the rulemaking schedule?

A public hearing on the proposed rule will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. This hearing will be held at the **Ohio EPA Conference Center, Room A, 50 West Town Street, Suite 700, in Columbus, Ohio at 10:30 a.m. on December 4, 2019**. The purpose of the public hearing is to give interested persons the opportunity to present oral or written comments on the proposed rule.

At the close of the public comment period, the Agency will review the comments, make any necessary changes to the rule, and then adopt the rule. This is roughly a two-month process from the close of the comment period. A responsiveness summary will be prepared and sent to everyone who comments on the proposed rule. The final rules could be adopted in Fall 2019.

How can I comment on the proposed rules?

Please submit your comments in one of the following ways:

- By email: dsw_rulecomments@epa.ohio.gov
- By fax: (614) 644-2745
- By postal mail:

Rule Coordinator
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

Comments on the proposed rules must be received no later than 5:00 p.m. on December 4, 2019.

How can I get more information?

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

For more information about these proposed rules, please contact:

Audrey Rush
(614) 644-2035
Audrey.rush@epa.ohio.gov

Environment

House Holds First Hearing on Watershed Planning Bill

October 18, 2019



The Ohio House this week heard **sponsor testimony** for **Senate Bill 2**, which would establish a statewide watershed planning and management program to be administered by the Ohio Department of Agriculture.

Many different groups and agencies are working on watershed issues, such as stream monitoring, using vegetation to prevent flooding, and erosion control. SB 2 is designed to complement the **H2Ohio program**, which was established in the state budget bill to provide funding for water quality resources. *10/17/2019*

Ohio EPA Seeks Stakeholder Input on Affordable Clean Energy Rules

October 11, 2019

The Affordable Clean Energy rule (ACE) — finalized by the U.S. Environmental Protection Agency on July 8, 2019 — consists of emission guidelines for greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs) under the federal Clean Air Act. The rule will inform states on the development, submission, and implementation of state plans to establish performance standards for GHG emissions from certain fossil fuel-fired EGUs.

The new rules will be a part of Ohio EPA's plan for implementing the ACE program in the Buckeye State. Ohio EPA has issued an **Early Stakeholder Outreach (ESO)** to help develop the rules. If you or your company would like to provide input on ACE implementation, please contact **Rob Brundrett**. *10/10/2019*

What You Need to Know About the Governor's PFAS Announcement

October 11, 2019

OMA environmental legal counsel has provided the membership **this memo** regarding Gov. Mike DeWine's recent **order** to analyze PFAS in Ohio's drinking water. In the governor's press release, Ohio EPA Director Laurie Stevenson says the agency is planning to involve stakeholders in its process of establishing a regulatory framework for PFAS.

The OMA will be actively engaged as a key stakeholder in this process to ensure manufacturers are heard. The association will also form a work group to determine how best to represent manufacturers with interests in this area. You can be part of this discussion at the upcoming **OMA Environment Committee** meeting on Oct. 23. Please notify the OMA's **Rob Brundrett** if you are interested. *10/10/2019*

Ohio EPA Notes 25 Years of Voluntary Cleanup Program

October 4, 2019

Ohio EPA **recently recognized** the 25-year anniversary of the agency's Voluntary Action Program (VAP), which encourages property owners to voluntarily clean up their land for redevelopment. According to Ohio EPA, more than 13,540 acres of contaminated land on 615 sites in 69 counties have been improved since the VAP was created in September 1994. Remediated properties range from a former gas station to the sites of closed steel mills. *9/30/2019*

Governor Enters Fray on PFAS

October 4, 2019

Gov. Mike DeWine late last week **announced** that he has directed state agencies to analyze the prevalence of per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water. This action followed a Sept. 18 letter from Gov. DeWine and 14 other governors to federal lawmakers, calling for more comprehensive federal legislation on PFAS standards.

The debate over PFAS has become controversial as plaintiffs' lawyers aggressively attempt to litigate against manufacturers. Stay tuned for more on this important topic. *10/3/2019*

Opportunities for Comment on Ohio EPA Regs Changes

October 4, 2019

Ohio EPA is offering stakeholders the chance to provide the agency with input on the following:

- Oct. 18, 2019 deadline: **Division of Air Pollution Control (DAPC), Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards.**
- Oct. 22, 2019 deadline: **Division of Air Pollution Control (DAPC), Emission Reduction Credit (ERC) Banking Program Rules.**
- Oct. 28, 2019 deadline: **Division of Surface Water (DSW), Beneficial Use Designation Rules, Wave 2.**
- Oct. 28, 2019 deadline: **Division of Surface Water (DSW), Beneficial Use Designation Rules, Wave 3.**

Please contact the OMA's **Rob Brundrett** with questions. *10/3/2019*

You're Invited: Nov. 19 Meeting with EPA Officials in Chicago

September 27, 2019

As reported earlier, the OMA has partnered with the law firm of Steptoe & Johnson to host a manufacturers' meeting with senior management of U.S. EPA Region V and Ohio EPA. The meeting has been rescheduled for Tuesday, Nov. 19, at the U.S. EPA offices in Chicago — and all OMA members are invited.

Attendees of last year's meeting found it valuable in terms of learning more about EPA policies and practices, while building relationships with agency leaders. Due to security and limited seating, you'll need to reserve your spot early. Please contact the OMA's **Rob Brundrett** to save your spot. Only those who RSVP can be admitted. *9/24/2019*

OMA Files Comments on NY Ozone Air Quality Case

July 19, 2019

On March 12, 2018, the State of New York filed a **petition** under Section 126 of the federal Clean Air Act naming approximately 350 sources of nitrogen oxides emissions in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia as contributing to violations of the ozone air quality standards in New York. On May 20, 2019, U.S. EPA **proposed** to deny the petition. The OMA **filed comments** at U.S. EPA supporting the denial of the petition. *7/17/2019*

Aquatic Life Monitoring Stakeholder Recording Available

July 19, 2019

On July 10, 2019, Ohio EPA's Division of Surface Water hosted a webinar introducing the enhanced two-pronged approach to surveying and monitoring aquatic life in Ohio's streams and rivers. A recording of the webinar and the presentation are now available on the agency's **website**. Comments and questions regarding this approach are **being accepted** by the Ohio EPA through Aug. 12, 2019. For more details, contact the OMA's **Rob Brundrett**. *7/18/2019*

Analysis: Uncertainty Surrounding WOTUS Likely to Continue

July 12, 2019

OMA Connections Partner **Dinsmore** has published **its analysis** regarding the uncertainty surrounding "waters of the United States" (WOTUS) under the federal Clean Water Act. The issue became a key topic of concern for manufacturers when the Obama administration issued its overreaching WOTUS rule in 2015. In 2017, President Donald Trump issued an executive order instructing EPA to rescind the Obama-era rule, which was also **contested legally**.

Dinsmore says the EPA's current administrator, **Andrew Wheeler** — an Ohio native — has said the new WOTUS definition proposed last February is "focused on providing regulatory certainty and clarity that every American can understand." But the EPA's new definition, which is scheduled to be published as a final rule in December 2019, is widely expected to face significant legal challenges. *7/10/2019*

Online Platform that Helps Businesses Recycle & Reuse Adds More Options

July 2, 2019

Bob Hodanbosi, the longtime chief of **air pollution control** at Ohio EPA, was the keynote speaker at this week's meeting of the OMA Environment Committee.

In his presentation, Hodanbosi briefed members on progress made to improve Ohio's air quality and ensure compliance. In the categories of 24-hour particulate matter, nitrogen dioxide (NO₂), carbon monoxide (CO), and lead, the entire state is designated as "in attainment" with federal clean air standards. However, portions of Ohio are designated as in non-attainment for annual particulate matter, sulfur dioxide (SO₂), and ozone.

Other highlights from the meeting included an update on federal and state issues, as well as a report from OMA Environmental Counsel **Frank Merrill** of Bricker & Eckler LLP.

The OMA Environment Committee, chaired by Julianne Kurdila of ArcelorMittal, will meet again **October 23**. 6/12/2019



The Ohio EPA's Bob Hodanbosi briefs OMA members on the state's air quality efforts.

U.S. EPA Aims to Update Rule on Ignitable Liquid Waste

June 14, 2019

In early April, the U.S. EPA published its proposed "Modernizing Ignitable Liquids Determinations" rule in the Federal Register. The rule has been described as an effort to update certain aspects of the regulations to determine whether a waste is hazardous based on the characteristic of ignitability as defined at the federal level. For more on what this may mean for manufacturers, see **new analysis** by **Dinsmore**, an OMA Connections Partner. 6/12/2019

OMA Testifies in Support of 'Auxiliary Container' Pre-Emption Bill

June 7, 2019

The OMA this week provided proponent **testimony** on **House Bill 242**, legislation that **would prohibit** local governments from imposing a tax, fee, assessment, or other charge on auxiliary containers (e.g., a plastic or paper bag) — as

well as the sale, use, or consumption of auxiliary containers, or on the basis of receipts received from the sale of auxiliary containers.

There are currently more than 300 laws pending in state legislatures that would regulate or ban certain types a packaging.

As the OMA stated in its **testimony**, "Ohio manufacturers make a wide variety of world-class products. So when local jurisdictions in our state enact restrictions or outright bans on certain products or product content; or impose mandates to label certain products; or place a tax on certain products, it makes it very difficult for Ohio manufacturers to comply here at home, much less in the global economy." 6/6/2019

New Bill Would Pre-Empt Local Plastic Bag Bans

May 31, 2019

On the heels of Cuyahoga County's action to prohibit the use of plastic shopping bags — as well as the Columbus suburb of Bexley outlawing plastic bags, straws, and cutlery — the Ohio House this week heard sponsor testimony on **House Bill 242**.

The OMA and other business groups have been supporters of this legislation in the past. 5/30/2019

fuel use ... through a broad array of social and economic reforms and public works projects." Jones Day adds: "The potential impact of the ensuing debate will vary from company to company but, in almost all cases, warrants serious attention in business, political, and legal planning efforts."

The full report can be seen **here**. 5/15/2019

EPA Rescinds 2015 WOTUS Rule **September 20, 2019**

Late last week, the U.S. EPA formally scrapped the Obama-era Waters of the United States (WOTUS) rule. **Read the summary** by the National Association of Manufacturers (NAM). While environmental groups are expected to fight the withdrawal of the rule in the courts — and California has threatened to sue the administration — EPA officials already have a narrower rule in the works. The OMA has **formally supported** the administration's proposed rule, which is more restrained and

observes traditional limits on the scope of federal power. 9/16/2019

Ohio EPA Accepting Comments Regarding VOCs and Carbon Emissions

September 20, 2019

Ohio EPA has released an **Early Stakeholder Outreach** for rules in Ohio Administrative Code chapter 3745-21, which establishes requirements for the control of emissions of volatile organic compounds (VOCs) and carbon monoxide (CO) from stationary emission sources. VOCs are a precursor compound from which ozone is formed. Ozone is one of the six criteria pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under the federal Clean Air Act. CO is also one of the six criteria pollutants for which a NAAQS has been established.

Ohio EPA seeks to make minor amendments to the current rules. Written comments will be accepted through close of business Friday, Oct. 18, 2019. Members may submit input to: *Mr. Paul Braun, Ohio EPA Division of Air Pollution Control, PO Box 1049, Columbus, Ohio 43216-1049*, or by **e-mail**. 9/19/2019

Ohio's NOx Rules Up for Comment

September 13, 2019

Ohio EPA has **revised rules** contained in Ohio Administrative Code (OAC) Chapter 3745-110, which addresses nitrogen oxide (NOx) emissions from Ohio sources. The chapter includes provisions on limits, testing, and record keeping.

Ohio EPA determined that certain changes to the current regulations were needed, primarily because OAC rule 3745-110-03 contains site-specific facility rules that must be updated as the need arises. In addition, a new compliance methodology for the use of a temporary continuous-emissions monitor is being added to OAC rule 3745-110-05.

Please see the **rule synopsis** for a complete summary of the proposed rule amendments. Comment deadline is Wednesday, Oct. 2, 2019. Comments must be submitted by either **emailing Paul Braun** at Ohio EPA or sending comments via U.S. Mail to: Paul Braun, Ohio Environmental Protection Agency, DAPC, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. 9/12/2019

Columbus is First Non-Attainment Area in U.S. to Meet Ozone Standard **September 6, 2019**



OMA Connections Partner Bricker & Eckler LLP **reports** that the U.S. Environmental Protection Agency (EPA) and Ohio EPA recently **announced** that “the Columbus area is the first non-attainment area in the nation to meet the most recent federal air quality standard for ozone.”

Now that the Columbus area meets the National Ambient Air Quality Standard (NAAQS) for ground-level ozone, businesses in the area “will face fewer air permitting restrictions, paving the way for infrastructure investment and economic development that will create jobs,” according to the report. 9/3/2019

Aug. 21 Webinar Will Address New Rules on Hazardous Waste

August 16, 2019

The U.S. Environmental Protection Agency has finalized the Hazardous Waste Generator Improvements Rule. The main objectives of the rule-making are to update the generator regulations, provide flexibility in hazardous waste management, and close regulatory gaps. On Aug. 21, the Ohio EPA will host a **webinar for manufacturers** and others to learn about where this regulatory change is in the Ohio rule-making procedure and how the new provisions apply to generators. 8/15/2019

Reminder: ‘Manufacturers Only’ Meeting with EPA Officials Set for Oct. 10 in Chicago **August 9, 2019**

This is a reminder that the OMA has partnered with the law firm of Steptoe & Johnson to host a manufacturers meeting with senior management of U.S. EPA Region V and Ohio EPA. The meeting — set for Oct. 10 at the U.S. EPA offices in Chicago — will feature updates on all

major program areas, followed by a Q&A session. All OMA manufacturing members are welcome, but due to security and limited seating, you need to reserve your spot early. Please contact the OMA's **Rob Brundrett** to save your spot. You must RSVP to be admitted. *8/8/2019*

Budget Halts Enforcement of Lake Erie Bill of Rights

August 2, 2019

In early 2019, Toledo's voters passed the Lake Erie Bill of Rights (LEBOR) — an amendment to the city charter that declares Lake Erie and its watershed have enforceable legal rights to “exist, flourish and naturally evolve.” It prohibits any corporation (defined to include any business) or government from violating these rights, and it allows the city or any resident of the city to sue in state court to enforce these rights and prohibition.

The LEBOR initiative is similar to other community proposals seeking to establish legally enforceable rights for natural resources. Many corporations or entities could be impacted by the LEBOR's enactment — especially businesses that have an Ohio EPA-issued water discharge permit authorizing them to conduct operations within the Lake Erie watershed.

The OMA was able to help secure an **amendment** in the recently enacted state budget to declare that “nature or any ecosystem does not have standing to participate or bring an action in any court.” The amendment also prohibits any person on behalf of nature or an ecosystem from bringing an action in court. The inclusion of this language in the final budget is a big win, especially for any permit-holding manufacturer in the Lake Erie basin. *8/1/2019*

OMA, Business Allies Work Together on Air Regulations

August 2, 2019

As **reported** last week, the OMA recently submitted comments in response to Ohio EPA's **Early Stakeholder Outreach** on the agency's five-year rule review of air pollution regulations. The OMA also **teamed up** with some business allies to ensure the agency was aware of the broad-based support for specific suggestions to the current regulations. The OMA will continue to work with Ohio EPA as changes to the rules are developed. *8/1/2019*

At a Glance: H2Ohio Fund **July 26, 2019**



The State of Ohio's new main operating budget (**House Bill 166**) — passed and signed last week — created a \$172 million “H₂Ohio fund,” aimed at protecting Lake Erie, other state waterways, and community water projects. The fund is a priority of Gov. Mike DeWine, whose administration has begun to form a strategy on how best to administer the dollars, while promising “more public discussions in the next few weeks.”

Approximately \$46 million of the fund will be dedicated to wetland restoration to help to prevent nutrient run-off that contributes to algal blooms. The budget requires the Lake Erie Commission to coordinate with state agencies and boards to submit an annual report to the governor and legislature on H₂Ohio spending during the prior fiscal year.

Learn more at the administration's H₂Ohio **website**. *7/24/2019*

OMA: Air Pollution Rules Need Clarity **July 26, 2019**

Late last week, the OMA submitted **comments** in response to the Ohio EPA's air pollution rules. The comments were made as part of the agency's Early Stakeholder Outreach program.

The OMA used the opportunity to share its concern over ambiguity in the current air pollution rules, and suggested the need for more clarity — specifically regarding the attainment and maintenance of the National Ambient Air Quality Standards. Because of the significant impact that air pollution regulations can have on manufacturers, the OMA requested that the association “be included in any work groups or future discussions on amendments to these rules.” *7/23/2019*

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on October 22, 2019

- HB7** **H2OHIO PROGRAM** (GHANBARI H, PATTERSON J) To create the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality, to create the H2Ohio Advisory Council to establish priorities for use of the Fund for water quality programs, and to authorize the Ohio Water Development Authority to invest the money in the Fund and to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.
Current Status: 10/22/2019 - Senate Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-7>
- HB94** **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95** **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB242** **CONTAINER USE RESTRICTIONS** (LANG G, JONES D) To authorize the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.
Current Status: 6/26/2019 - **REPORTED OUT**, House State and Local Government, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-242>
- HB340** **DRAINAGE LAW** (CUPP B) To revise the state's drainage laws.
Current Status: 9/24/2019 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-340>
- SB2** **STATEWIDE WATERSHED PLANNING** (PETERSON B, DOLAN M) To create a statewide watershed planning structure for watershed programs to be implemented by local soil and water conservation districts.
Current Status: 10/16/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-2>
- SB50** **INCREASE SOLID WASTE DISPOSAL FEE** (EKLUND J) To increase state solid waste disposal fee that is deposited into the Soil and Water Conservation District Assistance Fund, and to make an appropriation.

Current Status: 4/2/2019 - Senate Finance, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-50>