Environment Committee

June 12, 2014

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2014 Environment Committee Calendar

Thurs., June 12, 2014
Thurs., Oct. 23, 2014

OMA Environment Committee Meeting Sponsor:

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OMA Environment Committee

June 12, 2014

Agenda

Welcome & Roll Call	Chairman Joe Bulzan, RockTenn
Counsel's Report	Frank Merrill, Bricker & Eckler
Guest Presentation	Mike Hopkins, Ohio EPA Assistant Chief, Permitting
Guest Presentation	Ross Eisenberg, National Association of Manufacturers Vice President of Energy and Resources Policy
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.

Thanks To Today's Meeting Sponsor:

Ross Eisenberg

VICE PRESIDENT

PrintEmail

Ross E. Eisenberg is vice president of energy and resources policy at the National Association of Manufacturers, the largest industrial trade organization in the United States, representing over 13,000 small, medium and large manufacturers in all 50 states. Ross oversees the NAM's energy and environmental policy work, and has expertise on issues ranging from energy production and use to air and water quality, climate change, energy efficiency and environmental regulation. He is a key voice for manufacturing on Capitol Hill, at federal agencies and across all forms of media.

Before coming to NAM in 2012, Ross spent over five years as environmental and energy counsel at the U.S. Chamber of Commerce, the world's largest business federation. He was also executive for the Chamber's Environment & Energy Committee, the Chamber's primary vehicle for the creation and development of environmental and energy policy.

Prior to joining the Chamber, Eisenberg spent five years as an environmental, energy, and insurance coverage attorney in the Washington, D.C., office of Greenberg Traurig LLP, a full-service international law firm with more than 1,700 lawyers. At Greenberg Traurig, Eisenberg represented large and small companies on a wide range of environmental and energy matters, including permitting and compliance with federal, state, and local laws and regulations; pesticide registration; rights of way and ratemaking; environmental insurance coverage; and assorted litigation.

Eisenberg represents, on a pro bono basis, an Alabama death row inmate challenging his sentence on the basis of ineffective assistance of counsel. He is a member of the State Bars of Maryland and the District of Columbia. Eisenberg has a B.A. from Emory University and a J.D. from Washington & Lee University School of Law.

BIOGRAPHICAL SKETCH

Michael E. Hopkins

Michael Hopkins has been with the Ohio EPA since 1980. He is currently the Assistant Chief, Permitting of the Ohio EPA. His duties include the review and final approval for all air pollution permit-to-install, permit-to-install and operate, and Title V permitting in the State, management of the Air Toxics/Permit Guidance Unit, the development of technical support for air pollution control regulations, litigation support and general air pollution planning activities. He has been in this position since April 2003. Before this assignment, he was in charge of the Air Quality Modeling and Planning Section with similar duties as above from August 1993 through April 2003. Prior to that assignment, he was in charge of the engineering section of the Ohio EPA Central District Office air program. The engineering section is responsible for reviewing air pollution Permit to Install and Permit to Operate applications for compliance with air pollution regulations, facility inspections, complaint investigations, enforcement case development, policy and rule development, the Emissions Inventory Program, and other related duties in the central Ohio area.

Mr. Hopkins earned his Bachelor's degree in environmental engineering from the Pennsylvania State University. He is a licensed Professional Engineer in the State of Ohio. He is a member of the Air and Waste Management Association, the National Society of Professional Engineers and the Ohio Society of Professional Engineers.

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COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP, Counsel to the OMA
June 12, 2014

ADMINISTRATIVE

A. Ohio EPA Activities of Note

1. Butler Appointed Director of Ohio EPA

On February 21, 2014, Governor Kasich appointed Craig W. Butler as director of the Ohio Environmental Protection Agency. Butler has served as interim director of the Agency since early January. He previously served as the Assistant Policy Director for Energy, Agriculture and the Environment in Governor Kasich's administration. Butler previously served as chief of Ohio EPA's Central District Office and Southeast District Office.

2. Gebhardt Appointed Ohio EPA Deputy Director for Water Resources and Chief of DSW

In April 2014, Karl Gebhardt joined Ohio EPA as a Deputy Director of Water Resources to coordinate efforts addressing water quality resource issues related to harmful algae and other nutrient issues affecting Lake Erie and Ohio's inland waters. Karl was also named Chief of Ohio EPA's Division of Surface Water, taking over the position vacated by George Elmaraghy. Most recently, Karl was with ODNR as a deputy director for water quality and water resource issues.

3. Proposed Changes to ORC 6111.99

In HB490 (Rep. Hall), which is an ODNR bill known as the "brine disposal bill", Ohio EPA has proposed revisions to ORC 6111.99 to incorporate a felony provision for certain "knowing" violations of Ohio Rev. Code Chapter 6111 (Ohio's Water Pollution Control Act). HB490 would also make certain "reckless" violations misdemeanors. Currently, there is no identified *mens rea* in ORC 6111.99, unlike the criminal violation sections of other environmental statutes, and Ohio EPA currently cannot bring a felony action against an intentional violator. Such cases are now referred to the Department of Justice to be prosecuted under the federal Clean Water Act.

4. Universal Waste

On April 9, 2014, OMA representatives met with Ohio EPA to re-activate discussions on the possible expansion of the scope of Ohio's universal waste rule, which is an exception from the hazardous waste rules. OMA had petitioned Ohio EPA approximately two years ago to add paint residue waste to the list of universal waste, as is the practice in Texas. Ohio EPA never formally acted on OMA's request and never responded in writing.

We were told informally by then Director Nally that it would not happen in Ohio, just because they did it in Texas.

Ohio EPA is now re-evaluating this request and has asked OMA to provide additional information on this request, including industries that could possibly benefit from such a listing and to explain the benefit.

5. Ohio EPA Early Stakeholder Outreach Proposals

a. Beneficial Use Rules

On May 18, 2014, Ohio EPA issued an Early Stakeholder Outreach (ESO) proposal titled "Beneficial Use: The 'Co-Product' Concept". Ohio EPA is proposing to segregate certain wastes (e.g., steel slag, foundry sand, etc.) into categories of "co-products" and "by-products" for regulation of further disposition involving land application or burning.

The "co-product" concept is based upon a company documenting that a secondary process material intended for placement on the ground meet certain characteristics of a product. The Agency would then recognize that material as a "co-product". In essence, Ohio EPA would recognize the identified use of that company's material on the ground as a product and not be subject to beneficial use program requirements or need for authorization. The company's documentation may be reviewed and challenged by Ohio EPA.

"By-products" would not be subject to or excluded from regulation under the beneficial use program because: 1) it is already regulated under a separate program; or 2) it is used as an ingredient and encapsulated into identified products commonly placed on the ground, into waters, or burned as fuel. (See Ohio EPA ESO notice attached).

b. Nutrient Water Quality Rules (OAC 3745-1).

In March 2013, Ohio EPA issued an Early Stakeholder Outreach (ESO) notice regarding potential rulemaking that will address the need and the most appropriate means to protect beneficially uses of water from adverse impacts due to cultural eutrophication, which is the result of releasing large amounts of nutrients into rivers and lakes. Left unchecked cultural eutrophication can result in harmful algae blooms, the depletion of dissolved oxygen and fish kills.

Ohio EPA has established a Nutrient Technical Advisory Group (TAG) to discuss possible regulation of nutrient loadings and discharges. OMA has a representative on this nutrient TAG. U.S. EPA is also active in this space and is encouraging all states to address nutrient pollution through multiple lines of work, including the adoption of state strategies and effective regulations. If not addressed on the state level, U.S. EPA may step in to fill the void.

B. U.S. EPA Activities of Note

1. U.S. EPA's Proposed Disapproval of Ohio's Continuous Opacity Monitoring Rule

On February 7, 2014, U.S. EPA issued proposed corrections to its approval of Ohio's opacity testing methods. U.S. EPA now maintains that it inadvertently approved the manner for determining compliance with Ohio's 20% capacity limit for stack emissions because Ohio's rule allows non-exempt visible particulate stack emissions to exceed 20% for up to "six consecutive minutes in any sixty minutes". U.S. EPA maintains that this is inconsistent with U.S. EPA's Method 9 test. On March 17, 2014, OMA and other business trade groups submitted comments to U.S. EPA on the proposed changes.

2. U.S. EPA's "Clean Power Plan"

On June 2, 2014, U.S. EPA proposed limits on carbon dioxide emissions from coal-fired power plants. The plan would cut carbon emissions from existing coal-fired power plants by up to 30% by 2030 compared with 2005 levels. Under the proposal, power plants in Ohio would need to achieve a 28% reduction in carbon emissions per megawatt hour of electricity by 2030.

Under the draft rule, the EPA would let states and utilities meet the new standard with different approaches mixing four options including energy efficiency, shifting from coal to natural gas, investing in renewable energy and making power plant upgrades. Other compliance methods could include offering discounts to encourage consumers to shift electricity use to off-peak hours.

On May 19, 2014, before the announcement of the proposed rule, Ohio EPA held a kick-off meeting to initiate the discussion on how to comply with the necessary "111(d) plan" for the proposal. The timeline is as follows:

1. U.S. EPA proposes state guidelines – June 2, 2014
2. U.S. EPA adopts state guidelines – June 2, 2015
3. Ohio required to submit plan – July 1, 2016
4. Ohio must develop rules to implement the plan – July 1, 2017

3. Clean Water Act Jurisdiction Rule

On March 25, 2014, U.S. EPA released a proposed rule to clarify U.S. EPA's and the Army Corp's jurisdiction under the Clean Water Act. Determining Clean Water Act protection and jurisdiction for streams and wetlands became confusing and complex following U.S. Supreme Court decisions in 2001 and 2006.

According to U.S. EPA, the proposed rule clarifies the following:

1. most seasonal and rain-dependent streams (including ephemeral streams and manmade ditches) are protected;

2. wetlands near rivers and streams are protected; and

3. other types of waters with uncertain connections with downstream water will be evaluated on a case-by-case basis.

JUDICIAL

A. State Cases

1. *Board of Commissioners of Fairfield County v. Nally*

(Ohio Supreme Court, Case No. 2013-1085). This case involves Ohio EPA's use of "total maximum daily load" (TMDL) limits as a basis for a limit in a wastewater discharge permit (commonly referred to as "NPDES permits"). The TMDLs are established by Ohio EPA for stream segments and watersheds and then sent to U.S. EPA for approval under the federal Clean Water Act. There is no public comment period or public input process for the establishment of a TMDL.

Fairfield County was issued an NPDES permit with a limit for total phosphorus, among other parameters. Ohio EPA claimed that the total phosphorus limit was reasonable and lawful because it was based on a TMDL for the area. Both the Environmental Review Appeals Commission (ERAC) and the court of appeals agreed. Fairfield County appealed the issue to the Ohio Supreme Court, which originally agreed to hear one of three issues appealed by Fairfield County.

On November 6th the Court agreed to review whether Ohio EPA must use the rulemaking process in determining TMDLs for discharges into streams before imposing such limits in discharge permits. However, the court refused to hear two other issues. The first being that the mere presence of a proposed discharge limit in a TMDL does not create a valid factual foundation for a limit in a NPDES permit. The second being that the Environmental Review Appeals Commission's refusal to consider evidence against a NPDES limit based on a TMDL unconstitutionally denies a permittee due process of law because the permittee has no ability to challenge the TMDL, upon which the discharge limit is based. Fairfield County filed a motion for reconsideration asking the Court to hear the other two issues. On November 18, 2013, the OMA filed a memoranda of amicus curiae asking the Ohio Supreme Court to review the remaining two issues.

On January 16, 2014, the Court agreed to hear all three issues. Briefs were filed on February 5, 2014.

B. Federal Cases

1. *Babb v. Lee County Landfill SC, LLC* (U.S. District Court, South Carolina)

Landowners near a county landfill in South Carolina sued the landfill claiming that odors from the area caused them damage. The landfill argued that the law suit should be dismissed, because emissions from waste disposal facilities are regulated by Clean Air Act permitting requirements.

The NAM and the National Waste & Recycling Association filed an amicus brief supporting this argument. Congress adopted a comprehensive regulatory process that allows federal and state regulators to set emissions requirements for major stationary sources of pollutants, and the facility at issue in this case is so regulated. Court orders that set different emissions requirements would conflict with the Clean Air Act's system, but would also dramatically alter the cooperative federal-state framework established by Congress to address air quality issues. Different court rulings around the country would create a patchwork of standards under the common law of each state, and regulated entities would face a daunting challenge of predicting what standards their facilities must meet. Instead, NAM argued, the court should find that this kind of state nuisance claim is preempted by the Clean Air Act.

This is another example of a law suit that attempts to use state common law claims to impose more and different air emission requirements on manufacturers or other facility operators already subject to state and federal regulation under the Clean Air Act. The NAM filed a brief in a similar case in 2013 involving emissions from a plant in Iowa.

2. *Environmental Protection Agency v. EME Homer City Generation*, (U.S. Supreme Court, 04/29/2014)

On April 29, 2014, the United States Supreme Court upheld the authority of the United States Environmental Protection Agency ("EPA") to regulate air pollution that crosses state boundaries under the Clean Air Act. The 6-2 ruling may also be a signal that EPA's efforts to use the Clean Air Act to fight global warming could withstand legal challenges.

The case involved a challenge to EPA's "Cross-State Air Pollutions Rules" ("CSAPR"), and how the Court would interpret a so-called "good neighbor policy," mandated by Congress in 1977. This policy requires that "upwind states" sending pollution to "downwind states" develop plans to keep polluters within their borders from sending wind-carried pollution into other states that would keep those neighbors from satisfying federal clean-air requirements. Further, in 1990, Congress directed states to prohibit any source inside their borders from adding "significantly" to neighbors' ability to maintain clean air.

EPA has tried various regulatory rules to carry out that mandate. In 2008, the D.C. Circuit Court of Appeals struck down the George W. Bush Administration's CSAPR rules for not sufficiently protecting downwind states from upwind pollution. In 2011, the Obama Administration issued its CSAPR rules, which were to apply to 28 states, including Ohio. However, in 2012, the D.C. Circuit found that the Obama Administration's version of the rules

were also improper because EPA's cost-based formulas failed to apportion responsibility on a state-by-state basis, according to their share of downwind impairment of air quality. The Supreme Court's ruling overturned the D.C. Circuit, stating that the courts are obliged to defer to EPA's expertise on how to fashion an explicit "good neighbor policy" that dealt with the "vagaries of the wind."

The decision upholding the CSAPR rule, combined with market pressures and the mercury and air toxic standards rules, may quicken the pace of coal plant retirements. By 2020, the U.S. Energy Information Administration estimates that 60 gigawatts of coal-fired power production—accounting for approximately 20% of coal-fired capacity in the United States—will be retired.

3. *National Environmental Development Association's Clean Air Project v. EPA*, (DC. Circuit, 05/30/2014)

The United States Court of Appeals for the D.C. Circuit vacated a U.S. EPA memorandum attempting to limit the applicability of the Sixth Circuit's *Summit Petroleum* decision, which limited U.S. EPA's ability to aggregate sources under the Clean Air Act. In the *Summit Petroleum* decision, the court rejected U.S. EPA's argument that distant air sources could be aggravated into a single source if they were "functionally interdependent". In response to the decision, U.S. EPA issued a memorandum on December 21, 2012 directing the various US.EPA regional directors to only apply the ruling in states within the Sixth Circuit (i.e., Michigan, Ohio, Kentucky and Tennessee). The D.C. Circuit Court of Appeals vacated the memorandum on the basis that it violated U.S. EPA regulations requiring uniformity.

The purpose of this DRAFT DOCUMENT is to continue the exploration of concepts with stakeholders for future program development. The concepts and the conceptual draft rule language are not complete, have not been thoroughly reviewed by Ohio EPA, and are subject to change. The discussion is not intended to be a description of any existing regulations or represent any final position of Ohio EPA.

Conceptual Draft: Beneficial Use Byproduct Program
March 2014

Conceptual Draft: Beneficial Use General Permit Information

Organization of BUB authorizations

The Ohio Environmental Protection Agency's (Ohio EPA) current concepts for beneficial use authorizations for land application involves exploring the following four categories: Co-product, by-products not subject to or excluded from regulation under this program, beneficial use by-product (BUB) general permit, and beneficial use by-product (BUB) individual permit. Following is a brief description of each category.

Co-product

This concept is based upon a company documenting that a secondary process material intended for placement on the ground meet certain characteristics of a product. The Agency would then recognize that material as a "co-product". In essence, recognize the identified use of that company's material on the ground as a product and not subject to beneficial use program requirements or need for authorization. The company's documentation may be reviewed and challenged by Ohio EPA. To facilitate stakeholder discussion, Ohio EPA has developed a concept paper further discussing this "co-product" concept.

By-products not subject to or excluded from regulation under this program

There are currently two concepts being explored. The first concept is that the beneficial use program would list other existing regulatory programs that already handle or authorize the beneficial use, placement of materials on the ground, into water, or burning. The beneficial use program would not be applicable to materials subject to these existing regulatory programs. The intent of the beneficial use program is to not duplicate or add requirements where unnecessary.

The second concept is that the beneficial use program would not be applicable to any by-product material that is used as an ingredient and encapsulated into identified products commonly placed on the ground, into waters, or burned as fuel. These identified products, which are often used or placed on the ground or into water, chemically encapsulate or bind the ingredient and are known to face significant product quality control and established industry use specifications. This use of by-products as an ingredient in these highly quality controlled products would be excluded or not subject to the beneficial use program.

Beneficial use by-product (BUB) general permit

As a concept, the use of a BUB general permit in the beneficial use program provides significant advantages. A primary feature of the general permit is the option for multiple eligible companies to gain authorization under known standards established in a general permit without each company having to submit an individual permit for Agency review. A

general permit would address who is eligible, what beneficial use by-products are authorized for specified beneficial uses, and establish permit requirements tailored to those eligible entities, by-products, and beneficial uses.

A key for Ohio EPA's development of any general permit will be a clear understanding of the characteristics of the beneficial use by-product and specific beneficial uses to be authorized under the general permit. Those entities interested in a general permit approach will be instrumental in assisting Ohio EPA in understanding how the beneficial use by-product is produced, its consistency and homogeneity and types of beneficial use. Ohio EPA must evaluate the potential impacts of the by-product's use may have to waters of the state, the environment, and public health and safety. The more data available industry-wide allows for a better understanding of the material's characteristics and development of appropriate general permit standards and conditions.

Ohio EPA has developed the attached two examples of BUB general permits. These examples illustrate an approach that would authorize through a general permit the broad distribution of eligible beneficial use by-products for specified beneficial uses. These examples are only intended to be illustrations of the concept and to facilitate discussion of the concept. These examples have not been discussed with representatives of the respective industries or the general public. Ohio EPA did choose these materials and uses because of the availability of material characterization data, the low levels of parameters of concern and homogenous nature, and available information on the material for use land application.

These two examples of BUB general permits do not reflect the range of potential general permits. While these are geared for highly homogeneous by-products at low concentrations for broad beneficial use distribution, there may be other general permits tailored differently involving higher concentrations and limited distribution and locations. While a BUB individual permit can address such a situation, there could be the potential of material being generally appropriate for capping waste disposal facilities or revitalizing industrial properties. Ohio EPA views the actual development of a general permit necessitating a strong commitment by effected stakeholders to provide necessary information and input.

Beneficial use by-product (BUB) individual permit
As a concept, the use of a BUB individual permit serves the same function and replacement for the following existing mechanisms: Integrated Alternative Waste Management Program (IAWMP) and Land Application Management Plan (LAMP). If a material is not addressed in any of the other three categories, has limited characterization data or is heterogeneous, or has limited data on its application and use, Ohio EPA will require an individual BUB permit. This type of permit will be very similar to the current Land Application Management Plan or Integrated Alternative Waste Management Program approval process administered under the Division of Materials and Waste Management (DMWM) in coordination with the Division of Surface Water (DSW).

It should be noted that any material (product, co-product, or beneficial use by-product) may still be subject to open dumping enforcement if disposed. If mismanaged, any material (product, co-product, or beneficial use by-product) may be subject to enforcement under Ohio Revised Chapter 6111 protections of waters of the state.

The example BUB General Permits Overview

Like other regulatory programs, Ohio EPA would develop BUB general permits to be issued by the Director. A general permit is not developed in response to an application or issued to any specified entity. A general permit establishes standards and conditions by which eligible entities may choose to become authorized rather than submitting an application for a BUB individual permit.

The attached two examples of BUB general permits are intended to provide stakeholders with some idea of the Agency's concept of how BUB general permits might appear.

- **BUB general permit cover letter**. A short description of the by-product and by-product beneficial use authorized under the general permit.

- **Format and sections of the BUB general permit.**
  - **I. Description.** A very short statement summarizing the by-product and beneficial use authorized under the general permit.
  - **II. Eligibility.** A description of what entities, by-products, and types of beneficial uses are eligible for coverage under the general permit. The eligibility will be tailored to the specific by-product, beneficial uses, and the type of permit conditions.
  - **III. Definitions.**
  - **IV. Conditions.** The requirements established in the BUB general permit specific to the by-products and beneficial uses.
    - The mechanism and criteria for entities to obtain authorization under the general permit. Specifics on the submittal of a Notice of Intent (NOI), demonstration of eligibility, and process (expiration and renewal of the general permit).

      (Note: Fees are mentioned in the conditions and cover letter. The Agency's general permits do have a fee associated with processing a general permit NOI (storm water NOI fee is $200). While the Agency has mentioned the concept of permit fees with stakeholders, fees have been included here as a placeholder. Fees have not yet been a focus of discussion.)
    - By-product specific characterization sampling and analysis.
    - Any specific limitations or restrictions on by-product or beneficial uses.
    - Any specific best management practices.
    - Specific recordkeeping and reporting requirements specific to the by-product and uses.
  - **V. Access to Site.**
  - **VI. Denial, Suspension, or Revocation of Permit Coverage.**
  - **VI. Compliance with Law by End-User.**

Questions?

Call DMWM's John Schierberl at 614.644.2955

The purpose of this DRAFT DOCUMENT is to illustrate what a beneficial use by-product (BUB) general permit could look like as part of the exploration of concepts with stakeholders for future program development. This illustration of a BUB general permit is not complete, has not been thoroughly reviewed by Ohio EPA, and is subject to change. This draft document is not intended to be a description of any existing regulations or represent any final position of Ohio EPA.

Effective Date: March xx, 2014
Expiration Date: March xx, 2019

OHIO ENVIRONMENTAL PROTECTION AGENCY

GENERAL PERMIT AUTHORIZATION TO BENEFICIALLY USE SPENT FOUNDRY SAND GENERATED FROM IRON (GRAY AND DUCTILE), STEEL AND ALUMINUM FOUNDRIES USING SILICA SAND AND CHEMICAL OR CLAY BINDERS

AUTHORIZED BENEFICIAL USES UNDER THIS PERMIT INCLUDE:

- **USE AS A COMPONENT FOR STRUCTURAL FILL**
- **USE AS PIPE BEDDING FOR NON-POTABLE PIPES**
- **USE AS A TOPSOIL AMENDMENT NOT TO EXCEED 30 PERCENT**

In accordance with Chapter 3745-599 of the Ohio Administrative Code (OAC), beneficial use of spent foundry sand, as defined in Part III of this permit, is authorized by the Ohio Environmental Protection Agency (Ohio EPA), to be used as identified in the applicant's Notice of Intent (NOI) on file with Ohio EPA and in accordance with the conditions specified in this general permit. All other beneficial uses must be separately approved by Ohio EPA. Only spent foundry sand as identified in this general permit is eligible for beneficial use under this general permit.

Spent foundry sand is an industrial byproduct generated by the metal-casting industry. Spent foundry sand generated by iron (gray and ductile), steel, and aluminum foundries using silica sand with chemical or clay binders can be beneficially used for structural fill, non-potable pipe bedding, and blending with topsoil.

Granting of permit coverage is conditioned upon payment of applicable fees and submittal of the Notice of Intent (NOI) application form. Permit coverage does not become effective until the Permittee receives written notification from the Director that coverage is granted.

Issuance of this permit does not relieve the Permittee of the duty of complying with all applicable federal, state, and local laws, ordinances and regulations.

This permit and the authorization to beneficially use spent foundry sand generated by iron (gray and ductile), steel, and aluminum foundries using silica sand and chemical or clay binders shall expire at midnight on the expiration date shown above. In order to receive authorization to beneficially use spent foundry sand beyond the above date of expiration, the Permittee shall submit such information and forms as are required by Ohio EPA. Pursuant to the authority of the Director under Chapter 3745-599 of the OAC, this general permit is granted subject to compliance with all conditions contained within this general permit.

Craig W. Butler
Director

I. Description

This general permit authorizes the beneficial use of spent foundry sand generated by iron (gray and ductile), steel, and aluminum foundries using silica sand and chemical or clay binders. This type of spent foundry sand may be used in Ohio as:

- a component for structural fill,
- non-potable pipe bedding, or
- a topsoil amendment, not to exceed 30 percent.

II. Eligibility

Persons that propose to operate under the terms and conditions of this general permit shall only use spent foundry sand generated by iron (gray and ductile), steel, and aluminum foundries using silica sand with chemical or clay binders. Spent foundry sand shall not be beneficially used under this general permit if the constituent concentrations of spent foundry sand exceed the standards listed in Table I.

This general permit does not apply to historical piles of spent foundry sand. In this case, a historical pile is one that was created more than 2 years ago. [Note – it is our intent with this eligibility requirement that this general permit is for recently generated spent foundry sand generated by iron (gray and ductile), steel, and aluminum foundries using silica sand with chemical or clay binders. Historic piles of spent foundry sand could have mixed with unfired foundry sand and / or other types of foundry sand not included in this general permit.]

III. Definitions

"Applicant" means the person applying for coverage under the general permit and intending to use, manage, or distribute spent foundry sand.

"Beneficial use" means the legitimate use of a beneficial use byproduct as an ingredient or product or in a manner that contributes to a manufacturing process or product that does not constitute disposal or cause pollution of any waters of the state. A beneficial use may include but is not limited to use as a replacement of a raw material, soil additive, fertilizer, structural fill, or a fuel.

"Beneficial use byproduct" means a solid waste, industrial waste, or other waste specifically identified for properties necessary or preferred for beneficial use.

"Clay binder" is bentonite which is a carbonaceous additive used by foundries to improve the surface finish of metal items cast in sand molds.

"Chemical binders" most commonly include phenolic-urethanes, epoxy, furfuryl alcohol, sodium silicate. Binders cause the sand mold to hold its shape during the introduction of molten metal into the mold and are usually used in core-making where high mold strengths are necessary to withstand the heat of molten metal.

"Director" means the director of Ohio EPA or an authorized representative.

"End user" means a person who owns the property on which a beneficial use byproduct is beneficially used.

"Notice of Intent (NOI)" means the form used to request coverage under a beneficial use general permit.

"Permittee" means any person who has been granted coverage under this general permit to beneficially use spent foundry sand in accordance with the conditions specified in this general permit.

"Pipe bedding" is an aggregate material placed under and around pipes to provide equal support along the length of pipe installed underground in a trench.

"Soil Amendment" means any material added to a soil to improve the soil's physical properties (e.g. water retention, permeability, water infiltration, drainage, aeration and structure).

"Spent foundry sand" is used silica sand and binders generated by the metal-casting industry, which uses silica sand molds in the production of metal products, and that can no longer be used to cast molds.

"Structural fill" is a screened material used to create a strong, stable base meeting engineering specifications for use as engineered fill, mechanically stabilized earthen (MSE) walls, low strength mortar backfill, and granular fill. This does not include valley fills or filling of open pits from coal or other industrial mineral mining.

"Topsoil" means the A and E horizon layers, or instances in which the area has been disturbed by agricultural processes, the soil ordinarily moved in tillage, or its equivalent in uncultivated soil.

IV. Conditions

1) To obtain coverage under this general permit, an applicant shall submit one copy of a complete and accurate NOI signed by the applicant and fees pursuant to OAC rule 3745-599-210 to the Ohio EPA Central Office at the following address:

   Ohio Environmental Protection Agency
   Office of Fiscal Administration
   P.O. Box 1049
   Columbus, Ohio 43216-1049

2) The NOI shall be on forms approved by the Director and shall include the information required by the NOI form, its instruction sheet, and the regulations. An NOI which is incomplete or deficient may be returned to the applicant.

   a. Applicants that propose to operate under the terms and conditions of this general permit must submit the NOI at least 60 days before commencing beneficial use under this general permit.

   b. After receiving a complete NOI, any additional information requested by the Director and the general permit fee as specified in the beneficial use rules, Ohio EPA will review the information and determine the eligibility of the applicant to operate under the terms and conditions of this beneficial use permit.

   c. Coverage under this permit shall not be effective until the Director notifies the applicant that the beneficial use is authorized under the general permit.

3) The spent foundry sand shall not be a hazardous waste as defined in Ohio Administrative Code 3745-51-03.

4) Concentrations of any constituents in the spent foundry sand, before beneficial use, cannot exceed the limits for the specified constituents listed in Table I.

Table I

Constituents	Totals Analysis (mg/kg)	TCLP Analysis (mg/L)
Aluminum (Al)	77000	4
Antimony (Sb)	31	0.12
Barium (Ba)	15000	40
Cadmium (Cd)	70	0.1
Chromium, total (Cr)	120000	2
Copper (Cu)	3100	26
Iron (Fe)	55000	6
Lead (Pb)	400	0.3
Selenium (Se)	390	0.2
Zinc (Zn)	23000	100

5) Sampling Characterization: Spent foundry sand beneficially used as a component for structural fill, non-potable pipe bedding, or as a soil amendment shall have been sampled and analyzed in accordance with the following:

   a. Take four grab samples from 20 yards of spent foundry sand as it is generated. These four grab samples shall be analyzed for total metals and TCLP for the constituents specified in Table 1. Determine if the results of the four samples meet a 95% upper confidence limit (UCL) and do not exceed the limits specified in Table 1. All samples shall be analyzed using the toxicity characteristic leaching procedure, test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods U.S.EPA publication SW 846.

   b. For existing piles of spent foundry sand, the pile of spent foundry sand shall be characterized in accordance with procedures and methods as specified in the most recent edition of U.S. EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA SW-846). [It is recommended that 12-15 grab samples be taken from at least three equally divided depths of the pile of spent foundry sand (i.e. 3 dimensional sampling grid) and analyzed for compliance with the constituents as specified in Table 1 of this general permit. Determine if the results of the 12-15 samples meet a 95% UCL and do not exceed the limits for total metals and TCLP, as specified in Table 1. Or, 30-40 grab samples may be taken, combining every 5 grab samples into a single composite sample to be analyzed. (Statistical analysis may not be appropriate with composite sampling. The Max test as provided in the US EPA soil screening guidance may be useful in analyzing the composite samples.

http://www.epa.gov/reg3hwmd/risk/human/rb-concentration_table/chemicals/SSG_nonrad_technical.pdf)]

c. If any changes are made in the types of sand binder systems, binder chemicals, types of metals or metal alloys being cast, the Permittee shall notify Ohio EPA in writing immediately and the spent foundry sand shall be reanalyzed prior to the beneficial use of the spent foundry sand.

6) Sample the spent foundry sand annually for the constituents listed in Table 1. Take four grab samples from 20 yards of spent foundry sand as it is generated. These four grab samples shall be analyzed in accordance with Condition IV.2) for total metals and TCLP for the constituents specified in Table 1. Determine if the results of the four samples meet a 95% UCL and do not exceed the limits specified in Table 1. If the annual sampling of spent foundry sand does not meet the constituent limits for total metals and TCLP as required in Table 1 of this general permit, the Permittee must notify Ohio EPA in writing within 10 days. In this event, the Permittee may apply for an individual permit in accordance with rule 3745-599-300 of the OAC.

7) Storage, screening, blending of spent foundry sand with topsoil, and beneficial use of the spent foundry sand shall be conducted in such a manner that it will not create a nuisance or adversely affect public health, safety or the environment. Should a nuisance condition develop, or a determination be made by Ohio EPA that the beneficial use, storage or blending of spent foundry sand with top soil is a threat to human health or the environment, the approval to beneficially use this material may be revoked upon written notification from the Director. Immediately upon the effective date of any written notification from the Director of revocation, beneficial use of spent foundry sand at the site shall cease. Remediation of the site may be required.

8) The Permittee shall provide a copy of the sampling and analysis of the spent foundry sand for the constituents listed in Table I upon request of the Director.

9) The contents of any products created under this general permit shall be made available to all end users, upon request.

10) The Permittee shall not cause pollution or cause to be placed any spent foundry sand that has been or is intended to be beneficially used in a location where it causes pollution to waters of the state. Any discharge to waters of the state shall be in accordance with an effective national pollutant discharge elimination system (NPDES) permit. Any unauthorized discharges to waters of the state must be reported to Ohio EPA (call 1-800-282-9378) within 2 hours of discovery.

11) If the Permittee discovers that the beneficial use byproduct is being misused, mismanaged, or is adversely affecting public health, safety, or the environment, the Permittee shall cease distribution or use of the beneficial use byproduct and notify the Director in writing within twenty-four hours.

12) The Permittee shall furnish to the Director, within 10 days of written request, any information which the Director may request to determine whether cause exists for modifying, revoking, reissuing, or terminating coverage under the general permit, or to determine compliance with this general permit.

13) The Director may require any applicant or any person authorized by this permit to apply for and obtain an individual permit in accordance with Section 3745-599-300 of the OAC. The Director will send written notification that an individual permit is required. This notice may include a brief statement of the reasons for this decision, an application form,

a statement setting a deadline for the applicant to file the application, and a statement that on the effective date of the individual beneficial use permit, coverage under this permit, if in effect, shall terminate. If a person authorized by this permit fails to submit in a timely manner an individual beneficial use permit application as required by the Director, then the applicability of this general permit to the Permittee is automatically terminated at the end of the day specified for application submittal. Any beneficial use past this date is illegal and subject to enforcement, unless the proper individual beneficial use permit is obtained.

14) In order to receive authorization to beneficially use spent foundry sand beyond the expiration date of this general permit (i.e. renew existing general permit coverage), the Permittee shall notify the Director of the intent to be covered by the new general permit by submitting a new NOI at least 180 days before the expiration of this general permit unless permission has been granted by the Director for submission at a later date.

15) When the Permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI to the Director, he or she shall promptly submit such facts or correct information.

16) The Permittee shall retain the following information at the Permittee's place of business for a minimum of five years and shall make it available to the Director upon request:

    a. Records of the annual volume of spent foundry sand that is designated for beneficial use and the volume and type of beneficial use of spent foundry sand actually beneficially used;

    b. Records of the location(s) where the spent foundry sand is stored or screened;

    c. The sampling plan detailing where samples of spent foundry sand were collected, how those samples were collected, dates of annual samples that were collected, and a list of constituents that were used to characterize the samples;

    d. All laboratory reports of the constituents in Table I.

17) By April 1 of each year the Permittee shall submit an annual report. The annual report shall be sent to the following address:

    Ohio EPA DMWM
    PO Box 1049
    Columbus, OH 43216-1049

    The annual report shall include the following for the previous calendar year:

    a. Types of beneficial uses involving the spent foundry sand

    b. Amount of dry tons of spent foundry sand generated

    c. Amount of dry tons of spent foundry sand used for each type of beneficial use

V. Access to Site

The Permittee shall allow the Director or an authorized representative of Ohio EPA to:

1) Enter upon the Permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit.

2) Have access to and copy any records that must be kept under the conditions of this permit.

3) Collect samples, take photographs, perform measurements, surveys and other tests, and inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit.

VI. Denial, Suspension, or Revocation of Permit Coverage

The Director may deny, suspend or revoke coverage under this general permit when the NOI or other required documentation is not in compliance with Section 3734-599-210 of the OAC or for any of the reasons listed in Section 3745-599-220(E) of the OAC.

VII. Compliance with Law by End-User

Nothing herein shall be construed to release any party, including but not limited to the owner(s) of property upon which the spent foundry sand is placed, from the obligation to comply with all applicable laws governing the placement or use of the spent foundry sand on the property. This general permit does not authorize placement or use of the spent foundry sand on the property in a manner or at a location that is inconsistent with the beneficial use requirements detailed in this general permit. This general permit does not authorize placement or use of the spent foundry sand on the property in a manner or at a location that would cause a nuisance, adversely affect public health or safety or the environment, cause air pollution, or cause pollution to waters of the State beyond the de minimus potential impacts contemplated in this general permit. This general permit is not, and shall not be construed to be, a storm water permit, individual permit issued under ORC 6111.04, or other permit or authorization that allows for air pollution, illegal disposal of solid or hazardous waste, or pollution of waters of the State beyond the de minimus potential impacts contemplated in this general permit.

FACT SHEET

Division of Materials and Waste Management
May 8, 2014

Early Stakeholder Outreach — Beneficial Use: The "Co-Product" Concept

Ohio EPA invites stakeholder input on a concept intended to distinguish between the beneficial use of an industrial by-product versus the production of a product (co-product).

Why is the Agency seeking Early Stakeholder Outreach?

There is increasing interest in the beneficial use of industrial by-products currently disposed of in landfills. The Agency has been working with stakeholders since 2012 to explore development of rules and procedures for beneficial use of industrial by-products to replace the current Integrated Alternative Waste Management Project (IAWMP) and Land Application Management Plan (LAMP) processes. For information regarding this effort, please see the Early Stakeholder Outreach tab of the DMWM Rules webpage.

Several stakeholders suggested there be recognition within the regulatory system that:

> *"....certain industrial by-products **are not "wastes"** and are therefore exempt or excluded from further regulation. These materials include those .....that are not "unwanted" by the generator and are sold in a commercially reasonable manner in the stream of commerce."*

Up to this point in time, the Agency's consideration of a comprehensive regulatory beneficial use program focused on the beneficial use of nonhazardous secondary materials or by-products and the circumstances of use under which such materials were no longer considered wastes. The Agency is now turning attention to the stakeholders' suggestion that nonhazardous secondary materials sold in a commercially reasonable manner in commerce are not wastes; in essence, these secondary materials should be viewed as products.

What input is the Agency seeking?

To facilitate exploration of this suggestion, stakeholders are invited to provide suggestions and give input regarding the attached document *"Concept Paper: Co-product under ORC Chapter 3734"*.

How can I provide input?

The Agency is seeking stakeholder input on the proposed concept included in this document. 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;
- provide specific examples to illustrate your views; and
- offer suggestions and alternatives.

Written comments will be accepted through close of business June 9, 2014. Please submit input to:

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

What if I have questions?

Please contact Dan Harris at 614-728-5377 or daniel.harris@epa.ohio.gov.

To facilitate stakeholder consideration of this concept, the Agency will host a stakeholder meeting between 1:00 to 3:00 pm on May 21, 2014. Participation is available by WebEx or by meeting attendance at Ohio EPA's Columbus office. To ensure that we have facilities to accommodate participation and allot meeting time appropriate to areas of stakeholder interest, please register on-line at https://www.surveymonkey.com/s/5-21-14BUmeeting. Please indicate the document of interest, provide the number of participants, email addresses, and whether attending the meeting or participating by WebEx no later than May 14, 2014.

What's the next step?

After the comment deadline, Ohio EPA will evaluate the input and facilitate additional stakeholder engagement as needed to further explore the concept.

How can I track the Agency's consideration of this concept?

Stakeholders are encouraged to sign up for the Agency's electronic mailing list which provides automatic updates about various topics. Registered users of the Beneficial Use mailing list will receive progress updates and be notified when new information is posted. To sign up, go to *ohioepa.custhelp.com/ci/documents/detail/2/subscriptionpage*.

Concept Paper: Co-product under ORC Chapter 3734

Division of Materials and Waste Management

The purpose of this CONCEPT PAPER is to continue the exploration of concepts with stakeholders for future program development. The concepts expressed in this paper are not complete, have not been thoroughly reviewed by Ohio EPA, and are subject to change. The discussion is not intended to be a description of any existing regulations or represent any final position of Ohio EPA.

Background: Ohio's current nonhazardous waste management rules do not establish a mechanism for recognizing when an item, which is no longer useful for its initial intended purpose, or a nonhazardous secondary material generated from an industrial process may have commercial value to the generator of the material for reuse, recycling, or other purposes. In addition, current rules do not establish a method for recognizing when a secondary material that is not utilized by the generator may still have commercial value to another party. DMWM is considering developing a comprehensive regulatory beneficial use program intended to acknowledge when secondary materials have commercial value to generators or third parties in order to avoid regulating such materials as "wastes" requiring appropriate disposal.

Regulators often work from a historically-based presumption that secondary materials that are not the intended product resulting from an industrial or manufacturing process have no intrinsic market value or direct use. Observations often reinforce and make obvious this presumption that such secondary materials are not a product. Management of a secondary material for further processing to reclaim or recycle[1] some attribute of the material for its value is demonstration that the material itself is not a product. Speculative accumulation is an indicator of low secondary material value. Failure to manage the secondary material in a manner that retains the material's value is a strong indicator that the secondary material is a waste. Illegal disposal of waste[2] is often evidenced as placement on the land or into waters, burning, abandonment, or discard.

The Division of Materials and Waste Management (DMWM) acknowledges that many industrial or manufacturing facilities are seeking to become "zero landfill" or "sustainable" operations by focusing on reclaiming a material's secondary value or locating and developing direct uses of previously disposed materials. There are companies that seek to reclaim the value of secondary materials or market secondary materials for different direct uses. The increasing recognition that our regulatory approach needs to adjust has been the initiative of Ohio EPA's on-going discussion with numerous stakeholders regarding a beneficial use program. This paper describes another concept for exploration as part of the overall development of a beneficial use

program. A secondary material may contain its own inherent unique value, be further used in commerce and, in some incidences, come to be considered product-like. For the purposes of discussion, it is referred to here as the "co-product" concept.

The "Co-product" concept: Several stakeholders suggested there be recognition within the regulatory system that:

> "....*certain industrial by-products* ***are not "wastes"*** *and are therefore exempt or excluded from further regulation. These materials include those .....that are not "unwanted" by the generator and are sold in a commercially reasonable manner in the stream of commerce.*"

Up to this point in time, DMWM's consideration of a comprehensive regulatory beneficial use program focused on the beneficial use of nonhazardous secondary materials or by-products and the circumstances of use under which such materials were no longer considered wastes. DMWM is now turning attention to the stakeholders' suggestion that nonhazardous secondary materials sold in a commercially reasonable manner in commerce are not wastes; in essence, these secondary materials should be viewed as co-products[3].

First, what is a Product? When one thinks about the general characteristics of a product, a number of aspects come to mind. These may include:

- The product serves a recognized and demonstrable purpose(s);
- The product is produced from a designed industrial/manufacturing process in which input materials and product quality is monitored and controlled;
- The product has to meet established product specifications and quality control standards;
- The revenue generated from the sale of the product helps sustain the economic viability of the company;
- The quality and integrity of the product is protected from deterioration and is maintained during handling, storage and transportation;
- The product is secured from theft;
- Sale of the product is available to the general public;
- Product safety and limitations have been evaluated/investigated;
- The product has established use and precaution warnings;
- Product adverse impacts to human health and the environment have been evaluated and are known,
- Product rejection rate is low; and
- The producer insures the product inventory.

It is product aspects, like those listed above, that DMWM could use to build a regulatory mechanism by which a nonhazardous secondary material can be classified as a co-

product. However, such a classification would not render the co-product immune from being classified as a waste should circumstances warrant such a conclusion. Any product can be become a waste; the switch in classification is evident by the actions of the product owner. A product becomes a waste when it is no longer wanted by the owner as evidenced by the management of the material. Indicators that the product has become unwanted include: it is abandoned, discarded, burned for destruction, disposed, thrown away, dumped, used in excess, inappropriately used, stored in excess or for an extended length of time or used in a manner that imparts no value.

Co-product demonstration: A co-product is more than a nonhazardous secondary material that might or could be used in a specific application or a material that is used in a limited amount as compared to the large amounts generated annually. A co-product is, in essence, a quality market valued material managed as a valued commodity not unlike the primary product of the industrial/manufacturing process. It is a demonstrated valued commodity evidenced by its management and use.

The concept involves recognition of the demonstration or vigorous dismissal, as necessary, when facts prove disposal, discard, or insufficient utilization of the material is occurring. Under the concept, the material simply is not a waste.....yet. At some point, the value of any product, commodity or co-product may be spent or simply devalued. It then fails to meet this concept's performance standards and becomes a waste.

DMWM suggests that the criteria for demonstrating a nonhazardous secondary material should be classified as a co-product should be set high. The criteria for the demonstration would be established in rule. The concept is that a provider (which may be envisioned as the first person who presents the material as a co-product to the general public) conducts an assessment to demonstrate that the nonhazardous secondary material is a co-product. Below are possible criteria or documentation the provider of a nonhazardous secondary material should meet in order to make the co-product demonstration.

- Discussion of the type and use(s) of the co-product;
- Discussion of the historic use(s) and management of the co-product;
- Explanation of the useful purpose(s) of the co-product;
- The degree to which the market for the co-product is guaranteed;
- The amount of co-product generated each year by the producer compared to the amount of nonhazardous secondary material sold each year;
- Projected annual co-product rejection rate;
- The estimated amount of co-product sold annually and the estimated annual revenue received;

- How the co-product production process is monitored and controlled to ensure that accepted co-product quality and material specifications are met;
- How the co-product is managed and stored to preserve and protect material integrity and material specifications;
- The degree of further processing the co-product requires after generation and prior to sale;
- How the co-product is managed and stored to minimize release to the environment;
- The concentration of each constituent reasonably expected to be present in the nonhazardous secondary material that may be harmful to human health and the environment; and
- Other relevant information.

Implementation and programmatic components: DMWM offers the following initial thoughts for discussion on how this concept might be implemented.

- Since the nonhazardous waste management system is focused on disposal facilities and prevention of open dumping and burning, the co-product demonstration process would apply to co-products placed into a body of water or onto the ground, and burned in an open area or type of chamber not otherwise authorized in rules. Other uses of co-products, such as use in other manufacturing processes or recycled would not need to conduct a co-product demonstration[4].
- The co-product demonstration may be provider and co-product specific and mostly self-implementing by the provider of the co-product. The provider may be the person who first claims and represents the nonhazardous secondary material as a co-product to another person or the general public. Also, the provider may be the actual producer of the nonhazardous secondary material or a distributor.
- The provider would need to notify DMWM of its determination and submit documentation demonstrating how all co-product criteria are met in its situation. DMWM is thinking that the provider would not need to wait for a DMWM response or obtain any acceptance or approval prior to the use of the co-product. No DMWM approval would be necessary since it is neither an exemption nor exclusion but an assertion established under rule that the material is a co-product. However, DMWM would have the ability to object to the assertion or request additional information. Furthermore, the provider has an ongoing responsibility to ensure that attainment of the co-product criteria is continuously maintained.
- The management and handling of the material is subject to all applicable federal, state and local rules. Ohio EPA would retain the enforcement authority to cite

violations of open dumping or open burning based on observations of the actual handling of the material regardless of a co-product determination.

- The co-product demonstration would only apply to nonhazardous secondary materials. This is because Ohio's hazardous waste rules have a long established recycling program, including an informal co-product approach, for classifying a hazardous secondary material as not being a waste.
- Eligible nonhazardous secondary materials are those generated from an engineered manufacturing/industrial production process that is monitored and controlled such that the secondary material quality and specification can be maintained. *[While material of uncertain or unmaintained quality would not be a co-product, by-product beneficial use authorization by permit or rule may be an option.]*
- With regards to product safety, it is the responsibility of the co-product provider to evaluate and document the safety of the product. Ohio's product liability laws would apply to the co-product and those who distribute it in the same manner as any other product. DMWM would not evaluate the product for safety or personal harm issues. However, we would question the use of a nonhazardous secondary material that contained harmful constituents not expected to be present in a similar product or contained constituents at levels greater than a similar product. DMWM's potential screening of the constituents in the co-product is only a general evaluation of probable harm the product may impose on human health and the environment and not an evaluation of product safety.

New Terms: Several new terms have been introduced in this paper to help present this concept of "Co-product." Below are DMWM's meanings of these terms as used in this paper.

- Secondary material is any material that is not the primary product of a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap that has yet to be identified as a solid, hazardous, industrial or other waste, or a co-product.

- Nonhazardous secondary material is a secondary material that, when unwanted, would not be identified as a hazardous waste.

- Hazardous secondary material is a secondary material that, when discarded, meets the definition of a listed or characteristic hazardous waste as defined in OAC rule 3745-51-03.

- Co-product means a nonhazardous secondary material that is manufactured along with a different product and meets the expectations of a product by being saleable, revenue producing, quality controlled and protected from loss.

- By-product means a nonhazardous secondary material that is historically undesirable and commonly disposed; it has limited potential for use; it is generated in amounts that exceed the amounts that can be used or it requires significant processing in order to be used.

Join the discussion: You are welcomed to follow and participate in the discussion on the development of a beneficial use regulatory program by:

- ✓ Accessing Ohio EPA's early stakeholder outreach page on beneficial use at: http://www.epa.state.oh.us/dmwm/dmwmnonhazrules.aspx.
- ✓ Signing up for listserv notification of available beneficial use information at: http://ohioepa.custhelp.com/ci/documents/detail/2/subscriptionpage.
- ✓ Participating in Ohio EPA scheduled stakeholder WebEx meetings (listserv notice is given on upcoming meetings and posted on the early stakeholder outreach page on beneficial use).
- ✓ Contacting DMWM to ask questions or share perspectives. For the "Co-product" concept, you may contact Dan Harris at 614-728-4819 or Daniel.harris@epa.ohio.gov or Karen Hale at 614-644-2927 or Karen.hale@epa.ohio.gov.

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[1]Recycling as used in the solid waste program is defined in the context of established recycling commodity markets as reconstituted materials, such as: metal, paper, plastics, etc. Placement of materials into a body of water or onto the ground and burning in an open area or type of chamber not otherwise authorized in rules and claiming it is recycling is not the intended concept and would likely be presumed as disposal. [Reference: OAC 3745-27-01(R)(1).]

[2]Ohio Revised Code 3734.01(E) defines solid wastes *"...means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding..."*.

[3]The concept of a co-product is distinct from that of a by-product. DMWM has been discussing concepts for a beneficial use by-product regulatory program with stakeholders since before 2011. While a by-product can be useful and marketable, it may often be managed and disposed as a waste. In a general sense, a by-product might be distinguished from a co-product in that a by-product is a secondary product derived from a manufacturing process, treatment process, or chemical reaction that is not the primary product or service being produced. A by-product is an output that is minor in quantity or value when compared to the main products. By-products typically are not inventoried or separately accounted for and reported as income. The markets for a by-product may be insufficient to use the quantity being produced with the consequence that the material is otherwise managed and disposed.

[4]The current solid waste regulatory system was established to ensure the proper disposal of wastes and prevent unregulated disposal such as open dumping and open burning. Therefore, a clear focus is to prevent the placement of solid wastes into a body of water or onto the ground and burning in an open area or type of chamber not otherwise

authorized in rules. It is when secondary materials generated from an industrial process are placed into water, on the ground, or burned, that the questions of open dumping and open burning arise. This is particularly an issue when the perception may be that the secondary material is generally being managed as a waste and disposed at licensed solid waste disposal facilities. [References: ORC 3734.01(F) "Disposal"; ORC 3734.01(H) "Open burning"; and ORC 3734.01(I) "Open dumping.]

The Ohio Manufacturers' ASSOCIATION

June 9, 2014

VIA EMAIL: *(michelle.braun@epa.ohio.gov)*

Michelle Braun
Post Office Box 1049
Columbus, Ohio 43216-1049

Re: **Comments from the Ohio Manufacturers' Association**
Beneficial Use: The "Co-Product" Concept

Dear Ms. Braun:

The Ohio Manufacturers' Association (OMA) is hereby providing its written input to Ohio EPA's May 8, 2014 "Early Stakeholder Outreach – Beneficial Use: The 'Co-Product' Concept." OMA is dedicated to protecting and growing manufacturing in Ohio, and for more than 100 years, has supported reasonable, necessary, and transparent environmental regulations promoting the health and well-being of Ohio's citizens.

The OMA, as a trade organization representing over 1,400 manufacturers throughout Ohio, appreciates Ohio EPA's efforts in tackling the issue of regulating and authorizing the beneficial use of high volume, low toxicity waste materials. Certain members of the OMA and certain industries within the general manufacturing sector may have unique concerns with the "Co-Product" concept, and as a result, these comments, on behalf of the OMA in general, are being provided in a broader context allowing others to weigh in with specific concerns unique to their respective manufacturing processes.

As noted previously by OMA, only "wastes" should be regulated under this program. Ohio Rev. Code § 3734.01(E) defines "solid waste" as "unwanted" residual solid or semisolid material resulting from industrial, commercial, agricultural and community operations with specific exclusions, including nontoxic fly ash and bottom ash, spent nontoxic foundry sand, and slag. If a co-product is not "unwanted," it is not a waste. While Ohio EPA has previously indicated that the term "unwanted" is viewed from the perspective of the generator, even this limited interpretation means that if a generator "wants" the co-product, it is not a waste.

Therefore, if a co-product is sold in a commercially reasonable manner for value (e.g., slag), it is not "unwanted" by the generator, and should not be subject to further regulation under O.R.C. Chapter 3734 or O.R.C. Chapter 6111. There is no need to regulate the further disposition or use of such valuable material or co-product.

In our previous comments, we suggested that a new category be incorporated into any beneficial use rule package to clarify that certain industrial by-products are not "wastes" and are therefore exempt or excluded from further regulation. These materials include those that are not "unwanted" by the generator and are sold in a commercially reasonable manner in the stream of commerce.

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Columbus, Ohio 43215-3005

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It appears that Ohio EPA agrees with our previous comment, and the "co-product" concept is Ohio EPA's initial proposal in this regard. While we applaud Ohio EPA's efforts in this regard, the proposed Ohio EPA "Co-Product" concept goes beyond our intentions.

Our position is that some "co-products" are not "wastes" because they are specifically excluded from the statutory definition of "solid wastes" (e.g., spent nontoxic foundry sand and slag). For those co-products, any beneficial use rule should clarify and reference that such co-product or material does not constitute a "solid waste" for purposes of Ohio's solid waste program or beneficial use program. Documentation from the generator and recordkeeping requirements contemplated in Ohio EPA's "Co-Product" concept paper are not necessary for these co-products with established beneficial uses. There should be no need for the generators of these co-products to provide and generate the scope of documentation set forth in Ohio EPA's concept paper, when such material or "co-product" has an established end use that Ohio EPA has already approved on an individual basis through different programs (e.g., IAWMP or LAMP) and the material or "co-product" is of a homogenous nature that is fairly consistent throughout the particular generating industry. For example, generators of these materials should not be required to document the projected annual co-production rejection rate or the degree to which the market for the co-product is guaranteed.

In summary, OMA applauds Ohio EPA's efforts to propose and consider a beneficial use program, but the "co-product" concept, as initially proposed, goes beyond what is necessary, especially from a documentation standpoint. If a material or "co-product" is excluded from the definition of a "solid waste", its further use should not be regulated by Ohio EPA's Division of Materials and Waste Management, and that exclusion should be simply set forth in the regulations so as to clarify Ohio EPA's position.

If you have any questions regarding the foregoing or attached, please feel free to contact me or OMA's environmental counsel, Frank L. Merrill with Bricker & Eckler LLP (614-227-8871).

Sincerely,

Rob Brundrett
Director, Public Policy Services

cc: Frank L. Merrill

EPA FACT SHEET: Clean Power Plan

OVERVIEW OF THE CLEAN POWER PLAN

CUTTING CARBON POLLUTION FROM POWER PLANTS

On June 2, 2014, the U.S. Environmental Protection Agency, under President Obama's Climate Action Plan, proposed a commonsense plan to cut carbon pollution from power plants. The science shows that climate change is already posing risks to our health and our economy. The Clean Power Plan will maintain an affordable, reliable energy system, while cutting pollution and protecting our health and environment now and for future generations.

Our climate is changing, and we're feeling the dangerous and costly effects right now.

- Average temperatures have risen in most states since 1901, with seven of the top 10 warmest years on record occurring since 1998.
- Climate and weather disasters in 2012 cost the American economy more than $100 billion.

Although there are limits at power plants for other pollutants like arsenic and mercury, there are currently no national limits on carbon.

- Children, the elderly, and the poor are most vulnerable to a range of climate-related health effects, including those related to heat stress, air pollution, extreme weather events, and others.

Nationwide, the Clean Power Plan will help cut carbon pollution from the power sector by 30 percent from 2005 levels.

- Power plants are the largest source of carbon pollution in the U.S., accounting for roughly one-third of all domestic greenhouse gas emissions.
- The proposal will also cut pollution that leads to soot and smog by over 25 percent in 2030.

Americans will see billions of dollars in public health and climate benefits, now and for future generations.

- The Clean Power Plan will lead to climate and health benefits worth an estimated $55 billion to $93 billion in 2030, including avoiding 2,700 to 6,600 premature deaths and 140,000 to 150,000 asthma attacks in children.

States and businesses have already charted the path toward cleaner, more efficient power.

- States, cities and businesses are already taking action.
- The Clean Power Plan puts states in the driver's seat to a cleaner, more efficient power fleet of the future by giving them the flexibility to choose how to meet their goals.

With EPA's flexible proposal, we can cut wasted energy, improve efficiency, and reduce pollution – while <u>still</u> having all the power we need to grow our economy and maintain our competitive edge.

- The agency's proposal is flexible—reflecting the different needs of different states.
- The proposal will put Americans to work making the U.S. electricity system less polluting and our homes and businesses more efficient, shrinking electricity bills by roughly 8 percent in 2030.
- It will keep the United States—and more importantly our businesses—at the forefront of a global movement to produce and consume energy in a better, more sustainable way.

Join the conversation

- In the coming months, we'll be listening to feedback and seeking new ideas about the best ways to reduce carbon pollution from existing power plants: http://www.epa.gov/cleanpowerplan

EPA FACT SHEET: Clean Power Plan

BY THE NUMBERS

CUTTING CARBON POLLUTION FROM POWER PLANTS

On June 2, 2014, the U.S. Environmental Protection Agency, under President Obama's Climate Action Plan, proposed a commonsense plan to cut carbon pollution from power plants. The science shows that climate change is already posing risks to our health and our economy. The Clean Power Plan will maintain an affordable, reliable energy system, while cutting pollution and protecting our health and environment now and for future generations.

Cleaning Up Power Plants

- Power plants are the **largest source** of carbon dioxide emissions in the United States, making up roughly **one-third** of all domestic greenhouse gas emissions.
- All told—the Plan puts our nation on track to cut carbon pollution from the power sector by **30 percent** by 2030—that's about **730 million metric tonnes** of carbon pollution.
- That's equal to the annual emissions from more than **150 million cars**, or almost **2/3s of the nation's passenger vehicles** – or the annual emissions from powering **65 million homes**, **over half the homes in America**.

Big Public Health and Climate Benefits

- The Clean Power Plan has public health and climate benefits worth an estimated **$55 billion to $93 billion** per year in 2030, far outweighing the costs of **$7.3 billion to $8.8 billion**.
- Reducing exposure to particle pollution and ozone in 2030 will avoid a projected
    - **2,700 to 6,600** premature deaths
    - **140,000 to 150,000** asthma attacks in children
    - **340 to 3,300** heart attacks
    - **2,700 to 2,800** hospital admissions
    - **470,000 to 490,000** missed school and work days
- From the soot and smog reductions alone, for every dollar invested through the Clean Power Plan—American families will see **up to $7** in health benefits.

- The Clean Power Plan will reduce pollutants that contribute to the soot and smog that make people sick by **over 25 percent** in 2030.
    - **54,000 to 56,000 tons** of $PM_{2.5}$
    - **424,000 to 471,000 tons** of sulfur dioxide
    - **407,000 to 428,000 tons** of nitrogen dioxide

Number of power plants covered by the Clean Power Plan

- In the U.S., there are **1,000 fossil fuel fired power plants** with **3,000 units** covered by this rule.

- Utility planners are already making plans to address an aging fleet. The average age of coal units is **42 years**. The average age of oil units is **36 years**. The average age of natural gas combined cycle units is **14 years**.

State climate, energy efficiency and renewable energy policy statistics

- States, cities and businesses have set energy efficiency targets, increased their use of renewable energy, and made agreements to cut carbon pollution. These are the kinds of programs that states will be able to use to cut carbon pollution under this proposal.
    - **47** states with utilities that run demand-side energy efficiency programs
    - **38** states with renewable portfolio standards or goals
    - **10** states with market-based greenhouse gas emissions programs
    - **27** states with energy efficiency standards or goals

Proposed State Plan Dates

June 30, 2016 – Initial plan or complete plan due

June 30, 2017 – Complete individual plan due if state is eligible for a one-year extension

June 30, 2018 – Complete multi-state plan due if state is eligible for two-year extension (with progress report due June 30, 2017

EPA FACT SHEET: Clean Power Plan

NATIONAL FRAMEWORK FOR STATES

SETTING STATE GOALS TO CUT CARBON POLLUTION

On June 2, 2014, the U.S. Environmental Protection Agency, under President Obama's Climate Action Plan, proposed a commonsense plan to cut carbon pollution from power plants. Nationwide, by 2030, the Clean Power Plan will help cut carbon emissions from the power sector by 30 percent from 2005 levels, while starting to make progress toward meaningful reductions in 2020.

- **Setting state goals—**To set state-specific goals, EPA analyzed the practical and affordable strategies that states and utilities are already using to lower carbon pollution from the power sector. These include improving energy efficiency, improving power plant operations, and encouraging reliance on low-carbon energy. Together, these make up the best system for reducing carbon pollution because they achieve meaningful reductions, and create jobs by driving clean energy investment and reducing energy waste to save families money.
- **Goals give states flexibility—**Each state has the flexibility to choose how to meet the goal using a combination of measures that reflect its particular circumstances and policy objectives. While EPA identified a mix of four "building blocks" that make up the best system of emission reductions under the Clean Air Act, a state does not have to put in place the same mix of strategies that EPA used to set the goal. States are in charge of these programs and can draw on a wide range of tools, many of which they are already using, to reduce carbon pollution from power plants and meet the goal, including renewable energy portfolios and demand-side energy efficiency measures.

SETTING STATE GOALS

- EPA is proposing state-specific emissions goals for reducing carbon dioxide (CO_2) emissions from the power sector.
- These state goals are <u>not</u> requirements on individual electric generating units. Rather, each state has broad flexibility to meet the rate by 2030 by lowering the overall carbon intensity of the power sector in the state.
- The basic formula for the state goal is a rate: CO2 emissions from fossil fuel-fired power plants in pounds (lbs) divided by state electricity generation from fossil-fuel fired power plants and certain low- or zero-emitting power sources in megawatt hours (MWh).
    - This approach factors in megawatt hours from fossil fuel power plants plus other types of power generation like renewables and nuclear, as well as megawatt-hour savings from energy efficiency in the state.
- State- and regional-specific information is plugged into the formula, and the result of the equation is the state-specific goal.
- Each state's goal is different, because each state has a unique mix of emissions and power sources to plug in to each part of the formula.

- EPA is proposing a two-part goal structure: an "interim goal" that a state must meet on average over the ten-year period from 2020-2029 and a "final goal" that a state must meet at the end of that period in 2030 and thereafter.

GOALS GIVE STATES FLEXIBILITY

- Each state will choose how to meet the goal through whatever combination of measures reflects its particular circumstances and policy objectives. A state does not have to put in place the same mix of strategies that EPA used to set the goal, and there are no specific requirements for specific plants.
- EPA is proposing the state goal approach under Section 111(d) of the Clean Air Act, which requires that EPA identify the "best system of emission reduction … adequately demonstrated" (BSER) that is available to limit pollution – and set guidelines for states to achieve reductions that reflect that system. States then make plans to get the reductions that would result from that system.
- In this case, EPA identified four sets of measures – or "building blocks" – that are in use today by many states and utilities and that together make up the best system for reducing carbon pollution.
- These building blocks recognize the interconnected nature of the power sector – looking broadly to find cost-effective and proven solutions.
    - For example, 47 states have utilities that run demand-side energy efficiency programs, 38 states have renewable portfolio standards or goals, and 10 states have market-based greenhouse gas programs.
- EPA analyzed historical data about emissions and the power sector to create a consistent national formula for reductions that reflects the building blocks. The formula applies the building blocks to each state's specific information, yielding a carbon intensity rate for each state.

Building Block	**Value Allocated in Goal-Setting Formula**
Make fossil fuel power plants more efficient • Improve equipment and processes to get as much electricity as possible from each unit of fuel • Using less fossil fuel to create the same amount of electricity means less carbon pollution.	Average heat rate improvement of 6% for coal steam electric generating units (EGUs)
Use low-emitting power sources more • Using lower-emitting power plants more frequently to meet demand means less carbon pollution.	Dispatch to existing and under-construction natural gas combined cycle (NGCC) units to up to 70% capacity factor
Use more zero- and low-emitting power sources • Expand renewable generating capacity, which is consistent with current trends. • Using more renewable sources, including solar and wind, and low-emitting nuclear facilities, means less carbon pollution.	Dispatch to new clean generation, including new nuclear generation under construction, moderate deployment of new renewable generation, and continued use of existing nuclear generation

Building Block	Value Allocated in Goal-Setting Formula
Use electricity more efficiently • Reducing demand on power plants is a proven, low-cost way to reduce emissions, which will save consumers and businesses money and mean less carbon pollution.	Increase demand-side energy efficiency to 1.5% annually

- EPA is also proposing to give states the option to convert the rate-based goal to a mass-based goal if they choose to in their state plans.
    - Adopting a mass-based goal would better allow a state or group of states to cap their tonnage of CO_2 emissions and set up a trading program if they choose that option.
- States can develop a state-only plan or collaborate with each other to develop plans on a multi-state basis to meet the goals outlined in the proposal.
- EPA is only proposing goals for states with fossil fuel-fired power plants. Vermont and Washington, DC are not included in this rule because they do not have fossil fuel-fired power plants.
- EPA is not proposing emission rate goals or guidelines for the four affected sources located in Indian country at this time. EPA will work with those tribes and sources to develop or adopt Clean Air Act programs.

FOR MORE INFORMATION

EPA will accept comment on the proposal for 120 days after publication in the Federal Register and will hold four public hearings on the proposed Clean Power Plan during the week of July 28 in the following cities: Denver, Atlanta, Washington, DC and Pittsburgh. The proposed rule, information about how to comment and supporting technical information are available online at: http://www.epa.gov/cleanpowerplan

EPA FACT SHEET: Clean Power Plan

THE ROLE OF STATES

STATES DECIDE HOW THEY WILL CUT CARBON POLLUTION

On June 2, 2014, the U.S. Environmental Protection Agency, under President Obama's Climate Action Plan, proposed a commonsense plan to cut carbon pollution from power plants. States, cities and businesses across the country are already taking action to address the risks of climate change, and EPA's proposal recognizes this progress. The Clean Air Act creates a partnership between EPA and the states—with EPA setting a goal and the states deciding how they will meet it. Each state will choose the best set of cost-effective strategies for its situation. The Clean Power Plan will help maintain an affordable, reliable energy system, while cutting pollution and protecting our health and environment now and for future generations.

STATES GET TO DECIDE

- Before issuing the Clean Power Plan, EPA heard from more than 300 stakeholder groups, including states, utilities, labor unions, nongovernmental organizations, consumer groups, industry and others to learn more about what programs are already working to reduce carbon pollution. We learned that states are leading the way– especially through programs that encourage energy efficiency and renewable energy.
- States can choose to rely on measures EPA used to calculate the goal to varying degrees, as well as on other measures that were not part of the goal-setting analysis.
- States can choose to participate in multi-state programs that already exist or may create new ones
- States that have already invested in energy efficiency programs will be able to build on these programs during the compliance period to help make progress toward meeting their target.
- States can choose how to meet the goals – they have up to two or three years to submit final plans depending on whether they work alone or in partnership with other states and up to 15 years for full implementation of all emission reduction measures, after the proposed Clean Power Plan is finalized.
- States get to decide when individual power plants must make reductions.
- EPA's guidelines also provide flexibility and encourage states to look across their whole electric system to identify strategies to include in their plans that reduce carbon pollution from fossil fuel fired power plants.
- Some of the measures states can choose to rely on in their plans include, but are not limited to:
    - demand-side energy efficiency programs
    - renewable energy standards
    - efficiency improvements at plants
    - co-firing or switching to natural gas
    - construction of new Natural Gas Combined-Cycle plants

- transmission efficiency improvements
- energy storage technology
- retirements
- expanding renewables like wind and solar
- expanding nuclear
- market-based trading programs
- energy conservation programs

- States can choose to integrate plans with the long-term planning and investment processes already used in this sector, and design them in ways that address region- and state-specific needs.
- The proposal gives states significant flexibility to develop a program that addresses the unique needs of generators within each state. It provides states the ability to craft requirements that vary the timing and magnitude of reductions to address individual challenges that municipal utilities and rural electric cooperatives may face.
- States can decide how to treat plants nearing the end of their useful life and how to help plants avoid "stranded investments."
- Together, the choices that states can make about when power plants must make reductions and about how they can do so will allow states to work with sources, planners and regulators to address individualized issues that may arise. The states and EPA will rely on the continued discussions with a broad variety of stakeholders – including utilities, Regional Transmission Operators, and state public utility regulators – to make sure all issues are appropriately considered and addressed.
- By setting a state-specific goal and giving states the choice about what to include in their plans, EPA is ensuring that states have the flexibility they need to drive investment in innovation, while ensuring reliability and affordability.

FOR MORE INFORMATION

EPA will accept comment on the proposal for 120 days after publication in the Federal Register and will hold four public hearings on the proposed Clean Power Plan during the week of July 28 in the following cities: Denver, Atlanta, Washington, DC and Pittsburgh. The proposed rule, information about how to comment and supporting technical information are available online at: http://www.epa.gov/cleanpowerplan

Ohio EPA
111(d) Stakeholder Group

May 19, 2014

Purpose / Goal of Stakeholder Group

- 111(d) plan may be most complex state plan ever needed
- Ohio EPA required to develop plan to submit to U.S. EPA
- Need stakeholder input/ideas/discussion on elements of Ohio plan

Basic Ground Rules for Stakeholder Group

- Focus on plan that is needed – what are key elements
- May need subcommittees to work on specialized topics
- Not seeking consensus from stakeholders

Basic Ground Rules for Stakeholder Group

- Not a forum for debate on legality of requirement – that will occur elsewhere

Guidelines for State of Ohio Plan

- Maintain Reliability
- Minimize Cost to utilities and consumers
- Include Compliance Flexibility, where possible
- Achieve Required Reductions

What is 111(d)?

- Specific provision of the Clean Air Act
- Applies to non-criteria pollutants
  - e.g. H_2S, sulfuric acid mist, CO_2
- Once U.S. EPA adopts New Source Performance Standard (NSPS) for non-criteria pollutants for certain source category, 111(d) comes into effect
- Requires control of that non-criteria pollutant from that specific source category

111(d) for Electric Generating Units

- In this case, once U.S. EPA adopts the NSPS for CO_2 for Electrical Generating Units, 111(d) becomes effective
- 111(d) is designed to be a state program
- Section 111calls for "best system for emission reductions"
- 111(d) specifies that state plan may consider "remaining useful life of existing source"

111(d) for Electric Generating Units

- Wide spectrum of opinions on what is "best system for emission reduction"
- Some believe U.S. EPA has wide authority to require wholesale changes to electric generation system in the US
- 111(d) never applied in that manner– has always been source oriented or "Inside the fenceline"
- Waiting to see U.S. EPA proposal
  - Due June 2, 2014

111(d) for Electric Generating Units Schedule

- U.S. EPA proposes state guidelines – June 2014
- U.S. EPA adopts state guidelines – June 2015
- States required to submit plans – July 1, 2016
- States will have only one year to develop rules to regulate the electrical generation system!

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U.S. EPA Actions on New and Existing Power Plants

- What have we been doing?
  - ➢ Provided comments to U.S. EPA with our concerns
  - ➢ Working with PUCO to ensure coordination and that we account for impacts on system reliability
  - ➢ Consulting with other states such as Kentucky, Indiana, Pennsylvania, South Dakota, Texas, etc. to understand possible impacts of rule

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Ohio Electrical Generation Capacity

- Initial Coal = 19581 MW
- Mercury Rule Closure = 4215 MW
- Conversion to Gas = 772MW
- Total Gas – 8866 MW
  (Simple Cycle= 6030 MW Combined Cycle = 2836 MW)
- Total Nuclear = 2120 MW
- "At Risk" Coal Capacity Due to CO_2 ≈ 5000 MW
- New Gas Capacity (Proposed) = 2800 MW
- Announced closure, gas conversion and "at risk" capacity ≈ 10,000 MW

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New Natural Gas Capacity

- Four natural gas facilities have proposed to build in Ohio:
  - Oregon Power Plant – 800 MW
    - Not yet under construction
  - Carroll County Power Plant – 700 MW
    - Not yet under construction
  - Middletown Power Plant – 500 MW
    - Not yet under permit, application just filed
  - Lordstown Power Plant – 800 MW
    - No application yet
- No new gas plants will be on line before closures in 2015

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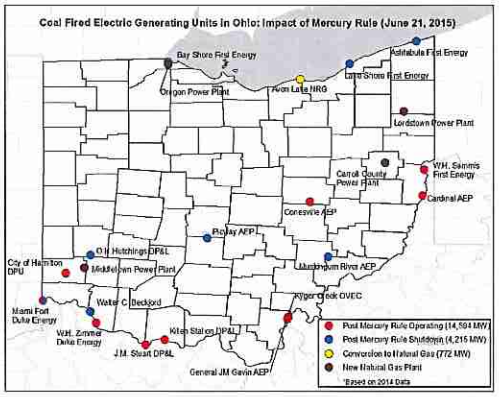

111(d) Stakeholder Group

- Discussion Topic:
  - How can Ohio more accurately quantify and articulate the loss of electricity-generating capacity with the proposed regulatory changes? What does this loss of capacity mean to consumers (industrial, commercial, residential) in terms of reliability and pricing?

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111(d) Stakeholder Group

- Discussion Topic:
  - What is the role of the energy efficiency and alternative energy in our plan?
  - How can reductions be projected in the future to be made part of the state plan?

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111(d) Stakeholder Group

- Discussion Topic:
  - Should we consider a system-based approach (within the state or regional)? Do the Regional Transmission Organizations such as PJM have a role? If so, how? What are the pros and cons of this approach?

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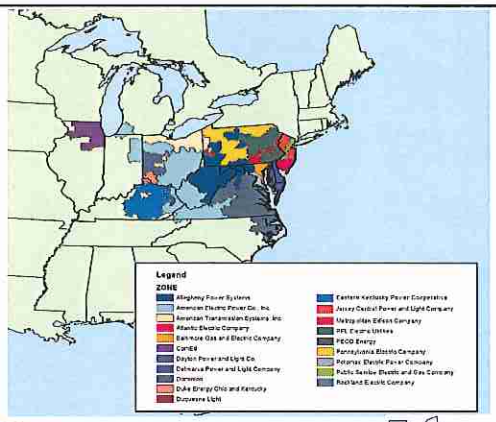
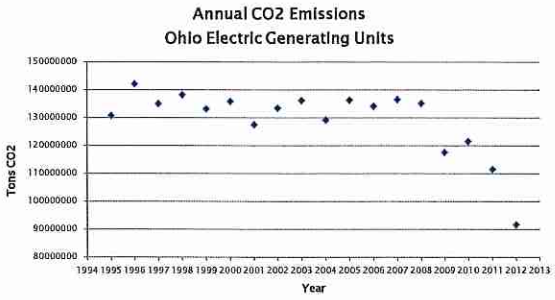


111(d) Stakeholder Group

- Discussion Topic:
  - Are there other impacts that need to be considered besides electric generating costs?
  - Impacts on manufacturing jobs, coal?
  - How can these be calculated?

111(d) Stakeholder Group

- Discussion Topic:
  - What should be the base year for Ohio?



111(d) Stakeholder Group

- Available Resources?
  - What resources are available to assist with plan development?

111(d) Stakeholder Group

- Frequency of Meetings
  - Once proposed rule is issued – busy time, will schedule a meeting about 30 days after proposal
  - After comments are submitted – need to continue to develop key elements while rules are finalized
  - Once rules are final – review final rule, modify draft plan, start to write rules, work towards meeting deadline

Thank you for attending!

Understanding State Goals under the Clean Power Plan

2014 JUNE 4

Janet McCabe

June 4, 2014
2:54 pm EDT

The Clean Power Plan is about getting all the power we need, with less of what we don't need: pollution. Many people are now looking more closely at the plan and want to know a little more about how it all works, especially about what role their state will play in reducing carbon pollution.

Because the agency is looking for well-informed comments and input on the proposed plan, I wanted to explain a few key aspects of the proposal. By answering a few questions such as – 1) what's the baseline? 2) how is EPA using the Clean Air Act? 3) how can the power sector cut carbon pollution? 4) how did EPA set goals for each state? and 5) what flexibilities do states have? – I hope you'll come away with a better understanding of the Clean Power Plan and how it will achieve significant air pollution reductions. As more questions come up, we'll use this space and epa.gov/cleanpowerplan to answer them. Now, on to the questions!

What baseline did EPA use to determine how much pollution must be reduced?

EPA did not set a baseline. Remember, the plan is about generating the power we need, but with less pollution. So instead of setting a baseline, the Clean Power Plan works by setting state goals to reduce the "pollution-to-power ratio" of the covered fossil-fuel fired power plants in a given state. EPA projects that by 2030, when states meet these goals, the U.S. power sector will emit 30 percent less carbon pollution than it did in 2005. But 2005 – or any other year – is not used a "baseline" year for a fixed percentage of reductions. We are using that statistic only because people need to know how much pollution we'll reduce by when and compared to what, so we're just comparing where we will be in 2030 to where we were in 2005.

How does the Clean Air Act work to cut carbon pollution from existing power plants?

EPA is proposing carbon pollution guidelines using section 111(d) of the Clean Air Act. Basically, this part of the law requires EPA to identify the best and cheapest ways to reduce pollution from a given source – in this case, power plants that burn fossil fuels. The key to reducing carbon pollution from the power sector is to generate and use power more efficiently. Put another way, the goal is to reduce the carbon pollution emitted for each megawatt-hour of electricity generated. That provides power with less pollution. The amount of carbon pollution per megawatt-hour produced is called an emission rate. It is the rate at which pollution is emitted per unit of power generated. If a source emits a lot of carbon dioxide but produces relatively little energy, then its "carbon intensity" is considered high. Using section 111(d) of the Clean Air Act, EPA is proposing that states develop plans to reduce the carbon intensity of the power sector. The goal is not to limit the amount of power we produce. It's about reducing the overall amount of carbon pollution from power plants, while still producing the energy we need.

How can the power sector reduce carbon emissions?

EPA found that there are a wide variety of commercially available, technically feasible, and cost-effective ways that states, cities and businesses across the country are already using to reduce carbon pollution from the power sector. EPA identified four measures–that are the commonly used, technically sound, affordable, and that result in significant reductions in carbon intensity. They are – 1) improving efficiency at existing coal-fired power plants, 2)increasing utilization of existing natural gas fired power plants, 3) expanding the use of wind, solar, or other low- or zero-emitting alternatives, and 4) increasing energy efficiency in homes and businesses. By applying some or all of these measures a state can reduce the carbon intensity of its power system. These aren't the only approaches that states can use, but EPA determined that—taken together—they are the best system of emission reduction, as that term is defined in the Clean Air Act.

How did EPA set goals for each state?

By looking at the mix of power sources and the ability of each state to take advantage of any of the four carbon pollution reduction measures, the EPA calculated goals for each state. The proposed state goals are based on **a consistent national formula** and calculated using specific information about the state or its region's individual power profile. The result of the equation is the state goal. Each state goal is a rate – a pollution-to-power ratio – for the future carbon intensity of covered existing fossil-fuel-fired power plants in a given state. States can meet their goal using any measures that make sense to them—they do not have to use all the measures EPA identified, and they can use other approaches that will work to bring down that carbon intensity rate. I hope this explanation makes clear that **EPA is not setting goals based on percentage reductions against a baseline year.** But when states meet their goals in 2030, EPA projects that the increased efficiency and reduced carbon intensity will result in a 30 percent less carbon pollution when compared with 2005 levels.

How do the state goals give states flexibility?

EPA has set a goal for each state based on an analysis of the best system of reductions, based on estimates of the potential in each state for efficiency improvements and increased utilization of cleaner generation. Once the state has a goal, however, it is free to meet that goal in the way that works best for that state. It can rely more or less heavily on specific measures such as efficiency or renewable energy, or even pursue others such as increases in transmission efficiency or new gas generation. The state can also choose the policy or portfolio of policies that works best to achieve the goal.

Learn more about the Clean Power Plan

The Clean Air Act and the state planning process offer enough time and flexibility for every state to cut wasted energy, improve efficiency, and reduce pollution – while still having all the reliable and affordable power we need to grow our economy and maintain our competitive edge. In the coming months, we'll be seeking comments and feedback on the proposed Clean Power Plan, and I encourage you to learn more and join the discussion: http://www2.epa.gov/carbon-pollution-standards

Air Program Update

Ohio Manufacturers' Association Environmental Committee
June 12, 2014

Michael Hopkins, P.E.
Assistant Chief, Permitting
Division of Air Pollution Control
614-644-3611
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Topics

- Permit Processing
- BAT Changes
- U.S. EPA's Clean Power Plan

2

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PERMIT PROCESSING

3

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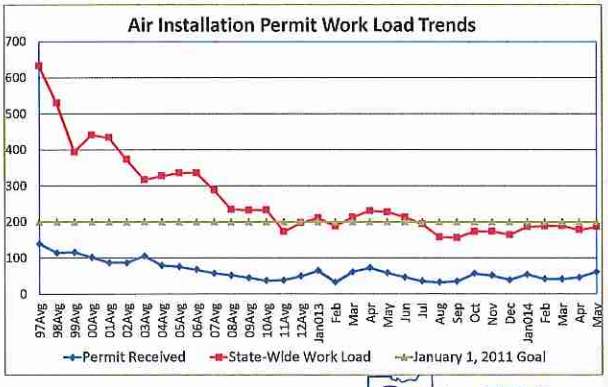

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Renewal Permits Effort

- Installation permit work caused renewals to backup
- 2010 got installation permits caught up
- Set aggressive goals for renewals – "no backlogged renewals by July 2014"
- Implemented multiple approaches

5

Renewal Permits Effort

- Set six-month sub goals
- Held six-month webinars w DO/Laa
- Worked with AG to identify and resolve appeal issues
- Set up meetings w/utilities
- Implemented program to train CO staff to do permits
- Shifted some permits

6

Renewal Permits Results

- All caught up on body shops, GDFs, concrete batch plants, bulk gasoline plants, drycleaners, drain dryers, crematoriums, electroplaters, stone/sand/gravel plants
- Appeal issues resolved
- Poised to issue utility renewals
- Dramatic progress but not done

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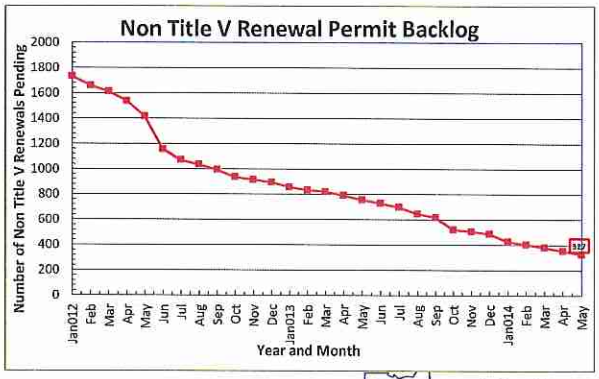

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BEST AVAILABLE TECHNOLOGY CHANGES

10

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Background

- 2006 SB 265 Changed BAT
- Issued several rounds of guidance
- Got comments/suggestions
- Issued revised guidance February 7, 2014
- Significant changes for new or modified after August 3, 2009

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SB 265 Expression Options

- Must express BAT using on of the four options:
  - Work Practice
  - Source Design Characteristic/Design Efficiency
  - Raw Material/Throughput
  - Monthly Allowable

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Work Practices

- Most will be description of work practice or implementation of a work practice plan
- No opacity, no ton/yr
- Few will be traditional opacity – only if company wants
- No ton/yr

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Source Design/Design Efficiency

- Applies when source/control was designed to limit a particular pollutant
- Short term appropriate but:
  - No emission limit in permit
  - Only "designed for" approach
- BAT = "Install a baghouse designed to meet 0.03"

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Source Design/Design Efficiency

- Larger sources… can do initial test
- No ongoing emission limit obligation
- Will need to maintain per manufacture's recommendations
- Will need to maintain records on maintenance
- OAC/other rules provide short-term backup
- U.S. EPA has concerns…

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Raw Material Specifications or Throughput Limitations

- Typical of part of synthetic minor limitations
- "45.6 tons of steel processed per rolling twelve-month period"
- No lb/hr, ppm, etc. for BAT… may need these for synthetic minor, however
- This format not used too often for BAT

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Monthly Allowable

- Similar to synthetic minor limitations
- "3.2 tons VOC/**month** averaged over a 12 month rolling period"
- Old way: 38.4 tons VOC/rolling 12 month period
- Overall restriction ends up the same but just described differently

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Monthly Allowable

- Will need monitoring, recordkeeping and reporting
- No lb/hr, ppm etc. short term limits
- OAC/other rules provide short-term

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U.S. EPA CLEAN POWER PLAN

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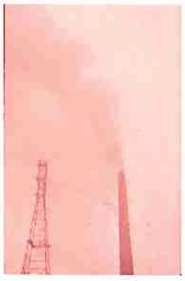
Clean Power Plan

- U.S. EPA issued proposal June 2, 2014
- ~1/3 US Carbon emissions comes from power sector
- Designed to reduce CO2 emissions from **existing** power plants
- Goal: 30% reduction USA wide (2005-2030)



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Clean Power Plan

- U.S. EPA calculated reduction goals for each state
- Based on existing mix of power generation
- Based on state lbs. CO2 per MWh produced
- States must meet 2020 and 2030 goals
- Each state different… based on each state's mix of emissions and power sources

21

Clean Power Plan

- States must put together plan
- Four "building blocks"
  - Improving efficiency of existing EGUs
  - Using lower-emitting EGUs (NGCC)
  - Zero-emitting generating (solar, wind, nuclear)
  - Improve demand-side efficiency
- Each state can use their own mix

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Clean Power Plan Goal Calculation

- 6% efficiency improvement for EGUs
- Replace coal/O/G MWh by unused NGCC MWh capacity up to 70% capacity factor
- Replace coal/O/G MWh by unused new NGCC MWH capacity up to 70% capacity factor

23

Clean Power Plan Goal Calculation

- Add under construction/"at risk" nuclear factor
- Add Renewable Energy factor
- Add Demand side Energy Efficiency factor

24

Clean Power Plan Ohio Goals

- 2012 baseline: 1,850 lbs. CO2/MWh
- 2020 goal: 1,452 lbs. CO2/MWh (21.5%)
- 2030 goal: 1,338 lbs. CO2/MWh (27.7%)

25

Clean Power Plan Schedule

- Comments due 120 days from FR publication (Mid October?)
- Hearings week of July 28 in Denver, Atlanta, Washington, DC and Pittsburgh.
- June 2015 final rule published
- June 2016 State plans due (not enough time!)
- 2020 interim goal
- 2030 final goal

26

Ohio EPA Plans

- Reviewing proposal
- Checking calculation method
- Checking basis for calculation
- Stakeholder process
  - Includes OMA, Chamber, Steel, etc.
  - Purpose: develop plan required by U.S. EPA
  - Will have opportunities to give input

27

Clean Power Plan Questions

- Calculation methodology fair?
- Basis for calculation correct?
- What is the likely impact?
- Is there enough time to develop plan?

28

Clean Power Plan Questions

- How does Ohio's efficiency standard apply?
- Is it possible to meet goals?
- What about electric reliability?
- Can we get power where it is needed?

29

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Wrap-up

- U.S. EPA Carbon Rule - http://www2.epa.gov/carbon-pollution-standards
- BAT Guidance – http://epa.ohio.gov/dapc/sb265.aspx
- DAPC Web - http://www.epa.ohio.gov/dapc/AirPollutionControl.aspx
- Questions?

30

OhioEPA

Ozone and Greenhouse Gases

The Coming Regulatory Storm

Ross Eisenberg
Vice President, Energy & Resources Policy
National Association of Manufacturers
reisenberg@nam.org

June 2014

MANUFACTURING MAKES AMERICA STRONG

The NAM Agenda

Goal 1: The United States will be the best place in the world to manufacture and attract foreign direct investment.

Goal 2: Manufacturers in the United States will be the world's leading innovators.

Goal 3: The United States will expand access to global markets to enable manufacturers to reach the 95 percent of consumers who live outside our borders.

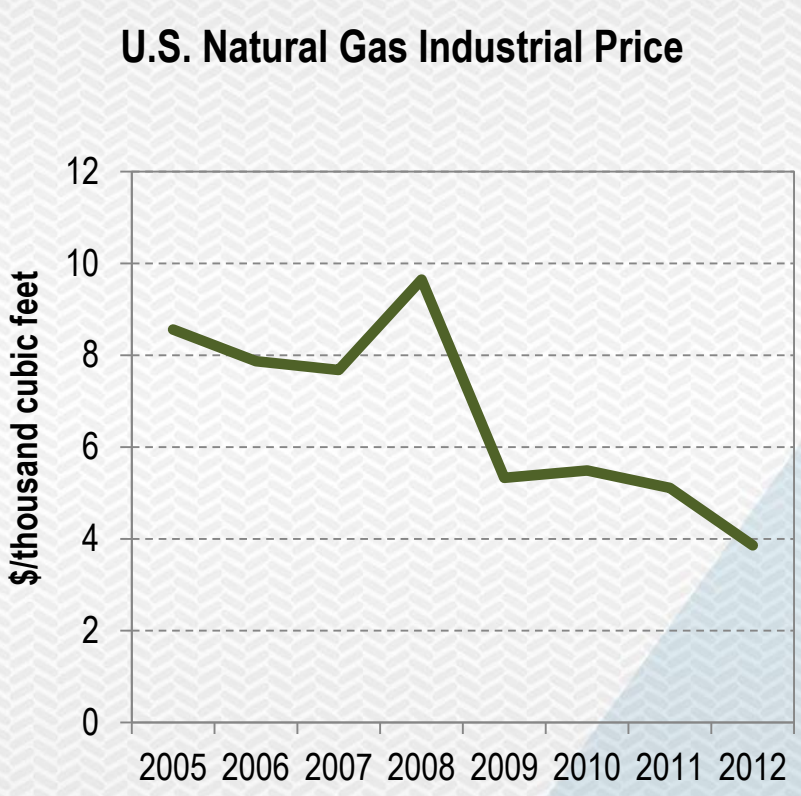
Goal 4: Manufacturers in the United States will have access to the workforce that the 21st-century economy demands.

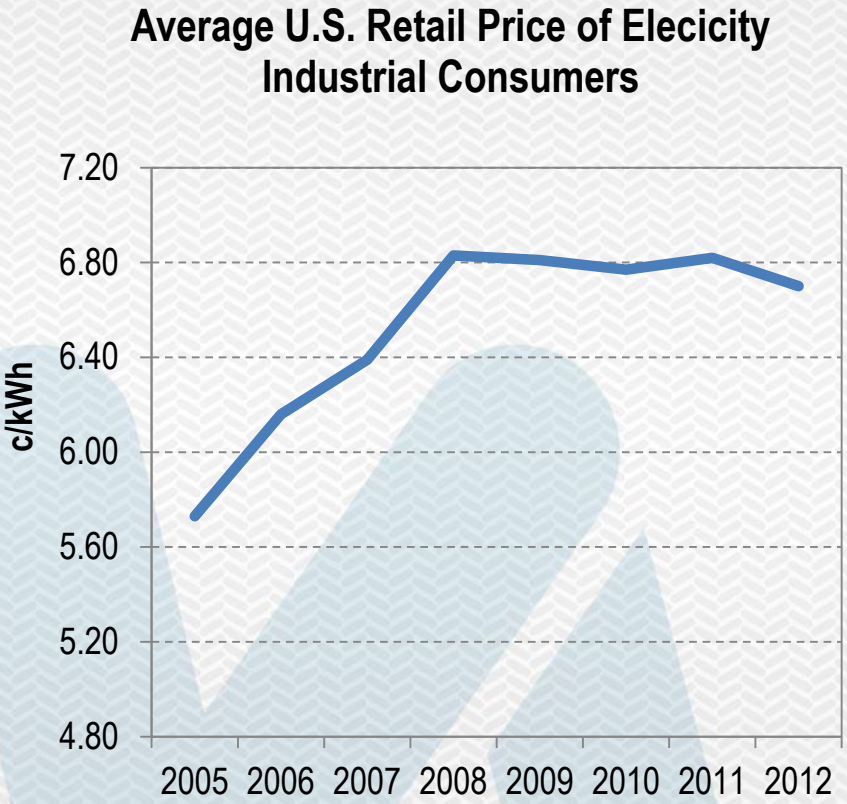
Energy Boom Driving Manufacturing Renaissance

- In 2012, supported more than 2.1 million jobs and contributed $284 billion to GDP.
- By 2020 will support more than 3.3 million jobs and 3.9 million jobs by 2025.
- Increase value of output for manufacturing of $258 billion in 2020, and $328 billion in 2025.
- 136 announced manufacturing plants representing a cumulative investment of $91 billion
- Manufacturers closing factories in other countries and returning to the United States

MANUFACTURING MAKES AMERICA STRONG

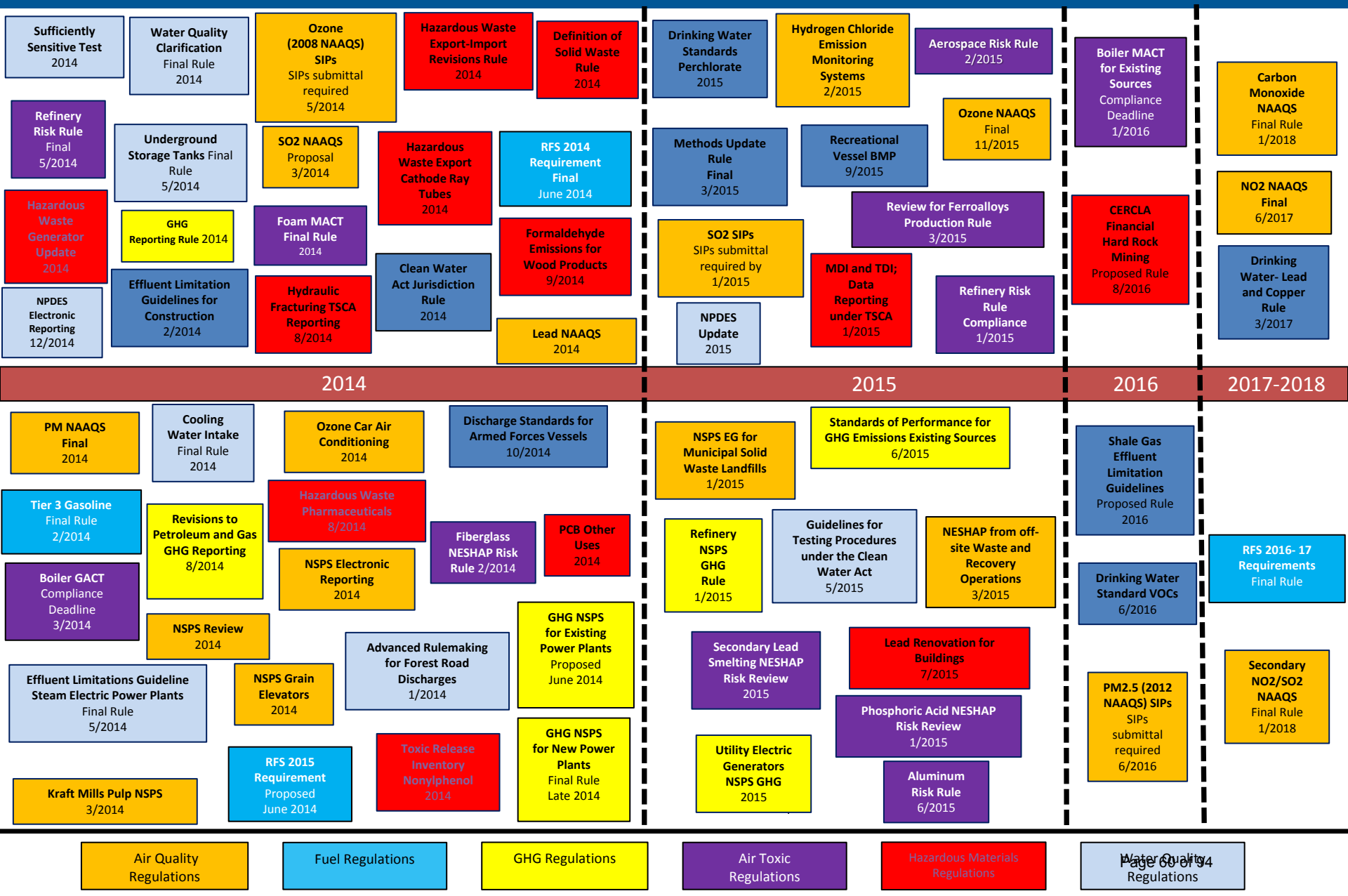
Energy Boom Impact on Manufacturers Energy Costs





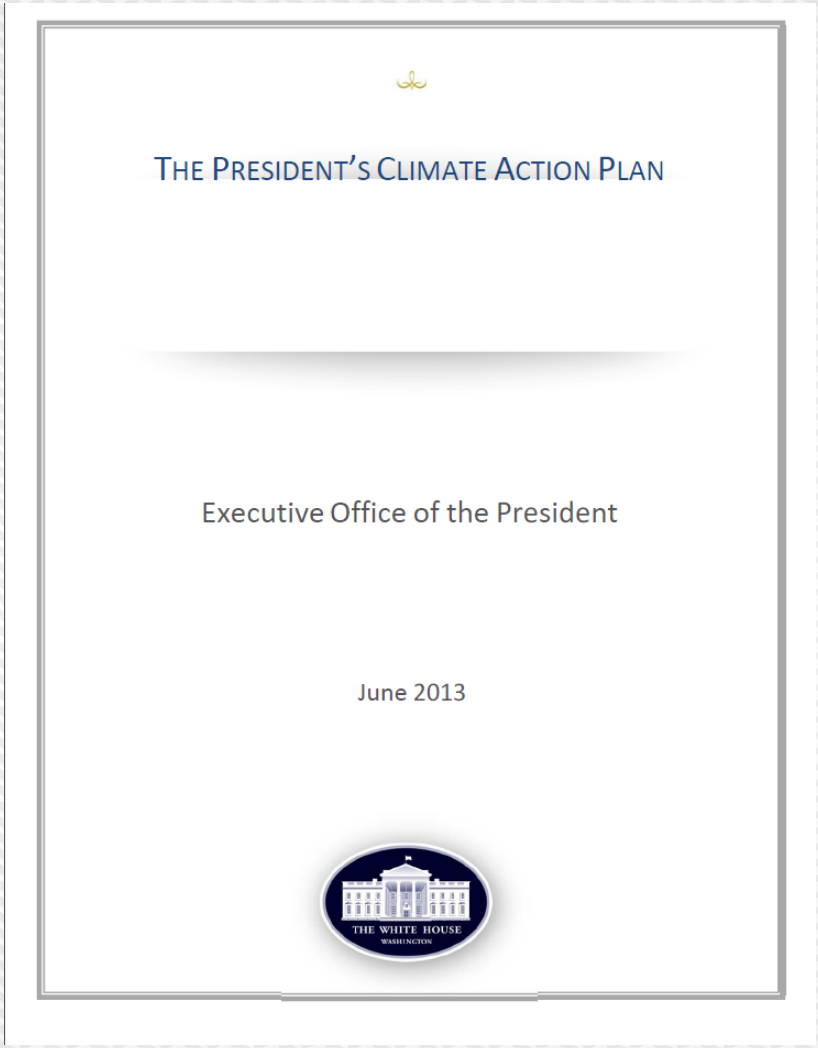
Source: EIA

EPA Rulemaking Timeline



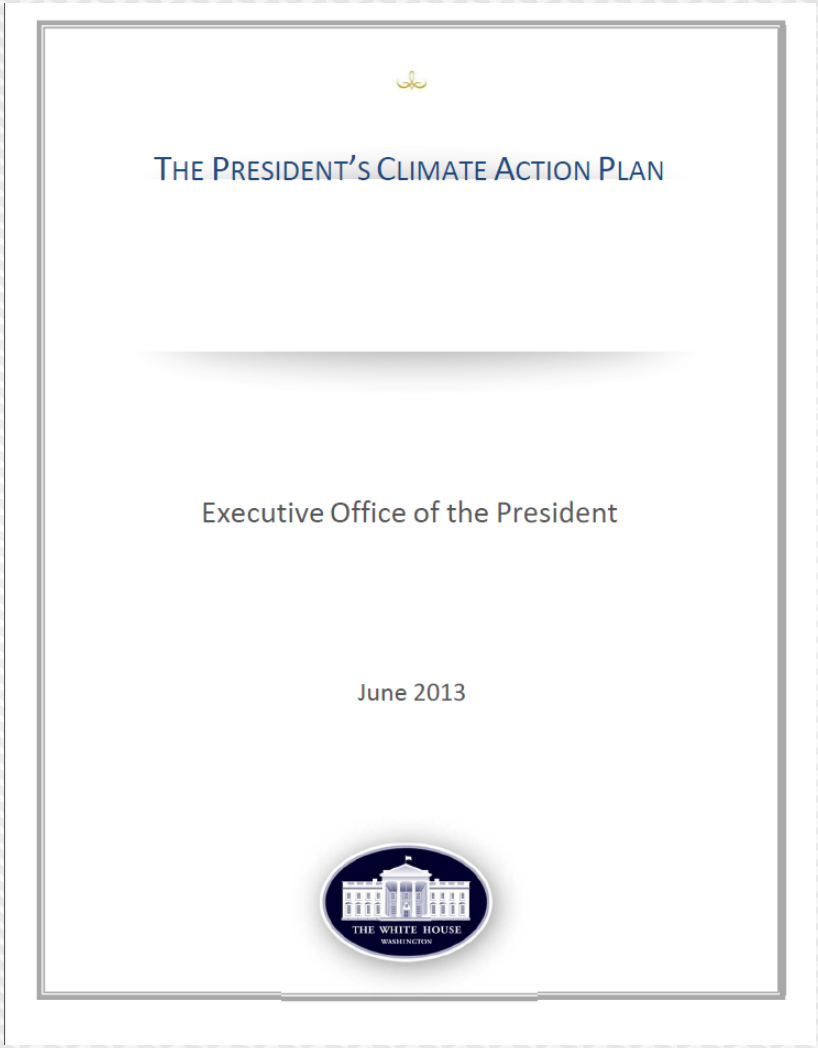
Updated March 2014

Greenhouse Gases: Overview



- Three Key Goals
  - 17% reduction in carbon emissions from 2005 to 2020
  - Prepare United States to adapt to climate change
  - Take leadership role in international climate change efforts
- Wide Range of Issues Addressed
  - Commitment to reduce carbon from new and existing utilities
  - Government purchase and installation of renewable energy
  - Incentives and guarantees for renewable energy
  - Investments in infrastructure for adaptation

Greenhouse Gases: Schedule of Regulation

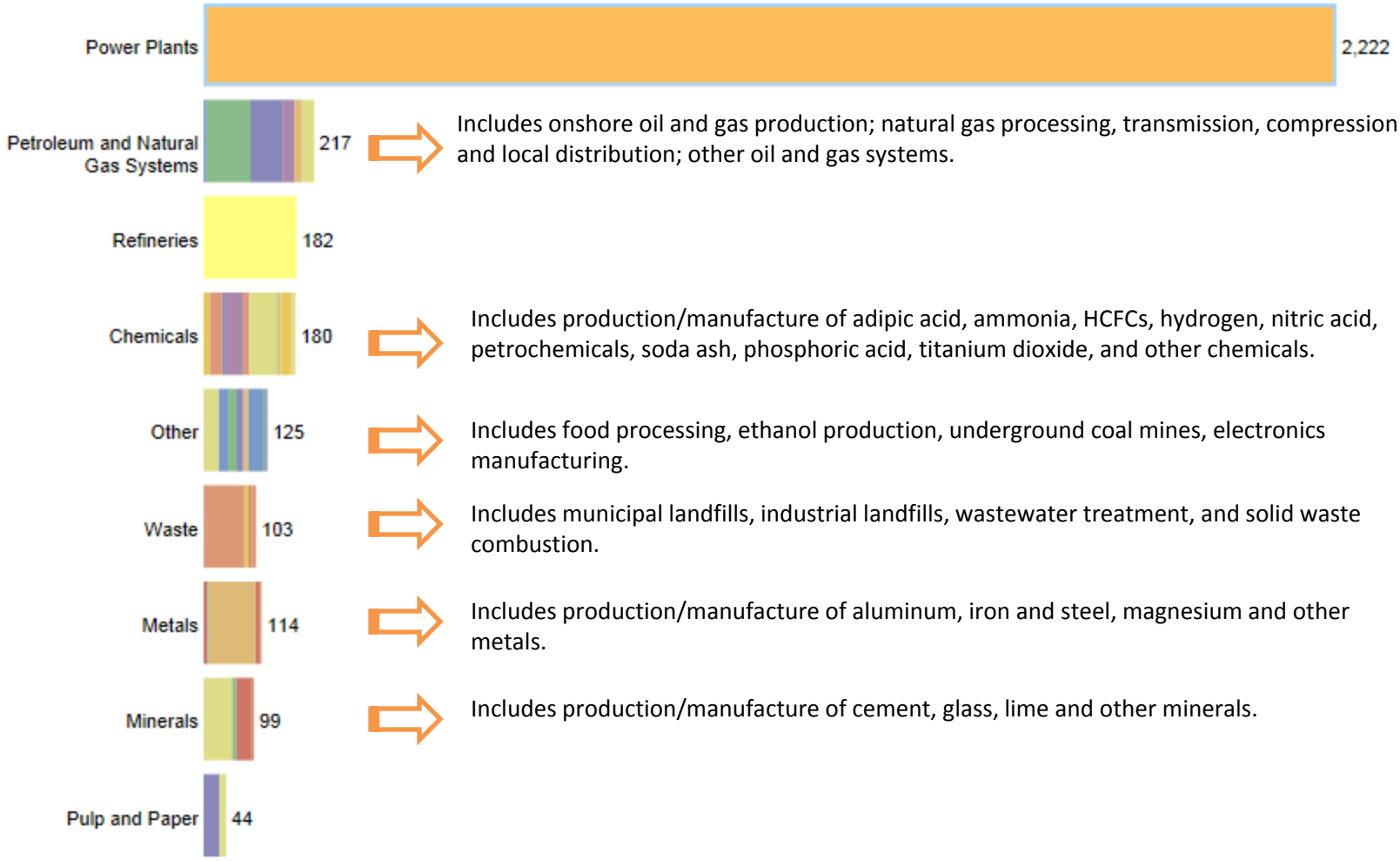


- NSPS for New Fossil Fuel-Fired Power Plants
  - Proposed 9/20/13; comment period closed May 2014
  - Three separate standards: new large natural gas plants, 1,000 lb/mwh; new small natural gas plants, 1,100 lb/mwh; new coal-fired power plants, 1,100 lb/mwh
  - To meet coal standard, partial CCS will be required; conventional coal-fired power plants are essentially banned going forward
- NSPS for Existing Fossil Fuel-Fired Power Plants
  - Proposed 6/1/14; Final rule expected 6/1/15
  - 111(d) SIP submittals due 6/30/2016; states may request one-year extension for single-state implementation plans, two-year extensions for multi-state implementation plans
  - Massively complicated regulation that ultimately requires 30 percent reductions from 2005 levels by 2030
- Post-2015: Refineries, Nat Gas, industrials

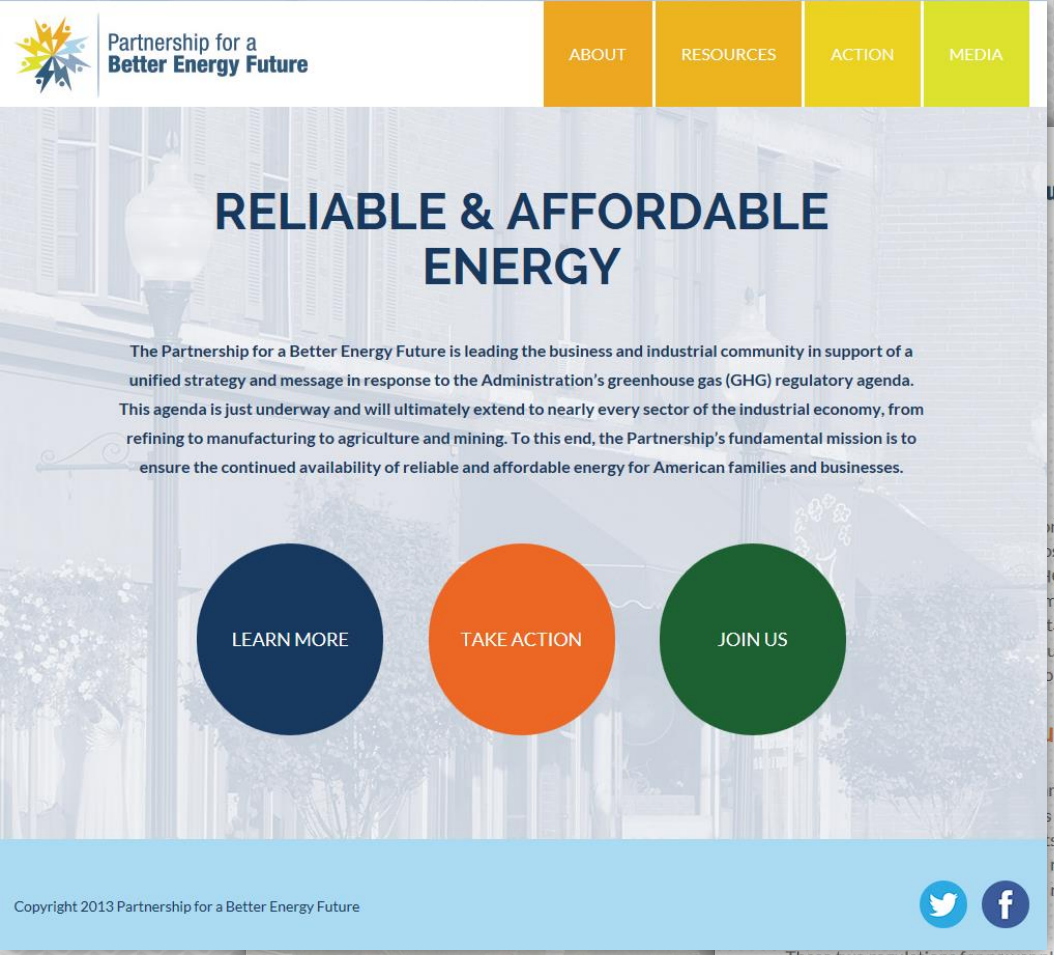
111(d) Rule overview

- *Determines each state's reductions by the state's capacity to implement "four blocks" of reduction strategies:*
  - **Block 1:** Reduce carbon intensity of coal generation through heat rate improvements – a 6% across-the-board reduction
  - **Block 2:** Replace carbon-intensive coal generation with existing and under-construction NGCC facilities
    - All NGCC facilities operate at 70% capacity
    - Emissions reductions vary based on current dispatch levels
  - **Block 3:** Replace carbon intensive coal generation with nuclear and renewable energy generation
    - Nuclear: complete all new construction; avoid projected retirement of 5.8% of current fleet
    - Renewable energy: increased generation to achieve regional average of current RPS mandates.
  - **Block 4:** Reduce demand for carbon-intensive coal generation through demand-side efficiency improvements.
    - Average annual energy efficiency improvements of 1.5%
- *Then allows states to choose their compliance options:*
  - Inside the fence: only fossil fuel EGUs are liable for achievable reductions at the facility through heat rate improvements, fuel switching, CCS and co-firing
  - Outside the fence: EPA allows states to hold "other entities to be legally responsible for actions under the plan that will, in aggregate, achieve the emission performance level." Includes displacing fossil fuels with renewable and nuclear energy, demand side management, and transmission and distribution energy efficiency measures.
  - Linking with existing state GHG regimes, such as AB32 (California economy-wide cap and trade), RGGI (Northeast US utility-level cap and trade) and CO Clean Air, Clean Jobs Act
- *Ohio is looking at about a 22% reduction from 2012 levels during the "interim goal" period (2020-2029) and a 28% percent reduction by 2030.*
  - According to EPA, Ohio's 2012 emission rate is 1,850 lbs/MWh. 2030 goal for Ohio is 1,338 lbs/MWh
  - EPA projects PJM to retire 4,622 MW of generating capacity by 2020 under these rules, all coal

U.S. - Direct GHG Emissions of Selected Gases Reported by Sector/Subsector in Million Metric Tons of CO_2e (2011 reporting period)



Source: Environmental Protection Agency (ghgdata.epa.gov)


Partnership for a
Better Energy Future
ABOUT
RESOURCES
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RELIABLE & AFFORDABLE ENERGY
The Partnership for a Better Energy Future is leading the business and industrial community in support of a unified strategy and message in response to the Administration's greenhouse gas (GHG) regulatory agenda. This agenda is just underway and will ultimately extend to nearly every sector of the industrial economy, from refining to manufacturing to agriculture and mining. To this end, the Partnership's fundamental mission is to ensure the continued availability of reliable and affordable energy for American families and businesses.
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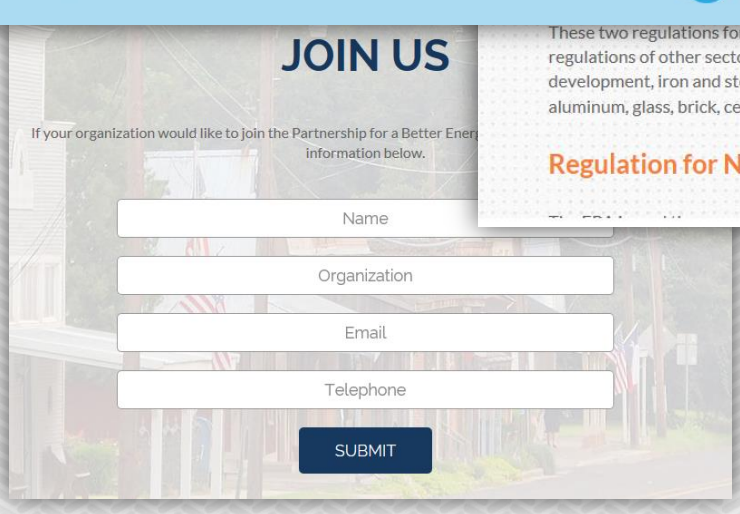
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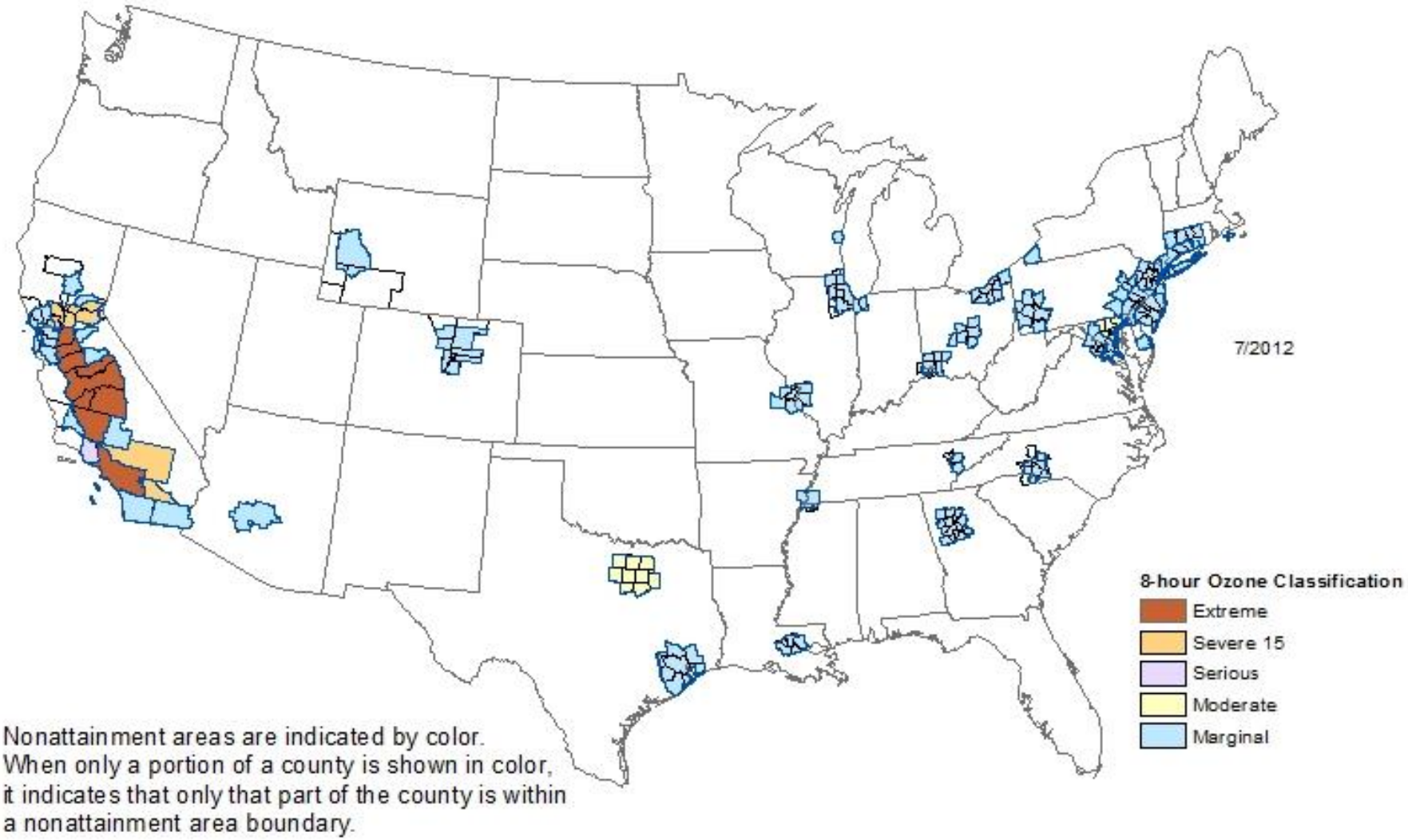
BACKGROUND ON REGULATIONS
n a regulatory agenda that
ostly ever imposed on the U.S.
G regulations for power plants will
ment of the industrial economy. This
tate which fuels can power our
urity and increase energy costs for
old in the country.
m
n executive memorandum directing
s to limit carbon emissions from
s. The memorandum called for the
regulation for new power plants by
regulation for existing power plants
These two regulations for power plants will set the stage for similar regulations of other sectors like refining, chemicals, natural gas development, iron and steel, pulp and paper, food production, aluminum, glass, brick, cement and other manufacturing.
Regulation for New Power Plants
September 2013
Proposed New Power Plants Regulation
Oct. - Nov. 2013
EPA Listening Sessions
Nov. 2013 - Jan. 2014
Comment Period for New Power Plants Regulation

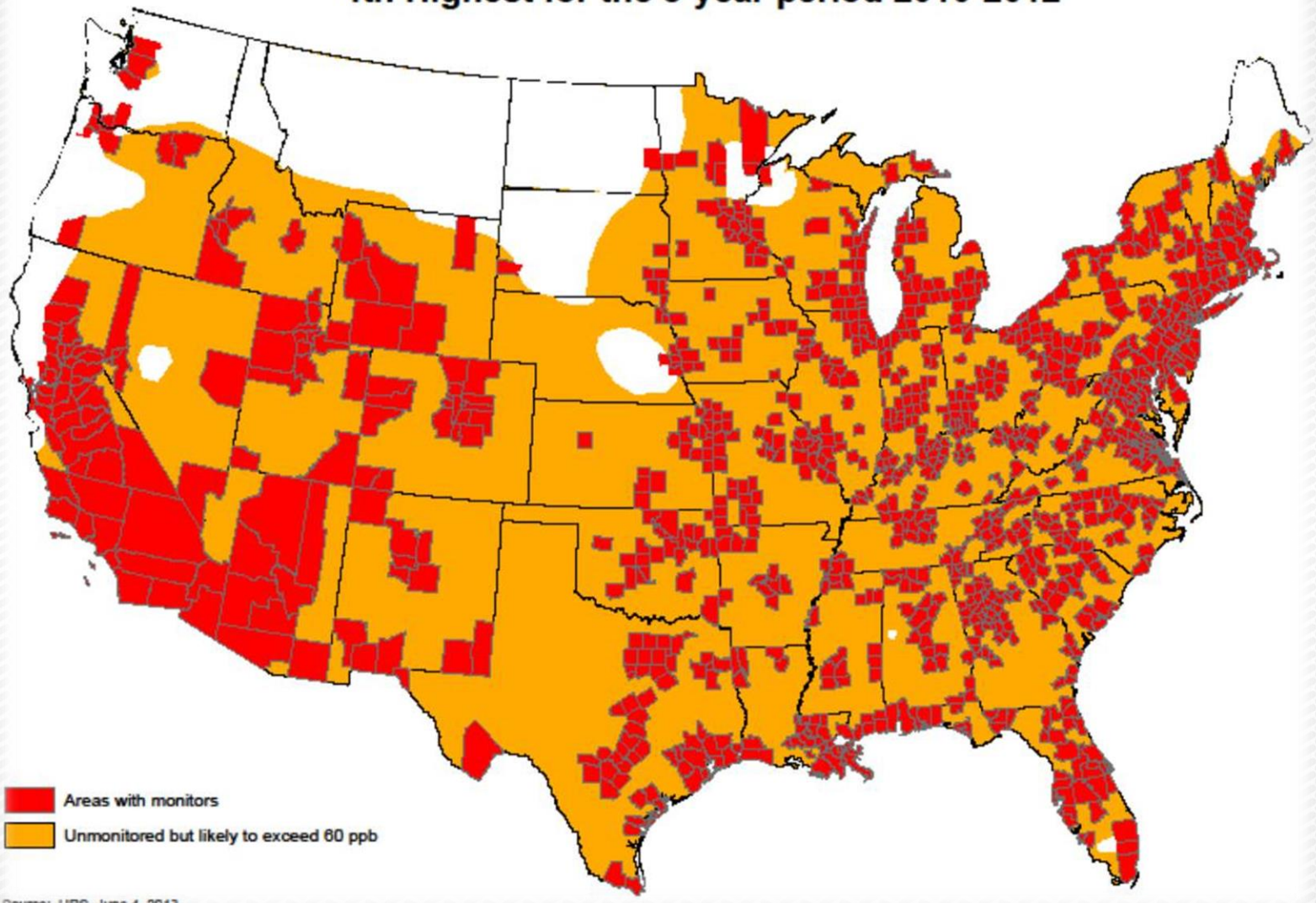
8-Hour Ozone Nonattainment Areas (2008 Standard)



Nonattainment areas are indicated by color. When only a portion of a county is shown in color, it indicates that only that part of the county is within a nonattainment area boundary.

Source: Environmental Protection Agency

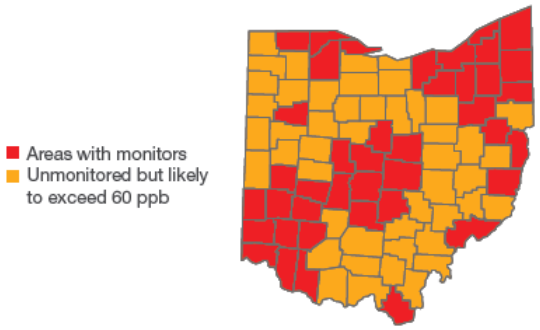
NAAQS Ozone 8-hr Design Values
4th Highest for the 3-year period 2010-2012



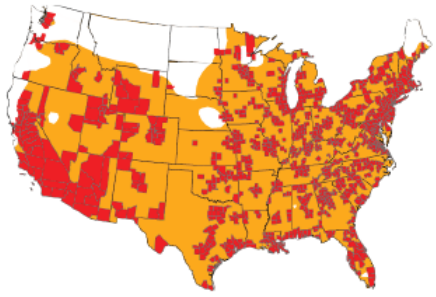
Source: URS, June 4, 2013

New EPA Regulations Will Stifle Manufacturing Growth in Ohio

The Environmental Protection Agency (EPA) is developing new ozone regulations that will put manufacturing growth at risk in the red and orange areas in your state.



Projected Nonattainment in Ohio (60 ppb)



Projected Nonattainment in the United States (60 ppb)

Source: URS

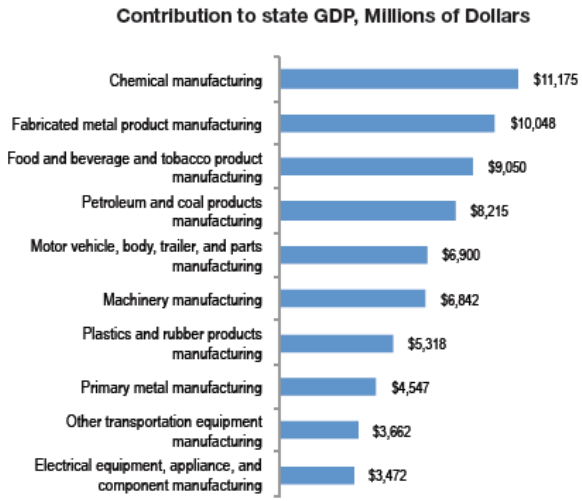
Growth Stifling Regulations Are Coming

- The ***EPA plans to tighten*** the National Ambient Air Quality Standards (NAAQS) for ***ground-level ozone*** from the current 75 parts per billion (ppb) to between 60 and 70 ppb, ***or even lower.***
- Ground-level ozone is formed from the combustion of fuel from cars, power plants and other industrial plants, as well as non-manmade sources like plants, forest fires and ozone from the stratosphere migrating to ground level.
- Just this year, a federal court ruled that the ***current standard protects human health.***

The Costs Will Be Astronomical

- When EPA considered tightening the same standard in 2010, the estimated costs in Ohio were ***$5.6 billion per year.***

At Risk: Top 10 Manufacturing Industries in Ohio



Source: U.S. Bureau of Economic Data

It Gets Worse For Counties In The Red and Orange

- ***Manufacturers won't be able to expand*** without a reduction of emission or ***shut down of operations*** from other businesses in the area.
- Plans for ***new plants*** and ***expansion*** at existing plants will be ***shelved.***
- ***Federal highway funds*** could ***freeze.***
- Existing facilities will have to ***change processes*** and ***pay for new equipment.***
- Economic ***growth will halt.***

Industries That Can't Grow

- Counties potentially impacted by the new standards are responsible for ***852,939 manufacturing, natural resources and mining, and construction jobs*** (U.S. Bureau of Labor Statistics, 2012 Q4).


MANUFACTURING
MAKES AMERICA
STRONG
NATIONAL ASSOCIATION OF
Manufacturers

TO: **OMA Environment Committee**
FROM: **Rob Brundrett**
DATE: **June 12, 2014**
RE: **Environment Policy Update**

Overview

The General Assembly recently adjourned for the summer. Ohio EPA has been relatively quiet on the legislative front over the past six months. Governor Kasich announced the permanent appointment of Craig Butler as the new EPA Director in late February. Director Butler had been serving as the interim director since Scott Nally resigned just after the New Year. Ohio EPA has a version of the MBR still pending and will be revisited by the General Assembly in the fall. U.S. EPA and its existing source standards will be a dominate subject for Ohio moving through the next year. Other agency issues will be dealt with through the regulatory process where the agency remains active.

General Assembly News and Legislation

House Bill 592 Review

Ohio EPA continues its internal work on a rewrite of the old House Bill 592, which created most of Ohio's current solid waste laws. Director Nally made it a priority to update this section of Ohio law and had a taskforce working on the rewrite. The agency appears stalled on phase II of the project.

The agency has recently let the OMA know that they are scaling back some of their priorities and hoping to have some legislation in place for the fall. Considering the amount of time they have worked on the project, portions of the rewrite should be ready to be introduced as legislation. This might be a bill with a chance to move in lame duck.

Senate Bill 150

Senate Bill 150 was signed by Governor Kasich this May. The bill is geared toward the agriculture industry. The bill requires those who apply fertilizer on Ohio's farmlands to be certified to do so. The General Assembly is hoping the law will help educate on proper fertilizer application to prevent overuse which can result in heavy nutrient runoff. This is important as Ohio EPA continues to review its nutrient strategy that could negatively impact manufacturers.

Senate Concurrent Resolution 25

Last year Senate Joe Uecker (R-Miami Township) introduced SCR 25. The resolution urges state agencies to adhere to green building standards that meet the American National Standards Institute voluntary consensus standard procedures instead of the most recent U.S. Green Building's Council's LEED standards. There has been controversy over the latest version of the LEED standards regarding process and the inclusion/exclusion of buildings materials that are regularly used. The resolution was passed from the Senate. The House announced it would refrain from holding any hearings on the issue until the fall.

Mid-Biennium Review – House Bill 490

The Governor's released his second mid-biennium review (MBR) bill this winter. The MBR bill is a comprehensive policy bill touching all aspects of state government, including Ohio EPA. The House promptly split the legislation into 14 different bills. EPA and Agriculture have their own MBR – House Bill 490. The bill has had numerous hearings in the House. One issue of note concerns changes to 6111, the Water Pollution Control Law. The bill creates a knowing and reckless standard for violations of ORC 6111.99. Currently, all criminal violations of Ohio's

Water Pollution Laws are misdemeanors, regardless of their severity or the intent of the violator. The suggested changes by Ohio EPA changes the way the agency would enforce violations.

House Bill 506

Last week Representatives Thompson (R-Marietta) and Cera (D-Bellaire) sponsored House Bill 506, which was developed in anticipation of the U.S. EPA's guidelines aimed at cutting carbon dioxide emissions from existing power plants. The bill's intent is to develop a framework on how Ohio EPA will comply with the new standards and guidelines revealed last week. The bill is an attempt to give Ohio more control over how its state plan would be able to implement the new federal standards. With a large amount of coal and gas fired generation, Ohio is particularly vulnerable to any new carbon rules from U.S. EPA. The bill passed the House last week.

Regulations

U.S. EPA 111(d)

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

The rule proposes a national reduction in power plant carbon emissions of 30% by 2030, from a base year of 2005. The base year selection of 2005 is significant, as emissions were much higher that year than in 2012, which some had anticipated would be the base year.

The EPA says it built a formula for state-specific reductions: "EPA analyzed historical data about emissions and the power sector to create a consistent national formula for reductions that reflects the building blocks. The formula applies the building blocks to each state's specific information, yielding a carbon intensity rate for each state."

Those "building blocks" are: making fossil fuel plants more efficient, fuel switching from coal to natural gas, increased use of solar, wind and nuclear power, and reducing electricity demand by increased energy efficiency.

The timetable for implementing these vast rules is aggressive: These rules are to be finalized next summer; the states then have one year to establish their compliance plans; and, the U.S. EPA then has one year to act on the states' plans.

Beneficial Use

This spring Ohio EPA released the much anticipated draft permits for foundry sand and alum sludge. They also released an Early Stakeholder Outreach document on "co-products" and "by-products". The overall goal of these would be to eventually compliment a beneficial use system and make it clear certain products are not wastes subject to beneficial use regulation. OMA submitted comments on the ESO.

Universal Waste

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

The OMA was recently approached by Ohio EPA to see what sort of backing the expansion of universal waste would have among members. Members interested should be prepared to contact the OMA to participate in a small working group on the issue.

Water Nutrient Work Group

Ohio EPA has been working on reducing the amount of nutrients that enter Ohio's waterways. The OMA has two members on the working group Ohio EPA created to review the issue. The group is meeting monthly to determine what is the best way to implement the state's water nutrient strategy.

Letter to U.S. EPA Regarding Stack Emissions Correction

The OMA and other Ohio business groups, submitted a letter to the U.S. EPA Region 5 regional administrator regarding its proposed rule, published in the Federal Register on February 7, 2014, that proposes to correct an error in EPA's October 26, 2010 approval of the provisions in Ohio Administrative Code (OAC) 3745-17-03 other than paragraph (A). One of the provisions that EPA now says it inadvertently approved, OAC Rule 3745-17-03(B), relates to the manner for determining compliance with Ohio's 20% opacity limit for stack emissions.

U.S. EPA and Ozone

The EPA plans to tighten the National Ambient Air Quality Standards (NAAQS) for ground-level ozone from the current 75 parts per billion (ppb) to between 60 and 70 ppb, or even lower. This will have a major impact on Ohio. See NAM presentation materials.

Agency Notes

Karl Gebhardt Named Ohio EPA Water Chief

Karl Gebhardt joined the Agency in April 2014 and will coordinate efforts addressing water quality resource issues related to harmful algae and other nutrient issues affecting Lake Erie and Ohio's inland waters. Gebhardt comes to Ohio EPA from the Ohio Department of Natural Resources (ODNR), where he served as deputy director and as the agency's point person for water quality and water resource issues. Prior to his role as a deputy, Gebhardt was Chief of the Division of Soil and Water Resources, where he provided leadership for the expansion of on-the–ground conservation practices, and developing legislation that would help in the efficient and effective delivery of conservation programs for nutrient management.

Other Notes

OMA Signs onto National GHG Advocacy Effort

The U.S. Chamber of Commerce, National Association of Manufacturers, and other key stakeholders have established the Partnership for a Better Energy Future, in response to the Obama administration's greenhouse gas (GHG) regulatory agenda. OMA has signed on as a member of the partnership.

The administration's GHG agenda is just underway and will ultimately extend to nearly every sector of the industrial economy, from refining to manufacturing to agriculture and mining. Most recently they announced their rules for existing electricity generating units.

The partnership, formally launched on January 30, aims to mobilize the business community to educate and motivate elected and public officials to address widespread concerns with these forthcoming greenhouse gas rules. Its mission is to ensure the continued availability of reliable and affordable energy for American families and businesses.

House Bill 506 is supported by the Ohio delegation to this group.

ORSANCO Chemical Committee

The Ohio River Valley Water Sanitation Commission's (ORSANCO) new executive director has approached the West Virginia Manufacturers' Association to gauge whether there would be interest in resurrecting the old chemical manufacturers committee. This would be a group made up of chemical manufacturers who operate within the ORSANCO zone who would supply information and analysis to the organization as policy decisions are being made.

ORSANCO operates programs to improve water quality in the Ohio River and its tributaries, including: setting waste water discharge standards; performing biological assessments; monitoring for the chemical and physical properties of the waterways; and conducting special surveys and studies.

(1) It is published in the newspaper of general circulation in which the first publication of the notice was made and is published on that newspaper's Internet website if the newspaper has one.

(2) It is published on the state public notice website.

(3) It includes a title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice, and includes a statement that the notice is posted in its entirety on the state public notice website. The notice also may be posted on the state agency's or political subdivision's Internet website.

(4) It includes the Internet addresses of the state public notice website and of the newspaper's and state agency's or political subdivision's Internet website if the notice or advertisement is posted on those websites and the name, address, telephone number, and electronic mail address of the state agency, political subdivision, or other party responsible for publication of the notice.

A notice published on an Internet website must be published in its entirety.[80]

Enforcement of Water Pollution Control Law

The bill increases criminal penalties for certain violations of the Water Pollution Control Law and establishes culpable mental states regarding certain violations as follows:

Type of violation	The bill	Current law
Violations of provisions regarding prohibited acts of pollution, compliance with effluent standards, and right of entry for enforcement purposes.	A knowing violation is a felony punishable by: a fine of not more than $25,000, imprisonment for not more than four years, or both. Each day of violation is a separate offense. A reckless violation is a misdemeanor punishable by: a fine of not more than $10,000, imprisonment for not more than two years, or both. Each day of violation is a	A violation is punishable by: a fine of not more than $25,000, imprisonment for not more than one year, or both.*

[80] R.C. 7.16, not in the bill.

Type of violation	The bill	Current law
	separate offense.	
Violations of provisions regarding submission of false information.	A knowing violation is a felony punishable by: a fine of not more than $25,000, imprisonment for not more than four years, or both. Each day of violation is a separate offense. A reckless violation is a misdemeanor punishable by: a fine of not more than $10,000, imprisonment for not more than two years, or both. Each day of violation is a separate offense.	A violation is punishable by a fine of not more than $25,000.*
Violations of orders, rules, or terms or conditions of a permit.	A knowing violation is a felony punishable by: a fine of not more than $25,000, imprisonment for not more than four years, or both. Each day of violation is a separate offense. A reckless violation is a misdemeanor punishable by: a fine of not more than $10,000, imprisonment for not more than two years; or both. Each day of violation is a separate offense.	A violation is punishable by: a fine of not more than $25,000, imprisonment for not more than one year, or both.*
Violations of provisions regarding waste minimization and treatment plans and fees per ton of waste.	A reckless violation is a misdemeanor punishable by: a fine of not more than $10,000, imprisonment for not more than two years, or both. Each day of violation is a separate offense.	A violation is punishable by a fine of not more than $10,000.*
Violations of provision requiring approval for plans for disposal of industrial waste.	A reckless violation is a misdemeanor punishable by: a fine of not more than $10,000, imprisonment for not more than	A violation is punishable by a fine of not more than $500.*

Type of violation	The bill	Current law
	two years, or both. Each day of violation is a separate offense.	
Violations of provision requiring approval of plans for installation of or changes in sewerage or treatment works.	A violation is punishable by a fine of not more than $10,000.* Each day of violation is a separate offense.	A violation is punishable by a fine of not more than $100.*

* No culpable mental state is specified. The default culpable mental state is recklessness.

The bill also provides that if a person is convicted of or pleads guilty to a violation of any provision of the Water Pollution Control Law, the court imposing the sentence may order the person to reimburse the state agency or a political subdivision for any response costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.[81]

Lead contamination of drinking water from plumbing

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing. It first prohibits using any pipe, pipe fitting, plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of a public water system or of any plumbing in a residential or nonresidential facility providing water for human consumption. Current law instead requires pipes, pipe fittings, solder, and flux that are used in a public water system or in plumbing for residential or nonresidential facilities providing water for human consumption that are connected to a public water system to be lead free. The bill retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.[82]

The bill also prohibits a person from doing any of the following:

(1) Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(2) Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies, except for the selling of plumbing supplies by manufacturers of those supplies; and

---

[81] R.C. 6111.99.

[82] R.C. 6109.10(B)(1) and (D)(1).

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

June 10, 2014

Robert A. Brundrett, Dir., Public Policy Services
Ohio Manufacturers' Association
33 N. High St.
Columbus, OH 43215

Via Regular Mail and E Copy

RE: Proposed Changes to ORC Section 6111.99

Dear Rob,

I am writing to inform you of proposed changes in HB 490 to criminal penalties currently found in Ohio Revised Code (ORC) Section 6111.99. I'd like to clarify any potential confusion regarding the scope of changes to this section and the agency's intention in pursuing these changes to the existing criminal penalties in ORC Section 6111.99. The most significant change involves inserting mens rea provisions (the intent or mental state of the alleged violator that the State would have to prove) whereby a knowing violation will be a felony and a reckless violation will be a misdemeanor.

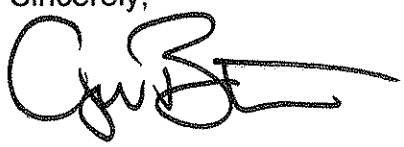
These changes are motivated by a significant gap in the existing criminal sanctions in ORC Section 6111.99. Presently, an intentional/knowing violation could only be charged as an unclassified misdemeanor. In the Hardrock Excavating/D&L Energy matter, this meant either charging the egregious, intentional conduct as a misdemeanor under state law or requesting federal prosecution under the federal Clean Water Act. We chose the latter and were thankful that the federal authorities chose to pursue the case. However, our preference would be to handle cases at the state level such that we can maintain control of the cases and their outcomes in the same manner that we do with our administrative and civil cases.

Additionally, inserting mens rea elements in the criminal provisions and fashioning appropriate sanctions based on the intent of the defendant is consistent with general provisions of the Ohio criminal code and also has precedent in other environmental statutes. (See for example ORC Section 6109.99 (drinking water law), ORC Section 3734.99 (solid/hazardous waste), and ORC Section 903.99 (Department of Agriculture PTI/CAFO NPDES provisions upon delegation)).

To be clear, we do not intend nor expect a shift from our typical enforcement paradigm, namely that the vast majority of violations that we encounter do not rise to the level of criminal conduct and thus the vast majority of our enforcement efforts will continue to be administrative/civil in nature. Our civil penalty provisions in ORC Section 6111.09 will not be altered by the changes in this bill.

I look forward to working with you, Chairman Hall, and other interested parties in moving these changes through the legislative process. Please use Annie van Blaricom as our main legislative contact on this bill.

Sincerely,



Craig W. Butler
Director

cc: The Honorable Dave Hall
The Honorable Andy Thompson
Madison Lisotto, Legislative Liaison, Governor's Office
Fred Shimp, Assistant Director, ODNR
Laura Factor, Assistant Director, Ohio EPA
Jim Canepa, Assistant Director, Ohio EPA
Cindy Hafner, Chief Legal Counsel, Ohio EPA
Annie van Blaricom, Legislative Liaison, Ohio EPA
Bill Fischbein, Legal, Ohio EPA

Am. H.B. 506*

130th General Assembly
(As Reported by H. Agriculture & Natural Resources)

Reps. Thompson and Cera, Grossman, Hill, Stebelton, Blessing

BILL SUMMARY

- Requires the Director of Environmental Protection to adopt rules establishing standards of performance for carbon dioxide emissions from existing coal-fired electric generating units and natural gas fired electric generating units (hereafter, existing generating units) in compliance with the bill if the U.S. Environmental Protection Agency (USEPA) adopts applicable regulations or issues applicable guidelines.

- Requires standards of performance for existing generating units to be based on specified factors, including reductions in carbon dioxide emissions that can reasonably be achieved.

- Requires the Director to consider whether to adopt less stringent standards or longer compliance schedules than those established in applicable federal regulations or guidelines when establishing a standard of performance for an existing generating unit based on specified factors, including consumer impacts and cost.

- Allows the Director to implement, to the maximum extent permissible, the standards of performance through mechanisms that provide flexibility in complying with the standards.

- Requires any plan establishing standards of performance for existing generating units developed under the bill to be prepared in consultation with the Public

* This analysis was prepared before the report of the House Agriculture and Natural Resources Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Utilities Commission of Ohio, the Ohio Air Quality Development Authority, and any other relevant agency.

- Requires the Director to consider the bill's provisions, to the extent practicable, in the development of a plan to be submitted to USEPA.

- States that any plan developed under the bill ceases to operate if applicable regulations adopted or applicable guidelines issued by USEPA under section 111(d) of the federal Clean Air Act are withdrawn by USEPA or invalidated by a court.

CONTENT AND OPERATION

Standards of performance for existing electric generating units

The bill requires the Director of Environmental Protection, if the U.S. Environmental Protection Agency (USEPA) adopts regulations or issues guidelines for reducing carbon dioxide emissions from existing coal-fired or natural gas-fired electric generating units (hereafter, existing generating units) under section 111(d) of the federal Clean Air Act, to adopt rules in accordance with the Administrative Procedure Act establishing standards of performance for carbon dioxide emissions from existing generating units to the maximum extent permissible under the USEPA regulations or guidelines.[1]

Standards of performance for existing coal-fired electric generating units must be based on all of the following:

(1) The best system of emission reduction that, taking into account the cost of achieving that reduction and any non-air quality health and environmental impact and energy requirements, has been adequately demonstrated for coal-fired electric generating units that are subject to the standards of performance;

(2) Reductions in carbon dioxide emissions that can reasonably be achieved through measures undertaken at each coal-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without changing from coal to other lower-carbon fuels, co-firing other fuels with coal, or limiting the economic utilization of the unit.[2]

[1] R.C. 3704.20(A).

[2] R.C. 3704.20(B).

Similarly, standards of performance for existing natural gas-fired electric generating units must be based on all of the following:

(1) The best system of emission reduction that, taking into account the cost of achieving that reduction and any non-air quality health and environmental impact and energy requirements, has been adequately demonstrated for natural gas-fired electric generating units that are subject to the standards of performance;

(2) Reductions in carbon dioxide emissions that can reasonably be achieved through measures undertaken at each natural gas-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at each natural gas-fired electric generating unit to reduce carbon dioxide emissions from the unit without changing from natural gas to other lower-carbon fuels or limiting the economic utilization of the unit.[3]

Consideration of whether to adopt less stringent standards

The bill requires the Director, in establishing a standard of performance for an existing generating unit, to consider whether to adopt less stringent standards or longer compliance schedules than those established in applicable federal regulations or guidelines based on all of the following:

(1) Consumer impacts, including any disproportionate impacts of energy price increases on lower income populations;

(2) Unreasonable costs of reducing emissions resulting from plant age, location, or basic process design;

(3) Physical difficulties with or the impossibility of implementing emission reduction measures;

(4) The absolute cost of applying the performance standard to the unit;

(5) The expected remaining useful life of the unit;

(6) Impacts of closing the unit, including economic impacts such as expected job losses, if the unit is unable to comply with the performance standard;

(7) Impacts on the reliability of the state's electrical grid;

[3] R.C. 3704.20(C).

(8) All actual reductions in carbon dioxide emissions beginning January 1, 2005; and

(9) Any other factors specific to the unit that make application of a less stringent standard or longer compliance schedule more reasonable.[4]

Additionally, the Director may implement, to the maximum extent permissible, the standards of performance established in rules adopted under the bill through mechanisms that provide flexibility in complying with the standards.[5]

Plans establishing standards of performance

The bill requires any plan establishing standards of performance for existing generating units developed under the bill to be prepared in consultation with the Public Utilities Commission of Ohio, the Ohio Air Quality Development Authority, and any other relevant agency to ensure that the plan does not threaten the affordability of electric power to all classes of electricity consumers, takes full advantage of the federal Clean Air Act to minimize impacts to the cost and reliability of electricity, and minimizes the impacts on current and future industrial, commercial, and residential consumers.[6]

Under the bill, the Director must consider the bill's provisions, to the extent practicable, in the development of a plan to be submitted to the USEPA under section 111(d) of the federal Clean Air Act.[7] The bill then states that any plan establishing standards of performance for existing generating units developed under the bill ceases to operate if applicable regulations adopted or guidelines issued by USEPA under section 111(d) of the federal Clean Air Act are withdrawn by USEPA or invalidated by a court.[8]

Federal Clean Air Act

Section 111(d) of the federal Clean Air Act requires the Administrator of USEPA to adopt regulations establishing a procedure under which each state must submit a plan that establishes standards of performance for any existing source for any air pollutant for which air quality criteria have not been issued or that is not included on a

[4] R.C. 3704.20(D).

[5] R.C. 3704.20(E).

[6] R.C. 3704.20(F).

[7] R.C. 3704.20(G).

[8] R.C. 3704.20(H).

list of hazardous air pollutants but to which a standard of performance would apply if the existing source were a new source.

HISTORY

ACTION	DATE
Introduced	03-25-14
Reported, H. Agriculture & Natural Resources	---

H0506-RH-130.docx/emr

About Us

The Ohio River Valley Water Sanitation Commission (ORSANCO), was established on June 30, 1948 to control and abate pollution in the Ohio River Basin. ORSANCO is an interstate commission representing eight states and the federal government. Member states include: Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia, and West Virginia. To view a list of current commissioners, click here: ORSANCO Commissioners

ORSANCO operates programs to improve water quality in the Ohio River and its tributaries, including: setting waste water discharge standards; performing biological assessments; monitoring for the chemical and physical properties of the waterways; and conducting special surveys and studies. ORSANCO also coordinates emergency response activities for spills or accidental discharges to the river, and promotes public participation in programs, such as the Ohio River Sweep and the RiverWatchers Volunteer Monitoring Program. To request a brochure or more information about ORSANCO, click here: Request Publications

To view a list of current ORSANCO employees, e-mail, and job functions, click here: ORSANCO Staff

ORSANCO is located at 5735 Kellogg Avenue (about one mile west of I-275) in Cincinnati, Ohio.

The Ohio Manufacturers' Association

POLICY GOAL:

Clear, Consistent, Predictable Environmental Regulations

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

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

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

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

Environmental policy priorities include the following:

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

- **Expand opportunities for industry to reuse non-harmful waste streams.** Beneficial reuse policies can result in less waste and more recycling of industrial byproducts.

- **Review Ohio's solid waste regulations, including procedures for disposing universal waste streams, to ensure safe and uniform disposal practices that are consistent with best practices used in other states.**

- **Reject state-level efforts to implement product composition mandates.** Such standards and requirements are best addressed at the federal level rather than through a patchwork of differing state-level requirements.

- **Reject extended producer responsibility policies that would shift responsibility for recycling certain consumer products from consumers to manufacturers.**

Environment

NAM's Eisenberg to Speak at OMA Environment Meeting

All OMA members are invited to the OMA Environment Committee on Thursday, June 12 at the OMA office from 10:00 a.m. until 1:00 p.m. (with lunch provided by OMA). A call-in option is also available. Agenda items include:

- Ross E. Eisenberg, vice president of energy and resources policy at the National Association of Manufacturers, will discuss impacts of new pending U.S. EPA ozone standards that that will affect manufacturers, and he'll also address the federal carbon regulation introduced this week.
- The committee will consider the latest 'beneficial use' draft permits and stakeholder outreach request from Ohio EPA.
- Michael E. Hopkins, P.E., Assistant Chief, Permitting, Ohio EPA, Division of Air Pollution Control, will address the committee regarding the state's air issues.

Register here for in-person or call-in attendance. *6/5/2014*

Assessing Impact of New Carbon Regulation

In anticipation of next week's unveiling of new carbon regulations on power plants, the U.S. Chamber released a new study that assesses potential impacts. It conclusion: higher electricity costs, lower GDP and not much effect on global atmospheric greenhouse gases.

NAM, in commenting on the study, notes: "If the U.S. acts alone with regulations designed to rapidly lower U.S. emissions and increase energy costs, manufacturers will become less competitive ceding production and jobs to other countries – increasing emissions in those often less energy- and carbon-efficient countries in the process. Manufacturers have demonstrated a commitment to reducing their GHG emissions. Manufacturing and other industrial carbon emissions are down 13% since 2005, while manufacturers' value added to the economy grew by 19% over the same time period.

NAM calls for a "strategy for lowering global emissions would be to promote policies that support U.S. manufacturers who continue to operate more efficiently, emit less and develop technologies that will support a sustainable future."

The study got the attention of U.S. EPA, which quickly commented on it. A peek at what is ahead, starting next week. *5/29/2014*

Ohio EPA Kicks Off Power Plant Carbon Discussion

In anticipation of the U.S. EPA's rules, expected next month, on carbon emissions from existing power plants, Ohio EPA Director Craig Butler conducted a first meeting of stakeholders to begin a dialogue on the best and most cost-effective way for the state to design compliance plans. These rules will be promulgated under Clean Air Act Section 111(d), and are commonly referred to as the "111(d) rules." The U.S. Supreme Court recently ruled that the agency has the authority to regulate carbon under the Clean Air Act.

Ohio EPA expects 111(d) to be the "most complex state plan ever needed." The expected timeline is incredibly fast: June 2014, U.S. EPA proposes state guidelines; June 2015, U.S. EPA adopts state guidelines; July 1, 2016, states required to submit plans.

This means the states will have only one year to develop rules to regulate carbon in the electrical generation system. *5/22/2014*

Ohio Lawmakers Take First Steps in Responding to Federal CO_2 Requirements

This week Reps. Andy Thompson (R-Marietta) and Jack Cera (D-Bellaire) provided sponsor testimony on House Bill 506 (bill analysis), a bill developed in anticipation of the U.S. EPA's pending regulations intended to cut carbon dioxide emissions from existing power plants.

The proposal provides a framework for Ohio EPA to comply with the new federal regulations while protecting the costs of energy to consumers. With significant coal and gas fired generation, Ohio is particularly affected by carbon dioxide regulation.

The bill requires any plan establishing standards of performance for existing generating units developed be prepared in consultation with the Public Utilities Commission of Ohio, the Ohio Air Quality Development Authority, and any other relevant agency to ensure that the plan does not threaten the affordability of electric power to all classes of electricity consumers, takes full advantage of the federal Clean Air Act to minimize impacts to the cost and reliability of electricity, and minimizes the impacts

on current and future industrial, commercial, and residential consumers.

Here is Rep. Thompson's testimony and here is Rep. Cera's testimony. *5/22/2014*

OMA on Record on U.S. EPA GHG Agenda

The comment period closed May 9 on U.S. EPA's New Source Performance Standards rule, a part of the Obama Administration's greenhouse gas (GHG) regulatory agenda. The Partnership for a Better Energy Future (PBEF), of which OMA is a member, submitted these comments.

PBEF wrote, "The EPA has indicated that it is considering GHG new source performance standards for other source categories….The Partnership's members are extremely concerned that a final regulation demanding unachievable standards of performance for electric power plants will set dangerous precedent for future regulation of other sectors."

The National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce co-chair the PBEF, which serves as a leading voice in support of a unified strategy and message in response to the president's GHG agenda. *5/12/2014*

Ohio EPA Releases New Information on Beneficial Use

This week Ohio EPA released two documents regarding its plans for a new beneficial use regulatory program.

"Conceptual Draft: Beneficial Use General Permit Information**"** contains two draft permits; one for spent foundry sand and one for alum sludge. It also outlines two new categories that will not be regulated under the program: co-products and certain by-products.

"Early Stakeholder Outreach - Beneficial Use: The "Co-Product" Concept**"** describes EPA's process to collect stakeholder input about nonhazardous secondary materials, sold in a commercially reasonable manner, are not wastes and should be viewed as products, and thus excluded from beneficial use regulatory programs.

To facilitate stakeholder consideration of this concept, the EPA will host a stakeholder meeting from 1:00 to 3:00 p.m. on May 21, 2014 at its Columbus office. Participation is in-person or via web meeting. Please register with Ohio EPA here. *5/8/2014*

Supreme Court Upholds EPA Transport Rule

The United States Supreme Court, in *Environmental Protection Agency v. EME Homer City Generation*, upheld the authority of the U.S. Environmental Protection Agency (EPA) to use the Clean Air Act to regulate air pollution that crosses state boundaries, the so-called "Transport Rule." The Transport Rule generally covers electric generating units that are fossil fuel-fired boilers and turbines producing electricity for sale.

OMA environmental counsel, Frank Merrill, of Bricker & Eckler, writes: "The 6-2 ruling may also be a signal that EPA's efforts to use the Clean Air Act to fight global warming could withstand legal challenges."

OMA energy counsel, Rebecca Hussey, of Carpenter, Lipps & Leland notes: "(T)he Supreme Court's decision may embolden the EPA to continue promulgating and implementing extremely aggressive pollution control programs and measures. Such a pattern would likely result in additional costs for consumers, namely manufacturers and industrial consumers, who consume significant amounts of power." *5/1/2014*

Tell U.S. EPA its Regulatory Agenda is Unworkable

U.S. EPA is embarked upon a regulatory agenda that is feared to be among the most costly ever imposed on the U.S. economy.

Until May 9, EPA is taking comments on proposed carbon dioxide regulations for new power plants that will limit the sources of energy needed to power U.S. homes and businesses.

The Partnership for a Better Energy Future (PBEF), of which OMA is a member, is calling for manufacturers to go on record with the EPA to oppose this regulation because it will damage the economy and risk our energy future. File your comments here.

PBEF is a coalition of businesses and organizations representing nearly every segment of the U.S. economy, united in support for responsible energy regulations. *4/30/2014*

Crown Equipment Earns First-Ever Ohio EPA Gold-Level Award

Ohio EPA Director Craig W. Butler visited OMA member Crown Equipment Corporation's New Knoxville plant to recognize it for setting the highest standard of environmental stewardship. He presented the company with the first-ever, gold-level

award in Ohio EPA's Encouraging Environmental Excellence (Ɛ3) program.

Crown, which is one of the world's largest material handling companies, designs, manufactures, distributes and services forklifts, material handling equipment and their components. The company's world headquarters is located in New Bremen. At its nearby New Knoxville facility, Crown manufactures electric motors and plastic injection-molded parts for new forklifts and dealer replacement parts.

The Ohio EPA E3 program acknowledges Ohio businesses and organizations for completing environmentally beneficial activities and serves as an incentive to commit to ongoing environmental stewardship. The gold level recognizes businesses that exceed regulatory compliance obligations and commit to long-term strategies to reduce waste, lower emissions and improve environmental performance.

Read about Crown's energy and environmental improvement activities. *4/22/2014*

D.C. Circuit Strikes Down a Clean Air Act Defense

This week the D.C. Circuit Court issued its decision in Natural Resources Defense Council v. Environmental Protection Agency et.al. The court delivered a potentially significant blow to manufacturers by holding that the U.S. EPA lacked power to create affirmative defenses to lawsuits brought under the Clean Air Act's (CAA) citizen suit provision.

This holding could have ramifications in citizen suits brought under a wide range of CAA emissions standards. The U.S. EPA previously created affirmative defenses for specific industries to allow a breach of the emissions standards for an unavoidable equipment malfunction. These affirmative defenses likely have deterred some litigation based on emissions associated with equipment malfunctions. With the new ruling, that barrier to litigation appears to have been eliminated. Read an analysis of the decision by OMA Connections Partner, Dinsmore. *4/24/2014*

Ohio Guide to Environmental Permitting Updated

Ohio EPA has just updated its Guide to Environmental Permitting in Ohio. The guide is intended to help businesses determine what permits they need, why they need them and how to get them. *4/22/2014*

NAM Running Ads Against Ozone Rule

The National Association of Manufacturers is running ads in newspapers and online in 10 states, calling attention to the severe problems with U.S. EPA's plans for new ground-level ozone standards. The ads direct readers to a new online video explaining the rule.

NAM says the rules are potentially "one of the most expensive regulations ever issued" and warns that huge new areas of nonattainment would mean those areas are "essentially prohibited from allowing new businesses to come to town."

The ads will run for several weeks in state capital publications in Arkansas, Colorado, Minnesota, North Carolina, Virginia, Iowa, Michigan, West Virginia, Kentucky, Ohio, and Missouri.

Watch the video here. See the effect on Ohio here. *4/15/2014*

OMA Submits Letter to U.S. EPA Regarding Stack Emissions

On behalf of OMA and other Ohio business groups, OMA Connections Partner, Porter Wright, submitted a letter to the U.S. EPA Region 5 regional administrator regarding its proposed rule, published in the Federal Register on February 7, 2014, that proposes to correct an error in EPA's October 26, 2010 approval of the provisions in Ohio Administrative Code (OAC) 3745-17-03 other than paragraph (A). One of the provisions that EPA now says it inadvertently approved, OAC Rule 3745-17-03(B), relates to the manner for determining compliance with Ohio's 20% opacity limit for stack emissions. Read the letter. *3/27/2014*

House Energy & Commerce Committee to Investigate U.S. EPA GHG Decision Making

This week the Partnership for a Better Energy Future (PBEF), of which the OMA is a member, responded positively to the U.S. House Energy and Commerce Committee announcement that it is launching an investigation into the U.S. EPA's decision-making process for consideration of carbon capture technologies in developing greenhouse gas emissions standards for new power plants.

In a statement, Ross Eisenberg, Vice President of Energy and Resources Policy at the National Association for Manufacturers, a co-chair of the PBEF, said," Businesses from almost every sector of the U.S. economy have raised concerns about the impact of EPA's GHG regulatory agenda on energy reliability and affordability." And, "As this difficult winter has illustrated, our country can't afford such a lack of (energy) diversity." *3/12/2014*

Harvard Law: Case for Energy Efficiency in Carbon Regs

A new report by Harvard Law School finds that the U.S. Clean Air Act allows energy efficiency to be part of new standards for carbon pollution from power plants.

The study notes: "Robust discussions are underway about EPA's options for crafting greenhouse gas emission guidelines for existing power plants. The discussions reflect widespread agreement that end-use energy efficiency is a cost-effective method for reducing greenhouse gas emissions. Yet stakeholders diverge on the role energy efficiency programs should play in the guidelines."

The legal analysis finds that the Clean Air Act gives the Environmental Protection Agency (EPA) broad authority to determine the "best system of emission reduction." EPA or states are not restricted to taking emissions reductions that can be achieved within a source's fence-line, as some have argued. *3/10/2014*

Prudent Action on GHG

This week the U.S. House of Representatives passed H.R. 3826, the Electricity Security and Affordability Act, 229-183. The OMA supported the bill and urges members to thank their congressmen who voted for the Act.

Manufacturers have significant concerns about U.S. EPA's proposed New Source Performance Standard (NSPS), the agency's first-ever regulation of greenhouse gas (GHG) emissions from a source category (power plants) under Section 111, because of the negative impact these regulations will have on energy prices and reliability, and thus the economy.

H.R. 3826 provides a more reasonable path forward in relation to the EPA's power plant GHG regulations, allowing the agency to regulate while also protecting a diverse energy mix. For new power plants, the bill requires separate standards for coal and gas, with the coal standard subcategorized for coal types and aligned with the best-performing commercially available generation technologies.

It also provides a sensible path for development and deployment of carbon dioxide capture and sequestration, prohibiting the EPA from mandating its use until the technology has been deployed by at least six units located at different commercial power plants in the U.S. It also allows the EPA to craft rules or guidelines for existing power plants, but requires Congress to review them and set a start date before they can take effect.

Backing this balanced approach contained in H.R. 3826 is the Partnership for a Better Energy Future (PBEF), of which the OMA is a member. The bill was drafted by Sen. Joe Manchin (D-WV) and Rep. Ed Whitfield (R-KY). Its co-sponsors include those on this list. Here's the PBEF letter that was delivered to representatives ahead of this week's vote; OMA is a signatory. *3/6/2014*

Butler Appointed Ohio EPA Boss

This week Governor Kasich appointed Craig Butler as director of the Ohio Environmental Protection Agency. Butler has been interim director of the EPA since the January resignation of former director Scott Nally.

Previously, Butler served as a senior policy advisor for the Kasich Administration on environmental, energy, public utility, and agricultural issues. He's worked in state government for more than 24 years, and previously served as District Director of both Ohio EPA's Central District Office and its Southeast District Office.

Butler earned his bachelor's degree in geography and environmental science from Mansfield University in Pennsylvania, and his master's degree in environmental science from Ohio University. *2/26/2014*

Manufacturers Go to Work on U.S. EPA GHG Proposal

Although the U.S. EPA's proposed New Source Performance Standard (NSPS) addresses specifically the utility sector, manufacturers have significant concerns about the EPA's first-ever regulation of greenhouse gas (GHG) emissions from a source category under Section 111, because of the impact these regulations will have on energy prices and reliability, as well as the potential precedent-setting nature of the approach on industrial sectors.

The Partnership for a Better Energy Future (PBEF), of which the OMA is a member, has drafted a set of comments as a resource for those concerned about this policy to learn more. The partnership urges the EPA to consider a more reasonable path forward based on technologically achievable standards. *2/26/2014*

Ohio EPA Issues Interim Solvent Wipe (Shop Rag) Rule

Last summer, U.S. EPA issued a new rule to clarify the handling and disposal of wipes or shop rags contaminated with solvents. The rule provided that

RCRA-authorized states, such as Ohio, can adopt their own solvent-contaminated wipes rule provided they are not less stringent than the U.S. EPA's rule.

On February 20, 2014, Ohio EPA issued an interim guidance document to cover this area until final regulations are adopted later this year.

OMA environmental counsel Frank Merrill of Bricker & Eckler wrote this bulletin on the issue. *2/20/2013*

OMA Environment Committee Hears Water Nutrient Update

This week the OMA environment committee studied a range of water issues and heard a presentation about Ohio EPA's water nutrient strategy from Christine Morgan, an attorney with Jones Day.

Ohio EPA has been working for a decade to develop new nutrient standards. This work was initiated in response to U.S. EPA's publication of national nutrient criteria recommendations in 2003 and Clean Water Act Section 106 grant work plan commitments.

Ohio EPA formed a technical advisory group to inform the development of nutrient standards. The OMA is represented on the advisory group by John Meyer, Director of Environmental and Sustainability, John Morrell Food Group, and Mike Brom, Director of Environment, Potash Corp.

Rob Brundrett is OMA's point person on the issue. *2/13/2014*

HB12 **LICENSED OPERATOR REQUIREMENT** (ROEGNER K) To eliminate the licensed operator requirement for gaseous fuel and fuel oil fired boilers that comply with certain safety and engineering standards.

Current Status: 10/31/2013 - **SIGNED BY GOVERNOR**; Eff. 1/30/2014

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_12

HB59 **BIENNIAL BUDGET** (AMSTUTZ R) To make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; to provide authorization and conditions for the operation of state programs.

Current Status: 6/30/2013 - **SIGNED BY GOVERNOR**; Eff. 6/30/2013; Some Eff. 9/29/2013; Others Various Dates

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_59

HB93 **OIL AND GAS LAW** (HAGAN R) To increase criminal penalties for violations of the Oil and Gas Law relating to improper disposal, transport, and management of brine, to establish a criminal penalty for a negligent violation of certain provisions of the Solid, Hazardous, and Infectious Wastes Law, and to require the revocation of a violator's permits and registration certificate and denial of future permit and registration certificate applications under the Oil and Gas Law.

Current Status: 6/25/2013 - House Agriculture and Natural Resources, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_93

HB148 **OIL AND GAS LAW** (DRIEHAUS D, HAGAN R) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.

Current Status: 6/25/2013 - House Agriculture and Natural Resources, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_148

HB205 **BRINE RECYCLING FEE** (GERBERRY R) To authorize a fee on the recycling of brine from oil and gas operations to benefit local governments.

Current Status: 6/25/2013 - House Agriculture and Natural Resources, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_205

HB282 **SALES-USE TAX LICENSE** (ROGERS J) To authorize vendors and others required to hold a sales or use tax license whose business and home address is the same to apply to the Tax Commissioner to keep such address confidential.

Current Status: 2/26/2014 - **BILL AMENDED**, House Ways and Means, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_282

HB417 **WATER-WASTEWATER UTILITY SERVICE IMPROVEMENT PROJECTS** (THOMPSON A) To ensure that all proven and acceptable piping materials be included in bids for water and wastewater utility service improvement projects.

Current Status: 3/19/2014 - House Public Utilities, (Second Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_417

HB472 **MBR-MID-BIENNIUM BUDGET REVIEW** (MCCLAIN J) To make operating and other appropriations and to provide authorization and conditions for the operation of state programs.

Current Status: 3/26/2014 - House Ways and Means, (Third Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_472

HB490 **MBR-AGRICULTURE-NATURAL RESOURCES-ENVIRONMENTAL PROTECTION LAWS** (HALL D, THOMPSON A) To revise certain laws governing agriculture, natural resources, and environmental protection.

Current Status: 5/20/2014 - House Agriculture and Natural Resources, (Fifth Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_490

HCR29 **EPA REGULATIONS** (THOMPSON A) To urge the President of the United States to halt the Environmental Protection Agency's costly and harmful pursuit of regulations that restrict fuel diversity for electricity generation and to pursue new fuel diversity policies.

Current Status: 11/19/2013 - Referred to Committee Senate Energy and Natural Resources

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_HCR_29

HCR49 **GREAT LAKES-ASIAN CARP** (SHEEHY M) To urge the United States Congress to approve and fund a hydrological separation of the Great Lakes and Mississippi River watersheds to stop the spread of Asian carp.

Current Status: 3/11/2014 - Referred to Committee House Agriculture and Natural Resources

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_HCR_49

SB59 **EDUCATION ENERGY COUNCIL** (BEAGLE B) To authorize an eligible regional council of governments to establish itself as an education energy council for the purpose of issuing debt to pay for school district energy purchases.

Current Status: 2/19/2014 - Senate Public Utilities, (Fourth Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_59

SB150 **AGRICULTURAL ADDITIVES, LIME AND FERTILIZER LAW** (HITE C, PETERSON B) To revise the law governing the abatement of agricultural pollution, to require a person that applies fertilizer for the purposes of agricultural production to be certified to do so by the Director of Agriculture, to provide for an agricultural pesticide-use category on commercial and private pesticide applicator licenses, and to make other changes to the Agricultural Additives, Lime, and Fertilizer Law.

Current Status: 5/22/2014 - **SIGNED BY GOVERNOR**

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_150

SB178 **DEEP WELL BRINE INJECTION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.

Current Status: 10/29/2013 - Senate Energy and Natural Resources, (First Hearing)

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_178

SCR9 **ASIAN CARP** (PATTON T) To urge the President of the United States and the Congress of the United States to take all actions necessary to prevent Asian carp from entering the Great Lakes, including Lake Erie.

Current Status: 11/19/2013 - Referred to Committee House Agriculture and Natural Resources

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_SCR_9

SCR25 **GREEN BUILDING RATING STANDARDS** (UECKER J) To urge, for Ohio state agencies and other government entities, the use of green building rating systems, codes, or standards that are consistent with state energy efficiency and environmental performance objectives and policies and that meet American National Standards Institute voluntary consensus standard procedures.

Current Status: 3/11/2014 - Referred to Committee House Manufacturing and Workforce Development

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_SCR_25

SCR34 **U.S. EPA-STATES PRIMACY** (GENTILE L) To urge the U.S. Environmental Protection Agency to recognize the primacy of states to rely on state utility and environmental regulators in developing guidelines for reductions of carbon dioxide emissions from existing power plants and to take other specified actions regarding greenhouse gas emissions.

Current Status: 2/19/2014 - Referred to Committee Senate Energy and Natural Resources

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_SCR_34