Environment Committee

February 13, 2014

Table of Contents

2014 Environment Committee Calendar

Thurs., Feb. 13, 2014
Thurs., June 12, 2014
Thurs., Oct. 23, 2014

OMA Environment Committee Meeting Sponsor:

JONES DAY | One Firm Worldwide℠

OMA Environment Committee

February 13, 2014

Agenda

Welcome & Roll Call	Chairman Joe Bulzan, RockTenn
Water Nutrient Presentation	Chris Morgan, Jones Day
SCR 25 Discussion	Neil Beup, United Technologies Ralph Raulie, Seaman Corporation
West Virginia Chemical Spill and Guest Speakers	Rebecca Randolph, President, West Virginia Manufacturers' Association Laurie Stevenson, Deputy Director for Business Relations, Ohio EPA
Counsel's Report	Frank Merrill, Bricker & Eckler
Boiler MACT Update	Ron Hansen, GT Environmental, Inc.
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:

JONES DAY | One Firm Worldwide℠

Laurie Stevenson, Deputy Director for Business Relations
Ohio Environmental Protection Agency

As deputy director for business relations, Laurie Stevenson acts as a primary contact for regulated entities to help coordinate permitting activities within the Agency, particularly for complex projects requiring multiple permits. In addition, she serves as an Agency contact to help coordinate compliance assistance-related education and outreach activities. She also acts as the Agency's ombudsman in assisting regulated entities with problem-solving related to permitting and regulatory issues.

Stevenson has worked at Ohio EPA for 20 years. She most recently served as the director's industrial liaison and chief of the Office of Compliance Assistance and Pollution Prevention (OCAPP). OCAPP is an independent office within Ohio EPA that helps small businesses achieve compliance with environmental regulations and helps all businesses reduce waste. She continues to provide oversight of this office. Previously, Stevenson managed Ohio EPA's Small Business Assistance Office for six years. She also held positions in Ohio EPA's Division of Hazardous Waste Management, starting in the Southeast District Office as a hazardous waste field inspector.

Stevenson earned a bachelor's degree in environmental health from Bowling Green State University and a master's degree in public health from The Ohio State University.

OMA Environmental Committee

Update on OEPA's Development of Surface Water Nutrient Criteria -- Technical Advisory Group Activities

February 13, 2014

Update:

1. Brief background to nutrient criteria development in Ohio
2. OEPA's proposed framework for nutrient criteria / Relevance for OMA Members
3. Technical Advisory Group activities
4. Key issues under review
5. OEPA rulemaking procedures

Briefing Materials (attached):

1. *Early Stakeholder Outreach – OAC 3745-1, Fact Sheet, "Developing Rules to Reduce the Impacts of Nutrients in Surface Waters,"* OEPA Division of Surface Water (March 2013).
2. *Trophic Index Criterion – Rationale and Scoring*, OEPA Division of Surface Water (March 2013).
3. *Guide to Rule-Making Fact Sheet*, OEPA Director's Office (Updated March 2013).
4. Excerpts from OEPA presentations to the TAG.

Presented by
Christine M. Morgan
Jones Day
(Counsel to PCS Nitrogen Ohio, L.P.)
cmmorgan@jonesday.com

FACT SHEET

Division of Surface Water
March 2013

Early Stakeholder Outreach – OAC 3745-1

Developing Rules to Reduce the Impacts of Nutrients in Surface Waters

What rulemaking is Ohio EPA considering?

Water quality standards (WQS, OAC 3745-1) establish the uses and criteria for how Ohio's surface waters will be managed and regulated. This rulemaking will address the need, and the most appropriate means to protect beneficial uses of water from adverse impacts due to cultural eutrophication. Cultural eutrophication is the result of releasing large amounts of nutrients into rivers and lakes. If left unchecked cultural eutrophication can result in harmful algal blooms, the depletion of dissolved oxygen and fish kills. Cultural eutrophication associated with high levels of phosphorus and nitrogen is one of the leading causes of impairment of aquatic life in Ohio's lakes, streams and rivers. Ohio EPA began working in 2002 to establish scientifically sound criteria and practical tests that will link excessive amounts of nutrients to the water quality problems that nutrients create. Ohio EPA is now ready to begin the process to adopt criteria to address cultural eutrophication.

What has Ohio EPA already done?

The Division of Surface Water (DSW) has designed and carried out studies on Ohio's lakes and rivers. These studies provide useful data for interpreting how aquatic systems in Ohio respond to increasing nutrients and other variables. Results of work conducted on Ohio streams have been peer reviewed and published in the scientific literature and additional technical review has occurred through the efforts of U.S. EPA. Over the past several years DSW has informally shared preliminary results of these studies and their possible application as a water quality standard with various interest groups.

What is the purpose of Early Stakeholder Outreach on rulemakings?

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. In response to Executive Order 2011-01K, Ohio EPA has created the Early Stakeholder Outreach step in all rulemaking efforts to ensure that stakeholders are brought into the process at the initial rule assessment phase. This additional interested party notification and request for information will allow for early feedback regarding the need for the rule, its rationale and the likely impacts of new requirements on stakeholders. The goal is to gather constructive feedback from outside parties before rule language is drafted by the Agency.

Why are the rules to address nutrients necessary?

Two reasons: 1) there is clear evidence that waters in Ohio are harmed by excessive amount of nutrients (phosphorus and nitrogen); and 2) U.S. EPA is urging that all states address nutrient pollution through multiple lines of work, including the adoption of state strategies and effective regulations. Ohio EPA believes the full scope of water quality problems caused by cultural eutrophication cannot be addressed until better clean water standards are established. Action now will result in faster implementation of additional pollution control measures at point sources and the voluntary adoption of best management practices for nonpoint sources of phosphorus and nitrogen.

What will happen if Ohio does not adopt standards?

The pace of effectively dealing with the impacts caused by nutrient pollution will continue to lag behind the expanding scope of impairments seen in Ohio's rivers, inland lakes and especially downstream waters like Lake Erie, the Ohio River and the Gulf of Mexico. Prolonged delays in Ohio's rule adoption efforts could lead to actions by U.S. EPA to promulgate standards for Ohio. These standards would almost certainly be less flexible and result in more extensive business impacts compared to the approaches under consideration by Ohio EPA.

Early Stakeholder Outreach
for DSW's WQS Program

What are the differences between narrative and numeric criteria?

Federal and state WQS regulations accommodate two types of criteria, narrative or numeric. Both criteria are intended to protect the beneficial uses assigned to the water (for example drinking water or protection of aquatic life). Narrative criteria are descriptors of the conditions that support the beneficial use. Numeric criteria specify the amount and form of a specific substance or biological attribute measured in the water. This value becomes the threshold at which the beneficial use is considered impaired.

Ohio currently has broad narrative criteria covering nuisance algal conditions and phosphorus. Ohio EPA has used these regulatory provisions and studies done in the 1990s to list waters impaired by nutrients and to establish Total Maximum Daily Load (TMDL) target values for nutrients. Much has been learned over the past decade and this new information should be applied to update Ohio's standards.

What are the issues and the areas where public input is needed?

At this time Ohio EPA is seeking input on the basic form of the criteria (narrative vs. numeric), the underlying technical approach used to develop criteria and on the Division's preliminary ideas for the criteria applicable in rivers, streams and inland lakes. The attached table outlines the scope of what Ohio EPA believes will be necessary to protect our water resources. All these issues are under review and open for input from all interested parties.

What preliminary criteria has Ohio EPA considered?

For Streams and Rivers

Ohio EPA has studied over one hundred stream locations to develop empirical relationships between nutrient concentrations [total phosphorus (TP) and dissolved inorganic nitrogen (DIN)], chlorophyll a produced by benthic algae, dissolved oxygen and overall biological community health (Ohio's existing biological criteria). A multi-metric scoring system has been developed that aggregates results from separate evaluations of primary productivity, biological health and in-stream nutrient concentrations. The resulting output is a multi-metric scoring system referred to as the Trophic Index Criterion (TIC). The TIC provides an integration of "stressor" variables (nitrogen and phosphorus concentrations) that potentially cause stream degradation with "response" data collected through measurements of biologically important stream attributes.

The conceptual approach is summarized on the attached flow chart. If advanced through the administrative rulemaking process the TIC would be adopted in Ohio's WQS regulations as the criterion to protect the stream and river aquatic life use designations from adverse impacts of cultural eutrophication. Where the TIC indicates that aquatic life uses of a stream are either impaired or threatened due to cultural eutrophication, nutrients would be managed to restore ambient nutrient concentrations to levels below the use-appropriate targets derived from the relationships observed in the Ohio field data. Tentative target values are shown on the flow chart.

For Inland Lakes

Ohio EPA used the regional reference approach to develop criteria for inland lakes and released these draft standards for interested party review in 2008. Criteria for chlorophyll a, secchi disk transparency, total phosphorus and total nitrogen where developed and stratified where possible by lake type and ecoregion. Ohio EPA is currently re-calibrating the regional reference approach criteria calculations using additional data collected in the past 4 years.

Who will be directly regulated by this rulemaking?

These standards, once adopted, will be implemented in Clean Water Act (CWA) programs such as National Pollutant Discharge Elimination System (NPDES) permits and TMDL reports. Entities affected by these programs that discharge nutrients include municipalities, industries (especially food and fertilizer plants), commercial facilities and concentrated animal feeding operations.

Who will be indirectly affected by this rulemaking?

Everyone who expects and depends upon clean water that is useable for drinking, recreation and industrial purposes. Drinking water utilities, tourism and water based recreation businesses have the most obvious interests and potential for economic losses. The quality and economic value of Ohio's water resource depends upon reducing the pollution impacts cause by cultural eutrophication.

Agribusiness and individual producers could be indirectly affected by these rules. Agriculture is currently exempt from most CWA regulations so water quality criteria cannot be translated into specific individual producer requirements. However, the criteria may be used to identify waters impaired by nutrients. Once listed as a water body impaired by nutrients Ohio EPA is obligated to track the status of the water body to determine if pollution abatement efforts result in improvements. TMDLs may be prepared on impaired waters and the regulations should clearly articulate the restoration goals or TMDL targets. .

What is the rulemaking schedule?

The Agency is planning to release a draft version of the rules for interested party review and comment later in 2013.

What feedback is the Agency seeking?

The Agency wants to hear from all who may be impacted by this rulemaking. General comments and specific factual information are welcome. Ohio EPA is specifically asking for feedback on the following general and specific questions:

General Questions -

- Does this rulemaking impact your business?
- Does this rulemaking have an adverse impact on your business? If so, please identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance).
- Is there a need to for the rule? Are the preliminary concepts regarding the rule clear?
- Is there an alternative rulemaking (or specific provisions within the rule) that the Agency should consider?
- What are the benefits of the rulemaking?
- What are the costs of not adopting the criteria?

Specific questions –

- Should the Agency adopt narrative or adopt numeric nutrient criteria?
- Is there sufficient technical justification to adopt nutrient standards? For which type(s) of water bodies?
- Do you support the TIC criterion for streams and rivers? Is another approach preferable? Are the TMDL stream target values for DIN and TP used for calculating Waste Load Allocations (WLAs) and Water Quality Based Effluent Limits (WQBELs) reasonable?
- What other specific questions need to be addressed before proceeding with rule adoption?

What should I consider as I prepare my comments?

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

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

Early Stakeholder Outreach
for DSW's WQS Program

How can I provide input on the rulemaking?

Please submit your comments in one of the following ways:

By email: dsw_rulecomments@epa.ohio.gov

By fax: (614) 644-2745

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

Comments on the rule must be received no later than 5:00 p.m. on May 22, 2013.

How can I get more information?

This fact sheet is available on the Division of Surface Water website at www.epa.ohio.gov/dsw/dswrules.aspx. Links to supporting documents are available below.

For more information about the rulemaking, please contact:

Dan Dudley
(614) 644-2876
dan.dudley@epa.ohio.gov

Supporting documents

Nutrients in General:

- Early stakeholder outreach chart for framing numeric nutrient criteria issues and the areas where public input is solicited (SEE ATTACHED PAGE)
- Ohio's Draft Nutrient Reduction Strategy Framework – available at: www.epa.ohio.gov/dsw/Home.aspx
- Director's Agricultural Nutrients and Water Quality Working Group – Final Report and Recommendations – available at: http://www.agri.ohio.gov/topnews/waterquality/docs/FINAL_REPORT_03-09-12.pdf
- Ohio EPA Point Source & Urban Runoff Nutrient Workgroup – Final Report and Recommendations – available at: www.epa.ohio.gov/dsw/Home.aspx
- Ohio Nutrient Forum Visioning Workshop – available at: www.epa.ohio.gov/dsw/wqs/NutrientReduction.aspx
- Ohio EPA's Association Between Nutrients, Habitat, and the Aquatic Biota of Ohio Rivers and Streams (1999) – available at: www.epa.ohio.gov/dsw/document_index/docindx.aspx

Nutrient Criteria for Lakes:

- 2010 Interested Party Review Draft Lake Habitat Criteria – available at: www.epa.ohio.gov/dsw/dswrules/nutrientcriteria.aspx
- Technical Support Document: Nutrient Criteria for Inland Lakes in Ohio, March 2010 - available at: www.epa.ohio.gov/dsw/rules/dswrules/nutrientcriteria.aspx
- Interested party comments on Draft Lake Habitat Criteria available upon request
- Ohio EPA DSW Inland Lakes program – available at: www.epa.ohio.gov/dsw/inland_lakes/index.aspx
- 2012 Integrated Report Section I, Consideration for Future Lists – available at: http://epa.ohio.gov/portals/35/tmdl/2012IntReport/IR12SectionIfinal.pdf

Early Stakeholder Outreach
for DSW's WQS Program

Nutrient Criteria for Streams & Rivers

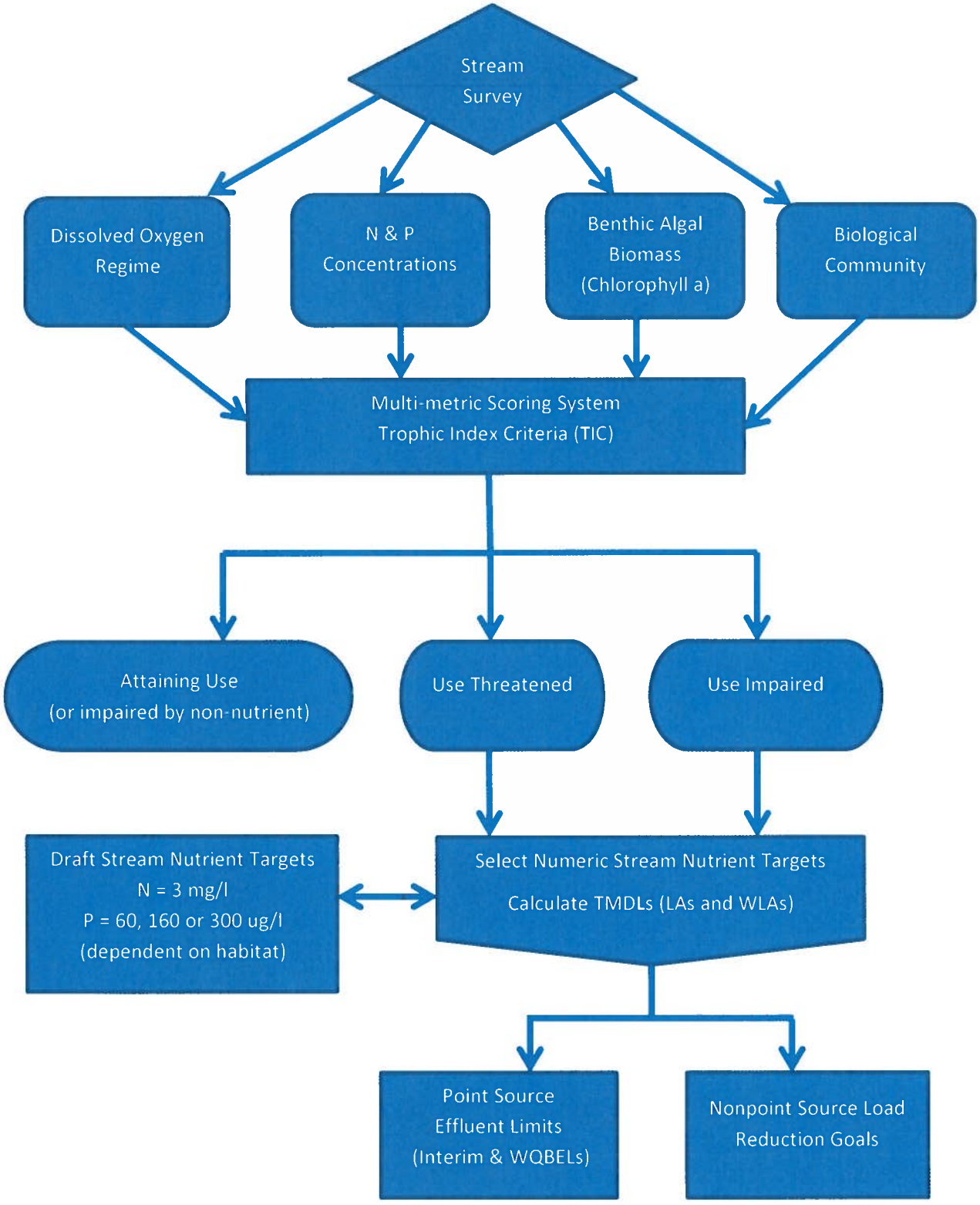
- Miltner, R. J. 2010. A method and rationale for deriving nutrient criteria for small rivers and streams in Ohio. Environmental Management 45:842-855 – available at: www.link.springer.com/article/10.1007%2Fs00267-010-9439-9
- Technical Support Document for Nutrient Water Quality Standards for Ohio Rivers and Streams. (Draft document prepared by Ohio EPA in cooperation with Tetra Tech and submitted to U.S. EPA on December 5, 2011.) – available at: www.epa.ohio.gov/Portals/35/rules/Nutrient_Criteria_Technical_Support_Document_12-2-2011%20DRAFT.pdf
- Trophic Index Criterion – Rationale and Scoring – available at: www.epa.ohio.gov/dsw/dswrules/nutrientcriteria.aspx

Other Resources

- Nutrients and the Mississippi River Basin / Gulf of Mexico – available at: www.water.epa.gov/type/watersheds/named/msbasin/index.cfm
- U.S. EPA – Nutrient Pollution Policy and Data – available at: www2.epa.gov/nutrient-policy-data

A chart that frames the nutrient standard issues and the areas where public input is being solicited during Ohio EPA's early stakeholder outreach process (March 2013).

Type of Water Body (where criteria apply)	**Primary Nutrient of Concern** & other parameters	Technical Approaches for Nutrient criteria – Available Options	Specific Standard as drafted by Ohio EPA
Lake Erie	**Total P** **Dissolved P** Chl a Secchi depth Nitrogen	1) Offshore, nearshore and tributary river mouth nutrient targets set out in Lake Erie Binational Nutrient Management Strategy (Lake Erie LaMP. 2011) 2) other	None at this time
Inland lakes and reservoirs	**Total P** Chl a Secchi depth Dissolved Oxygen Nitrogen	1) Regional reference model 2) Stressor response model 3) Recreational use impairment management model 4) other	Using regional reference model - draft criteria for each parameter listed; values vary by lake type and region of the State (proposed rules were withdrawn in February 2012)
Streams and rivers	**Total P** DIN Chl a Dissolved Oxygen Biological criteria	1) Stressor response model, parameters weighed collectively 2) Stressor response model, each parameter considered separately 3) Regional reference model 4) other	Using stressor response model – Trophic Index Criterion, incorporating the parameters listed; associated TP and DIN target values provided and applied in TMDL and permit programs
Ohio River & Gulf of Mexico	**Nitrogen** Phosphorus	1) Reduction goal established by Gulf hypoxia task force 2) other	None at this time



Conceptual design of the Trophic Index Criterion

Trophic Index Criterion – Rationale and Scoring

Introduction

Pollution associated with municipal and industrial point sources has largely been controlled, often with dramatic results, under the Federal Water Pollution Control Amendments of 1972, commonly known as the Clean Water Act (CWA). For example, prior to 1985, nearly 70 percent of the state's waters were too polluted to support fishing and recreation, and 20 percent were so polluted as to be functionally dead. Here, organic enrichment - essentially raw sewage - and pollutants like metals from industrial sources were the most proximate causes of impairment. By 2006, fewer than 35 percent of the state's waters were considered impaired; however, of those, sediment, habitat destruction, flow alteration and nutrients were the four leading causes of impairment (Ohio EPA 2006). The common thread running through those remaining causes of impairment is that they are all principally derived from diffuse sources related to land use practices; few of which are regulated in an environmentally meaningful way under the CWA.

That is not to say that efforts to address pollution from diffuse sources have been wanting or unfruitful. Sediment pollution from agricultural sources has been greatly reduced through broadly prescriptive, incentives-based programs (Richards et al. 2009). More recently, pollutants associated with urban storm water have been addressed under the umbrella of the NPDES system (*i.e.*, MS4 permits). And to address the issue of nutrient pollution, U.S. EPA (2001a) published suggested nutrient criteria using a reference range approach, and authorized states to develop regionally specific, scientifically defensible criteria (U.S. EPA 2001b).

Most of the existing numeric water quality criteria are built on a sound technical basis owing to well-defined, dose-response relationships between individual pollutants and aquatic organisms. These relationships are so well-defined as to allow confident predictions of environmental outcomes; hence, our administrative and regulatory infrastructure is largely predicated on tabular or algorithmic numeric criteria. However, unlike toxicants and putrescible materials, the effects of nutrient pollution on fish or macroinvertebrates are indirect, and therefore not predictable through simple dose-response curves, or highly deterministic models.

That said, relationships between nutrients and stream eutrophication have been well documented (Dodds and others 1997, Smith and others 1999, Biggs 2000), and a sufficient number of field studies exist tracing the links between nutrients and algae, macroinvertebrates or fish, that a reasonably complete picture exists of how biological condition changes over a nutrient gradient. The upshot of all this is that there is a dose-response relationship of sorts, though that response cannot be interpreted in the traditional sense because of the indirect pathways over which it is expressed, and because of the confounding factors that tend to mute, obscure, or exacerbate the responses. The dose-response relationship, such as it is, can be exploited, however, because there is a reasonably predictable and consistent response between increasing nutrient concentrations and periphyton (reviewed by Hillebrand 2002), and between periphyton and dissolved oxygen concentrations (Morgan et al. 2006, Huggins and Anderson 2005, Heiskary et al. 2010, Miltner 2010). The Ohio EPA nutrient criteria study (Miltner 2010) was predicated on tracing the steps from nutrients to periphyton (as given by chlorophyll-a), from periphyton to dissolved oxygen, and from dissolved oxygen to macroinvertebrates and fish, with the goal of identifying benchmarks or thresholds at each step that would help define where a given water body is positioned along a continuum of enrichment.

Trophic Index Criterion – Rational and Scoring

The Trophic Index Criterion

The Trophic Index Criterion (TIC) is a composite index that brings together the measures of nutrients, periphyton, dissolved oxygen, and biological assemblages by awarding points to successive ranges of each indicator, where the ranges are defined by benchmarks identified in the nutrient study. Hence, the TIC provides a structured method of aggregating data collected on Ohio's streams and rivers into a nominal scale that is essentially a translator for the condition of a water body relative to nutrient enrichment. As such, it can be applied independently to dictate the imposition of appropriate nutrient management programs including NPDES permit limits, waste-load allocations, and abatement strategies for landscape pollution.

Table 1. The Trophic Index Criterion (as currently proposed in draft form).

Biological Assemblages	Dissolved Oxygen	Benthic Algae	Nutrients†	Trophic Index Criterion
Meet applicable biocriteria (12)	Normal variation‡ <6 mg/l (12)	<107 mg/m^2 (8)	Concentrations typical of low disturbance systems (6)	Acceptable (38-22)
	Modest swings >6 mg/ (6)	107-183 mg/m^2 (4)	Concentrations typical of healthy streams in working landscapes (3)	
Within the range of non-significant departure (6)	Wide swings >7 mg/l (1)	Enriched 183-320 mg/m^2 (1)	Concentrations observed with high-intensity land use and WWTP loadings (1)	Threatened 21-14
Fail biological criteria (0)	Extreme swings >9 mg/l or swings >7 mg/l and minimum D.O. <WQS (0)	Thick to nuisance levels >320 mg/m^2 (0)	Concentrations typical of highly disturbed systems; effluent domination; >50% chance of biological impairment (0)	Impaired 13-0

†See Table 2 for nutrient concentration ranges

‡Measured as the difference between the daytime maximum concentration and the morning minimum

Trophic Index Criterion – Rational and Scoring

Table 2. Trophic Index Criterion scoring for the nutrient component.

Total Phosphorus (mg/l)	Dissolved Inorganic Nitrogen (mg/l)				
	≤0.44	0.44-1.10	1.10-3.60	3.60-6.70	≥6.70
≤0.04	6	3	3	1	0
0.04-0.08	3	3	3	1	0
0.08-0.13	3	3	1	1	0
0.13-0.40	1	1	1	0	0
≥0.40	0	0	0	0	0

A Note on TIC Categorical Levels

Boundaries set for the TIC (i.e., Acceptable, Threatened and Impaired) are assigned using the rationale that the biological indicators can be used to set the ceiling and floor of the threatened range. For example, if full biological attainment (i.e., a score of 12) occurs where two or more of the enrichment indicators suggest over-enrichment (i.e., a component score of 1), then the site will usually be classed as threatened. Also note that marginal biological performance with one of the enrichment measures indicating over-enrichment would class the site as impaired. This approach recognizes that the biological indicators can be stressed by nutrient enrichment before showing statutory impairment as defined by the biocriteria. Conversely, it is worth noting that full biological attainment accompanied by normal variation in daily dissolved oxygen concentrations yields an acceptable TIC rating regardless of what the other enrichment indicators show. This construct recognizes and dampens the reality of environmental variability inherent in chemical measures. It also allows for the determination of reasonable potential, given that dissolved oxygen concentrations can be reliably modeled (Cox 2003).

Implementation in NPDES Permits

Demonstration of impairment or reasonable potential to a receiving water body will invoke permit limits for nutrients, typically phosphorus. The default limits are 1.0 mg/l TP and 10 mg/l DIN. These limits are anticipated to be iterative through two successive 5 year permit cycles to allow for pursuing other options including habitat restoration and water quality trading. If, after two cycles, the water body remains impaired due to nutrient over-enrichment, nutrient target values based on ranges defined by empirical relationships will form the basis of discharge limits. The agency is evaluating if any current rules would need to be revised to implement this approach. Values to be used in the derivation of water quality based effluent limits are as follows:

Aquatic Life Use and QHEI	**TP (mg/l)**	**DIN (mg/l)**
Exceptional warmwater habitat and all QHEI scores	0.060	3.0
Warmwater habitat and QHEI score = 12 to 64	0.13	3.0
All other aquatic life uses and QHEI scores	0.30	3.0

Trophic Index Criterion – Rational and Scoring

References

Biggs, B. J. F. (2000) Eutrophication of streams and rivers: Dissolved nutrient-chlorophyll relationships for benthic algae. Journal of the North American Benthological Society 19: 17-31

Cox, B.A. 2003. A review of dissolved oxygen modeling techniques for lowland rivers. Science of the Total Environment 314–316: 303–334.

Dodds, W.K., V.H. Smith, and B. Zander. 1997. Developing nutrient targets to control benthic chlorophyll levels in streams: A case study of the Clark Fork River. Water Resources 31:1738-1750.

Hillebrand, H. 2002. Top-down versus bottom-up control of autotrophic biomass – a meta-analysis on experiments with periphyton. Journal of the North American Benthological Society 21:349–69.

Huggins. D., and J. Anderson. 2005. Dissolved oxygen fluctuation regimes in streams of the Western Corn Belt Plains ecoregion. Kansas Biological Survey, Lawrence, KS.

Heiskary, S., R.W. Bouchard, H. Markus. 2010. Minnesota Nutrient Criteria Development for Rivers. Minnesota Pollution Control Agency. St. Paul, MN.

Miltner, R.J. 2010. A method and rationale for deriving nutrient criteria for small rivers and streams in Ohio. Environmental Management 45:842-855.

Morgan, A.M., T.V. Royer, M.B. David, and L.E. Gentry. 2006. Relationships among nutrients, chlorophyll-a, and dissolved oxygen in agricultural streams in Illinois. Journal of Environmental Quality 35:1110-1117.

Ohio EPA (2006) Ohio 2006 integrated water quality monitoring and assessment report. Division of Surface Water. Columbus, OH.

Richards, R.P., D.B. Baker, and J.P. Crumrine. Improved water quality in Ohio tributaries to Lake Erie: A consequence of conservation practices. Journal of Soil and Water Conservation 64: 200-211.

Smith, V.H., G.D. Tilman, and J.C. Nekola. 1999. Eutrophication: Impacts of excess nutrient inputs on freshwater, marine, and terrestrial ecosystems. Environmental Pollution 100:179-196.

U.S. EPA (2001a) Federal Register: January 9, 2001 (Volume 66, Number 6). Accessed online May 19, 2008: http://www.epa.gov/fedrgstr/EPA-WATER/2001/January/Day-09/w569.htm

U.S. EPA (2001b) Accessed online May 19, 2008: http://www.epa.gov/waterscience/criteria/nutrient/policy.html

FACT SHEET

Director's Office
Updated March 2013

Guide to Rule-Making

This guide, required by Ohio Revised Code 119.0311, is intended to help members of the public who participate, or may wish to participate, in the rule-making process of the Ohio Environmental Protection Agency (Ohio EPA).

Upon taking office on Jan. 10, 2011, Governor Kasich issued Executive Order 2011-01K, "Establishing the Common Sense Initiative." According to Lt. Governor Taylor, the Common Sense Initiative was created "to cut through the red tape and eliminate burdensome, costly and duplicative rules and regulations so that businesses and entrepreneurs can more easily put their job-creating ideas into action and help revive Ohio's economy."

According to its Strategic Plan, the Common Sense Initiative Office (CSIO) is guided by the following principles: regulations should facilitate, not hinder, economic growth, regulations should be transparent and responsive, compliance should be as easy and inexpensive as possible and regulations should be enforced fairly and consistently.

Subsequent to the issuance of the Executive Order, the Ohio Legislature enacted Amended Substitute Senate Bill 2 (SB2). SB2 more broadly seeks to identify and limit adverse impacts on businesses regardless of size. Although SB2 was effective on June 7, 2011, many provisions took effect on Jan. 1, 2012.

SB2 codified the creation of the CSIO, altered the procedure for promulgation of agency rules and expanded the jurisdiction of Joint Committee on Agency Rule Review (JCARR). Under SB2, a rule that might have an adverse impact on business is subject to additional analysis by the agency proposing it, the CSIO and JCARR.

The objectives of these new requirements can only be achieved when the process by which regulations are enacted is transparent and accessible to persons outside of government and when those regulations are crafted so they are easy to understand by those affected.

Ohio EPA's Mission

To protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship.

Ohio EPA's Vision

The Ohio Environmental Protection Agency is a trusted leader and environmental steward using innovation, quality service and public involvement to ensure a safe and healthy environment for all Ohioans.

Agency Organization

Ohio EPA has six major program divisions that implement Ohio's environmental regulations.

Air Pollution Control
(614) 644-2270 | *www.epa.ohio.gov/dapc/*

Drinking and Ground Waters
(614) 644-2752 | *www.epa.ohio.gov/ddagw/*

Environmental Response and Revitalization
(614) 644-2924 | *www.epa.ohio.gov/derr/*

Environmental and Financial Assistance
(614) 644-2798 | *www.epa.ohio.gov/defa/*

Materials and Waste Management
(614) 644-2621 | *www.epa.ohio.gov/dmwm/*

Surface Water
(614) 644-2001 | *www.epa.ohio.gov/dsw/*

Rule-making Requirements and Authorization

The Ohio Revised Code (ORC) requires and authorizes Ohio EPA to adopt administrative rules. Rules are adopted pursuant to Chapter 119 and section 111.15 of the ORC, which become part of the Ohio Administrative Code (OAC). The Agency may also adopt internal management rules.

What is a rule?

A rule is a regulation or standard, having a general and uniform operation, which is adopted, promulgated and enforced by any agency under the authority of the laws governing such agency.

Guide to Rule-Making

Rule-making Process

The rule-making process may be lengthy and complex, but in general, there are standard steps involved in the adoption of rules at Ohio EPA.

Drafting, Review and Early Stakeholder Outreach

The first step in the rule-making process is for Ohio EPA to identify that a rule needs to be amended, rescinded, or created. There are many different reasons to change a rule, some include a quick change, (e.g., incorrect rule reference), a limited rule change (e.g., difficulties with interpretation or application), a full ORC 119.032 review (five-year review) and changes to state or federal law.

In response to EO 2011-01K, Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional early stakeholder outreach and request for information will allow for early feedback before the rule language has been developed by the Agency. The notifications may be different for the type of rule changes necessary.

For quick changes and limited rule changes – The notification will identify the rule and the problem, contain a link to the current rule and provide information on how to comment.

For full ORC 119.032 reviews – The notification will identify the rule, link to the current rule, and provide information on how to comment. If problems with the current rule or concepts on how the rule will be changed have already been identified by Ohio EPA, these may be included in the notification. If the intent is to file the rules as no-change, then this will be identified in the notification.

For changes to state or federal laws – The notification will identify the rule, include the federal or state law that is creating the need for the rule change, link to the current rule and provide information on how to comment.

For other changes not covered by one of the above scenarios - Ohio EPA will provide the best information necessary to allow the stakeholders to comment on the rule.

This notification is not considered an action of the director and would not be public noticed. This is considered an early courtesy to those interested parties that have already signed up to receive rule notifications. The notifications will include a deadline for submitting comments and will ask the commenters for feedback to assist the divisions in filling out the Business Impact Analysis required by the CSI process.

If any comments are received, Ohio EPA will consider those comments when drafting the rule changes. Ohio EPA will not create an official response to comments for these comments. If Ohio EPA feels additional outreach with stakeholders is necessary, the Agency may hold stakeholder meetings, send out additional questions to stakeholders or create external advisory groups. This process does not suggest that Ohio EPA is required to send out drafts or negotiate rule language with stakeholders.

Interested Party Review

The interested party review process is designed to allow interested parties, stakeholders or citizens to make comments regarding the rule prior to adoption. Ohio EPA conducts the interested party review prior to filing the proposed rule with JCARR. JCARR's primary function is to review rules in accordance with Ohio's laws. JCARR, part of the Ohio Legislature, consists of five State Representatives and five State Senators.

Once the draft rule is completed, it is posted on Ohio EPA's website along with the completed Business Impact Analysis. Interested parties are notified that the draft is available for review. A deadline for submitting comments is set by Ohio EPA. This timeframe is normally 30 days but may be lengthened or shortened as needed.

Interested parties may register to receive notification through the State of Ohio's Rules E-Notification System at ***www.business.ohio.gov/reform/*** or through Ohio EPA's listservs at ***www.epa.ohio.gov/Rules_and_Laws.aspx***. Once registered, individuals will receive notices and communications regarding the creation, amendment, rescission or continuation without change of any rule.

Consider Interested Party Comments

Ohio EPA collects, reviews, and considers each relevant comment, concern or question received during the draft review period. Based on the comments received, Ohio EPA may revise the draft rules as appropriate. The time needed to review and incorporate the comments received varies depending on the complexity of the comments.

Guide to Rule-Making

Submission of the Business Impact Analysis

Ohio EPA is required to send this analysis to the CSIO. CSIO has two options for the Business Impact Analysis:

- Prepare and send recommendations to Ohio EPA for eliminating or reducing adverse impacts.
- Allow 16 days to pass without preparing and sending recommendations.

If a recommendation is received from the CSIO, Ohio EPA will respond to the recommendations and work with the CSIO to resolve the issues. If 16 days pass, the rules can be original filed with JCARR.

Propose Rules to JCARR

When the draft rule is complete, it is filed with JCARR, the Secretary of State and the Legislative Service Commission (LSC). The Secretary of State maintains copy of the proposed rule. LSC reviews the proposed rule to ensure that it is properly formatted and codified.

When the rule has been filed with JCARR, it is called a "proposed rule." Ohio EPA submits a Rule Summary and Fiscal Analysis (RSFA), Environmental Amendment/Adoption Form and the Business Impact Analysis with the proposed rule. These forms answer many questions regarding the content of the proposed rule, the legal basis for the rule, the environmental justification, the adverse impacts to business, the estimated budgetary effect of the proposed rule and the estimated cost of compliance by all directly affected persons.

The proposal to JCARR starts the 65-day JCARR jurisdiction. Within the first 31 to 40 days of that jurisdiction, Ohio EPA will hold a public hearing to provide an opportunity for anyone to provide oral testimony on the rule.

Public Notice, Comment Period and Hearing

When the rule is proposed, Ohio EPA public notices the proposal and begins the formal public comment period. The public comment period usually ends on the day of the public hearing. Ohio EPA conducts public hearings for all new, amended and rescinded rules. A public hearing is the public's opportunity to provide oral testimony for the record. Those who choose not to provide oral testimony are encouraged to submit their comments in writing. Ohio EPA considers all relevant comments when deciding whether to adopt, amend or rescind a rule. Public hearing notices are posted in Ohio EPA's Weekly Review, on the Register of Ohio's website (***www.registerofohio.state.oh.us***) and Ohio EPA's website at ***www.epa.ohio.gov/calendar.aspx***.

Consider Public Comments

Written and oral comments received during the public comment period receive the same consideration. Ohio EPA carefully reviews all submitted comments and may revise the proposed rule as appropriate.

JCARR Hearing and Jurisdiction

JCARR has 65 days to review the rule to ensure:

- the rules do not exceed the scope of the rule-making agency's statutory authority;
- the rules do not conflict with another rule of that agency or another rule-making agency;
- the rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed;
- the rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment or rescission (ORC 127.18) and, if the agency has incorporated text or other material by reference, the agency has met the standards stated in ORC sections 121.72, 121.75 or 121.76; and,
- the rule-making agency has demonstrated, through the business impact analysis, CSIO recommendations, and Memorandum of Response, that the regulatory intent justifies the adverse impact on business.

Within the last 41 to 65 days of JCARR jurisdiction, JCARR holds a hearing to accept comments on the proposed rule. Based on the comments received, JCARR may take action to stop the adoption of the rule for the duration of that general assembly.

Finalize the Rule

Following the 65-day JCARR jurisdiction, the director of Ohio EPA adopts the rule and establishes the date the rule becomes effective. Once the rule is adopted, it is subject to appeal. The adoption of the final rule is public noticed in the Register of Ohio at ***www.registerofohio.state.oh.us*** and in Ohio EPA's Weekly Review.

Guide to Rule-Making

Emergency Rules

In extraordinary circumstances, Ohio EPA may bypass most of this procedure and adopt emergency rules. This requires an order of the governor finding that an emergency exists and suspending the normal procedural requirements of ORC Chapter 119. Emergency rules are not subject to EO 2011-01K or SB2. Emergency rules automatically expire after 90 days, unless, in the interim, the Agency has gone through the normal Chapter 119 rule-making procedure.

Public Involvement

There are many opportunities for the public to participate in the rule-making process. Some of the simplest, and most effective ways, are described here.

- Sign up for the interested party list at ***www.epa.ohio.gov/Rules_and_Laws.aspx*** to receive notification of rule-making activities.
- Sign up for the State of Ohio's Rules E-Notification System at ***www.business.ohio.gov/reform/***. Once registered, you will be notified electronically about agency rule actions. The Rules E-Notification System notifies interested parties and allows comment feedback during the executive order review of rules for selected state agencies. This notification and comment feedback period will be conducted in concert with Ohio EPA's established interested party review period.
- Review and comment on draft rules.
- Review the rule proposal and public hearing notices.
- Attend Ohio EPA and JCARR public hearings.

Resources

- Joint Committee on Agency Rule Review - ***www.jcarr.state.oh.us***
- E-Notification System - ***www.business.ohio.gov/reform***
- Ohio EPA Rules and Laws - ***www.epa.ohio.gov/Rules_and_Laws.aspx***
- Register of Ohio - ***www.registerofohio.state.oh.us***
- Common Sense Initiative Office - ***www.governor.ohio.gov/PrioritiesandInitiatives/CommonSenseInitiative.aspx***

Who to Contact

If you have a question regarding the rule-making process, please contact Ohio EPA's rules coordinator at (614) 644-2782. If your question concerns a particular rule or technical requirement, please contact the appropriate division listed on the first page of this fact sheet.

Numeric Values Assigned to the Enrichment Continuum: The Trophic Index Criterion

	Biological Assemblages	Dissolved Oxygen	Benthic Algae	Nutrients	Trophic Index Criterion
Un-enriched	Meet applicable biocriteria (12)	Normal variation <6 mg/l (12)	<107 mg/m2 (8)	Concentrations typical of low disturbance (6)	**Acceptable 38-22**
Typical waters		Modest swings >6 mg/ (6)	<183 mg/m2 (4)	Concentrations typical of working landscapes (3)	**Hold (21-20)**
Enriched	Within the range of non-significant departure (6)	Wide swings >7 mg/l (1)	<320 mg/m2 (1)	Exceeds ranges typically observed in reference sites (1)	**Threatened 19-14**
Over-enriched	Fail biological criteria (0)	Swings anomalously wide >9 mg/l or swings >7 mg/l and minimum D.O. <WQS (0)	>320 mg/m2 (0)	Exceeds concentrations associated with 50% chance of biological impairment (0)	**Impaired 13-0**

Source: 11/19/13 OEPA TAG Presentation

Source: 12/10/13 OEPA TAG Presentation

State's CWA Obligations Simplified*

- Set standards for water quality - 304(a)(1); 303(c)
- Measure quality; are standards met? – 305(b)(1)
- Report on water quality and prioritize problems – 305(b)(1)
- For waters not meeting the goal, prepare a TMDL – 303(d)(3)
- Implement changes: permits, grants, etc. – 402, 319, State $

* Primary Clean Water Act sections listed

Inventory and Assessment

- Condition assessments are collectively inventoried to fulfill 305(b) requirements
  - essentially an accounting report of waters meeting/not meeting designated uses
- For waters not meeting designated uses, causes of non-attainment must be identified
  - causal assessments inventoried for 303(d) reporting

Assessments and Condition Status

- Assessment of biological assemblages determines condition status
  - fish and macroinvertebrate assemblages scored as numeric indexes
  - water quality criteria (biocriteria) exist for numeric scores
  - biological criteria stratified by stream size and ecoregion (see handout)
    - Failure of one assemblage indicator indicates that the condition status is compromised
    - Assessments are narratives based on the degree of failure or attainment
      - Full
      - Partial
      - Non
- Chemical concentrations in excess of WQ criterion are not **independently applied** as determinant of condition status

Condition Status and Impairments

- Waters with jeopardized biological condition are deemed impaired
  - Agent or factor causing the impairment, and the sources of the causative agents are identified
  - Cause and source determines management option
    - reporting categories
    - traditional management (e.g., NPDES limits, infrastructure repairs or upgrades, etc.)
    - TMDL
      - habitat
      - nutrients
      - sediment

Where the TIC Fits Into Assessment and Permitting

TIC components used to determine where the waterbody is positioned on the enrichment continuum

TIC score used to confirm/rule-out nutrients

Reporting under 305(b) & 303(d)

study plan | basin survey | condition status | determination of causes and sources | management options

NPDES Permit 5-year cycle | determination of reasonable potential | management options

402 permits

TIC score used to determine where the waterbody is positioned on the enrichment continuum

Take Home

- Translating ambient concentration targets into TMDLs and NPDES permit limits is key
- Applicability of targets determined by
  - steam survey data, rigorous interpretation of results, and TIC scoring
  - First objective, resolve all TAG member questions
- Next, generate the implementation details
  - Ohio Nutrient Reduction Strategy provides a starting framework

Strategy for Point Sources*

- **Phase in** water quality based effluent limits for phosphorus derived from TMDL/WLA calculations
  - In general, P limits imposed if receiving stream is impaired or threatened
    - Start with limit of 1 mg/l P or current load
    - allow exploration of trading or other options in lieu of achieving lower limits necessary to meet in-stream targets

* See Ohio Nutrient Reduction Strategy (6/28/13)

As Introduced

130th General Assembly
Regular Session
2013-2014

S. C. R. No. 25

Senator Uecker
Cosponsor: Senator Schaffer

CONCURRENT RESOLUTION

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.

BE IT RESOLVED BY THE SENATE OF THE STATE OF OHIO (THE HOUSE OF REPRESENTATIVES CONCURRING):

WHEREAS, The State of Ohio is dedicated both to economic growth and to the objectives of achieving energy efficiency and environmental performance in state agency and other government buildings; and

WHEREAS, The selection of building materials and products for new construction and renovation can significantly contribute to achieving these objectives; and

WHEREAS, Many building materials and products that are capable of contributing to the state's energy efficiency and environmental performance objectives are manufactured or harvested in Ohio, and their manufacture and harvest support Ohio jobs and contribute to the state's economic growth; and

WHEREAS, Energy efficient buildings further contribute to economic growth by reducing long-term operating and maintenance costs of state agency and other government buildings; and

WHEREAS, To ensure long-term energy conservation and realize cost savings, buildings must be designed and constructed to exceed the highest energy standards; and

WHEREAS, Private sector green building rating systems, codes, and other standards can be useful tools that, when implemented, can result in buildings that exceed the energy standards for energy efficiency and environmental performance; and

WHEREAS, The U.S. Green Building Council's (USGBC) LEED v4 green building system fails to conform to recognized voluntary standard development procedures, including but not limited to American National Standards Institute (ANSI) procedures, and fails to base environmental and health criteria on risk assessment methodology; now therefore be it

RESOLVED, That we, the members of the 130th General Assembly of the State of Ohio, urge Ohio state agencies and other government entities to use green building rating systems, codes, or standards that are consistent with state energy efficiency and environmental performance objectives and policies; and be it further

RESOLVED, That the only systems, codes, and standards used in state agency and other government buildings be those that have been developed in an open and transparent way with the input of Ohio building materials and products manufacturers and harvesters to ensure that the use of green building rating systems, codes, and other standards from the private sector are consistent with Ohio objectives and policies; and be it further

RESOLVED, That the State of Ohio use private sector green building rating systems, codes, and other standards to implement

state energy efficiency and environmental performance objectives provided that they are voluntary consensus standards that are properly grounded in science and include the use of environmental and health criteria that are based on risk assessment methodology generally accepted by applicable scientific disciplines; and be it further

RESOLVED, That the use of green building rating systems, codes, and other standards that have been developed pursuant to ANSI procedures be presumptively deemed to be open, transparent, and voluntary consensus standards suitable for Ohio government use; and be it further

RESOLVED, That the LEED v4 green building rating system no longer be used by Ohio's state agencies and government entities until the USGBC conforms its system development to the ANSI voluntary consensus standard procedures as confirmed by ANSI or until the state, after an opportunity for public comment and participation, incorporates the LEED v4 system by reference, in whole or in part, into the administrative rules for state agency or government entity building standards; and be it further

RESOLVED, That the Office of Energy Services within the Ohio Facilities Construction Commission (OFCC) immediately review, while taking economic growth and long-term operating and maintenance costs into account, the availability and suitability of alternative private sector green building rating systems, codes, and other standards that advance state energy efficiency and environmental performance objectives; and be it further

RESOLVED, That the OFCC continue to incorporate energy efficiency and sustainable design features into approved school projects through the use of alternative green building rating systems, codes, and standards other than LEED v4; and be it further

RESOLVED, That the Clerk of the Senate transmit duly authenticated copies of this resolution to the USGBC.

State, feds declare a state of emergency as out-of-state water is trucked in.

Some 300,000 residents in nine West Virginia counties have been told avoid consuming or using public water supplies indefinitely after a chemical spill that emitted the odor of black licorice tainted the Elk River near Charleston, prompting businesses, schools and restaurants to close, a run on bottled water and state and federal officials to declare a state of emergency.

Gov. Earl Ray Tomblin urged water customers in the southwest counties of Kanawha, Putnam, Jackson, Clay, Lincoln, Logan, Roane and Boone counties, as well as customers in the area of Culloden in Cabell County, to stop using water for everything but flushing toilets and fighting fires. There is no timeline for water restoration.

"Do not drink it. Do not cook with it. Do not wash clothes in it. Do not take a bath in it," Tomblin warned. "For safety, we would ask everyone -- this includes restaurants, hospitals, any institutions out there -- please do not use any tap water if you're a customer of West Virginia American Water."

Late Friday, West Virginia regulators ordered Freedom Industries, the company responsible for the leak, to cease operations until it recovers the chemical from the river and tests storage tanks and containment structures for reliability.

It's unclear how much of the chemical, 4-Methylcyclohexane Methanol (MCHM), was spilled and how much of a hazard it poses.

State health officials say MCHM could be potentially harmful if swallowed and could cause skin and eye irritation. But Jeff McIntyre, president of the West Virginia American Water Company, says so far, water tests to determine how much MCHM is in the water have been inconclusive. "We don't know that the water's not safe. But I can't say that it is safe," McIntyre said.

"There is material present. We don't know how to quantify it," McIntyre said. A National Guard mobile lab will conduct sampling, he said.

The spill occurred Thursday when MCHM, used to wash coal of impurities, leaked from a Freedom Industries tank and overran a containment area, then poured into the Elk River and a nearby treatment plant.

Officials from Freedom, which makes chemicals for the mining, steel, and cement industries, said they were working with local and federal officials and are following "all necessary steps to fix the issue."

Earlier Friday, the spill prompted President Obama to issue a state of emergency for the state. Retailers quickly sold out of bottled water. Truckloads of water were shipped from

Maryland by the National Guard. Wal-Mart said it would also provide several truckloads of water.

The state Department of Environmental Protection's air-quality officials discovered the spill -- which the company had not reported, the Charleston Gazette reported. "We're confident that no more than 5,000 gallons escaped," said department spokesman Tom Aluise. "A certain amount of that got into the river. Some of that was contained."

But Freedom Industries President Gary Southern said the company is still trying to determine how much MCHM had been released. The steel tank holding the chemical has a capacity of 35,000 gallons. "We have mitigated the risk, we believe, in terms of further leakage," Southern said at an evening news conference. "Our mission now is to move on to the next phase of remediation."

The leak caused a licorice-like smell to envelope the capital, forcing businesses schools in five counties and the state legislature to shut down.

Warnings of contamination to the water supply triggered a run on stores selling bottled water, including a Sam's Club that sold its 4,200 cases of water in an hour and a half, The Charleston Daily Mail reported. Store employees said they were unable to find any more water at stores in a 20-mile radius.

The sheriff's office in Kanawha county reported receiving about a dozen 911 calls after scuffles broke out over rapidly dwindling supplies. the Gazette reported. Police were asked to step up patrols around convenience stores.

The chemical's odor -- similar to cough syrup — was especially strong at the Charleston Marriott hotel a few blocks from the Elk River, which flows into the Kanawha River in downtown Charleston. The Marriott shut off all water to rooms, and then turned it back on so guests could flush toilets. Each guest was given two 16.9-ounce bottles of spring water upon returning to the hotel.

The head of the state Air National Guard's 130th Airlift Wing said 75 tractor-trailers loaded with water were sent to West Virginia from a Federal Emergency Management Agency facility in Maryland, the Gazette reported. A C-130 cargo aircraft was sent to Martinsburg to pick up the water.

Some officials said the orders against drinking water from the tap were issued as a precaution, as they were still not sure exactly what hazard the spill posed to residents. It also was not immediately clear how much of the chemical spilled into the river and at what concentration.

The governor's warning about water use included restaurants, hospitals, nursing homes and other establishments that use tap water. Department of Military Affairs and Public

Safety spokesman Lawrence Messina said he wasn't aware of any hospitals closing and that area medical centers "seemed to have adequate water supply, at least for the short term."

The water ban also affected airlines serving Charleston's Yeager Airport in Charleston. Yeager spokesman Bryan Belcher said Friday that a USAirways flight from Charlotte, N.C., was cancelled overnight because its crew couldn't take showers.

Belcher says airport officials have notified airlines of the problem so they can make contingency plans.

Airport executive director Rick Atkinson says the airport is working with the airlines to find alternative housing for overnight flight crews.

At the Little India restaurant in Charleston, about 12 customers were asked to leave when bar manager Bill LaCourse learned about the shutdown notice.

Karlee Bolen, 16, of Charleston, said her family, including her parents, two sisters and brother, were considering the possibility of heading to her grandmother's home in Braxton County, where tap water was unaffected, an hour to the northeast.

"I kind of want to shower and brush my teeth," she said.

Bricker & Eckler
ATTORNEYS AT LAW
COLUMBUS I CLEVELAND
CINCINNATI-DAYTON
MARIETTA

BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
MAIN: 614.227.2300
FAX: 614.227.2390

www.bricker.com
info@bricker.com

Frank L. Merrill
614.227.8871
fmerrill@bricker.com

COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP, Counsel to the OMA
February 13, 2014

ADMINISTRATIVE

A. Ohio EPA Activities of Note

1. Ohio EPA Early Stakeholder Outreach Proposals

a. Toxic Air Contaminants Rule (OAC 3745-114-01).

This rule is set for its 5-year review, and the OMA and other business trade groups submitted comments on December 5, 2013, which provided in pertinent part as follows:

> We respectfully submit that Ohio EPA's 5-year review of OAC rule 3745-114-01 should be focused on the directives in section 3704.03(F)(3)(c) of the Revised Code and the recently-completed review of the rule by ERAC and the Tenth Appellate District. Ohio EPA should not reopen and revisit the objections to its rulemaking actions that were recently litigated and put to rest by ERAC and the Court of Appeals. Both ERAC and the Tenth Appellate District correctly upheld the Director's "categorical exclusion of irritants, acutely toxic compounds, and compounds whose route of exposure is primarily through consumer products" from the list of regulated air toxics in OAC rule 3745-114-01. *See Sierra Club v. Koncelik*, 10th Dist. Franklin Nos. 12AP-288, -289, and -290, 2013-Ohio-2739, at 40. The rule has been remanded to Ohio EPA to give further consideration to the proper status of those compounds, and *only* those compounds, initially proposed to be listed in OAC rule 3745-114-01 that were categorically excluded in the final rule because either: 1) the toxicity of the compound is through non-inhalation routes of exposure or 2) the compound is not currently used or produced in Ohio. For the compounds among the originally proposed list of 639 that were categorically excluded from the final rule list for either of those two reasons, Ohio EPA is instructed to evaluate each such excluded compound to determine whether it meets the statutory criteria set forth in section 3704.03(F)(3)(c) of the Revised Code. We note that the criteria for listing an air toxic in section 3704.03(F)(3)(c) are the same as the criteria in

section 112(b)(2) of the Clean Air Act for revising the list of federally regulated Hazardous Air Pollutants. Therefore, there should be a strong presumption against listing any compound that is not a federally regulated HAP as an Ohio-regulated air toxic.

We urge Ohio EPA to follow the directives of the General Assembly in SB 265, and of ERAC and the Tenth Appellate District, in efficiently conducting its 5-year review of OAC rule 3745-114-01.

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. 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. Proposed Ohio EPA Rules

1. Facility Emergency and Hazardous Chemical Inventory Form OAC 3750-30-20. On July 13, 2013, U.S. EPA implemented changes in the data required in the emergency and hazardous chemical inventory form under EPCRA (see 78 Fed. Reg. 41300). In order for Ohio EPA (and SERC) to have these changes in the new form by the next reporting cycle, which is March 2014, Ohio EPA originally requested comments on the changes by October 18, 2013. This date has been extended to February 17, 2014.

2. NSR for Fine Particulate Matter (OAC 3745-31). The proposed amendments include language for incorporation of the U.S. EPA requirements for implementation of the New Source Review (NSR) program for fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as "PM 2.5"), promulgated on May 16, 2008, as well as U.S. EPA's requirements for establishing increments, significant impact levels, and a significant monitoring concentration for fine particulate pollution, promulgated on October 20, 2010. Ohio EPA has also performed a review and made changes consistent with the requirements of ORC 119.032 (5-year review).

On May 27, 2009, OMA and other business trade groups submitted comments on the original proposed rule package. Ohio EPA has incorporated many of OMA's comments and proposed changes. Ohio EPA will hold a public hearing for these proposed rules on February 18, 2014.

3. Miscellaneous Ohio EPA Rules. Ohio EPA has initiated ESO for the following rules, which are subject to the 5-year rule review (Ohio EPA does not anticipate any major changes):

a. Water Quality Standards Program Rule (OAC 3745-1-34). Ohio EPA is considering removing the thallium nondrinking human criteria of 6.3 ug/l from the Ohio River basin water quality standards rule. Sources of thallium in the environment include leaching from ore-processing sites and discharges from electronics, glass and drug factories.

b. Inspection and Maintenance (E-Check) Program Rules (OAC 3745-26). Ohio EPA will be making changes to the rules to bring them in line with current federal and state requirements.

c. Accidental Release Prevention Program Rules (OAC 3745-104). Ohio EPA will be making changes to the rules to bring them in line with current federal and state requirements

4. Nonattainment for Particulate Matter Recommendation. Based on air quality monitoring data, Ohio EPA is planning to recommend that U.S. EPA designate seven counties as nonattainment under the new federal particulate matter standard.

The Ohio counties included in the state's draft recommendation include:

- Cleveland area: Cuyahoga
- Canton area: Stark
- Steubenville area: Jefferson
- Cincinnati area: Hamilton, Butler and Clermont
- Dayton: Montgomery

U.S. EPA adopted a new, more stringent particulate matter standard on December 14, 2012. Ohio EPA must submit recommended nonattainment areas to U.S. EPA by December 14, 2013. U.S. EPA will finalize nonattainment designations by December 13, 2014. After the designations are effective, Ohio EPA will have three years to develop plans and implement air pollution control strategies to bring these areas into compliance with the standard.

5. 2014 Integrated Water Quality Report. On January 29, 2014, Ohio EPA released this draft report for public comment. The report summarizes water quality conditions in the state of Ohio and was last updated in 2010.

Using methods devised to determine the suitability of waters for four specific uses – aquatic life (fish and aquatic insects), recreation such as boating and swimming, human health impacts related to fish tissue contamination, and public drinking water supplies – available data were compared with water quality goals. The results indicate which waters are meeting goals and which are not. Waters not meeting the goals for one or more of the four types of uses are referred to as *impaired*. The waters found to be impaired are prioritized and scheduled for further study and restoration. The report also includes the monitoring schedule that Ohio EPA plans to follow for the next several years.

According to Ohio EPA, the 2014 report features 459 changes to the last water quality list, including 282 removals (primarily due to TMDL approvals) and 177 new additions (primarily due to new data). Ohio EPA will host a public meeting on February 12, 2014 at 3:00 pm to discuss the draft report.

C. U.S. EPA Activities of Note

1. Solvent-contaminated Wipes Rule. On July 31, 2013, U.S. EPA issued a new rule to clarify the handling and disposal of wipes or shop rags contaminated with solvents. This new rule became effective on January 31, 2014 but is only effective in states that do not have RCRA authorization. Since Ohio is a RCRA-authorized state, the rule does not currently apply in Ohio.

The rule essentially excludes most solvent-contaminated wipes from the definition of "hazardous waste" if the wipes (e.g., reusable shop rags, towels) are cleaned and reused or disposed of in a landfill. Wipes contaminated with trichloroethylene (TCE) or a listed hazardous waste other than a solvent are not eligible for the exception. The rule requires that wipes be stored in closed, labeled containers and not stored for more than 180 days. Certain recordkeeping requirements are also contained in the rule.

The rule provides that RCRA-authorized states can adopt their own solvent-contaminated wipes rule provided they are not less stringent than U.S. EPA's rule. The rule notes that U.S. EPA "encourages states to adopt this rule as soon as possible to reduce regulatory burden on businesses." Ohio EPA has indicated that it expects to issue a draft solvent-contaminated wipes rule in the Spring of 2014 with final adoption expected in August or September 2014. In the interim, Ohio EPA is working on a "bridge policy" to address this issue prior to final rule adoption.

2. Coal Company NPDES Permits. EPA has instructed Ohio EPA to explain in writing why a proposed NPDES permit for Murray Energy's Bennoc facility does not include TDS and sulfates. Ohio EPA has not yet responded, but this is the issue that purportedly caused George Elmaraghy's forced resignation.

3. U.S. EPA Annual Enforcement Report. On February 7, 2014, U.S. EPA released its annual enforcement and compliance results. Highlights (from U.S. EPA's perspective) include criminal sentences requiring violators to pay more than $4.5 billion in fines, restitution and court-ordered environmental projects, and requiring Walmart to pay more than $80 million in fines and penalties for mishandling pesticides and hazardous waste. More information about EPA's Fiscal Year 2013 enforcement results: http://www2.epa.gov/enforcement /enforcement-annual-results-fiscal-year-fy-2013

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.

2. *Oxford Mining Company v. Nally*, ERAC Case No. 12-256581 (September 18, 2013).

This case involves Ohio EPA's issuance of a water quality (WQ) certification for a coal mining project impacting wetlands and small streams. The WQ was necessary as a prerequisite for a Section 404 "dredge and fill" permit from the U.S. Army Corps of Engineers. Ohio EPA applied a proposed existing use designation/classification for primary head water habitat (PHWH) to streams on the site. Even though the PHWH designation/classification was not adopted through the rulemaking process, Ohio EPA used the classification to conclude that the company's restoration plan was insufficient.

Both parties have appealed the decision to the Tenth District Court of Appeals.

B. Federal Cases

1. *National Environmental Development Association's Clean Air Project (NEDA/CAP) v. U.S. EPA*, Case No. 13-1035 (U.S. Court of Appeals, D.C. Circuit) (filed February 18, 2013).

This case involves NEDA/CAP's challenge to U.S. EPA's December 2012 memo directing regional offices to only apply the *Summit Petroleum* decision in the states that make up the Sixth Circuit (e.g., Michigan, Ohio, Tennessee, and Kentucky). In August 2012 the Sixth Circuit had ruled that certain gas plants and wells were too widely scattered to be considered "adjacent properties" for purposes of Title V permitting under the Clean Air Act. U.S. EPA has historically looked at the "operational interdependency" or "functional interrelatedness" of the sources in question to determine whether the sources were "adjacent". The Sixth Circuit held that "adjacency" pertained to physical or geographical distance.

NEDA/CAP's challenge involves U.S. EPA's inconsistent interpretation of the statute depending upon in which state the facility is located. For example, different rules apply to gas operations in Ohio, as opposed to gas operations across the border in West Virginia, according to U.S. EPA's policy memo. The D. C. Circuit Court of Appeals heard oral argument on the case on January 17, 2014.

Robert L. Brubaker
rbrubaker@porterwright.com

Porter Wright
Morris & Arthur LLP
41 South High Street
Suites 2800-3200
Columbus, Ohio 43215-6194

Direct: 614-227-2033
Fax: 614-227-2100
Toll free: 800-533-2794

www.porterwright.com

porterwright

CINCINNATI
CLEVELAND
COLUMBUS
DAYTON
NAPLES
WASHINGTON, DC

December 11, 2013

Mr. Paul Braun
Ohio EPA Division of Air Pollution Control
50 W. Town St., Suite 700
PO Box 1049
Columbus, Ohio 43216-1049

Re: Early Stakeholder Outreach – Toxic Air Contaminants Rule

Dear Paul:

Thank you for the opportunity to provide Early Stakeholder feedback as Ohio EPA begins the 5-year review of OAC rule 3745-114-01, the "Toxic Air Contaminants" list rule.

These comments are submitted on behalf of the Ohio Chamber of Commerce, the Ohio Chemistry Technology Council, and the Ohio Manufacturers' Association. Porter Wright represented these three trade associations and a cross section of regulated entities in connection with the enactment of SB 265, which created the statutory directives that led to Ohio EPA's promulgation of OAC rule 3745-114-01. Porter Wright also submitted comments during the rulemaking proceedings that culminated in the promulgation of OAC rule 3745-114-01, and represented the Ohio Chamber of Commerce, the Ohio Chemistry Technology Council, and the Ohio Manufacturers' Association as interveners, in support of Ohio EPA's action adopting OAC rule 3745-114-01, in the Sierra Club's appeal of that rule at ERAC.

We respectfully submit that Ohio EPA's 5-year review of OAC rule 3745-114-01 should be focused on the directives in section 3704.03(F)(3)(c) of the Revised Code and the recently-completed review of the rule by ERAC and the Tenth Appellate District. Ohio EPA should not reopen and revisit the objections to its rulemaking actions that were recently litigated and put to rest by ERAC and the Court of Appeals. Both ERAC and the Tenth Appellate District correctly upheld the Director's "categorical exclusion of irritants, acutely toxic compounds, and compounds whose route of exposure is primarily through consumer products" from the list of regulated air toxics in OAC rule 3745-114-01. *See Sierra Club v. Koncelik*, 10th Dist. Franklin Nos. 12AP-288, -289, and -290, 2013-Ohio-2739, at ¶ 40. The rule has been remanded to Ohio EPA to give further consideration to the proper status of those compounds, and *only* those compounds, initially proposed to be listed in OAC rule 3745-114-01 that were categorically excluded in the final rule because either: 1) the toxicity of the

compound is through non-inhalation routes of exposure or 2) the compound is not currently used or produced in Ohio. For the compounds among the originally proposed list of 639 that were categorically excluded from the final rule list for either of those two reasons, Ohio EPA is instructed to evaluate each such excluded compound to determine whether it meets the statutory criteria set forth in section 3704.03(F)(3)(c) of the Revised Code. We note that the criteria for listing an air toxic in section 3704.03(F)(3)(c) are the same as the criteria in section 112(b)(2) of the Clean Air Act for revising the list of federally regulated Hazardous Air Pollutants. Therefore, there should be a strong presumption against listing any compound that is not a federally regulated HAP as an Ohio-regulated air toxic.

We urge Ohio EPA to follow the directives of the General Assembly in SB 265, and of ERAC and the Tenth Appellate District, in efficiently conducting its 5-year review of OAC rule 3745-114-01.

Thank you again for the opportunity to provide this early input. Please let us know if you have any questions about the foregoing recommendations.

Very truly yours,

RBB

Robert L. Brubaker

EBG

Eric B. Gallon

cc: Bob Hodanbosi
Drew Bergman
Mike Hopkins
Paul Koval

OhioEPA

Compliance & Prevention Quarterly

A Publication of Ohio EPA, Office of Compliance Assistance and Pollution Prevention

Autumn 2013

U.S. EPA Modifies Solvent-Contaminated Wipes Rule

U.S. EPA has modified the hazardous waste management regulations for solvent-contaminated wipes under the Resource Conservation and Recovery Act (RCRA). Specifically, this rule revises the definition of solid waste to conditionally exclude solvent-contaminated wipes that are cleaned and reused and revises the definition of hazardous waste to conditionally exclude solvent-contaminated wipes that are disposed. The purpose of this final rule is to provide a consistent regulatory framework that is appropriate to the level of risk posed by solvent-contaminated wipes in a way that maintains protection of human health and the environment, while reducing overall compliance costs for industry, many of which are small businesses.

The rule excludes wipes that are contaminated with solvents listed as hazardous wastes under RCRA that are cleaned or disposed of properly. To be excluded, solvent-contaminated wipes must be managed in closed, labeled containers and cannot contain free liquids when sent for cleaning or disposal. Additionally, facilities that generate solvent-contaminated wipes must comply with certain recordkeeping requirements and may not accumulate wipes for longer than 180 days. **This final rule is effective on Jan. 31, 2014, only in states that do not have RCRA authorization.**

Since Ohio is a RCRA-authorized state, the rule will not be effective until a state rule is adopted and effective. **Ohio EPA anticipates rule adoption to be effective summer 2014.** For information on Ohio EPA's current guidance on the management of solvent-contaminated wipes, go to page 7 of the *Spring 2006 Notifier* at **www.epa.ohio.gov/portals/32/pdf/NotifierSpring06.pdf**.

For more information about U.S. EPA's modified rule, visit **www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/wipes.htm**.

To keep updated on Ohio EPA's rulemaking activities and other information, visit **http://ohioepa.custhelp.com/ci/documents/detail/2/subscriptionpage**.

Refresher Training Required for U.S. EPA 6H Rule

The Jan. 10, 2011, deadline for complying with U.S. EPA's National Emissions Standards for Paint Stripping and Miscellaneous Surface Coating Operations, or the "6H rule," has long passed. The rule applies to body shops and other facilities that spray-apply coatings that contain chromium, lead, manganese, nickel or cadmium to metal or plastic substrates. In addition to filtered paint booths, HVLP-equivalent guns and non-atomized gun cleaning, the rule requires all painting personnel to be trained on proper spray gun and booth operation, spray techniques and rule compliance.

The 6H rule specifies that painter training or certification is good for up to five years, and painters must undergo refresher training at five-year intervals. Affected facilities may have painters who completed their initial training well in advance of the 6H compliance date. This is a reminder to shop owners and operators that all painting personnel must have painter training certifications on file that are no more than five years old. For more information, contact OCAPP at (800) 329-7518 or go to **www.epa.ohio.gov/ocapp/auto_body.aspx**.

In This Issue

B. Effect on State Authorization

Today's rule amends the definition of solid waste to conditionally exclude solvent-contaminated reusable wipes and the definition of hazardous waste to conditionally exclude solvent-contaminated disposable wipes. These definitions were promulgated under the authority of sections 2002, 3001-3010 and 7004 of the Solid Waste Disposal Act of 1965 (later amended by RCRA and by HSWA). Today's rule amends the application of the RCRA Subtitle C "base" program to certain wastes and is thus a non-HSWA rule.

Because, today's conditional exclusions are not HSWA regulations, today's regulatory provisions are not immediately effective in authorized states. They are only immediately applicable in those states and territories that do not have final authorization for the base (non-HSWA) portion of the RCRA program, including Indian country.

Today's rule includes requirements and conditions that are less stringent than those required under the base RCRA hazardous waste program. Thus, states, except as described below, are not required to adopt the conditional exclusions. However, **the Agency encourages states to adopt this rule as soon as possible to reduce regulatory burden on businesses** and maximize national consistency, while maintaining protection of human health and the environment. In addition, if a state were, through implementation of state waiver authorities or other state laws, to allow compliance with the provisions of today's rule in advance of adoption or authorization, EPA would not generally consider such implementation a concern for purposes of enforcement or state authorization.

Of course, states cannot implement requirements that are less stringent than the federal requirements in today's rule. As we stated in the November 2003 proposal, the 1994 Shapiro memo established federal policy with regard to solvent-contaminated wipes that deferred the determination of their regulatory status to the states and EPA regions (68 FR 65617). This deferral has resulted in the development of various state programs for reusable wipes. Today's conditional exclusion for reusable wipes is generally consistent with many of these state policies; however, some conditions required by today's final rule may be more stringent than some existing state programs. As a result, authorized states whose programs include less stringent requirements than today's final rule are required to modify their programs to maintain consistency with the federal program per the provisions of 40 CFR 271.21(e). In addition, any states that delineate their program for reusable wipes in guidance documents or interpretive letters will need to promulgate enforceable regulations, as required by 40 CFR 271.7. Because today's rule is a non-HSWA rule, the current state requirements remain in place until the state adopts the equivalent to these federal requirements.

IN THE SUPREME COURT OF OHIO

Board of Commissioners of Fairfield County,	:	CASE NO. 2013-1085
Plaintiff-Appellant,	:	On Appeal from the Franklin County Court of Appeals
v.	:	Tenth Appellate District
[Scott J. Nally], Director of Environmental Protection,	:	Court of Appeals Case No. 11AP-508 ERAC Case No. 235929
Defendant-Appellant.	:	

MEMORANDUM OF AMICUS CURIAE THE OHIO MANUFACTURERS' ASSOCIATION IN SUPPORT OF APPELLANT'S MOTION FOR RECONSIDERATION OF DECISION NOT TO ACCEPT DISCRETIONARY APPEAL ON PROPOSITIONS OF LAW II AND III

Frank L. Merrill (0039381)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
T: (614)-227-8871
F: (614)-227-2390
fmerrill@bricker.com
Counsel for Amicus Curiae the Ohio Manufacturers' Association

Stephen P. Samuels (0007979)
Joseph M. Reidy (0030346)
Nicole Woods (0084865)
Ice Miller, LLP
250 West Street
Columbus, Ohio 43215
T: (614) 462-5021
F: (614) 222-3489
Stephen.samuels@icemiller.com
Joseph.reidy@icemiller.com
Nicole.woods@icemiller.com
Counsel for Board of Commissioners of Fairfield County

L. Scott Helkowski (0068622)
Alana Shockey (0085234)
Assistant Attorneys General
Environmental Protection Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
T: (614) 466-2766
F: (614) 644-1926
Lawrence.helkowski@ohioattorneygeneral.gov
Alana.shockey@ohioattorneygeneral.gov
Counsel for State of Ohio

I. INTRODUCTION.

Pursuant to S.Ct.Prac.R. 18.02(C), Amicus Curiae the Ohio Manufacturers' Association ("OMA") respectfully requests that the Ohio Supreme Court grant Appellant Fairfield County Board of Commissioners' ("Fairfield County") November 18, 2013 Motion for Reconsideration and accept Proposition of Law Nos. II and III for review together with Proposition of Law No. I.

II. SUMMARY OF BASIS FOR OMA'S INTEREST AND SUPPORT OF FAIRFIELD COUNTY'S MOTION FOR RECONSIDERATION.

The OMA is a statewide association of approximately 1,600 manufacturing companies, which collectively employ the majority of the 610,000 men and women who work in manufacturing in the state of Ohio and account for almost 17 percent of Ohio's gross domestic product. Member companies are engaged in various businesses or industries in Ohio and are incorporated and/or conduct substantial business operations in the state. Member companies also hold NPDES permits for discharges to the waters of the state, similar to the permit at issue in this appeal. The impact of Ohio EPA's use of total maximum daily pollutant loadings (TMDLs) in issuing such permits is of significant concern for OMA and its member companies.

Because of the important interests raised in this case, the OMA offers this amicus memorandum in support of jurisdiction. The OMA has an interest in protecting its members from unnecessary costs and overreaching regulations.

For the sake of brevity, OMA hereby joins in and incorporates the arguments of Appellant Board of Commissioners of Fairfield County in its Motion for Consideration and the arguments of Amicus Curiae the Ohio Chamber of Commerce in its Memorandum of Support of Appellants' Motion for Reconsideration.

III. CONCLUSION.

Proposition of Law Nos. II and III are not fact-specific arguments affecting only Appellant Fairfield County. In actuality, the lower court's decision resonates state-wide by impacting every Ohio business that holds an NPDES permit to discharge into a watershed subject to a TMDL. The OMA respectfully requests that the Court grant Appellant Fairfield County's Motion for Reconsideration, and accept jurisdiction of the two additional related propositions of law.

Respectfully submitted,

Frank L. Merrill (0039381)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
T: (614)-227-8871
F: (614)-227-2390
fmerrill@bricker.com
Counsel for Amicus Curiae the Ohio Manufacturers' Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following persons this 18th day of November, 2013 via regular U.S. Mail, postage prepaid:

Stephen P. Samuels
Joseph M. Reidy
Nicole Woods
Ice Miller, LLP
250 West Street
Columbus, Ohio 43215
Counsel for Board of Commissioners of Fairfield County

L. Scott Helkowski
Alana Shockey
Assistant Attorneys General
Environmental Protection Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Counsel for Scott J. Nally, Director of Ohio Environmental Protection Agency

Frank L. Merrill

INTEROFFICE MEMO

OhioEPA

To: Permit Writers and Permit Reviewers

From: Mike Hopkins, Assistant Chief, Permitting, DAPC, through Bob Hodanbosi, Chief, DAPC

Date: February 7, 2014

Re: BAT Requirements for Permits Issued On or After February 7, 2014

This guidance memo supersedes August 30, 2013 *BAT Requirements for Permits Issued On or After October 1, 2013* memo. It contains changes associated with the comments received from interested parties after the August 30th memo was issued.

This guidance applies to BAT determinations made for new or modified sources that were installed or modified on or after February 7, 2014. See the response to Question 42 and the chart found in *Appendix A* found later in this guidance for more information on the applicable dates.

The following procedure shall be used to develop and determine BAT for non-exempt sources[1]. A flow chart of this procedure can be found in *Appendix B* of this document.

1. Applicability of Post August 3, 2009 BAT

Determine the date the installation or modification permit application was *filed* (not the completeness determination date). In this case, "modification" means a modification as defined in Chapter 31, not an administrative modification. Determine the date that construction or installation of the air contaminant source was started. If the application was filed prior to August 3, 2009, or the air contaminant source was constructed or modified (for this permit action) prior to August 3, 2009, then BAT for the new or modified air contaminant sources covered under the application shall be determined on a case-by-case basis using past practices (prior to August 3, 2009) for determining BAT. In that case, do not follow the below procedure. Instead, review the chart in *Appendix A* to determine which BAT guidance should be used for that source. If the application was filed and the source was to be installed or modified on or after August 3, 2009, then proceed to the next step.

[1] Exempt sources include those that are exempt under OAC rule 3745-31-03 and those that are exempt from BAT under the <10 ton/yr exemption. This guidance would not apply to de minimis sources because de minimis sources are not required to obtain installation permits.

2. MACT, GACT, BACT, LAER Applicability

Review each air contaminant source, each criteria pollutant (or precursor[2]) and each operating scenario[3] to determine if the source/pollutant combination is subject to Section 112 (Maximum Achievable Control Technology (MACT) or Generally Available Control Technology[4] (GACT)), Part C of Title I (Prevention of Significant Deterioration, PSD) (Best Available Control Technology (BACT)), and Part D of Title I (Nonattainment NSR) (Lowest Achievable Emission Rate (LAER)) of the federal Clean Air Act[5]. If, for the applicable criteria pollutant (or precursor), one or more of the above rules applies, then BAT is equivalent to the most stringent of the above applicable standards. (Note, this requirement of S.B. 265 applies to any permit *issued* on or after August 3, 2009. Also note that this approach follows long standing DAPC guidance.)

The format of the MACT/GACT/BACT/LAER based BAT limit established needs to follow the standard format for each of the above requirements. For instance, for BACT and LAER limits, U.S. EPA often requires one or more short term limits, such as an emission rate limit (like lb/hr) and a technology based limit (like ppm, % control, etc.), and an annual limit. For MACT or GACT based BAT limits, the format should be in the same format as found in the applicable MACT or GACT standard. Since most MACT's and GACT's do not have annual limits, no annual limit would be established for BAT.

Do the above analysis for each criteria pollutant or criteria pollutant precursor separately. Also, if the permittee is asking for multiple operating scenarios, then do the analysis for each operating scenario.

If you determine BAT based on this step, then use ORC 3704.03(T) and OAC 3745-31-05(A)(3) for the applicable rule citation for the BAT limit and the typical MACT, GACT, BACT and LAER citation for their equivalent limits. You can use the typical "the requirements of this rule are equivalent to MACT/GACT/BACT/LAER requirements" language.

If, for the particular pollutant, one or more of the above standards apply, then BAT is the MACT/GACT/BACT/LAER limit. Do not establish another BAT requirement for that pollutant in this case unless the permittee is asking for multiple operating scenarios. BAT has been determined and you do not need to do the rest of the procedures below.

2 NOx and SOx for PM10 or PM2.5, and NOx and VOC for Ozone
3 For example, the use of different fuels, different raw materials, etc.
4 Note that for most cases, Ohio EPA does not accept delegation for applicable GACT standards and we would not list the GACT as an applicable requirement. However, if a GACT exists for a particular source and pollutant, then establish BAT as equivalent to the GACT.
5 Note that under this step, New Source Performance Standards (NSPS) are not included but they can be evaluated as a possible BAT under step 4.

If, for the particular pollutant and operating scenario, none of the above standards apply, then proceed to step three.

3. Reasonably Available Control Technology (RACT) BAT Floor

Review each air contaminant source to determine if the controlled potential to emit of volatile organic compounds[6] (VOC) is greater than or equal to 10 tons per year (controlled is used in this case because the <10 ton/yr exemption is based on controlled emissions)[7]. For those air contaminant sources where the controlled potential to emit of VOC is greater than or equal to 10 tons per year, review the rules of OAC Chapter 21 (Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and related Materials Standards) Reasonably Available Control Technology (RACT) that were effective on January 1, 2006. These rules include the following:

- *The January 1, 2006 version(s) of paragraphs (C) to (I), (K) with the exception of (K)(4), (L) to (N), (O) with the exception of (O)(2)(e), (P) to (R), (U) with the exception of (U)(2)(k) and (U)(2)(l), (V) to (X), (Y) with the exception of (Y)(2)(d) and (Y)(3), (Z) to (EE), and (DDD) of rule 3745-21-09 of the Administrative Code; and*

- *The January 1, 2006 version(s) of rules 3745-21-11 to 3745-21-16 of the Administrative Code.*

Determine if any VOC rule for any location in the State applies to the same size and type of source you are considering. If a January 1, 2006 effective VOC rule applies anywhere in the State for your type of source, then BAT is determined to be, at a minimum, equivalent to the most stringent VOC rule no matter where in the State that rule applies. Note that this sets the minimum BAT for VOC but you still have to determine if a more stringent case-by-case BAT is appropriate under step 4 below.

Do the above analysis for each operating scenario if there are different operating scenarios.

The format for BAT established in this step should be identical to the format of the RACT rule you are using to establish BAT. You would not add any additional BAT requirements (like a ton/year limit).

6 Note that the SB 265 language also lists NOx. However, there was no NOx RACT rule in existence on January 1st, 2006 so NOx is not evaluated.
7 Note that there are different criteria for deciding if a source qualifies for the <10 ton/yr BAT exemption vs. if a source needs to determine if a RACT floor exists for BAT for sources that are equal to or greater than 10 tons.

Use the RACT monitoring, record keeping, reporting and testing requirements to support the BAT requirement.

If you determine BAT based on this step and you decide that a more stringent case-by-case BAT requirement is not appropriate under step 4 below, then use ORC 3704.03(T) and OAC Rule 3745-31-05(A)(3) for the applicable rule citation. You should not use the RACT rule citation in this case.

If a RACT limit is established under this step for VOC, then you have determined the "floor" for BAT. Next, you need to do a case-by-case BAT determination to decide if a more stringent BAT should apply in place of the RACT floor. This process is described below in step four. If you have not found a RACT limit that applies, then you also move on to step four.

4. Case-by-Case BAT Determination

If the procedures described in step one through step three above do not result in a determination of BAT for the pollutant and/or operating scenario, then a case-by-case determination must be made. In addition, if you determined the minimum BAT for VOC based on the RACT requirement as described in step three above, then use this step to determine if a more stringent requirement than RACT is appropriate for BAT.

In order to determine BAT under the revised SB 265 language, permit writers need to take two steps. First, they will need to follow the historic approach to evaluating various alternatives to BAT, and then, second, they will need to determine the appropriate SB 265 method that should be used to express BAT.

a. Initial Evaluation of BAT

First, the permit writer should review each air contaminant source to understand the type of process used, the equipment used, the materials used etc. in order to fully understand the air pollution source. This review is designed to understand the type and size of the air pollution source so it can be compared to similar type and size sources.

Once the size and type of source is understood, then permit writers should review other similar sources in Ohio and in other states with similar air quality (excluding states, for example, that have severe non-attainment areas) to determine what level of control has been demonstrated to work for these sources. For many common sources, this analysis will involve simply reviewing other permits for similar sources. For other more

significant sources, this may involve a more detailed cost-effectiveness analysis. Remember, you will need to do this analysis for each pollutant and for each operating scenario. In any case, this analysis will follow our traditional analysis to evaluate BAT options.

When you do your analysis for BAT, you are typically going to be reviewing short-term emission rates like lb/hr or lb/ton of product or control efficiencies and comparing them to various options for BAT. For larger sources, you may also need to evaluate the cost effectiveness for potential control options. This will follow our traditional analysis for BAT.

In some cases, for instance for fugitive type sources, the conclusion will not result in a numerical value but, instead, will result in a description of a work practice. That work practice will then, typically, be used as a descriptor for BAT.

Once this analysis is complete, the next step is to determine the method that should be used to express BAT.

b. *Determining the Appropriate Method to Express BAT*

Next, the permit writer should determine the appropriate method to ***express*** the BAT requirement. S.B. 265 directs BAT to be expressed as follows:

> *Best available technology requirements established in rules adopted under this division shall be expressed only in one of the following ways that is most appropriate for the applicable source or source categories:*
>
> *1) Work practices;*
> *2) Source design characteristics or design efficiency of applicable air contaminant control devices;*
> *3) Raw material specifications or throughput limitations averaged over a twelve-month rolling period;*
> *4) Monthly allowable emissions averaged over a twelve-month rolling period.*[8]

Each of these options is described in more detail below. In order to improve the readability of the below discussion, the below table describes the shortened term I will use for each acceptable BAT expression.

8 See the response to question 24 later in this document for a discussion concerning the difference between "monthly allowable emissions averaged over a twelve-month rolling period" and the more traditional, "tons of emission per rolling 12-month period".

Original Language	Shortened Language
Work practices	*Work Practice*
Source design characteristics	*Source Design Characteristic*
Design efficiency of applicable air contaminant control devices	*Design Efficiency*
Raw material specifications or throughput limitations averaged over a twelve-month rolling period	*Raw Material/Throughput*
Monthly allowable emissions averaged over a twelve-month rolling period	*Monthly Allowable*

c. Work Practices

Work Practice BAT will typically describe how an owner or operator will operate a source in order to cost-effectively minimize emissions. This approach should be used when the primary method of control consists of work practices, not things like control equipment, material used, etc. There are a number of different ways to do this depending upon the type of source. An example is given below:

Unpaved Roadway Example

Under the revised BAT approach, the primary approach for fugitive roadways is to require the permittee to develop and implement a site-specific work practice plan designed to minimize or eliminate fugitive dust emissions. Under this approach, no opacity limit is needed and no ton/yr limit is needed. However, under this approach, the work practice plan will need to include the following items:

- An identification of each segment of unpaved roadway or parking area for which the plan applies.
- A determination of the frequency that the roadway or parking area will be inspected to determine if additional control measures are needed.
- The identification of the record keeping form that will be used to track the inspection and treatment. This form should include, at a minimum, the following elements:
    - Roadway or parking area segment inspected

    - Date inspected
    - Name of employee doing the inspection
    - Result of the inspection (needs treated or does not need treated)
    - A description of why no treatment was needed
    - Date treated
    - Name of employee treating the segment
    - Method used to treat the segment
- A description of how and where the records shall be maintained. Records must be kept for at least five years.
- A description of the records that must be submitted if the plan is not followed. This would follow the Standard Terms and Conditions deviation requirements.

There can be other options for *Work Practice* BAT for roadways. For instance, the 1-minute/3-minute limitation approach can be used if the company states they want that approach. There can also be other types of *Work Practice* BAT for different types of fugitive sources. Permit writers should work closely with the permittee and with their central office permit review contact to determine if a particular approach is approvable.

The *Work Practice* BAT will not have any kind of initial testing, but will typically have monitoring, record keeping and reporting requirements to verify that the work practice is being done. There will not be anything listed in the testing section of the permit.

d. Source Design Characteristics or Design Efficiency of Applicable Air Contaminant Control Devices

Source Design Characteristics

For some sources, BAT may be a *Source Design Characteristic*. When we say *source design characteristic*, we are really talking about a design characteristic as it relates to emissions. For instance, if a gas-fired boiler has a burner that is designed to achieve 0.1 lbs of NOx/mmBtu emission rate, then the *Source Design Characteristic* will be the 0.1 lbs NOx/mmBtu rate. Another example of a design characteristic is a 0.1 lb PM/100 lbs charged emission rate for an incinerator. If the incinerator was designed to meet this

emission rate, then it would be appropriate to use that design emission rate to express BAT.

Both sources with or without controls can have a *Source Design Characteristic*. In either case, the *Source Design Characteristic* will be a short-term emission rate, not a control efficiency. If BAT is desired to be a control efficiency for the control device, then the BAT will use the *Design Efficiency* approach discussed next.

Note that under the *Source Design Characteristics* or *Design Efficiency* approach, **no ongoing emission rate limit will be established for BAT**[9]. Instead, the owner/operator will be required to *design* the source to meet the described BAT. This is an important difference from the current approach of setting a short-term (lb/hr, ppm, etc.) limit that must be met at all times. Below are a couple of examples of how BAT should be expressed in this case:

- Install a FGD or equivalent SO2 control technology that shall have at least a 95% design removal efficiency for SO2 at maximum rated capacity
- Install a baghouse that is designed to meet 0.03 gr PM/dscf
- Install an incinerator that is designed to meet 0.1 lb PM/100 lbs charged
- Install a burner that is designed to meet 0.1 lb NOx/mmBtu heat input

When trying to decide if a *Source Design Characteristic* exists for a source without controls, permit writers should ask the permittee to provide the design specification sheet (as related to emissions) from the manufacturer of the equipment. If the design specification sheet contains design specifications for NOx, PM, but not SO2, CO or VOC, then *Source Design Characteristic* BAT can be set for NOx and PM, but not for SO2, CO or VOC.

For those pollutants where there is no design characteristic, BAT will most likely be set based on either the *Raw Material/Throughput* type limit or the *Monthly Allowable* type limit.

Note Ohio EPA expects *Source Design Characteristics* to be requirements for the front-end design of the source, not an emission limit.

9 Although no ongoing emission rate limit will be established, owners/operators will be required to maintain the equipment following manufacturer's recommendation in order to ensure the equipment continues to operate as designed. Also note that although there will not be a short-term limit for BAT, non-BAT short-term limits will typically be included in the permit because they are required by existing OAC rules.

For some source types, *a numerical Source Design Characteristic* may not be appropriate the BAT expression. Instead, the *Source Design Characteristics* may also be things like a description of the equipment installed that has the impact of reducing emissions. An example of that approach is for degreasers or cold cleaners where the BAT expression would simply be described as the use of cooling coils and lids. Another example would be for the use of a complete enclosure on a material conveyor.

Design Efficiency

When a source utilizes a control device, BAT will be either a *Source Design Characteristic* (as described above) or a *Design Efficiency* of the control device. If a *Design Efficiency* method is chosen, then the BAT determination would be in the form of a designed percent control efficiency. A couple of examples of how this BAT should be described are:

- Install an electrostatic precipitator with a design control efficiency of at least 98.7% control of PM
- Install an incinerator on the paint line oven with a design control efficiency of at least 95% control of VOC

If the source has not been designed to meet a certain emission level, or the control device has not been designed to meet a specific control level or have other emissions control design characteristics, then the *Source Design Characteristics* or *Design Efficiency* BAT approach is probably not the appropriate approach to use and another approach should be chosen.

When a BAT limit is based on the *Source Design Characteristic* or *Design Efficiency*, ongoing compliance is not expected. Instead, this type of BAT is simply a design standard that needs to be met initially. No ongoing BAT compliance obligations exist. No monitoring, record keeping or reporting requirements should be included. When BAT is expressed as a *Source Design Characteristic* or *Design Efficiency*, a one time performance test may be required to confirm proper design, depending on the nature of the controls or process design, the pollutant, and the size and location of the air contaminant source, but periodic stack testing or other ongoing monitoring is not required or appropriate. It is acceptable to include in the testing section a description of the basis for the *Source Design Characteristic* or *Design Efficiency* BAT. Some examples include:

- If the burner was designed to meet 0.01 lb NOx/mmBtu heat input, for the testing section you might say, "Based on Burner Manufacture Inc. design specification sheet #xxx dated January 23, 2014."

- If the emissions unit has an incinerator and BAT was chosen as a control efficiency of 98% destruction efficiency, then in the testing section you might say, "Based on incinerator Inc. design specification sheet #xxx dated January 23, 2014."
- In the case where the company has done their own design or has modified the equipment such that the original design specification is no longer valid, you might say, "Based on the company supplied design estimate as supplied in the Permit-to-install and Operate (PTIO) application #453234 received January 23, 2014."

Owners/operators will, however, be required to maintain the equipment following manufacturer's recommendations in order to ensure the source continues to operate as designed. The owner/operator should be required to keep a record of the maintenance on the unit along with manufacturer's recommendations.

If a BAT limit is established for the *Source Design Characteristics* or *Control Efficiency* then no ton/yr or other limit should be included for BAT. Also, remember, that if there are different operating scenarios, BAT limits may need to be established for each scenario.

e. Raw Material Specifications or Throughput Limitations Averaged Over a Twelve-month Rolling Period

This particular type of BAT is essentially the same as we have used for years to support synthetic minor type limits. An example of this kind of BAT for a rotary grain dryer at a brewery could be "5000 tons of wet grain processed per rolling 12-month period". Another example could be "45.6 tons of steel produced/Rolling 12-month period".

This type of BAT will have an ongoing compliance obligation that includes monitoring, record keeping, and reporting to verify ongoing compliance with BAT. In the testing section it is acceptable to describe the compliance method for the limit. In most cases, initial verification of the processing rate is not needed. However, in some cases it may be desirable to verify the rate so it is acceptable to require initial verification of the processing rate.

Note that under this BAT, no "short term" BAT limit will be listed. For instance, there will not be a ton of wet grain per hr, per day, or per month type limit.

Note also that if the source is a synthetic minor source, the above type limit will be needed for the synthetic minor and, in that case, short term limits may be needed in order to meet U.S. EPA's requirements for synthetic minors. In that case, the permit

writer has the option of using the synthetic minor *Raw Material/Throughput* limitation approach as BAT (i.e., have it function as both the synthetic minor limit and the BAT limit) or, instead, establish a separate BAT as a *Source Design Characteristic, Design Efficiency, or Monthly Allowable* limit.

f. Monthly Allowable Emissions Averaged Over a Twelve-month Rolling Period

This is another type of BAT that is essentially the same as we have used to support synthetic minor type limits. It is similar to the above material/throughput BAT except that emissions are restricted instead of the amount of material processed or product throughput. An example of this would be, "3.21 tons VOC per month averaged over a twelve-month rolling period[10]".

This type of BAT will often have an ongoing compliance obligation that includes monitoring, record keeping, and reporting to verify ongoing compliance with BAT. You have the option to require initial testing to verify that the emission rate used to develop the tons permit month limit is appropriate. However, you would not put any ongoing testing obligation within the permit. It is acceptable to describe in the testing section how the tons/month limit was established.

In some cases where the amount of emission is small and we are relying on an emission factor for the compliance determination, then it may not make sense to require monthly monitoring, record keeping and reporting. Instead, it is acceptable to simply include in the testing section a description of the compliance method using the emission factor.

For instance, if you have a 20 mmBtu/hr natural gas fired boiler, the emissions of particulate are expected to be very small, say 1.0 tons/yr. The limit would be 1.0 ton/yr / 12 months = 0.83 tons of PM per month averaged over a twelve-month rolling period. The compliance method would simply be the maximum heat input rate times the AP-42 emission factor for particulate. Each month this calculation would be the same so there is really no need to require monthly records. Instead, it is acceptable to only include the compliance determination language in the Testing Section of the permit and skip any monitoring, record keeping and reporting. This follows past practice when we were establishing ton/yr BAT limits.

Under this BAT, no "short term" BAT limit will be listed[11]. For instance, there will not be a pound of VOC per hr or per day type limit.

10 See the response to Question 24 later in this memo.
11 Note that a short-term limit will often be needed either because of existing OAC rules or to support a synthetic minor restriction in order to follow U.S. EPA requirements.

g. Deciding Which Option is Most Appropriate

Since there are four optional ways BAT can be expressed under the S.B. 265 language, it can sometimes be difficult to decide which option is most appropriate for the source or source category. **You should consider the recommendation from the owner/operator of the source as to which option fits their facility best as part of this decision.** In order to help determine which BAT format is most appropriate, DAPC is recommending the following approach in the following order:

i. If the source is a traditional fugitive type source (roadways, parking areas, etc.) or a source that Ohio EPA has not typically established a short-term type BAT limit (degreaser), then it is recommended you use the *Work Practices* type expression for BAT. You do, however, have the option of using one of the other BAT expressions.

ii. If the source has a control device for the particular pollutant, then use either the *Source Design Characteristic* or *Design Efficiency* approach where you determine the basis of the control equipment designed to control the pollutant. This is typically a ppm, gr/dscf, etc., or control efficiency type expression for BAT.

iii. If there is no control device, review the manufacturer's specifications for the source to determine if the source was designed to meet a certain emission rate (the *Source Design Characteristic* approach). If the source was designed to meet a certain emission rate, then use that expression type for BAT.

iv. If none of the above applies, then you will typically be using the *Monthly Allowable* expression approach where you establish a ton of emission per rolling 12-month period BAT type limit.

v. As an option, the *Raw Material/Throughput* approach can be used. However, it is recommended that the permit writer use the *Monthly Allowable* in most cases, instead.

Note, that under S.B. 265, Ohio EPA cannot include more than one BAT requirement per pollutant per operating scenario. So, only use the one expression of BAT. However, you are free to use another format as long as it fits within one of the four categories listed in S.B. 265 and is considered most appropriate for the applicable source or source category.

Note that it is important to consider the owner/operator's preference as to which option works best for their operation. So, permits writers should review and

understand the owner/operator's recommendation before deciding the most appropriate method to describe BAT. The director has the final say on which option is the most appropriate method.

Remember, BAT is only one of the applicable requirements that apply to a source and the source owner is obligated to meet all other emissions standards, including short-term limits, which apply to the source.

Also remember that if the source has multiple operating scenarios, then you should determine BAT for each operating scenario using the above procedures.

If you determine BAT based on a case-by-case approach, then use ORC 3704.03(T) and OAC 3745-31-05(A)(3) as the applicable rule citation associated with the BAT limit.

Develop the testing requirements needed to support the BAT selected. In many cases, this will simply be detailing the method used to calculate emissions. However, for larger sources where initial compliance testing is needed, it will be detailing the calculation method and describing the initial emissions testing that will be needed to determine compliance.

vi. Next, it is recommended you provide the permittee with a copy of the terms of the permit and discuss with them the decisions you made to determine BAT. Let them know of the current issues associated with S.B. 265 and advise them of their options associated with BAT.

vii. Your decision concerning the establishment of BAT under this guidance should be documented in the Permit Strategy Write-up document in STARS2. This serves two purposes. First, the potential to emit level and basis are documented outside of the terms and conditions and this can be relied on in the future to determine whether the air contaminant source has undergone a Chapter 31 modification. Second, in the event that a company has decided that they will not accept a BAT requirement in accordance with this memo, this document can be shared with U.S. EPA who has requested to be notified in these instances.

viii. Process the permit per our normal procedures from this point.

5. Common Questions and Answers

MACT/GACT Issues

Question 1. *If a MACT applies and the MACT does not include an annual limit, can we establish an annual limit as part of BAT?*

No, if the MACT applies, then only list the limits/control requirements/operational restrictions as BAT. Do not add any other limits.

Question 2. *What happens if both a MACT applies to a source and a RACT rule applies to the source? Which is BAT? What happens if there is a similar source RACT rule that is more stringent than the MACT?*

If MACT applies to the source and a RACT rule applies to the source (actually applies, not because it is a similar source under step 3 above), then MACT would represent BAT.

If MACT applies to the source and a "similar source" RACT rule could apply under step 3 above, the MACT is BAT, not the "similar source" RACT.

Question 3. *When specifying GACT-like BAT in permits should the permit only include numerical emission limits from the GACT? Should we cite the GACT rule?*

If the GACT has numerical emission limits then use those as BAT for the pollutant controlled by the GACT. If the GACT has work practice standards (e.g., employ tight-fitting covers) that have the effect of limiting emissions of the pollutant controlled, then use the work practice standards to express BAT. If the GACT has only recordkeeping requirements, then do not use them as an expression for BAT.

If you use the GACT to determine and describe BAT, you normally will not cite the GACT rule as an applicable requirement. Instead, you are simply using the GACT control levels/practice standards as what you are going to describe as BAT. This is because Ohio EPA has chosen not to accept delegation of the GACTs except for in rare cases. If you think you should be citing the GACT rule, then discuss this issue with your central office permit review contact.

Remember, that GACT rules were developed under 112(k) of the CAA and primarily include work practice standards for area sources.

Question 4. *Does the GACT rule get IBR's per EG #76?*

In most cases, since we are not accepting delegation for the GACT, the answer would be no. However the permit might need to include the GACT-like (or identical) M/R/Rp that supports the emission limit or work practice standard to support the BAT determination.

If we decided to accept delegation of the GACT for that permit, then the answer would be yes, you do need to use the IBR process permit Engineering Guide #76.

Question 5. *If a GACT-like emission limit is included in the permit should the permit terms require emission testing for the limit if the GACT rule requires testing? The GACTs for the many spark ignition and compression ignition engines often have testing requirements.*

If we decided not to accept delegation for the GACT (by deciding not to cite the GACT rule), then don't include emissions testing. If we decided to accept delegation, then do include the IBR the GACT rule and include the testing requirements. Accepting delegation should only be done in rare cases. See the response to Question 3.

Question 6. *The miscellaneous surface coating GACT preamble indicates that rule primarily addresses metal HAP through the control of particulates. Other GACT rules address organic HAPS but not VOC. SB265 addresses criteria pollutants and their precursors. How is this handled?*

If the GACT rule also has the effect of limiting criteria pollutant/precursor emissions (e.g., use of a baghouse for particulate) then this would likely satisfy BAT. If the GACT controls only have the impact of limiting a single HAP, and the controls do not control all of the compounds that constitute the criteria pollutant/precursor pollutant grouping, then the GACT controls would not be sufficient for BAT. For example, if a GACT is designed to limit chromium emissions by limiting the amount of chromium allowed in a coating for spray painting, then that GACT limitation would not be sufficient to be used for particulate emissions because limiting chromium in coatings does not limit all particulate from painting.

Question 7. *What is BAT if a GACT doesn't apply to an emissions unit (e.g., there is an exemption within the GACT rule) but the emissions unit is in the same source category covered under the GACT?*

It is acceptable to review the GACT to see if the GACT-like controls make sense as BAT for the source. However, if U.S. EPA exempted the source from the GACT, it is likely done for good reason so it is also likely that we would not consider the use of the GACT-like controls as BAT. So, in most cases, the answer would be that BAT is not equivalent to the GACT-like controls. If you think your situation is different, discuss the issue with your central office permit reviewer.

Reviewing BAT Issues

Question 8. *My understanding is that when we are looking for potential BAT options, we should look to see what other states require for similar sources. Is this a new requirement? When looking at other States in determining BAT, how much resources should be expended?*

No, this is not a new requirement. BAT options should consider what other states have required for similar size and type air pollution sources. However, in most cases, a review of what Ohio requires in similar permits is all that is needed because we already have a pretty good idea what BAT should be for the sources.

Although reviewing other State's requirements is always acceptable, for most standard small to medium sources this is not necessary. It is more likely that you will need to do this kind of review when you are dealing with an unusual source or with larger sources where controls may not be well known and you need to do some additional research. Spend more time in the evaluation for larger units or units that don't have similar permits in Ohio. Make sure to evaluate States with similar air quality (i.e., do not use areas in serious nonattainment such as southern California). You can look at what other states have in their rules, in their general permits, in their permit-by-rule type programs, or in any BAT-like programs.

Question 9. *The guidance says to follow current practices for cost effectiveness determinations. Are these practices documented somewhere?*

Engineering Guide #46 gives a detailed explanation of how cost-effectiveness determinations should be done. See: http://epa.ohio.gov/Portals/27/engineer/eguides/guide46.pdf . In addition to Engineering Guide #46, permit writers should review the document, "Proposed Engineering Guide XX "is a Best Available Technology Study Needed?" found under tab 6 in Appendix B of the March 20, 2002 DAPC Permitting Manual. This can be found on the DAPC Intranet at: http://epaintra.epa.ohio.gov/dapc/Home.aspx#2620225-permit-resources . Although this document was never finalized as an Engineering Guide, it does contain some useful guidance concerning the approach permit writers should use when it comes to deciding when a cost-effectiveness study is needed.

Work Practice Issues

Question 10. *For BAT for paved/unpaved roadways do we stay with the traditional BAT opacity 1-minute/3-minute limits? What about the "minimize or eliminate" language?*

The 1-minute/3-minute limit approach will not normally be used unless the permittee specifically requests it. Note that opacity limits specified in OAC Chapter 3745-17 still apply and are not affected by the latest BAT guidance. The "minimize or eliminate" language will be used as a criteria to determine if the roadway segment needs to be treated.

Question 11. *Can a work practice include additional descriptors of when controls are needed?*

In most cases, the descriptors of when controls are needed will be described in the control plan the company develops, so, we will not be putting these in the permit. If the control plan is developed and decided before the permit is written, then it is acceptable to insert the text of the control plan into the permit. However, only insert the text into the permit if the company prefers that approach.

Question 12. *For new installations of fugitive sources how will the permit writer know what is acceptable?*

The permit writer will write terms that require the permittee to develop and implement a control plan designed to minimize or eliminate fugitive dust. After the permit is issued, the permittee will need to submit the plan to Ohio EPA for review. The permit writer will need to review the plan to verify that, if implemented, it will result in the minimization or elimination of fugitive dust.

Question 13. *Do the General Permits (GPs) need to be revised under this latest BAT guidance?*

GPs will need to be updated to take into account the revised BAT approach. Until they are updated, however, the current GPs can continue to be issued if the company prefers to obtain one. A company applying for a GP today will get the current GP terms and conditions. If the company does not want the current GP because they want the new BAT approach, then they need to apply for a case-by-case permit.

Question 14. *Will EAC forms need to be updated?*

DAPC is not aware of any need to update the EAC forms due to the revised BAT approach. If a DO/LAA thinks an EAC form needs updated please inform Mike Hopkins.

Question 15. *Will updates be made to the STARS Library for this latest BAT guidance? What about a clearinghouse or common location for the latest BAT determinations?*

Any terms that are developed based on the revised BAT approach can be routed to Cheryl Suttman so she can include them in the Terms and Conditions Library.

Source Design/Design Efficiency Issues

Question 16. *Will the "design to" standard be included in the testing section of the permit along with possible "if required...testing" language?*

In most cases no, unless an initial test of the design efficiency is needed. Initial testing requirements should be established based on current permitting practices.

Question 17. *In cases where a design specification is tied to a an operating parameter (e.g., minimum 1400F in the combustion chamber of a thermal oxidizer to achieve a 95% destruction efficiency) will it be necessary to specify the operational standard in the permit?*

No. In the case where we are setting BAT based on a *Source Design Characteristic* or *Source Design Efficiency*, you will not need to put any type of operational restriction into the permit. In the above described case, BAT would be described as, "install a thermal oxidizer designed to achieve 95% destruction of VOC emissions". If it is decided that initial testing is needed, then a term would be added to require the initial testing. Then, the only additional terms would be terms that required the company to maintain the equipment following manufacturer's recommendations and to keep records of the maintenance following manufacturer's recommendations. No other terms will be needed to support the BAT limit.

Note that other federal rules or state rules (e.g., the CAM rule under 40 CFR Part 64, OAC rules) can apply and establish additional requirements.

Question 18. *What if there are no manufacturer's specs on a piece of control equipment or the company manufacturers its own control equipment?*

The company will need to create their own maintenance procedures for that control equipment and the DO/LAA will need to agree that it is adequate.

Question 19. *What is the procedure if there is an indication that the control equipment is not meeting the design standard?*

The first step is for the DO/Laa to ask the permittee to provide them with the maintenance records and verify that the permittee has been complying with the necessary maintenance and maintenance recordkeeping. If they have not been doing so as required under the permit, then an NOV would typically be needed to inform them of the violation.

If the permittee has done the maintenance as required but there still seems to be something not working with the controls, then Ohio EPA can ask for an emissions test. This is because the director retains broad authority to require emissions testing under OAC Chapter 3745-15 and this could be pursued following normal course of action (warning letter, NOV etc...). Note, however, testing would not be for determining if the design standard is being achieved, but if compliance with other applicable OAC rules is being achieved (since the design spec is only an "initial" requirement and not an ongoing requirement). The test results may also be used as an indicator to determine if the expected maintenance has been done. However, the test results will not be able to be used to determine if the permittee is in compliance with the *Design Characteristic* or *Design Efficiency* listed in the permit because these are not limit, just design standards.

Question 20. *When processing a PTIO renewal for which emission testing is required for a BAT limit, is there any problem requiring the test per the permit terms if a similar new or modified emissions unit will not be required to test under the latest BAT guidance?*

If an existing permit has a testing requirement that has not been met, then we can require them to do the test.

If an existing permit has a BAT limit based on the historical approach (limit instead of design standard), and we think the source is not in compliance, then, yes, we can require them to test. This is true even if we would use the design standard approach for a new, similar source today.

Monthly Allowable Issues

Question 21. *Has the guidance changed the way that annual emission averaging is performed using monthly emission records?*

We think that the end result is the same although the calculation is slightly different. See examples in the guidance. Also note that synthetic minors will continue to follow current policy of including a 12-month table during the initial year following installation where sufficient records do not already exist and can include higher levels during certain months of the 12-month period.

Question 22. *Do Chapter 31 Modifications follow the new BAT guidance?*

Yes. RE-evaluate BAT using the current guidance for any pollutant(s) experiencing an increase in allowable emissions.

Question 23. *Do applications received in September for which the permit will be issued after February 7, 2014 need to follow the latest BAT guidance? What about permits that are out as draft but won't be issued until after February 7, 2014?*

Yes, BAT within the permits should be converted to the new BAT approach. However, if we have already issued the draft, and the company does not want us to take the time to convert to the new approach, then we can issue the final with the old approach.

Question 24. *I have noticed that S.B. 265 uses the term "Monthly allowable emissions average over a twelve-month rolling period". Historically, we have used the "tons of emission per rolling 12-month period" type limit. What is the difference?*

From a compliance perspective, there is no difference between these two descriptors. They both result in the same restriction. The only real difference is that the limit is listed as a monthly limit or a 12-month limit. Since the monthly limit is based on a 12-month average, the limits end up being the same. To explain, here is an example:

Company name: Hubcap Painting, Inc.
Source: Hubcap painting booth
VOC content: 3.5 lbs VOC/gallon of coating
Maximum coatings that can be used in a year (potential): 20,000 gallons/year

How do you calculate the "monthly allowable emissions averaged over a twelve-month rolling period"?

(20,000 gallons of coating)/Year × (3.5 lbs VOC)/Gallon × Ton/(2000 lbs) × (1 year)/(12 months)=2.92 (Tons VOC)/Month

This is equivalent to 2.92 tons VOC/month on a 12-month average

Compliance would be determined by calculating the actual emissions from the past 12 months, dividing it by 12 to get the monthly average and comparing it to the 2.92 tons VOC/month on a 12-month average.

How do you calculate the "tons of emission per rolling 12-month period"?

(20,000 gallons of coating)/Year × (3.5 lbs VOC)/Gallon × Ton/(2000 lbs)=35 Tons/Year

This is equivalent to 35 tons VOC/12-month period.

Compliance would be determined by adding up the actual emissions for the past 12 months and comparing it to the 35 tons VOC/12-month period limit.

These limits end up the same. The only difference is that one is divided by 12 to get a monthly average.

Although there is no difference, Ohio EPA is asking permit writers to use the "monthly allowable emissions averaged over a twelve-month rolling period" language when describing BAT because that reflects the language in the law.

Question 25. *I am working on a permit and the company says they don't want their BAT limit expressed as a "monthly allowable emissions averaged over a twelve-month rolling period" and would, instead, prefer the limit expressed as a "tons of emission per 12-month rolling period". Is it ok to use the tons of emission per 12-month rolling period approach in this case?*

If you get something in writing from the company saying they would prefer the tons of emission per 12-month rolling period approach then it is acceptable to use this approach.

Potential to Emit Issues

Question 26. *Can we continue to determine PTE after controls for major NSR applicability purposes?*

This answer will depend upon which BAT option is selected, and whether or not additional voluntary terms have been added to make sure the restriction meets the federally enforceable requirements and/or the practical enforceable requirements by the state. A discussion of each of the BAT options is provided below:

Work Practice – Work Practice BAT will no longer have an emission limit associated with it. PTE should be based on the maximum potential emissions taking into account the use of the work practice control measures.

Source Design Characteristic or *Design Efficiency* BAT – DAPC will accept a *Source Design Characteristic* or *Design Efficiency* BAT to limit PTE for NSR purposes. Remember, you may need more than just this BAT to restrict PTE to meet U.S. EPA synthetic minor restrictions. If you are establishing a synthetic minor, you will need to follow U.S. EPA's Limiting Potential to Emit guidance.

Raw Material/Throughput BAT – This type of BAT can be used to restrict PTE although you will need more restrictions to meet U.S. EPA requirements for synthetic minors including

the need to establish a rolling emission limitation and possibly to include a short-term limit. You will need to follow U.S. EPA's Limiting Potential to Emit guidance which will require a limitation on emissions and will require the permit to be issued draft, then final.

Monthly Allowable – This type of BAT can be used to restrict PTE because it is practically enforceable by the State. However, if you are establishing a synthetic minor permit, you will need to follow U.S. EPA's *Limiting Potential to Emit* guidance which will require a limitation on a process variable and will require the permit to be issued draft, then final.

Note that the above answers apply to major NSR applicability and not necessarily to Title V applicability. For Title V applicability, the PTE is calculated before controls unless the controls are federally enforceable through a PTI or other means. See Engineering Guide #80 for more details on Title V applicability and PTE.

Question 27. *Can we use the source design/design efficiency BAT as an acceptable restriction for PTE?*

A source design/design efficiency value established as BAT in a permit can be used to limit PTE for all NSR actions, including emissions units covered under PSD permits. This change will result in more natural minors and more sources that can start construction per OAC rule 3745-31-33. In addition more permits can be issued as direct-final actions. It is possible that U.S. EPA will not agree with this interpretation. Discuss with the company and let them know that U.S. EPA might object to this interpretation of limiting PTE.

Note that for Title V applicability, you would still calculate PTE before controls.

Question 28. *What effect does this have on ensuring that the limit on PTE is both legally and practically enforceable?*

Ohio EPA believes that the limits established under this guide for BAT are legally and practically enforceable.

Question 29. *Does this PTE interpretation result in more/less emission testing for source compared to before?*

The PTE interpretation should not affect the frequency of emissions testing. Generally testing is required for larger sources and not for smaller sources. The latest BAT guidance does not change this.

Question 30. *If emission testing is not required how will the true PTE be known for the "designed to" BAT?*

Use the "designed to" standard as the basis for PTE.

Question 31. *Can source design characteristic/design efficiency BAT limits limit PTE for Title V applicability determinations as well?*

Yes, this type of BAT limit can be used to limit PTE except that when there are add-on controls, you must determine PTE before controls.

Question 32. *Is PTE still evaluated at 8760 hrs/yr?*

Yes

Miscellaneous Issues

Question 33. *When we establish a BAT limit using this new guidance, what do we put in the various sections of the permit?*

As a guide, the following chart identifies when you would or would not include information in each major section of the permit.

Recommended Monitoring/Record Keeping/Reporting/Testing for BAT

	Section of the Permit			
BAT Option	Monitoring	Record Keeping	Reporting	Testing
Work Practice	Yes	Yes	Yes	No
Source Design Characteristic Design Efficiency	No	No	No	Describe calculation method/assumptions for BAT; include any needed initial test requirement.
Raw Material/Throughput	Yes	Yes	Yes	No except to include any needed initial test requirement.
Monthly Allowable	Yes	Yes	Yes	Describe calculation method/assumptions for BAT; include any needed initial test requirement.

Question 34. *Do we use the new BAT approach when we are establishing BAT for <10 ton sources?*

Yes, permit writers should use the new approach to describe BAT for <10 ton/yr sources. We will continue to use the dual approach (BAT is developed and described for <10 ton sources and BAT goes away once the <10 ton BAT rule exemption is approved as part of the SIP).

If a company does not want us to put BAT in the permit for their <10 ton source, bring this issue up with your central office contact.

Question 35. *If a company indicates they do not want Ohio EPA to establish a BAT requirement because a BAT rule has not been developed, what should the permit writers do?*

Bring the issue up with your Central Office DAPC permit contact for further guidance. We will discuss options with the company including: (1) agree to establish a BAT requirement following this guidance, (2) ask us to process the permit without a BAT requirement, or (3) ask us to process the permit with a voluntary restriction on allowable emissions that is equivalent to BAT (see OAC Rule 3745-31-05(F)). If they choose option (2) or (3) we will inform them that U.S. EPA would likely not approve the permit and that U.S. EPA may take some sort of action against either the company or Ohio EPA. We will also inform them that we are obligated to provide U.S. EPA with a copy of any issued permit that does not contain BAT.

Question 36. *What happens if I am still not sure which type of BAT expression I should use?*

Contact your Central Office DAPC permit contact for further guidance.

Question 37. *Ohio EPA has used the BAT rule to establish used oil specification limits in the past. These limits have been established to ensure hazardous waste was not burned and to ensure air emissions would not cause health or welfare effects. Can we continue to use the BAT rule to do this?*

Yes. BAT can be expressed as a *source design characteristic* under S.B. 265, and fuel specifications can be included as a *source design specification* or *work practice*. You can continue to use our standard terms that restrict used oil contaminants to make sure the oil is not classified as a hazardous waste.

Question 38. *DAPC's interpretation of S.B. 265 is that only one BAT requirement can be established. What happens when an emission unit has more than one stack? For instance, consider a painting line often that has an emission point from the uncontrolled base-coat spray booth and then another emission point from an incinerator-controlled prime-coat spray booth. Can permit writers still establish a BAT requirement for each stack?*

No, a BAT requirement should not be established for each stack. Instead, you should decide which of the appropriate BAT approaches should be used to cover the entire air contaminant source and use it.

Question 39. *DAPC's interpretation of S.B. 265 is that only one BAT requirement can be established. What happens when an emission unit has more than one operating scenario? For instance, an asphalt plant typically operates using natural gas some days, #2 fuel oil on other days, or may use different raw materials (say, slag) on different days. The emission rate for SO2 in this case is significantly different for each fuel/material. What should we do for BAT?*

If the *Source Design Characteristic* approach is used, then a different BAT requirement for each pollutant should be established for each operating scenario where there is a difference in emissions. However, if the emission rate is the same for the various operating scenarios, then it is acceptable to establish one BAT requirement that covers all operating scenarios.

On the other hand, if a *Monthly Allowable* approach is used, then, even if different operating scenarios are used, only establish one BAT requirement that covers both operating scenarios.

Question 40. *According to the above guidance, no short-term BAT limits will be established when using the Source Design Characteristics and Design Efficiency BAT options and there will be no on-going short-term compliance obligations. Does this mean that sources can operate their equipment at higher emission rates than the Source Design Characteristics or Design Efficiency BAT determinations?*

If the facility is operating the equipment at an emission rate that is higher than the design standard, then it is likely that the equipment has not been maintained. To address this issue, facilities will be required to follow maintenance procedures developed by the manufacturer. This will ensure that the equipment is operating as designed.

Question 41. *We normally model the short term emission rates if the annual emissions are over our modeling thresholds. Since there will be no short-term emission rates, what do we do?*

If the annual emissions are over the modeling thresholds, then modeling should be completed. In the case where we are setting BAT based on a *Source Design Characteristic* or *Design Efficiency*, modeling should be based on the short-term BAT *Source Design Characteristic* or *Design Efficiency* selected. In the case where we are setting BAT using the *Work Practice, Raw Material Throughput* or *Monthly Allowable* approach, modeling should be based on the short-term potential to emit. If the source cannot pass modeling based on

these short-term design values/PTEs, then tighter short-term limits will need to be established. These tighter limits will not be BAT limits, but will, instead, be voluntary limits in order to pass modeling.

Question 42. *When should we start using this guidance?*

With the exception described in the response to questions 44 and 45, this guidance applies when BAT must be determined for any new or modified[12] source that was installed or modified on or after February 7, 2014. This guidance does not apply when BAT terms and conditions are being administratively modified.

Question 43. *If I am processing a permit for a source that was installed or modified some time ago, how do I determine BAT for that source?*

Except for the situation described in the response to questions 44 and 45, BAT should be determined for after-the-fact permits following the guidance that existed when the source was installed or modified[12]. To help determined which guidance document should be followed, DAPC has developed a chart that describes the timeline for various guidance documents. This chart can be found as *Appendix A* of this document.

Question 44. I have heard that, because of an ERAC decision, we should not be establishing short-term BAT limits (lbs/hr, ppm, X% opacity) for sources installed after August 3, 2009. Is this true?

Yes, that is true. In *Martin Marietta vs. Korleski*, ERAC ruled that the short-term BAT limits (opacity limits for fugitive sources) found in the Martin Marietta permit did not meet the requirements in SB 265 because SB 265 does not allow short-term limits for BAT. This means that if we get a permit application for a source installed or modified between August 3, 2009 and today, we should process the permit using this guidance.

Question 45. If that is true, what should we do with the exiting new and Chapter 31 modified permits that have these short-term BAT limits?

There is a subset of permits/limits that we will need to change. Any installation permit that was issued final for a new or modified source on or after August 3, 2009, and, has new or modified emissions units for which we have established a short-term emission limit as BAT should be revised to change the short-term BAT to one of the four options found in this guidance. We should make this change in the following circumstances:

12 Modified in this case means that the source has tripped the modify definition in OAC Rule 3745-31-01.

1. *When the permit needs to be renewed,*
2. *When the source in question is modified (per a Chapter 31 modification), or*
3. *When the facility owner/operator requests we change the BAT limit.*

Note that when you do this change, you will need to evaluate the permitting situation to verify that no additional changes are necessary. For instance, we may have been relying on the BAT short-term limit in order to avoid major NSR. In that case, you may need to include some other limitation in order to properly avoid major NSR.

Question 46. What should I do when a company is violating one of the short-term BAT limits found in a permit for a new or modified source that was installed or modified on or after August 3, 2009?

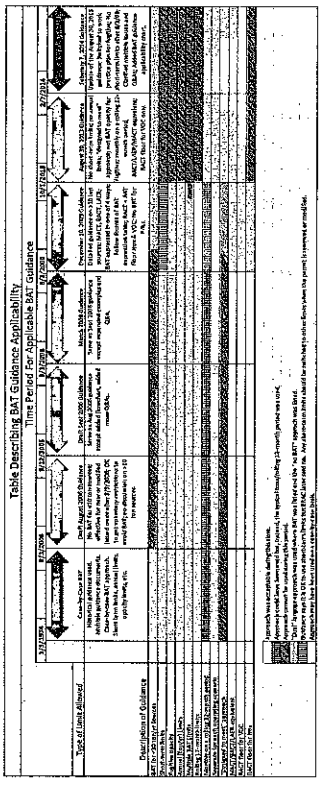
If you find any violations of this type, please contact your Central Office enforcement coordinator before taking any action like issuing a notice of violation or requiring a compliance plan. Please note that this applies only to compliance matters for new or Chapter 31-modified sources that were installed or modified on or after Aug. 3, 2009.

If you have any questions or concerns about establishing BAT for particular source, please contact your Central Office permit contact to discuss.

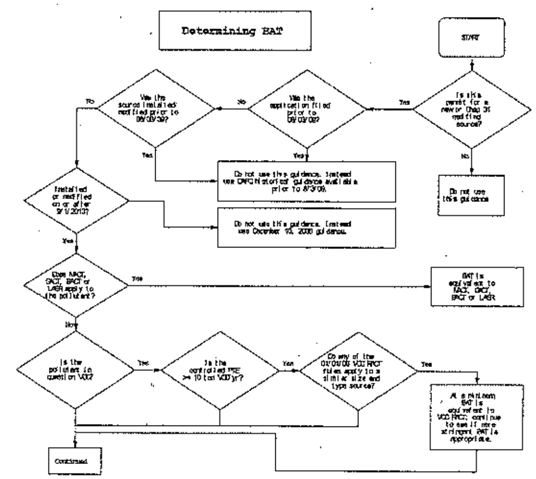
MH/mh
Post0908038ATv11Final20140207.docx

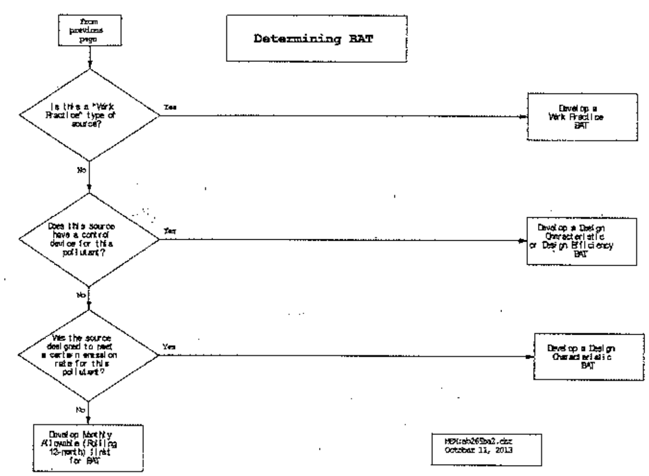
Cc: Craig Butler, Director
Bob Hodanbosi, DAPC
Laurie Stevenson, Dir. Off.
All DO/LAA Air Unit Supervisors
Drew Bergman, Legal
Andrew Hall, DAPC
All CO permit reviewers

Appendix A



Appendix B


Determining BAT
START
Is this permit for a new or Chap 3I modified source?
Yes
No
Do not use this guidance
No
Yes
Do not use this guidance. Instead use DAPC historical guidance available
Do not use this guidance. Instead use December 10, 2000 guidance.
Yes
Does MACT, GACT, BACT or LAER apply to the pollutant?
Yes
BAT is equivalent to MACT, GACT, BACT or LAER
No
Is the pollutant in question VOC?
Yes
Is the controlled PTE >= 10 ton VOC/yr?
Yes
Yes
At a minimum BAT is equivalent to VOC RACT; continue to see if more stringent BAT is appropriate.
Continued


from previous page
Determining BAT
Is this a "Work Practice" type of source?
Yes
Develop a Work Practice BAT
No
Does this source have a control device for this pollutant?
Yes
Develop a Design Characteristic or Design Efficiency BAT
No
Was the source designed to meet a certain emission rate for this pollutant?
Yes
Develop a Design Characteristic BAT
No
Develop Monthly Allowable (Rolling 12-month) limit for BAT
October 11, 2013

To: **OMA Environment Committee**
From: **Rob Brundrett, OMA Staff**
Re: **Environment Policy Update**
Date: **February 13, 2014**

Overview

The General Assembly returned from its winter/holiday break in mid-January. They will continue to work straight through until the summer with a short spring break and a possible break prior to the May primary.

Ohio EPA has been quiet on most issues since the late summer. Director Nally resigned at the beginning of the year. Craig Butler was named the new interim director for Ohio EPA. He had previously served as a policy advisor for Governor Kasich. With the switch in leadership, it is hard to imagine any new or major initiatives coming from Ohio EPA during the election year. Most legislative efforts from the agency appear to be on hold. Rules continue to be reviewed but major rule change initiatives like beneficial use have gone silent. With a mid-biennium review bill being prepped for introduction this month, there might be a chance for Ohio EPA to make some minor legislative changes.

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. At the end of November the agency released a power point showing the review's progress. Legislation appears to have been pushed back even further unless the agency wants to break up the rewrite into smaller chunks.

One thing to note is that Ohio EPA was seriously considering including language from Senator Lehner's (R-Kettering) old Senate Bill 253 which created a post-consumer recycling liability for manufacturers of certain electronic products. The OMA opposed this legislation last year and has reiterated its opposition to Ohio EPA and Senator Lehner's office.

Senate Bill 150

Senate Bill 150 cleared the Senate earlier this year and began hearings in the House of Representatives. The bill is geared toward the agriculture industry. The version passed by the Senate would require 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.

Mid-Biennium Review

The Governor's office is preparing another mid-biennium review (MBR) bill this winter. The MBR bill is a comprehensive policy bill touching all aspects of state government, including Ohio EPA. There have been no official announcements about what the MBR might contain and speculation has not indicated if there will be any important policy impacts on Ohio EPA. However the bill could contain some possible policy tweaks for the department.

Regulations

Beneficial Use

Ohio EPA has been working on new beneficial use draft rules for over a year. In the summer of 2012 the agency began asking for feedback and comments through the early stakeholder process. This past summer the agency released draft conceptual language and an updated beneficial use concept paper. The agency also planned to release some draft permits for stakeholders to make comments. These draft permits have not been released.

The agency has not issued any new updates regarding this effort since it released the draft conceptual language in the middle of last year. The original goal was to have something in rule form by the first of the year. However things have gone silent on this front since last summer.

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. With a new leadership change at the agency it is hard to think that this issue will be a priority.

Startup Shutdown Malfunction

Last year the U.S. EPA proposed a state implementation plan call that requires 36 states including Ohio to revise their laws governing emissions associated with emission unit or control device startups, shutdowns and malfunction events.

The EPA is attempting to find the middle ground between the Sierra Club and industry by proposing that states are prohibited from allowing blanket exemptions for SSM events or affirmative defenses for emissions associated with startup and shutdown but would allow affirmative defenses for malfunctions.

The OMA partnered with the Chemistry Council and Ohio Chamber to comment on this call and Ohio EPA has submitted its own comments with align with Ohio industry.

Water Nutrient Work Group

Ohio EPA has been working on reducing the amount of nutrients that enter in Ohio's waterways. Attached to this report includes the agency's water nutrient reduction plan. 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.

Agency Notes

Director Nally resignation

Governor Kasich's office announced in early January that Ohio EPA Director Scott Nally resigned from the post he held for three years. Nally indicated he resigned "to pursue other opportunities."

Craig Butler was appointed interim agency director by the governor. He previously served as the Assistant Policy Director for Energy, Agriculture and the Environment in Governor Kasich's administration. He also previously served as District Chief of both Ohio EPA's Central District Office and its Southeast District Office.

This change follows the resignation of long time Ohio EPA staffer George Elmaraghy who resigned in September. Mr. Elmaraghy was most recently chief of the division of surface water at Ohio EPA. According to several reports Mr. Elmaraghy resigned over issues regarding permits. Ohio EPA has not yet named a permanent replacement but Brian Hall has been acting in his place since the fall.

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.

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.

OHIO SOLID WASTE MANAGEMENT REVIEW

GENERAL UPDATE

November 6, 2013

Solid Waste Management Review: The Basics

Where Did This Come From?

H.B. 592 Passed in 1988

It's been on Ohio EPA's long-term "to-do" list for several years

Timing seemed right to take a holistic look, rather than react to piecemeal initiatives

Key Process Principles

Looking comprehensively at the entire system to make it more efficient and effective

Open, transparent process based on consensus-building

Not afraid to think big

Maintaining Fundamental Principles of 592

Ohio EPA maintains our commitment to original HB 592 principles:

Waste management must be protective of human health and the environment

Continue to reduce reliance on landfills for solid waste management

But, we entered this process with very few pre-conceived notions about how to maintain that commitment

Solid Waste Management Review: Process

4 Phase Process (Approximately 18 months)

Phase I: *Information Gathering*

Phase II: *Discussion and Consensus Building*

Phase III: *Formal Proposal*

Phase IV: *Legislative Initiative*

Solid Waste Management Review: Process

Phase I: *Information Gathering*

March 2012 – June 2012

Informal sit down meetings

- Ohio EPA invitation
- All the obvious interested parties
- Information gathering focus
- Open invitation to others and individual members

Solid Waste Management Districts
County Commissioners
Health Departments
Environmental Groups
Recycling Organizations
Ohio Municipal League
Ohio Township Association
Ohio Chamber
Ohio Manufacturers
Solid Waste Consultants
NSWMA / SWANA
Individual Businesses
Individual Citizens
Planning Organizations

Solid Waste Management Review: Process

Phase I: Results

Engaged with over 300 participants through a variety of channels

Scheduled nearly 40 meetings between in April – June

- *32 External and 7 Internal*

Compiled a significant written record

- *Over 130 pages of hand-written notes*
- *17 formal documents*
- *Over a dozen substantive emails*

Solid Waste Management Review: Process

Phase 2: *Discussion and Consensus Building*

July 2012 – End of 2013

Significant resources being directed to research and benchmarking

Various methods of stakeholder engagement depending on issue

Facilitated discussions on certain issues

- Contracting with professional facilitators to ensure neutrality
- Ohio EPA is also encouraging discussion among IPs

Ultimately seeking consensus-based solutions

Solid Waste Management Review : Solutions Framework

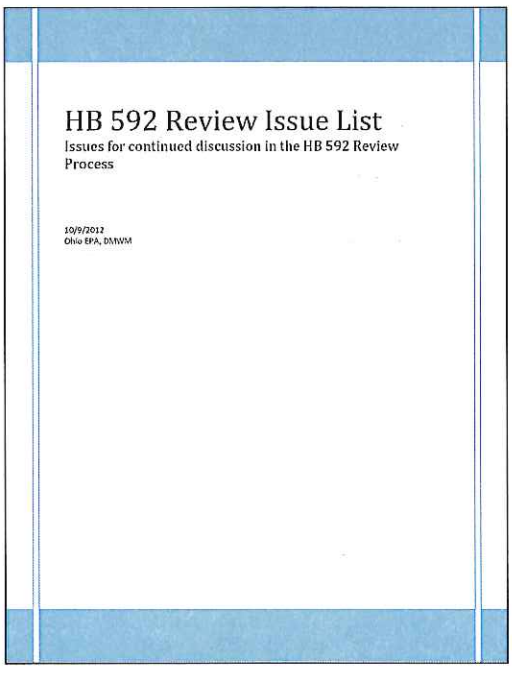
Statutory Changes	Regulatory Changes	Partnerships & Initiatives	Shared Visions and Goals	'Parking Lot' Issue Identification
	Guidance, Policies & BMPs			

Solid Waste Management Review: Vision 2035

Final Version (Released March 4, 2013):

"Ohio continues to reduce waste generation. Waste materials that are generated are recognized as important resources that often have significant economic value. These materials are managed in ways that maximize that value and prevent the negative impacts associated with improper management. Ohio will manage waste materials via a competitive and innovative portfolio of best management practices that include recycling, composting, and other beneficial approaches, with disposal as a last resort. These practices are developed and operated by public, private and non-profit stakeholders at all stages of the product life cycle. Landfilling is practiced at an ever decreasing rate, while Ohio strives toward zero landfilling."

Solid Waste Management Review: Issue List


HB 592 Review Issue List

Issues for continued discussion in the HB 592 Review Process

10/9/2012
Ohio EPA, DMWM

Nearly 100 issues – all raised from Phase I

As of Fall 2012, Ohio EPA was willing to commit resources to research and discuss these issues

Fewer than 20 issues were removed between Phase II kick-off meetings and the release of this list

Solid Waste Management Review: Active Issues

External Discussions:

- Solid Waste Management District Planning Issues
- Solid Waste District Shared Services/Consolidation
- Facility Oversight
- Solid Waste Fees
- C&DD
- SWAC/RLPAC

Internal research/technical issues:

- Post-Closure Care
- Abandoned "Orphan" Landfills
- Landfill Redevelopment (27-13 program)
- Conditionally Exempt Small Quantity Generators (CESQGs)
- Beneficial Use
- Others

Update: SWAC/RLPAC

6 proposed changes:

- Combine SWAC and RLPAC into a single council
- Name the new council the Ohio Materials Management Advisory Council (OMMAC)
- Revise the purpose and responsibilities
- Modify membership
- Allow the election of a Chair
- Develop bylaws

OMMAC Membership

~~Director of the Ohio EPA;~~
Director of the Ohio ~~Department of Development~~ **Development Services Agency**;
Member of the Ohio Senate;
Member of the Ohio House of Representatives;
Representative from a health district (involved in the enforcement of solid waste regulations);
~~Two~~ **One** members representing counties;
~~Two~~ **One** members representing municipal corporations;
~~Two~~ **One** members representing townships;
~~Member representing single-county solid waste management districts;~~
~~Member representing joint solid waste management district;~~
One member representing solid waste management districts;
~~Member representing industrial generators of solid waste;~~
~~Member representing the private recycling industry;~~
~~Member representing the private solid waste management industry;~~
Seven members providing a broad based representation of private industry, including manufacturing, retail, wholesalers, labor, raw materials, recycling and solid waste;
Member representing statewide environmental advocacy organizations; and
Member representing the public.

OMMAC Responsibilities

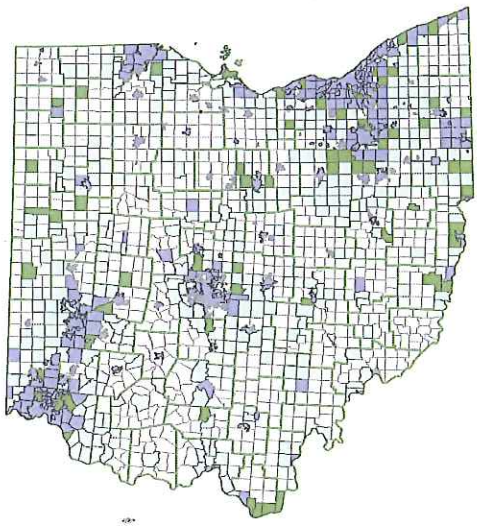
- Guide the development of the State Materials Management Plan
- Approve the State plan
- Annually review implementation of the State Plan
- Prepare, approve and submit a periodic report to the Ohio General Assembly on Ohio's materials management framework, progress and future efforts – also make legislative recommendations
- Provide general guidance to Ohio EPA to advance recycling, litter prevention and other materials management issues
- Research and discuss questions posed by Ohio EPA
- Develop relationships to advance recycling and litter prevention efforts in Ohio
- Advise the Ohio EPA Director in carrying out grant programs

Update: Local Involvement and Responsibility

Engaged with Ohio Municipal League (OML) and Ohio Township Association (OTA) on how to improve local communities' involvement in recycling

Draft proposal (not yet finalized) focuses on 3 ideas:

- Elimination of the Largest Municipality Veto
- Establishment of formal partnerships with OML/OTA
- Aspirational goals for expanding curbside access



Update: Facility Oversight

Started out as a discussion about LHDs involvement – Ohio EPA chose to expand the scope to the entire system

Data-intensive project aimed at building the most effective system and funding it properly

Outreach has primarily been focused on LHDs, but solid waste industry also invited to the December 2012 meetings

Update: Facility Oversight

Timeline:

- October - December 2012: Initial data collection (funding & facility inventory)
- December 17, 2012: Initial internal meetings
- January – April 2013: Internal discussions and data analysis
- April 2013: Ohio EPA visits AOHC regional meetings
- May – June 2013: Internal and External data collection on time
- July 2013: Review of data (internal & external)
- August 2013: Internal discussions
- September 2013: Additional meetings scheduled

Update: Facility Oversight

Questions/Analysis:

- What accounts for the difference between Ohio EPA times and LHD times?
- What does it cost to run the system overall?
- Are inspection frequencies sufficient/correct?
- Does the system meet or address the common goals/concerns found in the December 2012 meetings?
  - *Complexity, Consistency, Expertise, Funding, Frequency*
- How, if at all, should we change the system?

Update: Shared Services/Consolidation

Sub-Committee met in Jan/Feb 2013

Three main parts:

1. Implement a regional planning pilot project
2. Coordinated efforts to promote shared services
3. Population threshold of 100,000 with a transition period and waiver process

Update: Planning Revisions

First officially released draft proposal (March 4, 2013)

Nine key points:

- All SWMDs on 10-year planning periods
- Elimination of statutory start date
- Clarification of public notice requirements
- Revised approval timeline
  - Increased NBAO time, reduced final approval time
  - Swap Ohio EPA approval and local ratification
  - All plans on 5.5 cycles
- Allow "for cause" extension
- 'Midway Adjustment' process

Update: Planning Revisions, 'Midway Update' Process

Purpose of the midway update:

- Provide a **tool** for updating a plan to keep it relevant without going through a full update
- To provide **flexibility** to SWMDs to react to changing conditions while maintaining the validity of the original plan
- To provide **public input** in those decisions

Several concerns and points of clarification raised with current update proposal:

- Clarification of how to handle responses to emergencies
- Monetary guidelines seem too strict
- Timeline/window isn't flexible enough

Additional ideas were provided to Ohio EPA via email following the discussion and are under consideration

Update: Solid Waste Fees

3 meetings held so far (June 6, June 13 and July 25)

Two goals in mind as we enter these discussions:

- Solid waste fee structure is complicated and needs simplification
- SWMDs need sufficient resources to carry out their functions

Based on the first two meetings and Phase I comments, Ohio EPA provided quantitative analysis on 3 possible scenarios:

- Flat statewide disposal fee administered by Ohio EPA
- Flat generation fee directly to SWMDs
- Flat disposal fee combined with locally set generation fee direct to SWMDs

Initial results provided to SWMD sub-committee and discussed on July 25

Update: Flow Control

Ohio EPA, working off the memo provided to participants for the April 30th meeting, is crafting a framework for the proposal which will then be shared with interested parties

As of now, the direction we expect the proposal may take includes:

- Flow Control continues to serve a legitimate public purpose
- Flow control should not be static and the implementation of any flow control measures should include an extensive analysis prior to enactment, including the economic impact on the district, community, industry, and more.
- We believe many districts are already doing this, but aim to ensure consistent and complete analysis across the board

Update: C&DD

5 meetings (May 14, June 4, June 24 and July 15, August 13)

Attended by SW Industry, C&DD Industry, Recyclers, SWMD, LHDs, Ohio EPA, Contractors and others

Ohio EPA developing framework for proposal

Main focus: Recycling and Transfer Stations

Next meeting September 24

What's Next?

After a busy Spring and Summer, things are mostly quiet on the external front right now.

Ohio EPA has been working to craft a strategy for moving forward with changes in the coming months.

Our goal continues to be a 2013 release of at least initial results.

Ohio Solid Waste Management Review

House Bill 592 (HB 592), passed by the Ohio legislature in 1988, created the structure for the modern-day management of solid waste (garbage) in Ohio. The law did a variety of things, including requiring Ohio EPA to adopt regulations to ensure that landfills are safe and protective of human health and the environment; creating local solid waste management districts that are responsible for developing and implementing local solid waste management plans; and creating the State Solid Waste Advisory Council (SWAC), which is responsible for developing State recycling goals (among other things).

In short, the way that solid waste is regulated and managed in Ohio today is in large part a reflection of what was included in HB 592. Since HB 592 was passed in 1988, there have been many changes within the solid waste industry, and changes with technology and solid waste management and disposal practices. As a result, Ohio EPA has initiated a comprehensive review of HB 592. The review will consider Ohio EPA's experience implementing the law, along with the experience gained from all interested parties including the solid waste industry, health departments, solid waste management districts, citizens and businesses. This information and experience will be the basis for proposing the changes necessary to improve the overall solid waste management system in Ohio.

UPCOMING MEETINGS

- **Solid Waste Fees**
  July 25, 10:30 a.m. - 12:30 p.m.
  Invitations extended through OSWDO
- **Solid Waste Management District Workgroup**
  August 1, 10 a.m. - 1 p.m.

MORE INFORMATION

If you have questions or would like more information, please email Christopher Germain or call (614) 728-5317.

Subscribe for Updates

Review Process | Vision 2035 | Get Involved | Proposals | Meetings | Issue List | Data | Related Documents

There are numerous ways you can get involved and provide input:

- **Schedule a meeting with representatives of Ohio EPA.** If you are interested in meeting with Ohio EPA, please send a meeting request to Christopher Germain or call (614) 728-5317.
- **Submit comments to Ohio EPA.** Ohio EPA will accept public comments throughout the entire review process. Once a formal proposal is finalized, there will be a final, formal comment period. At any time during the process, interested parties are encouraged to submit their ideas and comments to Christopher Germain (.doc and .pdf attachments are acceptable). Hard copy comments can be submitted to:

  Ohio EPA, DMWM
  ATTN: Christopher Germain

Questions

Ohio Solid Waste Management Review Process

Project Contact: Christopher Germain
(614) 728-5317
Christopher.germain@epa.state.oh.us

Ohio EPA
Division of Materials and Waste Management,
Attn: Christopher Germain
PO Box 1049
Columbus OH 43216-1049

Director's Office

Upholding the Agency's mission to protect human health and the environment.

The office directs all activities of the Agency including policy development and rule making, enforcement, strategic planning, coordinating state and federal initiatives, and providing outreach, education and assistance to the regulated community and citizens.

Craig W. Butler, Interim Director

On January 7, 2014, the Governor appointed Craig W. Butler as Interim Director of Ohio Environmental Protection Agency. He previously served as the Assistant Policy Director for Energy, Agriculture and the Environment in Governor Kasich's administration.

A public servant of more than 24 years, he previously served as District Chief of both Ohio EPA's Central District Office and its Southeast District Office. He is a board member of the Dangerous Wild Animal Board and is a past member of the Board of Directors for the Ohio Alliance for the Environment.

Mr. Butler graduated Mansfield University in Mansfield Pennsylvania with honors with a BA in Geography and Environmental Science. After receiving a scholarship from Ohio University he also graduated from Ohio University with a Masters in Environmental Science.

The Partnership for a Better Energy Future ("the Partnership") is leading a unified advocacy campaign in response to the Administration's greenhouse gas (GHG) regulatory agenda. The Administration's 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.

The Partnership will provide a forum for advocacy and messaging coordination through education and outreach efforts with the public, Congress and the Executive Branch. Grassroots engagement across a diverse set of stakeholders will be a central theme. This may include letters, policy statements, and other communications that can be delivered jointly but also through individual associations and their members. Additionally, through the Partnership, various informational and advocacy materials will be distributed in order to promote coordinated communications.

Partnership's Structure

1. Messaging and advocacy will be done with the Partnership's broad membership in mind; no one group or industry will singularly drive the agenda.
2. The Partnership will hold weekly calls to provide updates on activities from the previous week and discussion of advocacy efforts with the Administration, Congress and in states.
3. Open to trade associations, labor groups and other organizations representing interested stakeholders. National, state and local groups are welcome.
4. No cost to join.

Partnership's Six Core Principles for GHG Regulations

1. Must be cost effective.
2. Must be technologically achievable.
3. Must allow all energy resources to play a role in a true all-of-the-above energy strategy.
4. Administration should seek broad stakeholder input in developing regulations.
5. Administration must perform a thorough cost benefit analysis, accounting for the impacts costly energy regulations will have on businesses, markets, employment and households.
6. Administration needs to take the time to get these regulations right; prioritizing a robust rulemaking process over arbitrary deadlines.

Additional details available at www.BetterEnergyFuture.org

Upcoming Partnership Events

1. Official Partnership launch on January 30th
2. Weekly calls Tuesdays at 3pm EST

Environment

New GHG Rules Coming for Power Plants

OMA Connections Partner, Jones Day, has produced a whitepaper on new U.S. EPA rules coming on greenhouse gas. This white paper describes the operation of Clean Air Act Section 111 as a whole. Next, it explains the important aspects of two major provisions, Section 111(b) and Section 111(d), by explaining EPA's authority and responsibilities under the relevant provisions and related regulations.

Under 111(b), the EPA proposes to regulate carbon emissions from new fossil fuel-fired power plants. President Obama also has directed EPA to issue emissions guidelines for existing sources under Section 111(d).

Jones Day describes the legal obstacles these rules face. Even if these obstacles are hurdled, the Clean Air Act "leaves significant discretion to states to implement the guidelines issued by EPA." States are encouraged "to develop rules that best suit the state's particular circumstances."

The firm notes: "Together, the statutory language and state flexibility indicate a lengthy process for comprehensive regulation of greenhouse gases from existing sources." *2/5/2014*

EPA's Proposed New Source Clean Air Act Standards and Carbon Capture and Storage Technology

OMA Connections Partner, Jones Day, reports: On April 13, 2012, the EPA proposed a new source performance standard (NSPS) pursuant to Clean Air Act Section 111 limiting emissions of carbon dioxide (CO_2) from new fossil-fuel electric generating units that primarily focused on coal- and natural gas-fired units. EPA received more than 2.5 million comments on the April 2012 proposal. Based on EPA's review and consideration of the comments as well as consideration of the future of the electric generating sector, EPA withdrew the April 2012 proposal, and on January 8, 2014, EPA published a new proposed rule.

Unlike the April 2012 proposal, the new rule proposes to establish separate standards for fossil fuel-fired electric steam generating units (utility boilers and Integrated Gasification Combined Cycle units) and for natural gas-fired stationary combustion turbines using separate determinations of the best system of emission reduction, which EPA claims are adequately demonstrated. Read more. *2/3/2014*

Green Building Standards Testimony Heats Up

This week the Senate continued to hear testimony on Senate Concurrent Resolution 25, sponsored by Sen. Joe Uecker (R-Miami Township), which urges state agencies to adopt the American National Standards Institute building standards, instead of the currently used U.S. Green Building Council's LEED standards.

The latest version of LEED, v4, has created concern in certain sectors of the manufacturing industry, putting manufacturers on both sides of the issue. Here is testimony from a number of manufacturers, which illustrate the perspectives: Seaman Corporation, United Technologies, Nucor Steel and Ferro Corporation.

The OMA Environment Committee will be taking some time to learn more about this proposal at our next meeting on February 13. Register today. *2/6/2014*

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.

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. It's mission is to ensure the continued availability of reliable and affordable energy for American families and businesses.

Here is a one-page overview of the partnership's mission, structure, and core principles. More information can be found here. We'll keep you updated on the partnership's activities and opportunities for engagement. *1/28/2014*

ME3 Program Offers Funding to Reduce Costs, Increase Sustainability

The Materials + Economy + Energy + Environment (ME3) program has funding to help manufacturers statewide save money and reduce their environmental footprint through discounted technical services. The program includes an energy assessment, a lean and green facility review, and participation in the Ohio By-Product Synergy (BPS) Network to help convert waste materials into profitable feedstocks.

The Calgon Carbon Corporation, Columbus plant, has realized an estimated annual savings of $140,000 through the program. Federal and local funding reduced the cost of technical services by more than 70 percent. "We are thrilled with the outcome, and are excited about the ongoing potential," said Tim Duckwall, Plant Manager.

The ME3 program has both funding and staffing to coordinate services. Resources include: a grant from the U.S. Environmental Protection Agency, and assistance from American Electric Power, Duke Energy, The George Gund Foundation, MAGNET, Ohio By-Product Synergy Network, TechSolve, the City of Columbus, The Ohio State University Center for Resilience, and University of Dayton Industrial Assessment Center.

Contact ME3's Brandi Whetstone at (614) 233-4174 and visit ME3. March 1 is the participation confirmation deadline. *1/27/2014*

2013 Hazardous Waste Reports Due March 1

The EPA Division of Materials and Waste Management reminds the regulated community that 2013 Hazardous Waste Reports are due March 1, 2014. The report is required of any facility that generated 2200 pounds or more of hazardous waste (or 2.2 pounds or more of acute hazardous waste) in any calendar month in 2013.

There are no changes to the reporting process, which means no changes to the eBusiness data entry screens or paper forms. The only changes for the 2013 report itself are changes to some of the Management Method Codes and to the Waste Minimization Codes. See a list of these changes on pages 2 to 3, 29 to 30 and 62 in the Hazardous Waste Report Instructions. If you are filing a paper report or importing data files, use correct and up to date codes or your report will fail data validation.

If you have any questions contact Thomas Babb, Hazardous Waste Report Coordinator, at (614) 914-2527. *1/16/2014*

Ohio EPA Director Scott Nally Resigns

Governor Kasich's office announced this week that Ohio EPA Director Scott Nally resigned from the post he held for three years. Nally indicated he resigned "to pursue other opportunities."

Craig Butler was appointed interim agency director by the governor. He previously served as the Assistant Policy Director for Energy, Agriculture and the Environment in Governor Kasich's administration. He also previously served as District Chief of both Ohio EPA's Central District Office and its Southeast District Office. *1/9/2014*

OMA Comments on Toxic Air Contaminants Rule Review

Ohio EPA is beginning the five year rule review process for the rule on "Toxic Air Contaminates," which states that the director may require a permit-to-install for any new or modified air contaminant source that emits a toxic air contaminant. The agency prepared this fact sheet on the review.

The OMA was involved in the creation of this rule through Senate Bill 265 in 2006.

The OMA and business sector allies submitted these comments to reinforce that the rule review should be focused on "the directives established by the Revised Code and the recently completed review of the rule by ERAC and the Tenth Appellate Division and that the agency should not reopen and revisit the objection to its rulemaking actions that were recently litigated and put to rest by ERAC and the Court of Appeals."

To learn more about how to participate in this rule review process, contact OMA's Rob Brundrett. *12/12/2013*

OMA Asks Ohio Supreme Court to Review Water Discharge Permitting

This week the OMA filed a memoranda of amicus curiae asking the Ohio Supreme Court to review two issues regarding water discharge permitting in Ohio.

On November 6t^{h} the court agreed to review whether Ohio EPA must use the rulemaking process in determining total maximum daily pollutant loadings (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, standing alone, a valid factual foundation for a limit in

a National Pollutant Discharge Elimination System (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.

The OMA filed in support of Fairfield County which was asking the Supreme Court to reconsider these other issues. *11/21/2013*

Ohio EPA Holds First Water Nutrient Advisory Group Meeting

This week Ohio EPA held its first Water Nutrient Technical Advisory Group (TAG) meeting. In response to stakeholder outreach earlier this year, the TAG was formed to advise the agency in its work to develop standards for nutrients.

The agency says that nutrient pollution is one of America's most widespread, costly, and challenging environmental problems. It is caused by too much nitrogen and phosphorus in water.

OMA members John Meyer, Director of Environmental Affairs & Sustainability, John Morrell & Company, and Mike Brom, Director, Environment, PotashCorp, are serving as members of the TAG.

Meeting information and details about Ohio's water nutrient strategy can be found here. 11/21/2013

OMA Asks Senator Brown to Streamline Pesticide Regulation

This week the OMA signed on a letter urging Senator Sherrod Brown to support inclusion of the "Reducing Regulatory Burdens Act" (RRBA) in the Federal Agriculture Reform and Risk Management Act.

The inclusion of the RRBA "corrects the duplicative requirement by specifying that Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits are not needed for the lawful application of pesticides already regulated under Federal Insecticide, Fungicide and Rodenticide Act."

Incorporating this change would return exclusive jurisdiction to the USDA for the regulation of weed and pest control products for food, feed crops, and landscape uses. *11/14/2013*

Ohio EPA Improves Document Search

Ohio EPA has launched the next phase of eDocument (eDoc). eDocument Search is designed to improve efficiency; reduce costs; and greatly improve the public's ability to access to Ohio EPA's public records.

The system currently includes noncompliance documents issued since January 1, 2007. Eventually, electronic copies of most of the agency's public records will be available. *11/14/2013*

Senators Introduce Resolution Urging Ohio Away from LEED Standards

This week state Sen. Joe Uecker (R-Miami Township) and Sen. Tim Schaffer (R-Lancaster) introduced Senate Concurrent Resolution 25 which urges Ohio state agencies to build green and energy efficient buildings that meet American National Standards Institute voluntary consensus standard procedures, instead of the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) (version 4) green building standards.

The LEED standards have come under criticism for lack of rigor and questionable environmental benefit.

Here is, in part, how the resolution critiques LEED v4: "WHEREAS, The U.S. Green Building Council's (USGBC) LEED v4 green building system fails to conform to recognized voluntary standard development procedures, including but not limited to American National Standards Institute (ANSI) procedures, and fails to base environmental and health criteria on risk assessment methodology ..." *11/7/2013*

Pepperidge Farm and Ohio EPA Team Up to Expedite New Permits

Cooperation and communication were key ingredients used by OMA member, Pepperidge Farm, and the Ohio EPA to ensure six necessary permits were received on time to support the manufacturer's $93 million, 227,000-square-foot plant expansion to install a new Goldfish® cracker production line. Fifty new jobs are expected.

One of those permits was to change the oven heat source from thermal oxidizers to catalytic oxidizers, which are proposed to be installed in 2014. This will result in a significant reduction in fuel consumption, making the facility more energy efficient.

This week Ohio EPA Director Scott Nally toured the facility in Willard.

Pepperidge Farm engaged Ohio EPA to ensure the project would be in compliance with all environmental regulations. The cooperative approach benefited both parties by helping Ohio EPA understand the company's business plans, which contributed to meaningful discussion regarding the permits. *10/31/2013*

OMA Environment Committee Gathers

The OMA Environment Committee gathered this week to discuss the major environmental issues effecting Ohio manufacturers. OMA members Randy Puckett from Campbell's Soup and Bryson Cole from Anheuser-Busch, gave presentations to the group on what their respective companies are doing in regards to sustainability.

The members also heard from the Department of Natural Resources including an update on the oil and gas drilling in eastern Ohio and what the Department is doing to ensure no adverse impacts to Ohio's environment. *10/24/2013*

U.S. Supreme Court Agrees to Hear Greenhouse Gas Cases

Last week the U.S. Supreme Court agreed to hear several appeals to various appeals related to greenhouse gas emissions (GHGs). Several petitions for hearing were consolidated and the court agreed to hear the cases under a single question, "Whether EPA permissibly determined that its regulation of GHG emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit GHGs."

The Court's ruling could profoundly impact EPA's permitting of GHGs. OMA environment counsel Frank Merrill put together this memo for OMA members on the issue. *10/24/2013*

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

Recent Status: 10/22/2013 - Sent to Governor for Signature
10/2/2013 - **PASSED BY SENATE**; Vote 30-1

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

Recent Status: 6/27/2013 - Consideration of Conference Committee Report; Vote 53-44
6/27/2013 - Consideration of Conference Committee Report; Approved Vote 21-11

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)

Recent Status: 3/6/2013 - Referred to Committee House Agriculture and Natural Resources
3/5/2013 - Introduced

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)

Recent Status: 5/7/2013 - Referred to Committee House Agriculture and Natural Resources
4/30/2013 - Introduced

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)

Recent Status: 6/18/2013 - Referred to Committee House Agriculture and Natural Resources
6/12/2013 - Introduced

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: 2/11/2014 - House Ways and Means, (First Hearing)

Recent Status: 10/23/2013 - House Ways and Means, (First Hearing)
10/10/2013 - Referred to Committee House Ways and Means

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: 1/28/2014 - Referred to Committee House Public Utilities

Recent Status: 1/28/2014 - Introduced

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

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

Recent Status: 11/13/2013 - **ADOPTED BY HOUSE**; Vote 66-22
11/13/2013 - Bills for Third Consideration

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

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: 9/25/2013 - Senate Public Utilities, (Third Hearing)

Recent Status: 6/18/2013 - Senate Public Utilities, (Second Hearing)
4/23/2013 - Senate Public Utilities, (First 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: 2/11/2014 - House Agriculture and Natural Resources, (First Hearing)

Recent Status: 1/28/2014 - Referred to Committee House Agriculture and Natural Resources
1/22/2014 - **PASSED BY SENATE**; Vote 32-0

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)

Recent Status: 9/26/2013 - Referred to Committee Senate Energy and Natural Resources
8/14/2013 - Introduced

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

Recent Status: 11/13/2013 - **ADOPTED BY SENATE**; Vote 32-0
11/13/2013 - Bills for Third Consideration

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: 2/11/2014 - Senate Energy and Natural Resources, (Third Hearing)

Recent Status: 2/4/2014 - Senate Energy and Natural Resources, (Second Hearing)
1/28/2014 - Senate Energy and Natural Resources, (First Hearing)

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

The Ohio Manufacturers' Association

Public Policy Priorities
2012-2013

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

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

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

The Ohio Manufacturers' Association

POLICY GOAL:

An Effective, Competitive Ohio Tax System

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

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

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

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

Tax policy priorities include the following:

- **Preserve the integrity of Ohio's 2005 tax reforms,** including a zero-tolerance response to any efforts via legislation or the court system to carve out exemptions or credits to (a) avoid paying the Commercial Activities Tax (CAT) or (b) earmark any portion of CAT revenues for specific government services.

- **Improve Ohio's tax appeals process,** which due to bad economic conditions and subsequent state budget cuts, staffing cutbacks and increased caseloads, has contributed to such a backlog of cases at the Ohio Board of Tax Appeals that it routinely takes two years to advance from the date of filing an appeal to the date of the first hearing.

- **Preserve the repeal of Ohio's estate tax,** which for so long served as a disincentive for business owners to invest in existing businesses and as an impediment to the capital formation that is so vital to Ohio's economy.

- **Streamline and simplify the sales tax,** which over time has become riddled with exemptions, carve-outs and credits that result in some taxpayers subsidizing exempted taxpayers. Exemptions, carve-outs and credits should be reviewed periodically for economic justification.

- **Promote taxpayer uniformity.** Consolidate and streamline the collection of municipal income tax by creating a uniform statewide municipal tax code, with uniform definitions of taxable income, consistent rules and regulations and a generic municipal income tax form.

- **Lower the effective tax rate in Ohio by reducing the number of government entities that are taxing jurisdictions.** This will help address the problem of pancaking state and local state taxes, which puts Ohio at a competitive disadvantage with many other states.

The Ohio Manufacturers' Association

POLICY GOAL:

An Efficient, Effective Workers' Compensation System

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

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

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

Workers' compensation policy priorities include the following:

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

- **Require claimants to show new and/or changed circumstances when filing for permanent total disability (PTD) or permanent partial disability (PPD) benefits more than once.**

- **Require Industrial Commission hearings to be recorded** to improve consistency in outcomes.

- **Allow telephonic hearings for permanent partial disability (PPD) claims to lower transaction costs.**

- **Establish an impairment standard (no consideration of non-medical factors) for permanent partial disability (PPD) cases.**

- **Terminate the compensation paid for temporary total disability (TTD) effective the date determined by the medical evidence establishing maximum medical improvement.**

- **Specify that if a temporary total disability (TTD) claim is suspended due to a claimant's refusal to provide a signed medical release or attend the employer's medical examination, the claimant forfeits his or her right to benefits during the period of the suspension.**

- **Allow employers to pay compensation and medical bills without losing the right to contest a claim (payment without prejudice).**

- **Require permanent partial disability (PPD) claims to be resolved by choosing either the claimant's medical exam determination or the defendant's medical exam determination—explicitly prohibiting an averaging of, or compromise between, the two.**

- **Require MCOs to demonstrate their medical arrangements and agreements with a substantial number of medical, professional and pharmacy providers participating in the BWC's Health Partnership Program.** These providers should be selected on the basis of access, quality of care and cost, rather than solely claimant preference. The focus should be on getting injured workers back to work quickly and safely, benefitting both the employee and the employer.

- **Allow the BWC to require claimants to pay out-of-plan co-payments for selecting medical providers outside the approved MCO panel of providers,** beginning the 46th day after the date of injury or the 46th day after starting treatment. However, employees should be allowed to use a provider outside the approved panel if they are located in certain parts of the state or outside the state where approved MCO providers cannot reasonably be accessed.

- **Allow the BWC to modify existing rules for the Bureau's Health Partnership Program to include administrative and financial incentives that reward high-performing MCOs and other providers.** Possible incentives include bonus payments to providers who greatly exceed quality benchmarks established by the BWC to help reduce costs without sacrificing quality of services or outcomes.

- **Collect and include in the BWC's healthcare data program annual data measuring the outcomes and savings of MCOs and other providers participating in the Health Partnership Program.** This data should be made available to employers and the public. The more performance data that are collected, the more efficient and effective the system will become.

- **Allow the BWC to recoup treatment costs from claims that ultimately are denied under BWC law.** The Bureau should be able to request that an employee's personal insurance or third-party payer reimburse the BWC for treatment amounts the Bureau paid on behalf of the employee. These payments should be deposited in the Surplus Fund Account. This will ensure injured workers will receive the treatments they need in a timely manner, while providing the Bureau a path to recoup payments that ultimately should not have been paid out by the system.

- **Allow the BWC to develop new rules permitting the BWC to pay for certain medical services within the first 45 days of an injury.** This would ensure that injured employees receive treatment regardless of whether their claims are eventually denied in the process. Also allow the Bureau to create rules allowing for immediate payment of prescriptions in certain circumstances. If a claim is ultimately disallowed, the services paid must be charged to the Surplus Fund Account as long as the employer pays its assessments into the Surplus Fund Account in the State Insurance Fund.

- **Require injured workers to participate in the treatment process in a timely manner.** Employees who refuse or unreasonably delay required treatment such as rehabilitation services, counseling, medical exams or vocational evaluations without a valid reason should forfeit their right to have the claim considered or to receive any compensation or benefits during the period of non-cooperation.

The Ohio Manufacturers' Association

POLICY GOAL:

Access to Reliable, Economical Energy

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

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

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

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

Energy policy priorities include the following:

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

- **Ensure rigorous PUCO monitoring and regulation of dealings between electric distribution utilities and their affiliates.**

- **Remove/mitigate barriers electric distribution utilities have created to inhibit/prevent shopping and ensure consumers have the information and tools they need to understand and take full advantage of market opportunities.** For example, utilities should (a) be required to explain how customers' peak load contribution, which is used by suppliers to price competitive generation contracts, is calculated; (b) provide the calculated peak load contribution not just to suppliers but also to customers; and (c) be held accountable for errors that affect the value to customers of competitive supply contracts. The PUCO also should require utilities to develop interactive tools that help demonstrate the "price to compare" and make apples-to-apples comparisons between competitive supply offers.

- **Ensure close coordination among the PUCO, PJM Interconnection, Ohio EPA, the Ohio Power Siting Board and Ohio manufacturers to ensure least-cost and most efficient use of generation and transmission resources.**

- **Adopt a state-level consumer advocacy role with PJM Interconnection regarding critical transmission issues and needs.**

The Ohio Manufacturers' Association

POLICY GOAL:

A Fair, Stable, Predictable Civil Justice System

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

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

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

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

Civil justice reform policy priorities include the following:

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

- **Amend Rule 68 of the Ohio Rules of Civil Procedure to mirror Rule 68 of the Federal Rules of Civil Procedure,** which makes a plaintiff who rejects a defendant's settlement offer liable for the defendant's post-offer costs if the plaintiff does not improve on the offer at trial.

- **Reject any efforts to codify in Ohio statute the *cy pres* doctrine**—an existing tool that permits, but does not require, a judge and the parties to a class action lawsuit to donate all undistributed class action proceeds to a charity or other non-profit organization.

- **Reject legislation to enact a state false claims act.** A bill was introduced in the 129th Ohio General Assembly (SB 143) that would allow individuals with knowledge of possible fraudulent activity to (a) file suit in state courts against companies doing business with public entities and (b) recover a portion of the money recovered by the State. Under this bill, false claims suits could be filed against any business selling services or goods to state government. While fraud against the government is not to be condoned, there are preferable alternatives to creating a whole new category of state-level lawsuit.

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.**

POLICY GOAL:

A Modernized Transportation Infrastructure

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

Transportation infrastructure policy priorities include the following:

- **Modify Ohio's rules and regulations** to allow greater flexibility and efficiency in the truck permitting process and to ensure Ohio's truck permitting standards and processes are competitive with other states with regard to requirements, fees and responsiveness.

- **Enhance shipping flexibility by supporting the federal Safe and Efficient Transportation Act.** This bill would allow states to tailor regulations to meet state-level transportation needs linked to a state's particular economic assets and strengths.

POLICY GOAL:

An Educated, Highly Skilled Workforce

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

Workforce development policy priorities include the following:

- **Expand the use of the National Association of Manufacturers' "Manufacturing Skills Certification System."** This system of nationally portable, industry recognized, "stackable" credentials is applicable to all sectors in the manufacturing industry. The credentials validate foundational skills and competencies needed to be productive and successful in entry-level positions in any manufacturing environment. Credentials can be earned from both secondary and postsecondary educational programs.

- **Expand the use of cooperative education, internships and apprenticeships.** These experiential learning programs enhance talent recruitment and retention because participating students are exposed to company-specific, real-world job expectations and experiences. Students develop strong leadership and management skills by working closely with company staff who serve as their mentors/supervisors, and participating companies benefit from reduced recruitment and training costs.