

**10:00 a.m. (EST)**

**1-866-362-9768**

**552-970-8972#**



# **Environment Committee**

**June 12, 2019**

## **Table of Contents**

<b>Agenda</b>	<b>2</b>
<b>Bios</b>	<b>3</b>
<b>Ohio EPA Air Presentation</b>	<b>5</b>
<b>OMA Counsel's Report</b>	<b>34</b>
<b>HB 166 BAT Memo</b>	<b>39</b>
<b>Public Policy Report</b>	<b>42</b>
• <b>SB 2 LSC Analysis</b>	<b>46</b>
• <b>HB 7 LSC Analysis</b>	<b>50</b>
• <b>HB 166 Comp Doc</b>	<b>59</b>
• <b>HB 166 Amendments</b>	<b>82</b>
• <b>HB 166 EPA Testimony</b>	<b>93</b>
• <b>HB 166 EPA Testimony</b>	<b>97</b>
• <b>OMA HB 242 Testimony</b>	<b>100</b>
• <b>HB 242 LSC Analysis</b>	<b>104</b>
• <b>OMA Water Quality Comments</b>	<b>106</b>
• <b>OMA ORSANCO Comments</b>	<b>108</b>
• <b>ORSANCO Article</b>	<b>108</b>
• <b>OMA WOTUS Comments</b>	<b>111</b>
<b>OMA News and Analysis</b>	<b>114</b>
<b>OMA Environment Bill Tracker</b>	<b>119</b>

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

**Wednesday, October 23**

**OMA Environment Committee Meeting Sponsor:**





## OMA Environment Committee

June 12, 2019

### Agenda

<b>Welcome &amp; Roll Call</b>	Chairman Julianne Kurdila, ArcelorMittal
<b>Guest Speaker</b>	Bob Hodanbosi, Chief of the Division of Air Pollution Control, Ohio Environmental Protection Agency
<b>Federal Update</b>	Ross Eisenberg, Vice President, Energy and Resources, NAM
<b>Counsel's Report</b>	Frank Merrill, Bricker & Eckler LLP
<b>Public Policy Report</b>	Rob Brundrett, OMA Staff
<b>Lunch</b>	

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

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

**OMA Environment Committee Meeting Sponsor:**



## **PROFESSIONAL BACKGROUND**

Bob Hodanbosi became chief of the Division of Air Pollution Control (DAPC), Ohio Environmental Protection Agency (Ohio EPA) in September 1992. His current duties include being responsible for the air pollution control program for the state of Ohio and development of the programs needed to comply with the Clean Air Act Amendments. Prior to that time, Mr. Hodanbosi held various positions in the Division of Air Pollution Control.

## **PROFESSIONAL ASSOCIATIONS**

Mr. Hodanbosi is a member of the American Institute of Chemical Engineers and Air & Waste Management Association, and is registered as a Professional Engineer in the State of Ohio.

## **EDUCATIONAL BACKGROUND**

Mr. Hodanbosi received his Master's of Science degree in Chemical Engineering at the Cleveland State University in 1977, and his Bachelor of Chemical Engineering at the Cleveland State University in 1973. In addition, he completed post-graduate courses in fluid mechanics and turbulence at the Ohio State University, from 1978 to 1982.

## **Ross Eisenberg**

### VP, Energy and Resources Policy

Ross Eisenberg is vice president of energy and resources policy at the National Association of Manufacturers (NAM). Mr. Eisenberg oversees the NAM's energy and environmental policy work and has expertise on issues ranging from energy production and use to air and water quality, climate change, energy efficiency and environmental regulation. He is a key voice for manufacturing on Capitol Hill, at federal agencies and across all forms of media.

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

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

Mr. Eisenberg is a member of the State Bar of the District of Columbia. He has a B.A. from Emory University and a J.D. from Washington and Lee University School of Law.

# Ohio Manufacturers' Association

June 12, 2019

Robert Hodanbosi

Chief, Division of Air Pollution Control

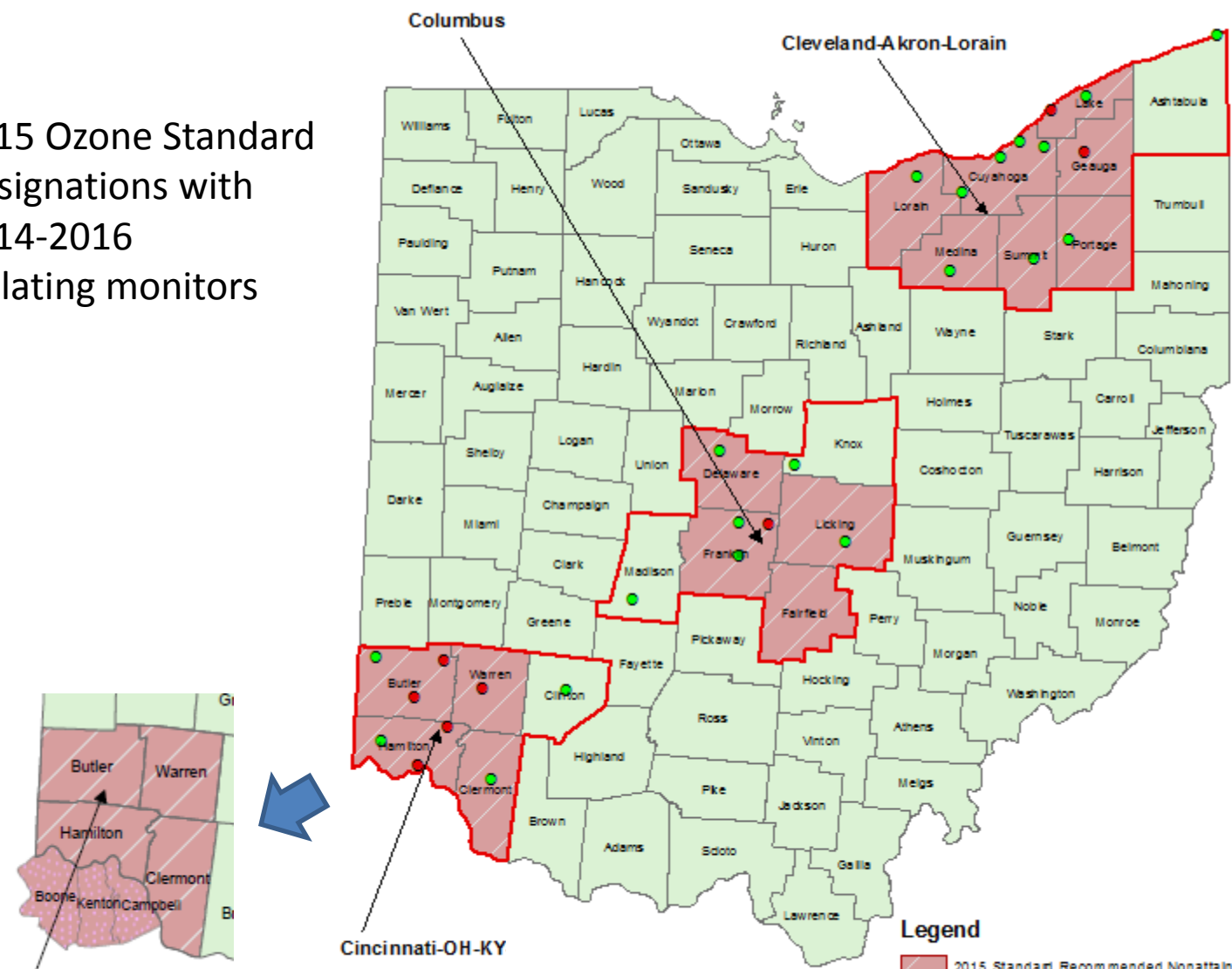
# New Administration

- New Director
  - Laurie Stevenson
- What will be priorities?
  - Lake Erie
  - H2Ohio – Funding for clean water projects
  - Other items?
- SFY 2020-2021 Budget

# Overview of Ohio's Attainment Status

- 24-hr PM2.5, NO2, CO, Lead: the entire state is monitoring attainment and is designated attainment.
- SO2, Annual PM2.5: the entire state is monitoring attainment but portions are designated nonattainment.
- 2015 Ozone: portions of Ohio are designated nonattainment and EITHER monitoring nonattainment or attainment.

2015 Ozone Standard Designations with 2014-2016 violating monitors



Ohio EPA DAPC Maps Available at:  
[http://www.epa.ohio.gov/dapc/general/na\\_aqs.aspx](http://www.epa.ohio.gov/dapc/general/na_aqs.aspx)

- Legend**
- 2015 Standard Recommended Nonattainment
  - 2006 Standard Designated Nonattainment
  - Monitors violating
  - Monitors not violating



# 2015 Ozone Standard Implementation Process Steps

- - Infrastructure SIPs submitted September 28, 2018 (due October 1, 2018)
  - Extensive Good Neighbor/Transport analysis.
- Attainment demonstrations due August 3, 2020 for marginal nonattainment areas.
- Attainment date August 3, 2021 for marginal nonattainment areas...which means 2020 ozone season.

# 2015 Ozone Standard Current Status

- 2015-2017 DV:
  - Cincinnati - 73 ppb
  - Cleveland - 74 ppb
  - Columbus - 71 ppb
  - Dayton - 70 ppb
- 2016-2018 DV:
  - Dayton area now violates (Montgomery County) - 71 ppb
    - Evaluating next steps
  - Columbus area in attainment - 69 ppb
    - Redesignation request and maintenance plan out for comment - Comment period closed April 9, 2019
    - Package sent to U.S. EPA
  - Cincinnati - Three sites exceed standard - High 75 ppb
  - Cleveland - Three sites exceed standard - High 75 ppb

**2015 Ozone Standard**

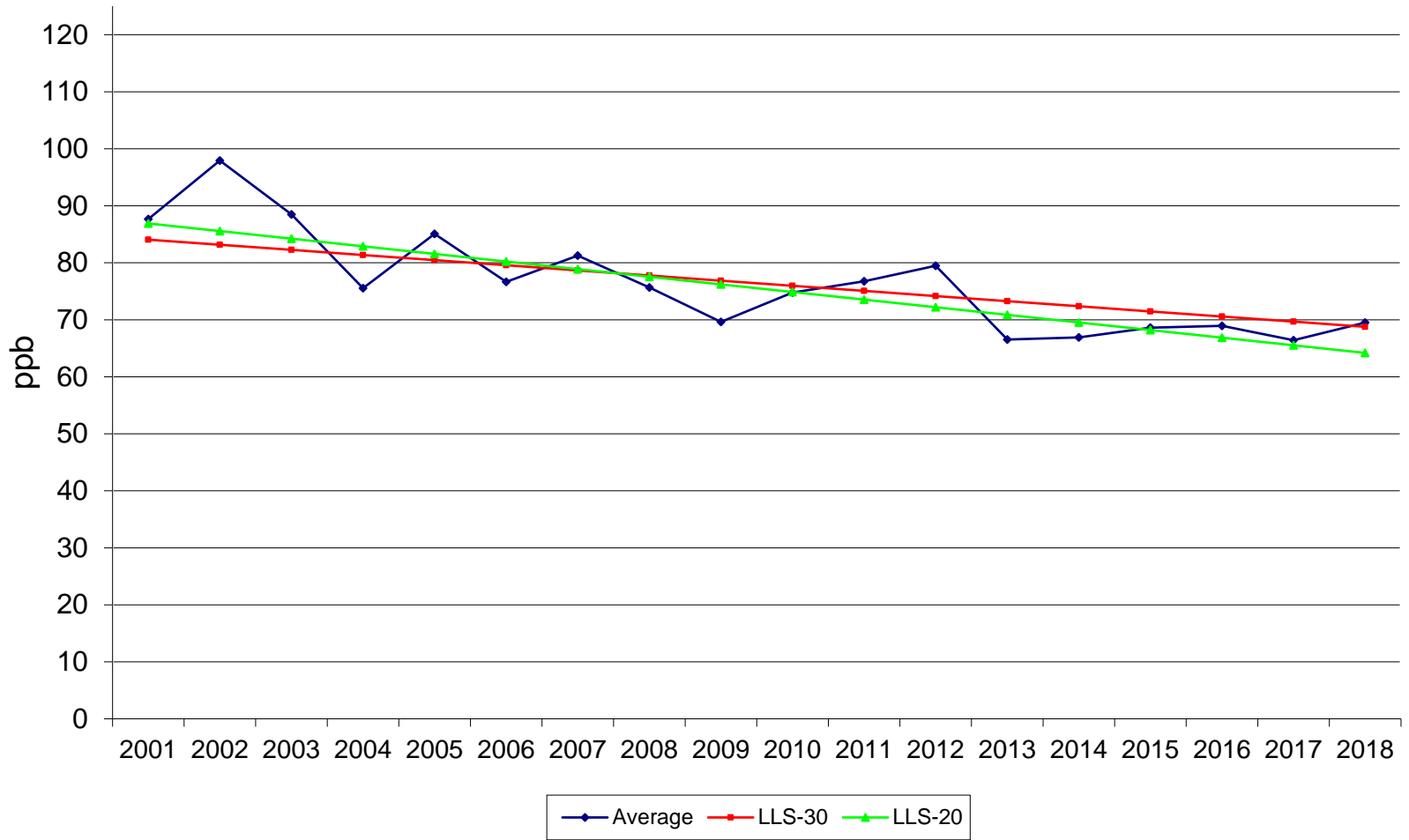
City	2012-2014 Data (ppb)	2013-2015 Data (ppb)	2014-2016 Data (ppb)	2015-2017 (ppb)	2016-2018 (ppb)
Cleveland	78	73	75	74	75
Columbus	75	71	71	71	69
Cincinnati	75	71*	72	73	75
Dayton	72	69	70	70	71

\*monitor in Northern Kentucky measured 71 ppb

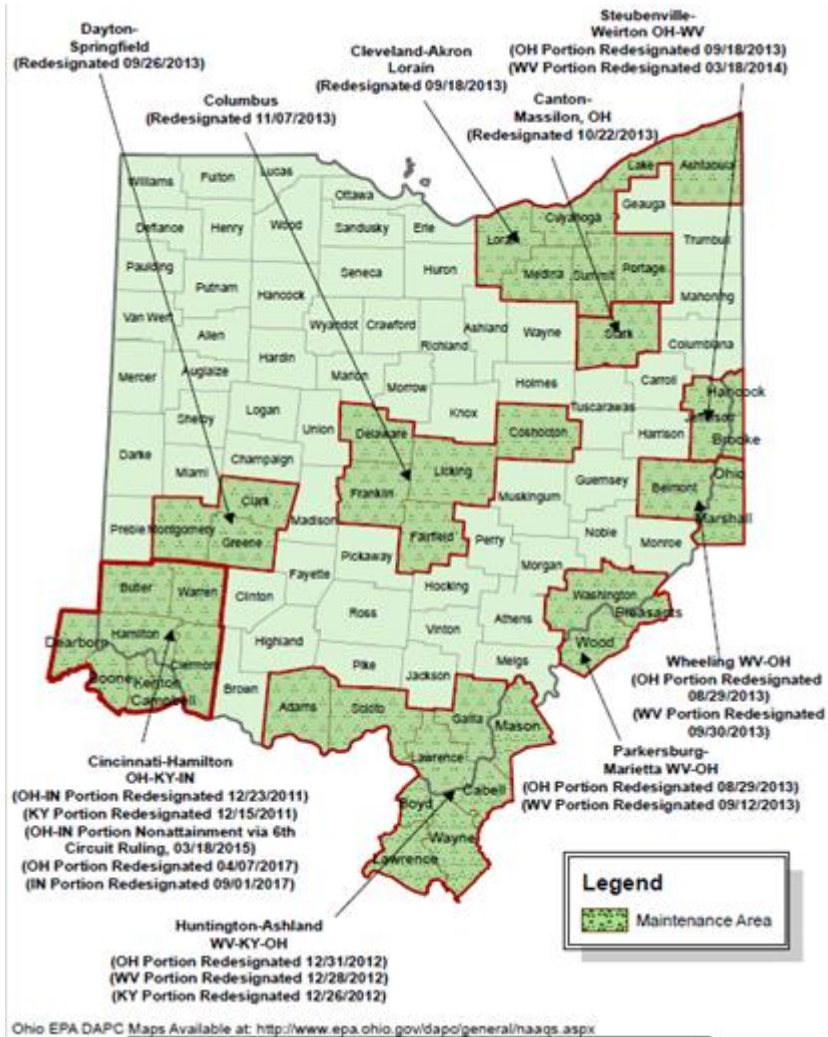
## Ozone Exceedances by Year (through September 2018)

Year	0.125 ppm 1-Hour	0.084 ppm 8-Hour	0.075 ppm 8-Hour	0.070 ppm 8-Hour
2003	22	204	458	
2004		25	178	
2005	5	192	688	1193
2006	None	39	236	505
2007	None	110	541	1037
2008	None	32	171	419
2009	None	4	31	138
2010	None	20	162	387
2011	None	38	215	434
2012	None	96	329	701
2013	None	2	14	65
2014	None	None	11	69
2015	None	1	16	91
2016	None	None	42	168
2017	None	None	19	61
2018	None	2	51	130

### Ohio Average One Year 8-Hour Averages



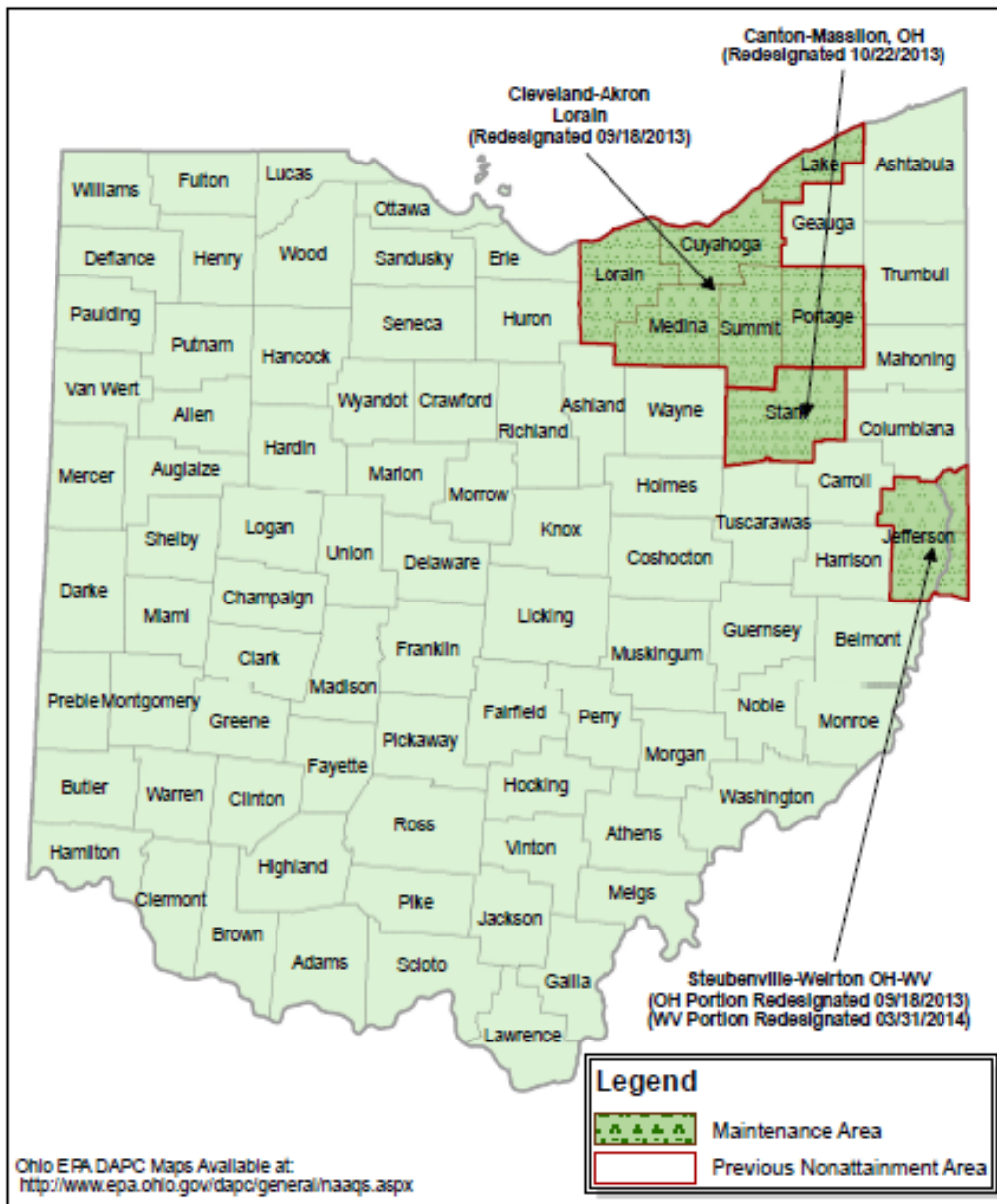
# 1997 Annual PM2.5



# 2012 Annual PM2.5



# 2006 24-Hr PM2.5



# PM2.5 24-hr Design Values (ug/m<sup>3</sup>)

## Standard 35 ug/m<sup>3</sup>

City	08-10	09-11	10-12	11-13	12-14	13-15	14-16	15-17	16-18*
Akron	33	29	26	24	23	25	24	22	20
Canton	34	30	29	27	26	26	24	22	22
Cleveland	33	30	30	29*	30*	28*	25	25	23
Columbus	29	28	26	23	26*	28*	21	19	23
Cincinnati	31	31	30	27	27	26*	24	23	23
Dayton	29	29	27	25	25*	27*	19	20	19
Steubenville	30	28	27*	26*	25	25	23	25	22
Toledo	30	28	26	23	24	25	23	24	25
Youngstown	30	28	27	24	23	24	22	20	18

\*Incomplete Data



## PM2.5 Annual Design Values (ug/m3)

### Standard 12.0 ug/m3

City	08-10	09-11	10-12	11-13	12-14	13-15	14-16	15-17	16-18*
Akron	13.3	12.6	12.0	11.0	10.7	11.2	11.0	10.2	9.0
Canton	13.8	13.4	13.0	12.1	11.7	11.6	10.8	10.1	9.4
Cleveland	13.6	13.1	13.0	12.5*	12.4	12.4	12.2	11.7	11.1
Columbus	12.5	12.2	11.9	10.9	10.8*	10.9*	9.8	8.8	8.8
Cincinnati	14.4	13.8	13.4	12.3	11.7	11.2	10.7	11.1	11.5
Dayton	13.2	12.8	12.3	11.0	**	**	9.7	8.9	8.4
Steubenville	13.0	12.5	12.2	11.6	10.9	10.8	10.1	10.7	9.5
Toledo	11.7	11.4	10.9	10.3	10.1	10.1	9.8	9.4	9.2
Youngstown	12.4	11.8	11.3	10.7	10.5	10.6	9.6	9.0	8.3

\*Incomplete Data

\*\* Lost site, have a new site but no 3 yrs. of data yet

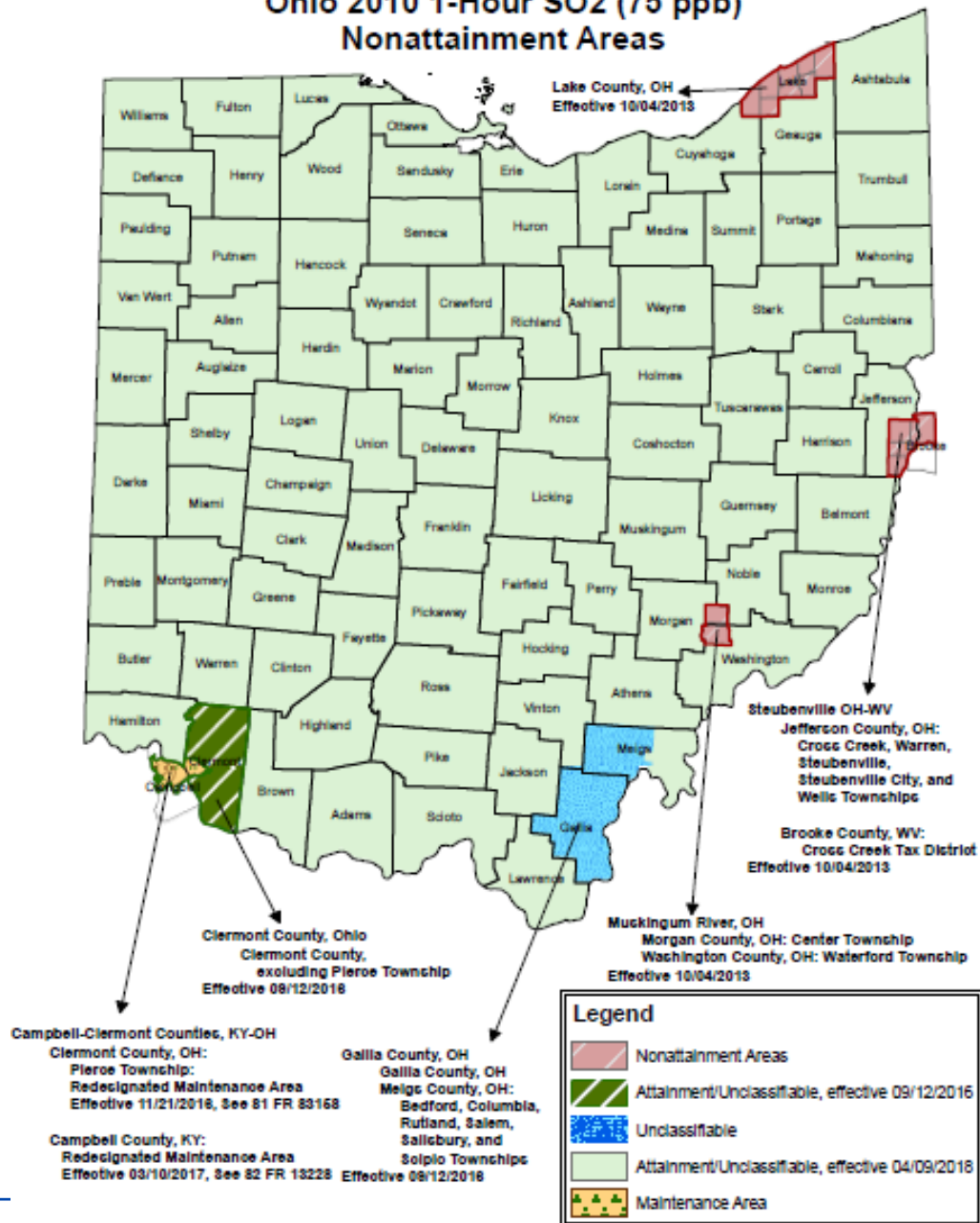
# PM2.5 Redesignation

- Cleveland area meeting PM2.5 annual standard
- Have prepared/submitted redesignation request package to U.S. EPA – July of 2018
- Proposed approval in December of 2018
- U.S. EPA Administrator announced approval at budget hearing – waiting for official Federal Register notice

# Sulfur Dioxide

- Old Standard – 140 ppb – 24 hour avg. – no measured violations for almost 30 years
- New Standard (adopted June 22, 2010) – 75 ppb – 1 hour average.

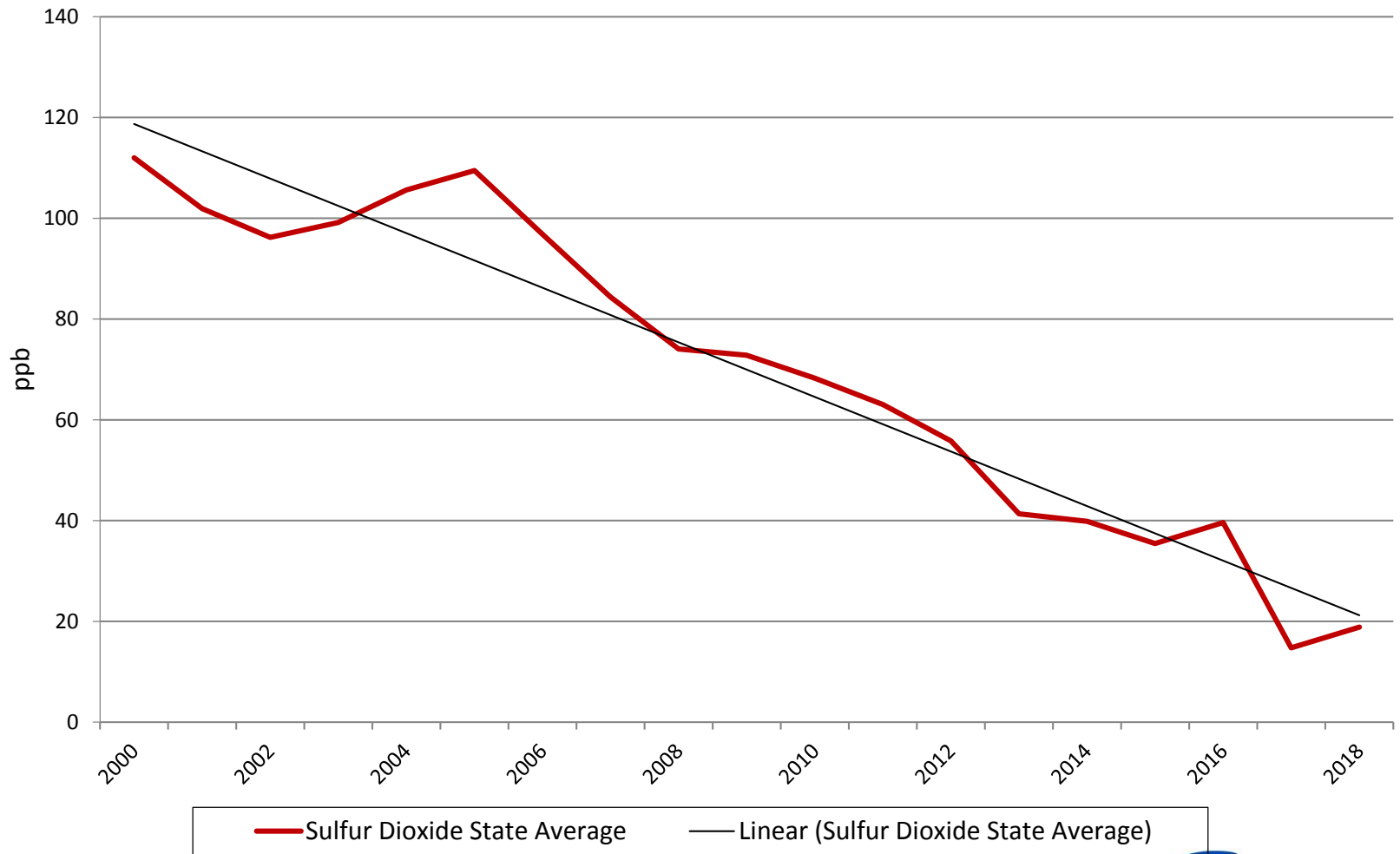
## Ohio 2010 1-Hour SO<sub>2</sub> (75 ppb) Nonattainment Areas



# SO2 Attainment Status

- Lake County – U. S. EPA approved redesignation to attainment on May 14, 2019
- Steubenville Area – Moving forward with redesignation request
- Washington/Morgan Counties – Area around Muskingum River power plant (shutdown) – Concern about nearby industrial source

### Sulfur Dioxide State Average 99th percentile 1-Hour Average



# Affordable Clean Energy (ACE)

- Replacement for Clean Power Plan
- Promulgated under 111(d) of Clean Air Act
- Takes more traditional approach (inside fenceline)
- US EPA to develop guideline document for Best System of Emission Reductions (BSER)
- Requires states to develop plans, require studies by utilities, states will need to review/approve utility submittals

# Affordable Clean Energy (ACE)

- State plans will require utilities to examine heat rate improvements (HRI)
- These include: intelligent sootblowers, boiler feed pumps, air heater & duct leakages control, redesign/replace economizer, blade path turbine upgrade
- Coal-fired utilities will examine energy efficiency projects and propose to implement cost effective projects within 24 months
- State will need to review/approve individual utility plans – may consider useful life of plant
- Package then sent to U.S. EPA for review



# Affordable Clean Energy (ACE)

- Proposed changes to New Source Review
- Changes “major modifications” triggers to lbs/hour from tons/year
- Applies only to utilities
- Designed to allow for the HRI to go forward without triggering “major new source review”

# Implementation of ACE

- Affordable Clean Energy Rule – Replacement for the Clean Power Plan
- How can we accomplish the requirements in the federal rule?
- How much time do we have to adopt rules? We will need to be on fast track
- Who can review the Heat Rate Improvement (HRI) Plans?

# Ozone Transport Region

- Congress created the Ozone Transport Region (OTR) made up by NE states. CAA § 184
- U.S. EPA has the discretion to add a new state to the OTR if U.S. EPA “has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of” the ozone air quality standard in the OTR. CAA § 176A
- NE states petitioned U.S. EPA to expand the OTR to cover nine more states, including Ohio.
- U.S. EPA denied the expansion based on its rulemakings under CAA Good Neighbor Provision.

# Ozone Transport Region cont.

- NE states appealed to D.C. Circuit
- Numerous states intervened to support U.S. EPA, including Ohio.
  - Petitioning states failed to prove that the upwind states significantly contribute to the OTR's nonattainment of ozone standard.
  - Petitioning states failed to show that expanding the OTR would be a cost-effective solution.
  - Upwind states lose control over traditional regulatory choices in conflict with the cooperative federalism structure of the CAA.
- On April 23, 2019 the D.C. Circuit upheld U.S. EPA's denial of the 176A petition. The Ohio AGs Office was the lead state in supporting the U.S. EPA action in the court.

# Section 126 Petitions

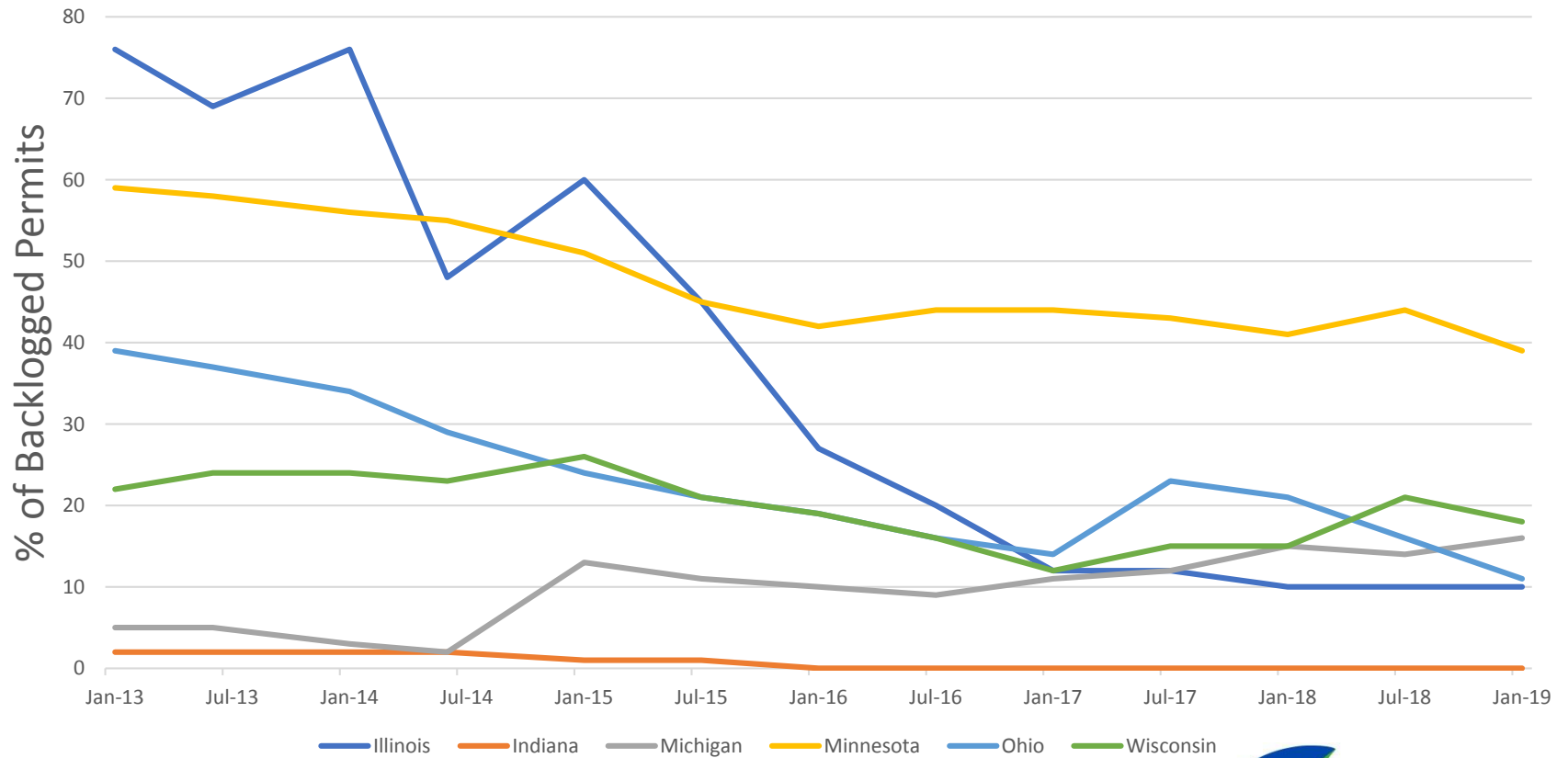
- A state may petition U.S. EPA for a finding that any upwind source or group of sources contribute to nonattainment downwind in violation of the CAA good neighbor provision.  
CAA § 126
- Some NE states submitted petitions, asking U.S. EPA to impose additional NOx emissions limits on certain EGUs in upwind states, including Ohio.
- U.S. EPA denied the petitions, stating that CSAPR Update sufficiently addresses downwind impacts and a cost-effective control strategy is already being implemented at the sources.  
83 FR 50444 (October 5, 2018)
- Under appeal.

# Section 126 Petitions

- New York filed a petition with U.S. EPA under Section 126 on March 14, 2018
- The petition is against sources of NO<sub>x</sub> larger than 400 tons per year in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia
- This amounts to approximately 350 sources of emissions in these states.
- On May 6, 2019, U.S. EPA proposed to deny this petition
  - basis for denial is the December 6, 2018 CSAPR Update fully addresses ozone transport
  - Proposal is out for comment until July 15, 2019

# Title V Permitting

% of Backlogged Title V Renewal Permits as of 12/31/2018



# Per- and Polyfluoroalkyl Substances (PFAS)

- Many possible sources; landfills, chrome plating, chemical manufacturing, biosolids, fire fighting foams
- Air deposition is one pathway
- What are sources/quantity of emissions? What controls are available?
- What provisions of Clean Air Act/ Ohio law are available to regulate? U.S. EPA has not provided information on toxicity from air inhalation.



# Questions?

- Robert Hodanbosi, P.E.
- Chief, Division of Air Pollution Control
- Ohio EPA
- 50 West Town St. Suite 700
- Columbus, Ohio 43215
- 614-644-2270
- [robert.hodanbosi@epa.ohio.gov](mailto:robert.hodanbosi@epa.ohio.gov)
- [www.epa.ohio.gov](http://www.epa.ohio.gov)



## COUNSEL'S REPORT

Frank L. Merrill & Christine Rideout Schirra, Bricker & Eckler LLP  
Counsel to the OMA  
June 12, 2019

### A. Ohio EPA Activities of Note

#### 1. Lake Erie Bill of Rights

In a February 26, 2019 special election, Toledo's voters passed the Lake Erie Bill of Rights (LEBOR). The LEBOR is an amendment to the City of Toledo's Charter that creates a new cause of action for the violation of the right of Lake Erie and its watershed to "exist, flourish, and naturally evolve." The entities that could be impacted by the LEBOR's enactment range far and wide. Generally, entities that have an Ohio EPA-issued water discharge permit authorizing them to discharge into surface waters within the Lake Erie watershed could be affected.

No additional regulatory oversight will be created by the LEBOR. The LEBOR's language does not create regulations that must be followed, nor does it attempt to give any regulatory authority to any office or organization. It purports to be "self-executing." On its own, it would only allow the City of Toledo or citizens of Toledo to bring a legal action for an alleged violation of Lake Erie's legal rights.

The LEBOR would, however, affect permits, licenses and other authorizations made by the state and even the federal government. Section 2(b) states that "[n]o permit, license, privilege, charter, or other authorization issued to a corporation, by any state or federal entity, that would violate the prohibitions of this law or any rights secured by this law, shall be deemed valid within the City of Toledo." All permits issued by U.S. EPA, the Ohio EPA, or the federal or state departments of agriculture would be deemed invalid to the extent they conflict with a citizen's conception of the LEBOR's provisions.

One day after the passage of LEBOR, on February 27, 2019, *Drewes Farm Partnership v. City of Toledo* was filed in federal court in Toledo, asserting many challenges to the LEBOR, including the argument that the LEBOR exceeds Toledo's limited authority to pass legislation and is in violation of state and federal preemption laws (Judge Zouhary, Case No. 3:19-cv-00434). Drewes sought a preliminary injunction to stop the LEBOR from going into effect before its defects are litigated. On March 18, 2019, Judge Zouhary issued an injunction blocking the LEBOR from going into effect while the case is litigated. Both the City of Toledo and Drewes agreed to the injunction.

On March 18, 2019, the environmental group Toledoans for Safe Water asked, on behalf of itself and the Lake Erie Ecosystem, to be permitted to intervene in the lawsuit. On March 29, 2019, the State of Ohio similarly filed a motion to intervene, for the stated purpose of protecting Ohio's interests in supporting its agriculture, environmental, and natural resources laws. On May 7, 2019, the court granted the State's request for intervention. The State's position, set forth in its Complaint for Declaratory Judgment and Injunctive Relief, is that LEBOR conflicts with Ohio's laws and rules and years of legal precedent, all of which recognize that the State holds the waters of Lake Erie within the boundaries of Ohio as trustee for the people of the State and for the protection of public rights.

Also on May 7, 2019, the court denied the request for intervention from Toledoans for Safe Water Lake Erie Ecosystem. The court found that the ecosystem lacks capacity to intervene and the request was meritless, and that Toledoans for Safe Water, Inc. does not qualify for intervention by right because it has no substantial legal interest in the outcome of the case that is not otherwise represented, and could unduly delay the lawsuit. Toledoans for Safe Water has appealed this denial of intervention to the Sixth Circuit.

## 2. Proposed Changes to "Rule 13 Authorizations" Rule

Ohio Administrative Code rule 3745-27-13, first promulgated in 1988, governs any person proposing to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or a solid waste facility was operated. The Agency calls this requirement to obtain authorization for such activity pursuant to OAC 3745-27-13 a "Rule 13 authorization." After reviewing the rule as part of its standard 5-year rule review, Ohio EPA has public noticed its preliminary determination to amend the rule.

Specifically, amendments include the reorganization of OAC rule 3745-27-13 into its own program chapter, OAC 3745-513, organized into the following subsections:

- 3745-513-01 Procedure to engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated – applicability.
- 3745-513-02 Definitions.
- 3745-513-05 Exclusions.
- 3745-513-20 Issuance, denial, termination, and revocation of an authorization to engage in chapter 513 activities.
- 3745-513-300 Application procedures for modern and historic facilities.
- 3745-513-350 Implementation requirements for modern and historic facilities.
- 3745-513-370 Certification report for modern and historic facilities.
- 3745-513-400 Application procedures for sampling, testing, or delineating the limits of waste placement.

- 3745-513-450 Implementation requirements for sampling, testing, or delineating the limits of waste placement.
- 3745-513-470 Certification report for sampling, testing, or delineating the limits of waste placement.

New requirements are additionally proposed to be added to new subsections -02, -20, -300, -370, -400, and -450. Ohio EPA is accepting comments on the draft rules and corresponding Common Sense Initiative Business Impact Analysis through July 3, 2019.

### 3. Early Stakeholder Outreach – Accidental Release Prevention Rules

Ohio EPA is requesting stakeholder input on potential amendments to Ohio Administrative Code (OAC) Chapter 3745-104, "Accidental Release Prevention Rules." These rules establish Ohio's Accidental Release Prevention Program under the Risk Management Plan (RMP). The rules generally require facilities that have over the threshold limit of listed RMP toxic substances or flammables to submit a Risk Management Plan (RMP), implement a prevention program, and an emergency response plan or program.

Facilities that have over the threshold limit of listed RMP toxic substances or flammables that are covered by this rule often include, but are not limited to, anhydrous ammonia retailers, ammonia refrigeration, gas processing plants, water and wastewater treatment plants using chlorine, chemical manufacturing plants, and refineries.

Ohio EPA Division of Air Pollution Control, is accepting comments through June 26, 2019.

### 4. Draft Human Health Water Quality Criteria Rules

The Ohio EPA Division of Surface Water issued for interested party review and comment proposed amendments to several rules within Ohio Administrative Code Chapter 3745-1, Ohio's water quality standards. Specifically, Ohio EPA is proposing changes to the numeric water quality criteria for the protection of human health in the Ohio River Mainstem, Ohio River Basin, and Lake Erie Basin. These rules include OAC 3745-1-32 (Ohio river standards), 3745-1-33 (water quality criteria for water supply use designation), and 3745-1-34 (water quality criteria for the protection of human health fish consumption).

The amendments are being proposed as part of Ohio EPA's Triennial Water Quality Standards Review as mandated in the Clean Water Act, in order to be consistent with U.S. EPA's 2015 updates to 94 human health water quality criteria, the Ohio River Valley Water Sanitation Commission's ("ORSANCO") 2015 pollution control standards, and maximum contaminant levels promulgated under the Safe Drinking Water Act. The Division of Surface Water currently applies MCLs only to the Ohio River basin. With this rulemaking, this protection will be extended

statewide (to the Lake Erie basin), aimed at protecting the treatment technology at the intakes of the drinking water plants in the Lake Erie basin.

Ohio EPA estimates that 151 of the 3,250 permitted dischargers in Ohio could potentially be negatively impacted by the adoption of these criteria. According to Ohio EPA, of these 151 dischargers, 60 already have limits for one or more of these chemicals that could impact them, and the remaining 91 dischargers monitor for one or more of these chemicals but do not currently have limits.

The OMA submitted written comments to Ohio EPA on April 30, 2019, and will remain involved in this rulemaking.

## **B. U.S. EPA Activities of Note**

### U.S. EPA Rejects Clean Water Act Jurisdiction over Discharges to Groundwater

On April 15, 2019, U.S. EPA issued an interpretive statement expressly rejecting the idea that Clean Water Act (“CWA”) jurisdiction includes discharges to groundwater. According to U.S. EPA, the “Act is best read as excluding all releases of pollutants from a point source to groundwater from NPDES program coverage and liability under Section 301 of the CWA, regardless of a hydrologic connection between the groundwater and a jurisdictional surface water.”

Currently, there is a circuit court split on this precise issue, which the U.S. Supreme Court is set to decide. The Sixth Circuit has rejected the hydrologic connection theory, in express disagreement with Fourth and Ninth Circuit decisions, which held that the CWA covers discharges to hydrologically connected groundwater. On February 19, 2019, the Supreme Court granted Maui County’s cert. petition appealing from the Ninth Circuit’s decision in *Hawai’i Wildlife Fund v. County of Maui*. Specifically, the Supreme Court will decide “[w]hether the CWA requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater.”

The U.S. EPA interpretive statement seeks to clarify U.S. EPA’s position in anticipation of the U.S. Supreme Court’s ruling in *County of Maui*.

## **C. Judicial**

### Southern District of Ohio Expands Scope of Ohio EPA Enforcement Powers

In its recent decision *Ohio ex rel. DeWine v. Breen*, 362 F.Supp.3d 420 (J. Sargus, S.D. Ohio 2019), the Southern District of Ohio recently expanded the scope of Ohio EPA’s enforcement

power, holding that former corporate shareholders can be personally liable for the dissolved corporation's environmental violations, even when the corporation itself was off the hook. In *Breen*, the State alleged that an extermination business, its operators, and the owner of neighboring properties were responsible for the State's response costs under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and alleged additional violations of Ohio law for violations of Ohio EPA orders.

Under Ohio statutory law, the state may only impose liability on a dissolved corporation for violating environmental enforcement orders within five years of the corporation's dissolution date. R.C. 1701.88(B). Therefore, the court in *Breen* found that the state could not impose liability on the defunct corporation because the corporation was dissolved in 2007 and the state did not initiate administrative enforcement proceedings until nine years later in 2016.

However, former corporate officers, directors and shareholders may be personally liable for their role in the environmental violations under the personal participation theory. When evaluating whether an individual is personally liable under the personal participation theory, Ohio courts consider whether “pursuant to an environmental enforcement action—the individual made decisions, gave orders, oversaw operations, served as the primary contact with administrative parties, and ‘importantly . . . failed to correct known violations even though [the individual] had the requisite authority to do so.’” *Breen* at 442. The *Breen* court found that the shareholders negotiated and agreed to the enforcement order with OEPA, were aware of the order's requirements, had the responsibility to oversee compliance with the order, and were in communication with OEPA even after the corporation was formally dissolved. As a result, the court held the former shareholders personally liable for the dissolved corporation's violations.

The court's decision is an expansion of the personal participation theory of liability that Ohio EPA uses to enforce liability against company officers as individuals in environmental enforcement litigation. The State has previously been successful in arguing for liability based on the personal participation theory in asbestos and water-related enforcement litigation. *State ex rel. DeWine v. Deer Lake Mobile Park*, 11th Dist., 2015-Ohio-1060, 29 N.E.3d 35, ¶ 57; *State ex rel. DeWine v. Sugar*, 7th Dist., 2016-Ohio-884, 60 N.E.3d 735, ¶ 41.



## MEMORANDUM

**TO:** Rob Brundrett  
**FROM:** Frank Merrill & Christine Rideout Schirra  
**DATE:** April 5, 2019  
**RE:** HB 166 (Operating Budget) – Best Available Technology for Air Contaminants

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House Bill 166 of the 133<sup>rd</sup> General Assembly introduces proposed amendments to Ohio's best available technology ("BAT") requirements for air contaminants. *See* R.C. 3704.03.

### **I. Summary**

Currently, the law provides that BAT is to be established via the 119 rule process for PTI applications filed three or more years after August 3, 2006, for air contaminants for which a national ambient air quality standard has been adopted pursuant to the Clean Air Act. *See* 3704.03(T). The proposed change removes the 119 rule process requirement for the agency to impose BAT, and instead states that BAT requirements shall be imposed via permit in one of four ways. Substantively, the four ways of imposing BAT are not significantly proposed to change. However, the impact of the proposed changes is that the agency's interpretation of BAT is proposed to be set forth within individual permits to install, rather than via rule:

Sec. 3704.03. The director of environmental protection may do any of the following:

(T) Require new or modified air contaminant sources to install best available technology, but only in accordance with this division. With respect to permits issued pursuant to division (F) of this section beginning three years after August 3, 2006, best available technology for air contaminant sources and air contaminants emitted by those sources that are subject to standards adopted under section 112, Part C of Title I, and Part D of Title I of the federal Clean Air Act shall be equivalent to and no more stringent than those standards. ~~For an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the federal Clean Air Act, best available technology only shall be required to the extent required by rules adopted under Chapter 119. of the Revised Code for permit to install applications filed three or more years after August 3, 2006.~~

Best available technology requirements for an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the federal Clean Air Act that are established in rules adopted permits issued under this division section 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 Rolling twelve-month rolling period~~ summation of the allowable emissions.

R.C. 3704.03(T).

As illustrated by the proposed language, the proposed changes also include alteration of the fourth BAT method by allowing for BAT requirements to be expressed as a rolling 12-month summation of the allowable emissions.

The proposed language is similar, but not identical, to the definition of BAT currently in effect in rule. OAC rule 3745-31-01(T) currently states:

“Best available technology” or “BAT” means any combination of work practices, raw material specifications, throughput limitations, source design characteristics, an evaluation of the annualized cost per ton of air pollutant removed, and air pollution control devices that have been previously demonstrated to the director of environmental protection to operate satisfactorily in this state or other states with similar air quality on substantially similar air pollution sources.

OAC 3745-31-01(T). Ohio Administrative Code 3745-31-05(A)(3) further discusses BAT in the context of permits to install and specifies when the Director shall evaluate and determine BAT, and situations in which a BAT determination is not required.

Lastly, HB 166 proposes to revise BAT methods for permits to install issued on or after August 3, 2009. Under current law, for permits to install issued on or after that date, any new or modified air contaminant source that has the potential to emit, taking into account air pollution controls installed on the source, ten or more tons per year of volatile organic compounds or nitrogen oxides must meet, at a minimum, the requirements of any applicable reasonably available control technology rule in effect as of January 1, 2006, regardless of the location. The proposed language clarifies that this requirement, as it applies to nitrogen oxides, must meet those requirements established in rule as of December 22, 2007:

For permits to install issued three or more years after August 3, 2006, any new or modified air contaminant source that has the potential to emit, taking into account air pollution controls installed on the source, ten or more tons per year of volatile organic compounds or nitrogen oxides shall meet, regardless of the location of the source, at a minimum, ~~the~~:

-- For volatile organic compounds, the requirements of any applicable reasonably available control technology rule in effect as of January 1, 2006, ~~regardless of the location of the source~~;

-- For nitrogen oxide, the requirements of any applicable reasonably available control technology rule in effect as of December 22, 2007.



R.C. 3704.03(T).

## **II. Assessment**

While the substantive methods of imposing BAT set forth in the Revised Code are not proposed to significantly change, the proposed change to impose BAT through individual permits rather than by rule is a significant procedural change that will undoubtedly impact business in numerous ways. Imposing BAT on a permit-by-permit basis rather than via rule clearly adds an element of uncertainty. Permittees will continue to have the option of appealing their permit to ERAC if the agency imposes an interpretation of BAT that the permittee disagrees with.

**TO: OMA Environment Committee**  
**FROM: Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: June 12, 2019**

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### **Overview**

Long time Ohio EPA staffer Laurie Stevenson was appointed to the lead the agency by new Governor Mike DeWine in January. Ohio EPA continues to coordinate with ODNR and Agriculture during operating budget discussions regarding Ohio water quality and Lake Erie and the new H2Ohio fund. The DeWine administration is taking a new and different approach to Lake Erie and the algal bloom issues than the previous administration. The environment budget contains several policy changes of note.

### **General Assembly News and Legislation**

#### **Senate Bill 2 – Statewide Watershed Planning**

The bill creates and funds a comprehensive statewide watershed planning structure to be implemented by local soil and water conversation districts to encourage efficient crop growth, soil conservation and water protection methods.

The Senate sees this as a complement to the Governor's H2Ohio program and that H2Ohio funding will be used for the newly created Statewide Watershed Planning and Management Program.

#### **House Bill 7 – H2Ohio Trust Fund**

The bill creates the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality. It would create the H2Ohio Advisory Council to disburse money from the Fund for water quality programs, and to create the H2Ohio Endowment Board to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.

The House removed most of the funding for H2Ohio from the state budget. This parallel piece of legislation was created to provide a new and more directed funding source for the programs. The bill is expected to be passed from the House in the next two weeks.

#### **Senate Bill 50 – Increase Solid Waste Disposal Fee**

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

#### **House Bill 94 – Lake Erie Drilling Ban**

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

#### **House Bill 166 – State Operating Budget**

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

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

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

Also included in the state operating budget are two provisions that may be of note to manufacturers. The agency is looking to change BAT requirements and asbestos policies.

The House put its finishing touches on the bill last month. Among the changes was the removal of the BAT requirements. However several new additions were included in the bill including an amendment addressing the Lake Erie Bill of Rights by explicitly denying an eco-system standing in courts; and an appropriation to the George Barley Water Prize, which is a contest to help solve water issues.

The OMA has been working with the Senate for language that would provide an affirmative defense for manufacturers who are sued under a nuisance tort claim as long as they are total compliance with their air contaminant permits.

#### House Bill 242 – Container Use Restriction

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

This so-called bag bill is aimed at providing uniformity across the state regarding packaging and other products that have been ground zero for local government bans. The OMA is providing proponent testimony this week.

#### Regulations

##### Toledo Passes Lake Erie Bill of Rights – Choppy Waters Ahead

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

The LEBOR initiative is similar to many other community rights proposals that seek to establish rights for natural resources that citizens can protect through legal action.

The corporations or entities that could be impacted by the LEBOR's enactment range far and wide. Generally, companies that have an Ohio EPA issued water discharge permit authorizing them to discharge into surface waters within the Lake Erie watershed could be affected.

On February 27th, Drewes Farm Partnership v. City of Toledo was filed in federal court in Toledo, asserting many challenges to the LEBOR, including the argument that the LEBOR exceeds Toledo's limited authority to pass legislation and is in violation of state and federal preemption laws. The Drewes case seeks a preliminary injunction to stop the LEBOR going into effect before its defects are litigated.

These, and other legal challenges, are anticipated in the near future, with industry groups, agricultural interest groups, and businesses all interested in challenging the LEBOR for its overreach and broad declarations

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

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

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

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

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

#### OMA Submits Comments on WOTUS Revisions

Earlier this spring, the OMA weighed in with comments on the Trump Administration's efforts to rewrite the federal water pollution rule known as the Waters of the United States (WOTUS) — which defines the scope of federal regulatory jurisdiction under the Clean Water Act (CWA).

Because the courts have rejected the Trump Administration's effort to suspend operation of Obama-era revisions to WOTUS, the Environmental Protection Agency and U.S. Army Corps of Engineers have proposed a narrower rule that may survive judicial scrutiny. The Trump Administration's WOTUS definition is more restrained and observes traditional limits on the scope of federal power. The public comment period ended this week.

In its comments, the OMA wrote, "The proposed rule strikes an appropriate balance between protecting waters and wetlands, and providing clarity and predictability to stakeholders and regulators," and would curtail the regulatory "creep" of WOTUS as it affects manufacturing activity. Additionally, the OMA suggested possible improvements to the proposed rule changes, including in the areas of stormwater control features, waste treatment systems, traditional navigable waters, tributaries and ditches.

#### OMA Comments on Ohio EPA Biocriteria

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

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

### OMA Comments on Ohio EPA Large River Nutrient Rule

The OMA submitted comments on Ohio EPA's Early Stakeholder Outreach (ESO) — Nutrient Water Quality Standards for Ohio's Large Rivers (OAC 3745-1-36).

This would be a new rule intended to contain Ohio's standards for eutrophication endpoints in Ohio's Large River Assessment Units. Large rivers are those that drain over 500 mi<sup>2</sup>.

This new proposed rule would establish nutrient standards for these large rivers. In addition, a target phosphorus concentration is being considered for river segments that are over-enriched as demonstrated by the standard.

OMA's comments dove into the technical aspects of the proposal and questioned portions of the ESO. OMA requested that Ohio EPA convene a stakeholder group to provide interested-party feedback, expert support, and industry analysis as part of the rulemaking process for this important nutrient rule.

OMA also submitted more general comments in conjunction with the Ohio AgriBusiness Association.

Thank you to the member companies which submitted comments on this issue. And thank you to the OMA nutrient working group members for your help and feedback with the comments.

### **Ohio EPA Agency News**

#### Stevenson Named Ohio EPA Director

In January, Governor-elect Mike DeWine appointed Laurie Stevenson as the new director of Ohio EPA. Stevenson, who has worked for the agency for more than 20 years in various capacities, most recently held the position of Deputy Director of Business Relations. In that role she served as the front door of the agency, working closely with the regulated community including manufacturers.

Stevenson also lead the agency's E3 Sustainability Awards program, which was started under outgoing director Craig Butler.

Director Stevenson has been a longtime friend of the OMA and has presented to our Environment Committee and at other OMA events dozens of times over the years. We are excited to work with Laurie, and her team, in her new role at Ohio EPA.



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

S.B. 2  
133rd General Assembly

## Bill Analysis

**Version:** L-133-0726-2

**Primary Sponsors:** Sens. Peterson and Dolan

Jeff Grim, Research Associate

### SUMMARY

- Creates the Statewide Watershed Planning and Management Program for the improvement and protection of Ohio's watersheds to be administered by the Director of Agriculture.
- Requires the Director to employ and assign at least one watershed planning and management coordinator (hereafter coordinator) in each watershed region categorized under the bill to coordinate watershed planning in the watershed.
- Requires a coordinator to perform certain duties in the watershed in which the coordinator is assigned, including assisting each soil and water conservation district to identify sources and areas of water quality impairment.
- Requires the Director to assist soil and water conservation districts in watershed planning and management.
- Requires a soil and water conservation district board to consult and work with the coordinator assigned to the watershed region in which the soil and water conservation district is located.
- States that it is the General Assembly's intent to collaborate with organizations representing agriculture, conservation, the environment, and higher education to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality.

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## DETAILED ANALYSIS

### Statewide Watershed Planning and Management Program

#### Creation

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

#### Watershed planning and management coordinator

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

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

1. Assist each soil and water conservation district in identifying sources and areas of water quality impairment, including total phosphorous, dissolved relative phosphorous, and nitrogen nutrient loading. A coordinator also may assist any political subdivision of the state or organization engaged in water quality improvement activities (hereafter organization) in the watershed region to address water quality impairment.

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

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

3. Engage in watershed planning and management activities, including assisting a political subdivision or organization in the watershed region in developing and formulating a nine-element plan or its equivalent. A nine-element plan generally means a strategic plan that a political subdivision, organization, or individual engaged in water quality improvements may utilize to obtain federal funding for projects that address nonpoint source pollution (pollution from an undefined source, such as runoff from streets and highways).<sup>2</sup>

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<sup>1</sup> R.C. 940.36(B)(1).

<sup>2</sup> R.C. 940.36(A) and (3), (B), and (C).

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

### **Watershed regions**

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

Watershed region	Watersheds included in the region
Region 1	Western Lake Erie Basin Watershed, hydrologic unit code 041000.
Region 2	1. Eastern Lake Erie Basin Watershed, hydrologic unit code 041100; and 2. Conneaut Creek Watershed, hydrologic unit code 041201.
Region 3	1. Wabash River Basin Watershed, hydrologic unit code 051200; 2. Great Miami River Watershed, hydrologic unit code 050800; and 3. Little Miami River Watershed, hydrologic unit code 050902.
Region 4	Scioto River Watershed, hydrologic unit code 050600.
Region 5	Muskingum River Watershed, hydrologic unit code 050400.
Region 6	Mahoning River Watershed, hydrologic unit code 050301.
Region 7	1. Hocking River and Ohio River Tributaries Watershed, hydrologic unit code 050302; and 2. Raccoon Creek, hydrologic unit code 050901.

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

The bill assigns additional duties to the Director and boards of supervisors of soil and water conservation districts. Under the Director's current duties regarding soil and water conservation districts, the Director must assist in expediting state responsibilities for watershed development and other natural resource conservation works of improvement. The bill also requires the Director to assist in watershed planning and management.<sup>5</sup>

<sup>3</sup> R.C. 940.36(E).

<sup>4</sup> R.C. 940.36(D).

<sup>5</sup> R.C. 939.02(C).



The bill also requires a board to consult and work with the watershed planning and management coordinator assigned to the watershed region in which the soil and water conservation district is located.<sup>6</sup>

### Intent statement

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

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

The Director must undertake all actions necessary to ensure that assistance and available funding are provided for farmers who participate in the certification program.<sup>7</sup>

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## HISTORY

Action	Date
Introduced	02-12-19

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S0002-I-133/ts

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<sup>6</sup> R.C. 940.06(U).

<sup>7</sup> R.C. 940.37.



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

**H.B. 7**  
**133rd General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Ghanbari and Patterson

Amanda George Goodman, Attorney

### SUMMARY

- Creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio's lakes and rivers.
- Requires the Treasurer of State to act as trustee of the H2Ohio Trust Fund and grants the Treasurer full power to invest Fund money.
- Creates two entities – the H2Ohio Advisory Council and the H2Ohio Endowment Board – and assigns various duties and responsibilities to each regarding the management and administration of the Fund.
- Authorizes the H2Ohio Advisory Council to disburse money from the Fund (up to \$50 million per fiscal year) by issuing loans and awarding grants to applicants that apply for money to address water quality issues in Ohio.
- If Fund money is appropriated specifically to the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency, requires the Directors of those state agencies to each prepare an annual plan detailing how the money will be spent.
- Requires the Council to review and approve each agency's annual plan before the agency may spend the appropriated money.
- Requires the H2Ohio Endowment Board to make recommendations to the Treasurer of State regarding the issuance of securities to raise money for deposit in the H2Ohio Trust Fund.
- Authorizes the Treasurer to issue securities (revenue bonds) to generate money for deposit in the H2Ohio Trust Fund to be disbursed by the H2Ohio Advisory Council.
- Creates the H2Ohio Security Repayment Fund consisting of pledged revenues to be used to retire debt issued by the Treasurer.

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## DETAILED ANALYSIS

### Overview

The bill creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio's lakes and rivers. The Fund is in the custody of the Treasurer of State, but is not a part of the state treasury. The Treasurer of State is the trustee of the Fund and has full power to invest Fund money.

In order to manage and administer the H2Ohio Trust Fund, the bill creates two entities – the H2Ohio Advisory Council and the H2Ohio Endowment Board – and assigns various duties and responsibilities to each. The bill also assigns various duties and responsibilities to the Treasurer of State.

The H2Ohio Advisory Council is tasked with disbursing money from the Fund (up to \$50 million per fiscal year), in the form of loans and grants, to applicants that apply for money to address water quality issues in Ohio. If Fund money is appropriated specifically to the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency, the Directors of those agencies each must prepare an annual plan detailing how the money will be spent. The Council must review and approve each plan before an agency may spend the appropriated money.

The H2Ohio Endowment Board is tasked with making recommendations to the Treasurer regarding the issuance of securities to raise money for deposit the H2Ohio Trust Fund. The Board also may engage in real property transactions and adopt an investment policy for the Fund and submit it to the Treasurer.

Based on the Endowment Board's recommendations, the Treasurer may issue securities to generate money for the Fund (to be disbursed by the H2Ohio Advisory Council). The securities are revenue bonds secured by pledged revenues, including loan repayments. The securities are not general obligation bonds backed by the full faith and credit of the state.

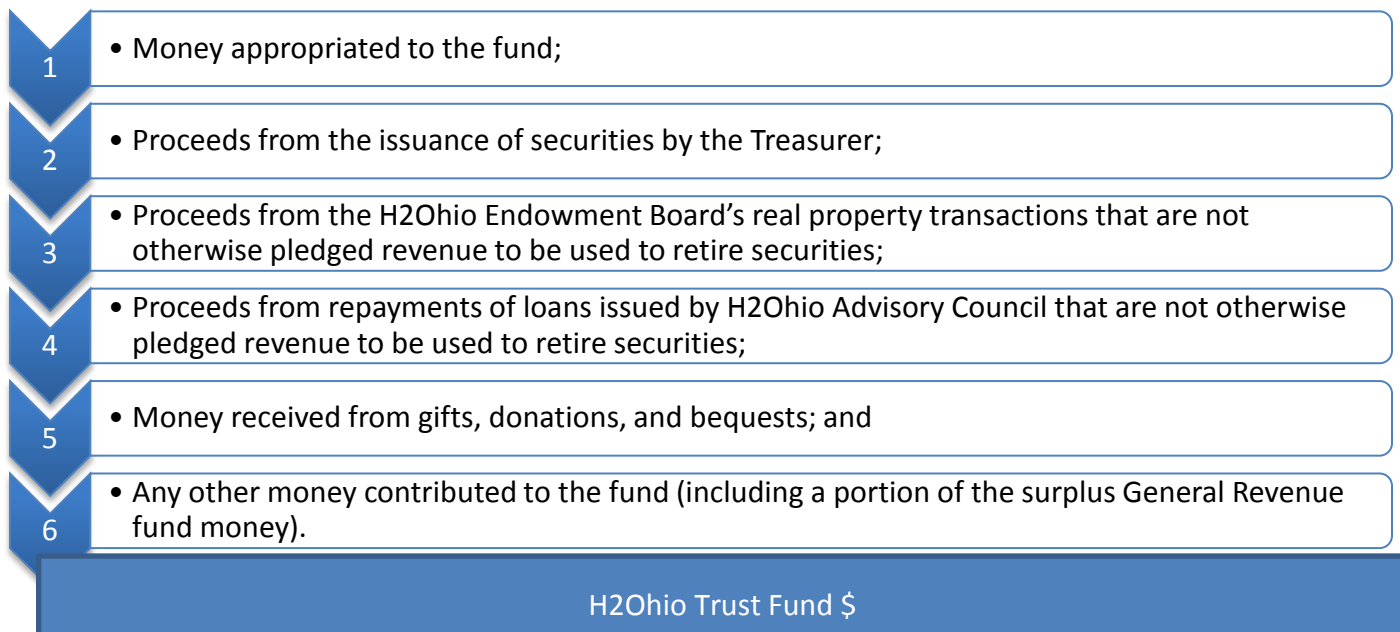
The bill creates the H2Ohio Security Repayment Fund consisting of pledged revenues. The Treasurer must use the revenues to retire debt issued under the bill. This Fund is separate from the H2Ohio Trust Fund so that money used to retire debt is separate from money used for disbursements from the H2Ohio Trust Fund.<sup>1</sup>

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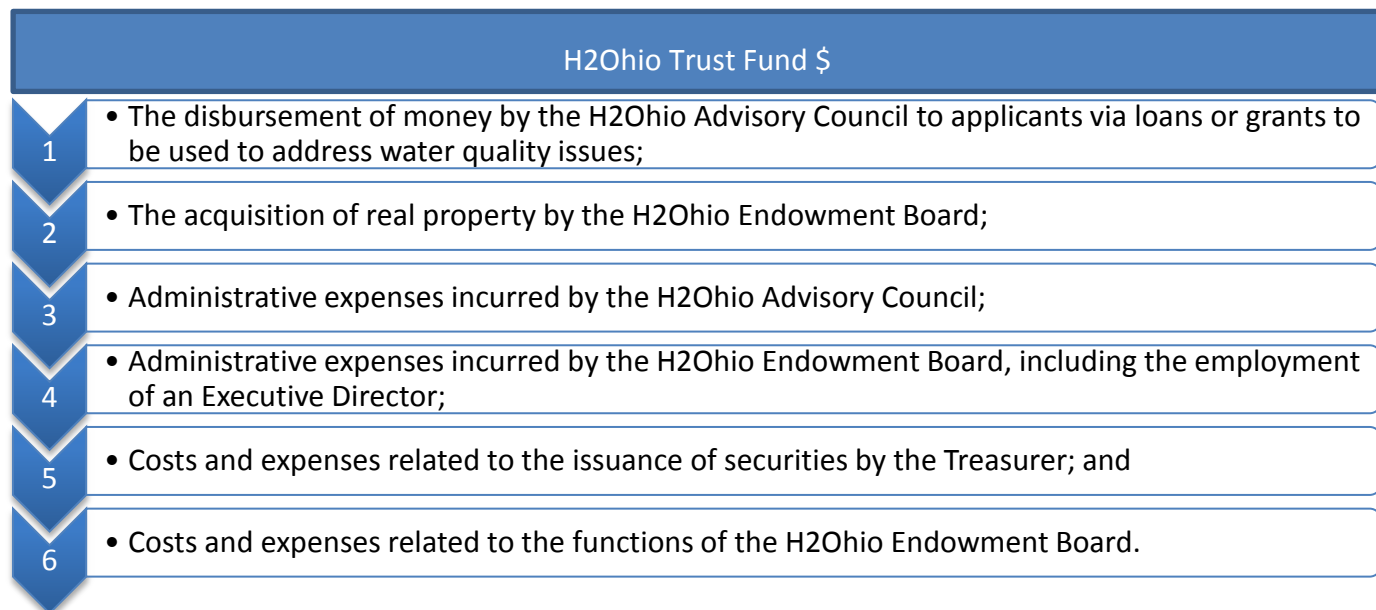
<sup>1</sup> R.C. 126.601 through 126.67.

## H2Ohio Trust Fund: management and purposes

The H2Ohio Trust Fund consists of all of the following money sources:<sup>2</sup>



The Fund may be used for any of the following purposes:<sup>3</sup>



<sup>2</sup> R.C. 126.601(A).

<sup>3</sup> R.C. 126.601(B).

As indicated above, the Treasurer acts as the Fund's trustee and has full power to invest money in the Fund. The Treasurer must discharge those duties solely in the interest of the Fund's purposes with care, skill, prudence, and diligence. The Treasurer must diversify the Fund's investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. All investment earnings of the Fund are credited to the Fund.<sup>4</sup>

## State agency plans

The Directors of the Department of Natural Resources, Department of Agriculture, and the Environmental Protection Agency must each prepare an annual plan for H2Ohio Trust Fund money appropriated to the respective agency. Each plan, at a minimum, must describe the following:

1. Funding priorities;
2. The specific programs, projects, or entities proposed to receive funding; and
3. The internal controls and external accountability measures that will be put in place to ensure that the funding is properly used.

Each Director must deliver their respective annual plan to the H2Ohio Advisory Council by March 1 each year. An agency cannot expend money appropriated from the Fund unless the Council approves the plan submitted by the agency's Director.<sup>5</sup>

## H2Ohio Advisory Council

The H2Ohio Advisory Council, created by the bill, is not subject to sunset review<sup>6</sup> and consists of the following 18 members:

1. The Director of Agriculture (or the Director's designee);
2. The Director of Environmental Protection (or the Director's designee);
3. The Director of Natural Resources (or the Director's designee);
4. The Executive Director of the Ohio Lake Erie Commission (who serves as a nonvoting, ex officio member);
5. Two members appointed by the President of the Senate (one member of the majority party and one member of the minority party) who serve at the pleasure of the President;
6. Two members appointed by the Speaker of the House of Representatives (one member of the majority party and one member of the minority party) who serve at the pleasure of the Speaker; and

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<sup>4</sup> R.C. 126.601(C).

<sup>5</sup> R.C. 126.64.

<sup>6</sup> R.C. 126.61(G).

7. Ten members appointed by the Governor with the advice and consent of the Senate (one who represents the interests of counties; one who represents the interests of townships; one who represents the interests of municipal corporations; one who represents the interests of public health; two who represent the interests of business or tourism; two who represent agricultural interests; and two who represent statewide environmental advocacy organizations).<sup>7</sup>

The ten members appointed by the Governor must reflect the demographic and economic diversity of the population of Ohio. Additionally, those members must be from geographically diverse areas of Ohio so that all areas of Ohio have representation on the Council. Of the initial members appointed by the Governor, five are appointed for two years and four are appointed for one year. Thereafter, terms of office for those members are two years. The Governor may reappoint a member to the Council.<sup>8</sup>

Ohio Lake Erie Commission, Department of Agriculture, and Environmental Protection Agency must provide administrative support to the Council and the Ohio Lake Erie Commission must provide the location for council meetings.<sup>9</sup>

The Governor must appoint a member of the Council to serve as the Chairperson of the Council and the Executive Director of the Ohio Lake Erie Commission, unless appointed to be Chairperson, serves as the Vice-Chairperson of the Council. If the Executive Director is the Chairperson, the Council must annually select a person from among its members to serve as Vice-Chairperson. A majority vote of a quorum of the members of the Council is necessary to take action on any matter.<sup>10</sup>

All members of the Council must file a disclosure statement with the Ohio Ethics Commission. Members of the Council serve without compensation for attending Council meetings, but receive their annual and necessary traveling and other expenses incurred in the performance of their official duties in accordance with the rules of the Office of Budget and Management.<sup>11</sup>

## **H2Ohio Advisory Council bylaws**

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

1. The frequency of meetings;
2. Procedures for reviewing annual plans submitted by the Directors of Agriculture, Natural Resources, and Environmental Protection;

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<sup>7</sup> R.C. 126.61(A).

<sup>8</sup> R.C. 126.61(B).

<sup>9</sup> R.C. 126.61(F).

<sup>10</sup> R.C. 126.61(C).

<sup>11</sup> R.C. 126.61(D).

3. Procedures for approving or disapproving annual plans submitted by those Directors, including a process for resubmitting disapproved plans;
4. Procedures for applicants to apply for loans and grants from the H2Ohio Trust Fund; and
5. Any other policy or procedure that the Council determines is necessary to carry out its duties.<sup>12</sup>

## **H2Ohio Advisory Council disbursement of funds**

The bill requires the H2Ohio Advisory Council to disburse H2Ohio Trust Fund money for any of the following purposes:

1. Awarding or allocating grants or money, issuing loans, or making purchases for the development and implementation of projects and programs, including remediation projects, that are designed to address water quality priorities;
2. Funding cooperative research, data gathering and monitoring, and demonstration projects related to water quality priorities;
3. Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, agriculture, institutions of higher education, environmental organizations, and water conservation districts; and
4. Other purposes, policies, programs, and priorities identified by the Ohio Lake Erie Commission in coordination with state agencies or boards responsible for water protection and water management, provided that the purposes, policies, programs, and priorities align with a statewide strategic vision and comprehensive periodic water protection and restoration strategy.<sup>13</sup>

The H2Ohio Endowment Board must approve the amount that the Council may disburse in each fiscal year. That amount cannot exceed \$50 million.<sup>14</sup> The Council cannot disburse more than the amount approved by the Board.<sup>15</sup>

## **H2Ohio Advisory Council – additional duties**

The H2Ohio Advisory Council is responsible for notifying the public of available H2Ohio Trust Fund money and of how to apply to receive loans and grants from the Fund.<sup>16</sup>

The Council, in coordination with the Ohio Lake Erie Commission, also must submit a report to the General Assembly and the Governor annually, beginning August 31, 2020. The

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<sup>12</sup> R.C. 126.62.

<sup>13</sup> R.C. 126.63(A).

<sup>14</sup> R.C. 126.65(I).

<sup>15</sup> R.C. 126.63(B).

<sup>16</sup> R.C. 126.63(C).

report must address activities undertaken with respect to the H2Ohio Trust Fund during the preceding fiscal year, and revenues and expenses for that year.<sup>17</sup>

## **H2Ohio Endowment Board**

The H2Ohio Endowment Board, which must advise the Treasurer regarding investment and debt management matters related to the H2Ohio Trust Fund, is not subject to sunset review<sup>18</sup> and consists of the following 12 members:

1. Three members appointed by the Governor who serve ten-year terms (however, initial terms are three, six, and nine years, respectively);
2. Three members appointed by the Governor, one serves a seven-year term, one serves a five-year term, and one serves a three-year term;
3. Three members appointed by the Speaker of the House of Representatives, one serves a seven-year term, one serves a five-year term, and one serves a three-year term; and
4. Three members appointed by the President of the Senate, one serves a seven-year term, one serves a five-year term, and one serves a three-year term.<sup>19</sup>

Members of the Board receive no compensation as board members, but are reimbursed for their necessary expenses incurred in the performance of their official duties. The Board must select from among its members a chairperson, a vice-chairperson, and a secretary. These officers serve a one-year term and may be reappointed. The appropriate appointing authority may remove any member of the Board from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance.<sup>20</sup>

## **H2Ohio Endowment Board duties**

### **Employing an Executive Director**

The bill requires the Board to employ an Executive Director to serve at the pleasure of the Board who serves in the unclassified civil service at a fixed salary according to state law.<sup>21</sup> The Board must prescribe the powers and duties of the Executive Director, including coordinating efforts between the Board, the H2Ohio Advisory Council, and the Treasurer.<sup>22</sup>

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<sup>17</sup> R.C. 126.63(D).

<sup>18</sup> R.C. 126.65(J).

<sup>19</sup> R.C. 126.65(A).

<sup>20</sup> R.C. 126.65(D).

<sup>21</sup> See R.C. 124.14, not in the bill.

<sup>22</sup> R.C. 126.65(E)(1).



The Executive Director must submit to the Director of Budget and Management, by June 1 each year, a request for surplus revenue to be transferred to the H2Ohio Trust Fund in an amount determined by the Board.<sup>23</sup>

Under current law, by July 31 of each year, the Director of Budget and Management must determine the surplus revenue that existed on the preceding June 30. The Director must then transfer the surplus from the General Revenue Fund (to the extent of the unobligated, unencumbered balance on the preceding June 30 in excess of 0.5% of the General Revenue Fund revenues in the preceding fiscal year) to the Budget Stabilization Fund and the Income Tax Reduction Fund. Currently, the surplus is first transferred to the Budget Stabilization Fund in an amount necessary for the balance of that fund to equal 8.5% of the General Revenue Fund revenues of the preceding fiscal year. The remaining surplus is transferred to the Income Tax Reduction Fund.

The bill requires the Director of Budget and Management to transfer an amount that is up to the amount requested by the Executive Director to the H2Ohio Trust Fund (after transferring money to the Budget Stabilization Fund, but before transferring the surplus to the Income Tax Reduction Fund).<sup>24</sup>

### **Recommendations to the Treasurer and management of the fund**

The bill requires the Board to make recommendations to the Treasurer regarding the issuance of securities to generate money for the H2Ohio Trust Fund. The Board also may adopt an investment policy to submit to the Treasurer.<sup>25</sup>

As part of the Board's duties, the Board may do both of the following:

1. Appoint or provide for the appointment of agents, consultants, independent contractors, or any other type of administrative, investment, financial, or accounting experts as are necessary, in the judgment of the Board;<sup>26</sup> and
2. Buy, sell, and lease real property.<sup>27</sup>

### **Treasurer of State**

Based on recommendations made by the H2Ohio Endowment Board, the bill authorizes the Treasurer to issue securities (also known as revenue bonds) to pay for costs related to disbursing money from the H2Ohio Trust Fund by the H2Ohio Advisory Council. The securities are backed by repayments of loans issued from the H2Ohio Trust Fund and any other pledged revenues (such as proceeds from the Board's real property transactions). The securities are special obligation securities and are not general obligations of the state. They do not constitute

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<sup>23</sup> R.C. 126.65(E)(2).

<sup>24</sup> R.C. 131.44(B)(1).

<sup>25</sup> R.C. 126.65(F).

<sup>26</sup> R.C. 126.65(G).

<sup>27</sup> R.C. 126.65(H).

debt for which the full faith and credit of the state may be pledged. The holder or owner of the securities has no right to have money raised by taxation by the state or any political subdivision obligated or pledged, and money so raised is not to be obligated or pledged, for the payment of principal or interest on the securities. Each issued security must bear on its face a statement to that effect.<sup>28</sup> Since the securities are secured by pledged revenues, the bill also creates the H2Ohio Security Repayment Fund consisting of pledged revenues. The Treasurer must use money in that Fund to retire debt issued under the bill.<sup>29</sup>

The Treasurer, when issuing securities to raise revenue for the H2Ohio Trust Fund, must do all of the following:

1. Issue the securities under just, reasonable, and financially sound procedures, terms, and conditions;
2. Take all actions necessary to pay debt incurred by the issuance of securities and execute all necessary documents (i.e., issued securities, trust agreements, leases, other financing documents, etc.) to provide for the pledge, protection, and disposition of the pledged revenues; and
3. Determine the maximum maturity of the securities.

The Treasurer may use all allowable revenue sources to pay debt incurred by the issuance of securities and may issue securities to fund or refund the already issued securities. The Treasurer also may issue securities in anticipation of the proceeds of the already issued securities.<sup>30</sup>

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## HISTORY

Action	Date
Introduced	05-13-19

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H0007-I-133/ks

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<sup>28</sup> R.C. 126.66(A).

<sup>29</sup> R.C. 126.67.

<sup>30</sup> R.C. 126.66(C) to (G).

Executive

As Passed by the House

In Senate Finance

**EPACD7 Local air pollution control authority**

**R.C. 3704.01, 3704.111**

Modifies the list of local agencies that qualify as a local air pollution control authority under the law governing air pollution control by eliminating the Mahoning-Trumbull Air Pollution Control Authority, City of Youngstown.

**Fiscal effect: None. The Mahoning-Trumbull Air Pollution Control Authority ceased operations as of September 30, 2018, therefore the elimination will not affect the distribution of available funding for local air pollution control authorities.**

**R.C. 3704.01, 3704.111**

Same as the Executive.

**Fiscal effect: Same as the Executive.**

**R.C. 3704.01, 3704.111**

Same as the Executive.

**Fiscal effect: Same as the Executive.**

**EPACD5 Best available technology requirements for air contaminants**

**R.C. 3704.03**

(1) Eliminates the requirement that the Director of Environmental Protection establish the best available technology (BAT) methods in rules and instead requires the BAT method for an air contaminant source to be established in the permit to install (PTI) issued for the source.

(1) No provision.

(1) No provision.

(2) Specifies that the methods apply only to air contaminants or precursors of air contaminants for which a National Ambient Air Quality Standard has been established under the federal Clean Air Act.

(2) No provision.

(2) No provision.

(3) Alters one of the four current BAT methods by allowing BAT requirements in a permit issued for an air contaminant source to be expressed as a "rolling 12-month summation of the allowable emissions" rather than as "monthly allowable emissions averaged over a 12-month rolling period."

(3) No provision.

(3) No provision.

**Executive**

**As Passed by the House**

**In Senate Finance**

(4) Clarifies that certain air contaminant sources having the potential to emit ten tons or more of nitrogen oxide per year must meet any applicable reasonably available technology rule in effect as of December 22, 2007.

(4) No provision.

(4) No provision.

**Fiscal effect: None.**

**EPACD6 Extension of E-Check**

**R.C. 3704.14**

Authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) in Ohio counties where this program is federally mandated by doing the following:

(1) Authorizing the Director of Environmental Protection to request the Director of Administrative Services to extend the contract (with the contractor that conducts the program) beginning on June 30, 2019, for a period of up to 24 months through June 30, 2021.

(2) Requiring the Director of Environmental Protection, prior to the expiration of the contract extension above, to request the Director of Administrative Services to enter into a contract (with a vendor to operate a decentralized program) through June 30, 2023, with an option to renew the contract for a period of up to 24 months through June 30, 2025.

**Fiscal effect: This program is a requirement that was developed as part of the federally approved State Implementation Plan (SIP) and compliance with the federal Clean Air Act so as to avoid the loss of federal grant money and possible sanctions. These sanctions include requiring offsets from facilities building in nonattainment areas and the loss of federal highway funds.**

**R.C. 3704.14**

Same as the Executive.

(1) Same as the Executive.

(2) Same as the Executive.

**Fiscal effect: Same as the Executive.**

**R.C. 3704.14**

Same as the Executive.

(1) Same as the Executive.

(2) Same as the Executive.

**Fiscal effect: Same as the Executive.**

Executive

As Passed by the House

In Senate Finance

**EPACD4 Asbestos training certification changes**

**R.C. 3710.01, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, 3710.12**

Makes the following changes to the law governing asbestos abatement, which is administered by Ohio EPA:

(1) Expands the scope of activities that are subject to regulation by applying the law to activities involving more than 3 linear or square feet of asbestos-containing material, rather than more than 50 linear or square feet as in current law.

(2) Adds the maintenance of asbestos-containing materials as one of the activities subject to regulation.

(3) Adds the operation of asbestos-containing materials as one of the activities subject to regulation.

(4) Authorizes the Ohio EPA to take certain enforcement actions against a contractor licensee or certificate holder if either is violating or threatening to violate specified federal regulations adopted under the Federal Toxic Substances Control Act.

(5) Requires the Ohio EPA to deny a contractor license application if the applicant or any of the applicant's officers or employees has been found liable in a civil proceeding under any state or federal environmental law. (Currently, denial is limited to felony convictions.)

(6) Eliminates the Ohio EPA Director's authority to approve, on a case-by-case basis, alternatives to the existing worker protection requirements for a project conducted by a public entity.

(7) Adds both of the following to the list of activities that require a person to be certified as an asbestos hazard evaluation specialist:

**R.C. 3710.01, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, 3710.12**

Same as the Executive, but makes the following changes:

(1) Same as the Executive.

(2) Same as the Executive.

(3) Same as the Executive, but changes "operation" to "operations."

(4) Same as the Executive, but adds a reference to the Asbestos Hazard Emergency Response Act, which amended the Federal Toxic Substance Control Act.

(5) Same as the Executive.

(6) Same as the Executive.

(7) Same as the Executive.

**R.C. 3710.01, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, 3710.12**

Same as the Executive, but makes the following changes:

(1) Same as the Executive.

(2) Same as the Executive.

(3) Same as the House.

(4) Same as the House.

(5) Same as the Executive.

(6) Same as the Executive.

(7) Same as the Executive.

**Executive**

**As Passed by the House**

**In Senate Finance**

(a) inspections, and (b) assessments of suspect asbestos containing materials.

(8) Adds the oversight of an asbestos hazard abatement activity to the list of activities that require certification as an asbestos hazard abatement project designer.

(8) Same as the Executive.

(8) Same as the Executive.

(9) Eliminates, with regard to the certification of an asbestos hazard abatement air-monitoring technician (responsible for environmental monitoring or work area clearance air sampling), the exemption from certification that applies to industrial hygienists-in-training since the American Board of Industrial Hygiene no longer certifies those hygienists.

(9) Same as the Executive.

(9) Same as the Executive.

(10) Requires a contractor to notify the Ohio EPA Director at least ten working days, rather than at least ten days as under current law, before beginning an asbestos hazard abatement project. (The change makes Ohio law consistent with federal law.)

(10) Same as the Executive.

(10) Same as the Executive.

**Fiscal effect: The net annual fiscal effect on the Ohio EPA's existing asbestos program revenues and expenditures is uncertain.**

**Fiscal effect: Same as the Executive.**

**Fiscal effect: Same as the Executive.**

**EPACD8                      Open dumping**

**R.C.                      3734.01**

Specifies that “open dumping” under the law governing solid and infectious waste includes both of the following: (a) depositing solid wastes or treated infectious wastes into an abandoned building or structure at a site that is not licensed as a solid waste facility, and (b) depositing untreated infectious wastes into any abandoned building or structure.

No provision.

No provision.

**Fiscal effect: The intent of this language is to clarify existing law, which may reduce the amount of time and resources expended on these matters and potentially generate some form of savings.**

Executive

As Passed by the House

In Senate Finance

EPACD15

Post-use polymers and recoverable feedstocks

R.C. 3734.01

(1) No provision.

(1) Excludes post-use polymers and recoverable feedstocks from the laws governing solid waste disposal if all of the following apply: (a) they are stored for a period of less than 90 days, (b) they remain retrievable and substantially unchanged physically and chemically, (c) their storage does not cause a nuisance, (d) their storage does not pose a threat from vectors (e.g., insects or vermin), (e) their storage does not adversely impact public health, safety, or the environment, and (f) prior to the end of the 90-day or less storage period, they are converted using gasification or pyrolysis.

(1) No provision.

(2) No provision.

(2) Specifies that a post-use polymer is a plastic polymer to which both of the following apply: (a) it is derived from any source and is not being used for its original intended purpose, and (b) its use or intended use is to manufacture crude oil, fuels, other raw materials, intermediate products, or final products using pyrolysis or gasification.

(2) No provision.

(3) No provision.

(3) Specifies that a recoverable feedstock is one or more of the following materials, derived from nonrecycled waste, that have been processed for use as a feedstock in a gasification facility: (a) post-use polymers, or (b) materials for which the U.S. Environmental Protection Agency has made a nonwaste determination or has otherwise determined are not solid waste.

(3) No provision.

(4) No provision.

(4) Specifies that pyrolysis is a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and are then cooled, condensed, and converted into certain fuels and other materials.

(4) No provision.

Executive

As Passed by the House

In Senate Finance

(5) No provision.

(5) Specifies that gasification is a process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere, and the mixture is converted into certain fuels or other specified materials.

(5) No provision.

**Fiscal effect: Uncertain.**

**EPACD1                      Extension of sunset of fees on the transfer or disposal of solid wastes**

**R.C.                      3734.57**

Extends for two years, from June 30, 2020 to June 30, 2022, the sunset of fees levied on the transfer or disposal of solid wastes. (A total of \$4.75 in state fees is levied on each ton of solid waste disposed of or transferred in Ohio and then used for administering the hazardous waste (90¢), solid waste (75¢), and other OEPA programs (\$2.85), and for soil and water conservation districts (25¢)).

**Fiscal effect: The fee extensions will continue annual revenues totaling \$64.5 million credited for the Ohio EPA's use as follows: \$40.9 million for the Environmental Protection Fund (Fund 5BC0), \$10.4 million for the Solid Waste Fund (Fund 4K30), \$10.2 million for the Hazardous Waste Clean-Up Fund (Fund 5050), and \$3.0 million for the Hazardous Waste Facility Management Fund (Fund 5030). Additionally, \$3.5 million credited annually to the Soil and Water Conservation District Assistance Fund (Fund 5BV0) and used by the Department of Agriculture is retained.**

**R.C.                      3734.57**

Same as the Executive.

**Fiscal effect: Same as the Executive.**

**R.C.                      3734.57**

Same as the Executive.

**Fiscal effect: Same as the Executive.**



Executive

As Passed by the House

In Senate Finance

EPACD9 Removal of additional wastes at scrap tire sites

R.C. 3734.85

(1) Specifically authorizes the Director of Ohio EPA, when issuing a scrap tire removal order to a property owner, to also require the owner to remove any additional solid waste or construction and demolition debris (C&DD) unlawfully disposed of at the property. (Under current law, the Director may issue a scrap tire removal order when the Director determines that a scrap tire accumulation constitutes a danger to the public health or safety or to the environment.)

(1) No provision.

(1) No provision.

(2) Authorizes generally the Ohio EPA, when performing a removal action, to remove, transport, and dispose of any additional solid wastes or C&DD unlawfully disposed of at a scrap tire site if one or more of the following apply: (a) the property owner consents to the removal in writing, or (b) the Director, in the removal order, required the removal of the additional wastes.

(2) No provision.

(2) No provision.

(3) Specifies that a person who receives a removal order is liable to the Ohio EPA Director for the removal, storage, processing, disposal, or transportation costs associated with additional solid waste or C&DD. Permits the Director to record these costs, in the office of the county recorder where the property is located, as a lien against the property (under current law, the costs associated only with the removal of scrap tires may be so recorded).

(3) No provision.

(3) No provision.

(4) Clarifies that in a civil action for removal costs (and only removal costs) associated with scrap tires, a landowner may recover costs from a responsible party in an amount equal to the portion of costs that the court determines is attributable to the responsible party. (Current law implies that the landowner may recover all costs from one responsible party even if there are multiple responsible parties.)

(4) No provision.

(4) No provision.

Executive

As Passed by the House

In Senate Finance

Fiscal effect: None, as these provisions clarify existing law.

**EPACD2 Extension of sunset on fees on the sale of tires**

**R.C. 3734.901**

Extends for two years, from June 30, 2020 to June 30, 2022, the sunset of both: (1) a base fee of 50¢ per tire levied on the sale of tires to assist in the cleanup of scrap tires, and (2) an additional fee of 50¢ per tire levied to assist soil and water conservation districts.

**Fiscal effect: The fee extensions preserve annual revenues totaling \$3.8 million for the Scrap Tire Management Fund (Fund 4R50) used by the Ohio EPA, and \$3.8 million for the Soil and Water Conservation District Assistance Fund (Fund 5BV0) used by the Department of Agriculture.**

**R.C. 3734.901**

Same as the Executive.

**Fiscal effect: Same as the Executive.**

**R.C. 3734.901**

Same as the Executive.

**Fiscal effect: Same as the Executive.**

**EPACD3 Extension of various fees under laws governing air pollution control, water pollution control, and safe drinking water**

**R.C. 3745.11**

Extends, for two years, all of the following:

(1) The sunset of the annual emissions fees for synthetic minor facilities.

(2) The sunset of the annual discharge fees for holders of National Pollutant Discharge Elimination System (NPDES) permits issued under the Water Pollution Control Law.

(3) The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works.

**R.C. 3745.11**

Same as the Executive.

(1) Same as the Executive.

(2) Same as the Executive.

(3) Same as the Executive.

**R.C. 3745.11**

Same as the Executive.

(1) Same as the Executive.

(2) Same as the Executive.

(3) Same as the Executive.

Executive

As Passed by the House

In Senate Finance

(4) The sunset of annual license fees for public water system licenses.

(4) Same as the Executive.

(4) Same as the Executive.

(5) The levying of higher fees, and the decrease of those fees at the end of the two years, for plan approvals for public water supply systems.

(5) Same as the Executive.

(5) Same as the Executive.

(6) The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law.

(6) Same as the Executive.

(6) Same as the Executive.

(7) The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems.

(7) Same as the Executive.

(7) Same as the Executive.

(8) The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Laws.

(8) Same as the Executive.

(8) Same as the Executive.

**Fiscal effect: The fee extensions will continue annual revenues totaling \$14.8 million and credited for the Ohio EPA's use as follows: \$8.3 million for the Surface Water Protection Fund (Fund 4K40), \$6.1 million for the Drinking Water Protection Fund (Fund 4K50), and \$375,000 for the Clean Air - Non Title V Fund (Fund 4K20).**

**Fiscal effect: Same as the Executive.**

**Fiscal effect: Same as the Executive.**

EPACD13

H2Ohio Fund

Section: 227.20

(1) Requires DPF Fund 6H20 appropriation item 715695, H2Ohio, to be used by the Ohio Environmental Protection Agency to support watershed planning, scientific research, and data collection.

Section: 227.20

(1) Same as the Executive.

Section: 227.20

(1) Same as the Executive.

**Executive**

**As Passed by the House**

**In Senate Finance**

(2) Permits appropriation item 715695 to be used to fund waterway improvement and protection of all state waterways in support of water quality priorities and management in accordance with R.C. 126.60.

(2) Same as the Executive.

(2) Same as the Executive.

(3) Permits the Director of the Environmental Protection Agency to certify to the Director of Budget and Management an amount up to the unexpended, unencumbered balance of appropriation item 715695, at the end of FY 2020 to be reappropriated in FY 2021 to the same appropriation item. Appropriates the certified amount for FY 2021.

(3) Same as the Executive.

(3) Same as the Executive.

**EPACD10**

**Areawide planning agencies**

**Section: 277.20**

Permits the Director of Environmental Protection to award grants from DPF Fund 5BC0 appropriation item 715687, Areawide Planning Agencies, to areawide planning agencies engaged in areawide water quality management and planning activities in accordance with the nonpoint source pollution control provisions of the federal Clean Water Act.

**Section: 277.20**

Same as the Executive.

**Section: 277.20**

Same as the Executive.

Executive

As Passed by the House

In Senate Finance

**EPACD11 Cash transfer to the Marsh Restoration Fund**

**Section: 277.20**

(1) Permits the Director of Budget and Management, in consultation with the Director of Environmental Protection, on July 1, 2019, or as soon as possible thereafter, to transfer up to \$12,000,000 from the Surface Water Improvement Fund (Fund 5Y30) to the Marsh Restoration Fund (Fund 5VA0). Creates Fund 5VA0 in the state treasury. Specifies that all moneys credited to Fund 5VA0 are to be used for the remediation and restoration of the Mentor Marsh site in Mentor, Ohio.

(2) Permits the Director of Budget and Management, in consultation with the Director of Environmental Protection, on July 1, 2019, or as soon as possible thereafter, to transfer up to \$1,000,000 from the Site Specific Cleanup Fund (Fund 5410) to Fund 5VA0.

**Section: 277.20**

(1) Same as the Executive.

(2) Same as the Executive.

**Section: 277.20**

(1) Same as the Executive.

(2) Same as the Executive.

**EPACD14 Drinking and Ground Water**

No provision.

**Section: 277.20**

Earmarks \$500,000 of DPF Fund 5BC0 appropriation item 715673, Drinking and Ground Water, in FY 2020 to be used to support a study, including the acquisition of necessary equipment, to determine an estimate of storage capacity and maximum annual yield of the Michindoh Aquifer.

**Section: 277.20**

Same as the House, but reduces the FY 2020 earmark to \$200,000.

Executive

As Passed by the House

In Senate Finance

EPACD16

George Barley Water Prize

Sections: 277.20, 737.30

(1) No provision.

(1) Requires new GRF appropriation item 715506, George Barley Water Prize, to be used to support the final stage of the awards process for the Everglades Foundation's George Barley Water Prize. Permits the certified, unexpended and unencumbered balance of FY 2020 appropriation to be reappropriated to FY 2021. Reappropriates the certified amount.

(1) No provision.

(2) No provision.

(2) Requires the OEPA Director to enter into a memorandum of understanding (MOU) with the Everglades Foundation prior to disbursing any money.

(2) No provision.

(3) No provision.

(3) Requires the MOU to specify all of the following: (a) that the money will be used to support the final stage of the awards process for the Prize, (b) that the State of Ohio or the OEPA will be listed as a sponsor of the Prize, (c) that the OEPA, and any other entity that the OEPA contracts with for purposes of the Prize, (i) may assist in the development of testing parameters for data collection in the Grand Challenge testing stage of the competition, (ii) will have access to all data collected during the Prize's campaign as well as access to the data and technologies developed during the Prize process, and (iii) will enter into a nondisclosure agreement with the Foundation for data collected in the Grand Challenge testing stage of the competition.

(3) No provision.

Executive

As Passed by the House

In Senate Finance

EPACD17

Water and sewer system grants

No provision.

No provision.

**Section: 277.20**

Requires GRF appropriation item 715507, Water and Sewer System Grants, to be distributed equally in each fiscal year to the Village of Yankee Lake (Trumbull) and Piperpont Township (Ashtabula County) for the purpose of undertaking water and sewer system upgrades and improvements.

Executive

As Passed by the House

In Senate Finance

**AGRCD14                      Creation of the H2Ohio Fund**

**R.C.            126.60**

Creates the H2Ohio Fund (Fund 6H20) in the state treasury consisting of money credited to it and any donations, gifts, bequests, and other money received for deposit in the Fund.

Requires Fund 6H20 to be used for the following purposes: (1) awarding or allocating grants or money, issuing loans, or making purchases for the development and implementation of projects and programs that are designed to address water quality priorities, (2) funding cooperative research, data gathering and monitoring, and demonstration projects related to water quality priorities, (3) encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, agriculture, environmental organizations, and water conservation districts, and (4) other purposes, policies, programs, and priorities identified by the Lake Erie Commission (LEC) in coordination with the state agencies or boards responsible for water protection and water management.

Requires that the LEC, in coordination with state agencies or boards responsible for water protection and water management, prepare a report on the activities undertaken under Fund 6H20 during the immediately preceding FY, including the revenues and expenses of the fund for the preceding fiscal year, and submit the report to the General Assembly and the Governor.

**R.C.            126.60**

Same as the Executive.

Same as the Executive, but also includes institutions of higher education in the list of entities specified in (3) for which H2Ohio Fund money may be used to encourage cooperation.

Same as the Executive, but requires the H2Ohio Advisory Council in coordination with LEC to prepare the report not later than August 31, 2020, and annually thereafter.

**R.C.            126.60**

Same as the Executive.

Same as the Executive.

Same as the Executive.



Executive

As Passed by the House

In Senate Finance

Fiscal effect: Corresponding uncodified provisions in the bill require the following amounts to be transferred to Fund 6H20: (1) a portion of FY 2019 GRF surplus revenue (up to \$100 million plus any remaining surplus after other specified transfers listed in OBMCD44), and (2) the entire balance of FY 2020 and FY 2021 GRF surplus (see OBMCD56). Altogether, the bill appropriates \$85.2 million in FY 2020 under Fund 6H20 to be used by AGR, DNR, and EPA for water quality initiatives.

Fiscal effect: Same as the Executive, but in the two corresponding uncodified provisions (1) limits the amount of the FY 2019 GRF surplus to be transferred to Fund 6H20 to up to \$86 million only (see OBMCD44), and (2) removes the provision that requires FY 2020 and FY 2021 GRF surplus revenues to be deposited into Fund 6H20 (see OBMCD56).

Fiscal effect: Same as the House, but increases the amount of the FY 2019 GRF surplus to be transferred to Fund 6H20 to up to \$172 million (see OBMCD44).

AGRCD18 H2Ohio Advisory Council

R.C. 126.60, 126.61, 126.62

No provision.

Requires the AGR, EPA, and DNR Directors to each prepare an annual plan for H2Ohio Fund (Fund 6H20) expenditures that, at a minimum, describes the following: (1) funding priorities, (2) specific programs, projects, or entities proposed to receive funding, and (3) internal controls and external accountability measures that will be put in place to ensure that the funding is properly used. (See AGRRCD14 for uses of the new H2Ohio Fund.)

No provision.

No provision.

Creates the H2Ohio Advisory Council, consisting of the following members: (1) AGR Director or Director's designee, (2) EPA Director or Director's designee, (3) DNR Director or Director's designee, (4) LEC Executive Director, (5) two members appointed by the President of the Senate, (6) two members appointed by the Speaker of the House, and (7) 10 members who represent various specific interests who are appointed by the Governor with the advise and consent of the Senate.

No provision.

No provision.

Requires the Council to do all of the following: (1) review and approve or disapprove the annual plans submitted by the AGR, EPA, and DNR, and (2) adopt bylaws governing its operation, including the process for reviewing and approving or disapproving the submitted plans, the frequency of meetings, and other

No provision.

Executive

As Passed by the House

In Senate Finance

No provision.

relevant operating procedures.  
 Requires LEC, AGR, and EPA to provide administrative support to the Council. Requires LEC to provide the location for Council meetings.  
**Fiscal effect: Potential increase in administrative costs for AGR, EPA, and DNR to prepare an annual plan and to reimburse members of the Council for expenses.**

No provision.

AGRCD23

Urban sediment and storm water runoff pollution

No provision.

No provision.

**R.C. 940.06, 939.02, 939.04, 940.01, 940.02, 1501.20 (repealed), and 6111.03**

Expands the authority of a board of supervisors of a Soil and Water Conservation District (SWCD) to enter into contracts or agreements by allowing such contracts or agreements to address storm water runoff pollution instead of only urban sediment pollution as in current law.

No provision.

No provision.

Revises the duties of the AGR Director regarding SWCDs as follows: (1) requires the Director to support the development and implementation of cooperative programs and working agreements between SWCDs and Department of Natural Resources (DNR) and the Ohio EPA, and (2) requires the cooperative programs and working agreements to be for the support of farm, rural, suburban, and urban conservation programs.

No provision.

No provision.

Adds that a SWCD board may enter into contracts or agreements with the DNR Director for partnership on state programs to assist with local needs relating to the management of wildlife, forestry, waterways, and other natural resources programs.

No provision.

No provision.

Adds that the EPA Director may coordinate with a SWCD board to ensure compliance with rules adopted by the Director that

Executive

As Passed by the House

In Senate Finance

No provision.

No provision.

pertain to urban sediment and storm water runoff pollution abatement.

Revises the duties of the Ohio Soil and Water Conservation Commission by doing both of the following: (1) adding the Directors of EPA and DNR to the people or entities that the Commission makes recommendations to regarding SWCD operations, and (2) regarding those recommendations, clarifying that the recommendations are to encourage proper soil, water, and other natural resource management for farm, rural, suburban, and urban land (current law does not specify the types of lands that the recommendations regarding proper natural resource management apply to).

No provision.

No provision.

Eliminates redundant law relating to coordination of the Ohio Soil and Water Commission, AGR, DNR, and EPA for agricultural and urban sediment pollution.

**Fiscal effect: Expands the type of contracts or agreements SWCDs can enter into and allows SWCDs to enter such contracts or agreements with DNR and EPA in addition to AGR under current law. SWCDs receive state funding based on local funds raised. State funds are appropriated under GRF line item 700509, Soil and Water District Support and DPF Fund 5BV0 line item 700661, Soil and Water Districts.**

Executive

As Passed by the House

In Senate Finance

**OBMCD44**      **FY 2019 GRF ending balance**

**Section: 513.10**

Requires the Director of OBM to determine the GRF surplus revenue that existed on June 30, 2019, and transfer cash, up to the actual surplus revenue amount, from the GRF as follows:

- (1) Up to \$10 million to the Targeted Addiction Program Fund (Fund 5TZ0)
- (2) Up to \$31 million to the Statewide Treatment and Prevention Fund (Fund 4750)
- (3) Up to \$100 million to the H2Ohio Fund (Fund 6H20)
- (4) No provision.
- (5) Up to \$5 million to the Books from Birth Fund (Fund 5VJ0)
- (6) Up to \$25 million to the State Park Fund (Fund 5120)
- (7) Up to \$25 million to the Emergency Purposes Fund (Fund 5KMO)
- (8) Up to \$25 million to the Disaster Services Fund (Fund 5E20)

**Section: 513.10**

Same as the Executive, but requires the first \$470 million of surplus revenue to remain in the GRF prior to any transfers and also makes the following transfer changes:

- (1) Same as the Executive.
- (2) Same as the Executive.
- (3) Same as the Executive, but reduces the amount to up to \$86 million.
- (4) Up to \$20 million to the School Bus Purchase Fund (Fund 5VU0)
- (5) Same as the Executive.
- (6) Same as the Executive, but subjects the transfer to Controlling Board approval.
- (7) Same as the Executive.
- (8) Same as the Executive.

**Section: 513.10**

Same as the Executive, but requires the retention of all of surplus revenue in the GRF except for the specific transfers listed in Section 513.10 and also makes the following changes to those listed transfers:

- (1) Same as the Executive.
- (2) No provision.
- (3) Same as the Executive, but increases the amount to up to \$172 million.
- (4) Same as the House.
- (5) Same as the Executive, but changes the name of the fund to "Ohio Governor's Imagination Library Fund."
- (6) No provision.
- (7) Same as the Executive.
- (8) Same as the Executive.

Executive	As Passed by the House	In Senate Finance
(9) Up to \$2 million to the Ohio Public Health Priorities Fund (Fund L087)	(9) Same as the Executive.	(9) No provision.
(10) Up to \$19 million to the Tobacco Use Prevention Fund (Fund 5BX0)	(10) Same as the Executive.	(10) Same as the Executive.
(11) Up to \$6.9 million to the Economic Development Programs Fund (Fund 5JC0)	(11) Same as the Executive, but increases the amount to up to \$8.9 million.	(11) Same as the Executive, but increases the amount to up to \$7.4 million.
(12) No provision.	(12) No provision.	(12) Up to \$2 million to the Ohio Incumbent Workforce Job Training Fund (Fund 5HR0);
(13) No provision.	(13) An amount to the Budget Stabilization Fund (Fund 7013) to bring the balance of the fund to 8.5% of FY 2019 GRF revenue.	(13) No provision.
(14) Remaining surplus cash to the H2Ohio Fund (Fund 6H20)	(14) Same as the Executive.	(14) No provision.

**OBMCD56 FY 2020 and FY 2021 GRF ending balances and FY 2021 appropriations for H2Ohio**

Section: 513.20	Section: 513.20	Sections: 513.20, 513.30
Requires the Director of OBM to determine the GRF surplus revenue that existed on June 30, 2020, and transfer cash, on July 1, 2020, in an amount equal to the actual surplus revenue amount, from the GRF to the H2Ohio Fund (Fund 6H20).	Replaces the Executive provision with one that requires the whole amount of the GRF cash balance as of June 30, 2020 to remain in the GRF.	Same as the House.
Authorizes the Controlling Board, in FY 2021, to increase or establish appropriations from Fund 6H20 for certain state agencies or boards in amounts necessary to support the statewide water protections vision and strategy in that year.	No provision.	Same as the Executive.
Requires the Director of OBM to determine the GRF surplus revenue that existed on June 30, 2021, and transfer cash, on July 1, 2021, in an amount equal to the actual surplus revenue	No provision.	No provision.

Executive

As Passed by the House

In Senate Finance

amount, from the GRF to the H2Ohio Fund (Fund 6H20).

**OBMCD58 Utility Radiological Safety Board assessments**

**Section: 514.10**

Specifies the maximum amounts, unless the agency and nuclear electric utility mutually agree to a higher amount by contract, that may be assessed against nuclear electric utilities under RC 4937.05 (B) (2) and deposited into the following funds:

\$97,610 in FY 2020 and \$101,130 in FY 2021 to the Utility Radiological Safety Fund (Fund 4E40) used by the Department of Agriculture;

\$1,300,000 in each of FY 2020 and FY 2021 to the Radiation Emergency Response Fund (Fund 6100) used by the Department of Health;

\$276,500 in FY 2020 and \$278,500 in FY 2021 to the ER Radiological Safety Fund (Fund 6440) used by the Environmental Protection Agency; and

\$1,258,624 in each of FY 2020 and FY 2021 to the Emergency Response Plan Fund (Fund 6570) used by the Department of Public Safety.

**Section: 514.10**

Same as the Executive.

Same as the Executive.

Same as the Executive.

Same as the Executive.

Same as the Executive.

**Section: 514.10**

Same as the Executive.

Same as the Executive.

Same as the Executive.

Same as the Executive.

Same as the Executive.

Executive

As Passed by the House

In Senate Finance

**DNRCD30 Stream flow monitoring program**

No provision.

**R.C. 1521.08**

Requires the Chief of the Division of Water Resources and the Director of EPA to jointly establish a program, along with rules to implement and administer it, to study the impact of oil and gas production operations on stream flow using stream flow monitoring technology in the following creeks: (1) Yellow Creek, Short Creek, and Cross Creek in Jefferson County; (2) Wheeling Creek, McMahan Creek, Wegee Creek, and Pipe Creek in Belmont County; and (3) Sunfish Creek and Opossum Creek in Monroe County.

**Fiscal effect: Increased costs for both DNR and EPA to run the new stream monitoring program.**

No provision.

**DNRCD3 Central Support Indirect Fund**

**Section: 343.20**

Requires the Director of Natural Resources with the approval of the Director of OBM, to determine each DNR division's payments into the Central Support Fund (Fund 1570). Requires the methodology used to determine the payments to contain the characteristics of administrative ease and uniform application in compliance with federal grant requirements, and allows the methodology to include direct cost charges for specific services provided. Requires payments to Fund 1570 to be made using intrastate transfer voucher.

Specifies that GRF appropriation item 725401, Division of Wildlife - Operating Subsidy, be used to cover the indirect costs of the Division of Wildlife.

**Section: 343.20**

Same as the Executive.

Same as the Executive.

**Section: 343.20**

Same as the Executive.

Same as the Executive.

Executive

As Passed by the House

In Senate Finance

**DOTCD38 Removal of the requirement for ODOT to adopt a business plan**

**R.C. 5501.20**

Removes the requirement that ODOT adopt a business plan every two years outlining the Department's mission, business objectives, and strategies, as well as adopt procedures for certain professional employees' performance accountability.

**Fiscal effect: Minimal decrease in administrative costs.**

**R.C. 5501.20**

Same as the Executive.

**Fiscal effect: Same as the Executive.**

**R.C. 5501.20**

Same as the Executive.

**Fiscal effect: Same as the Executive.**

**DOTCD39 Diesel Emissions Reduction Grant Program**

**Section: 755.10**

(1) Establishes a Diesel Emissions Reduction Grant Program (DERG) in the Highway Operating Fund (Fund 7002) and requires the Ohio Environmental Protection Agency (EPA) to administer the program and solicit, evaluate, score, and select projects submitted by public and private entities that are eligible for the federal Congestion Mitigation and Air Quality (CMAQ) Program. Requires ODOT to process Federal Highway Administration (FHWA) projects as recommended by EPA.

(2) Specifies that in addition to the expenditures allowed under RC 122.861, program funds also may be used to assist projects involving the purchase or use of hybrid and alternative fuel vehicles that are allowed under CMAQ guidance developed by FHWA.

(3) Requires public entities eligible to receive program funds to be reimbursed from moneys in Fund 7002. Requires private entities eligible to receive funds to be reimbursed at the discretion of the local public sector agency and upon approval by ODOT, through direct payments to the vendor in the prorated share of

**Section: 755.10**

(1) Same as the Executive.

(2) Same as the Executive.

(3) Same as the Executive.

**Section: 755.10**

(1) Same as the Executive.

(2) Same as the Executive.

(3) Same as the Executive.



Executive

As Passed by the House

In Senate Finance

federal/state participation. Specifies that the reimbursements shall be made from moneys in Fund 7002.

(4) Specifies that expenditures for the program from Fund 7002 shall not exceed \$10 million in both FY 2020 and FY 2021.

(5) Specifies that any allocations under this section of the bill represent CMAQ program moneys within ODOT for program use by EPA, and that such allocations shall not reduce the amount of moneys designated for metropolitan planning organizations (MPOs).

(6) Requires EPA, in consultation with ODOT, to develop guidance for the distribution of funds and for the administration of the program. Requires the guidance to include a method of prioritization for projects, acceptable technologies, and procedures for awarding grants.

**Fiscal effect: The Diesel Emissions Reduction Grant Program has been authorized under temporary law of main operating budget bills in the same or a similar manner since the FY 2012-FY 2013 biennium. Up to \$10 million over the FY 2020-FY 2021 biennium may be used for the program from Fund 7002, the same amount allowed for the current FY 2018-FY 2019 biennium.**

(4) Same as the Executive.

(5) Same as the Executive.

(6) Same as the Executive.

**Fiscal effect: Same as the Executive.**

(4) Same as the Executive.

(5) Same as the Executive.

(6) Same as the Executive.

**Fiscal effect: Same as the Executive.**

Am. Sub. H.B. 166  
As Passed by the House

\_\_\_\_\_ moved to amend as follows:

In line 52 of the title, after "3704.01," insert "3704.09," 1

In line 285, after "3704.01," insert "3704.09," 2

After line 35810, insert: 3

"Sec. 3704.09. Determinations (A) Except for purposes of the 4  
affirmative defense established in division (B) of this section: 5

(1) Determinations made by the director of environmental 6  
protection or other persons acting under sections 3704.03 and 7  
3704.04 of the Revised Code shall not be used as evidence in civil 8  
actions nor create any presumption of law or finding of fact ~~which~~ 9  
that shall inure to or be for the benefit of any person other than 10  
the state, and sections 3704.01 to 3704.07 of the Revised Code do 11  
not create, enlarge, or abrogate existing private rights; and 12

(2) Nothing in Chapter 3704. of the Revised Code shall be 13  
construed to abridge, limit, or otherwise impair the right of any 14  
person to damages or other relief on account of injury to persons 15  
or property and to maintain any action or other appropriate 16  
proceedings therefor. 17

(B) The holder of a permit issued under this chapter for an 18  
air contaminant source has an affirmative defense to a nuisance 19  
claim brought by a private party related to the installation or 20  
operation of the air contaminant source if both of the following 21  
apply during the time for which the claim alleges nuisance: 22

(1) The air contaminant source does not exceed any emission 23

limit established pursuant to rules adopted under this chapter. 24

(2) The director, or other person acting under the authority 25  
of sections 3704.03 and 3704.04 of the Revised Code, does not make 26  
a determination that a nuisance condition exists regarding the air 27  
contaminant source." 28

In line 76037, after "3704.01," insert "3704.09," 29

The motion was \_\_\_\_\_ agreed to.

SYNOPSIS

**Air contaminant source: affirmative defense** 30

**R.C. 3704.09** 31

Creates an affirmative defense in a private nuisance claim – 32  
for an entity issued an installation or operation permit for an 33  
air contaminant source – when both of the following apply during 34  
the time for which the claim alleges nuisance: 35

(1) The air contaminant source does not exceed any emission 36  
limit established in rule; 37

(2) The Director of Environmental Protection (or other 38  
appropriate person) does not determine that a nuisance condition 39  
exists regarding the air contaminant source. 40

\_\_\_\_\_ moved to amend as follows:

1 In line 122 of the title, after "2151.455," insert  
2 "2305.011,"

3 In line 281, after "2151.455," insert "2305.011,"

4 After line 12268, insert:

5 "Sec. 2305.011. (A) As used in this section:

6 (1) "Nature" means the phenomena of the physical world  
7 collectively, including plants, animals, the landscape, other  
8 features and products of the earth, the natural environment or  
9 wilderness, and generally areas that are not human or human  
10 creations, have not been substantially altered by humans, or  
11 that persist despite human intervention.

12 (2) "Ecosystem" means a complex community of living  
13 organisms in conjunction with their physical environments, all  
14 interacting and linked together as a system through nutrient  
15 cycles and energy flows in a particular unit of space.

16 (B) Nature or any ecosystem does not have standing to  
17 participate in or bring an action in any court of common pleas.

18 (C) (1) No person, on behalf of or representing nature or an  
19 ecosystem, shall bring an action in any court of common pleas.



\_\_\_\_\_ moved to amend as follows:

1 After line 75163a, insert:

2 "GRF 715506 George Barley Water Prize \$125,000 \$0"

3 In line 75164, add \$125,000 to fiscal year 2020

4 In line 75225, add \$125,000 to fiscal year 2020

5 In line 75227, after "**Section 277.20.**" insert "GEORGE  
6 BARLEY WATER PRIZE

7 The foregoing appropriation item, 715506, George Barley  
8 Water Prize, shall be used to support the final stage of the  
9 awards process for the Everglades Foundation's George Barley  
10 Water Prize. On July 1, 2020, or as soon as possible thereafter,  
11 the Director of Environmental Protection may certify to the  
12 Director of Budget and Management an amount up to the  
13 unexpended, unencumbered balance of the foregoing appropriation  
14 item, 715506, George Barley Water Prize, at the end of fiscal  
15 year 2020 to be reappropriated in fiscal year 2021. The amount  
16 certified is hereby reappropriated to the same appropriation  
17 item for fiscal year 2021."; begin a new paragraph

18 After line 82424, insert:

19           **"Section 737.\_\_\_\_.** The Director of Environmental Protection  
20 shall enter into a memorandum of understanding with the  
21 Everglades Foundation prior to dispensing to the Foundation any  
22 money appropriated to the Environmental Protection Agency for  
23 the George Barley Water Prize. The Director, a representative  
24 from any entity that the Agency contracts with for purposes of  
25 the George Barley Water Prize, and a representative from the  
26 Everglades Foundation shall sign the memorandum. The memorandum  
27 shall specify all of the following:

28           (A) That the money will be used to support the final stage  
29 of the award process for the Everglades Foundation's George  
30 Barley Water Prize;

31           (B) That the State of Ohio or the Agency will be listed as  
32 a sponsor of the George Barley Water Prize;

33           (C) That the Agency, and any other entity that the Agency  
34 contracts with for purposes of the George Barley Water Prize,  
35 may assist in the development of testing parameters for data  
36 collection in the Grand Challenge testing stage of the  
37 competition;

38           (D) That the Agency, and any other entity that the Agency  
39 contracts with for purposes of the George Barley Water Prize,  
40 will have access to all data collected during the George Barley  
41 Water Prize's campaign as well as access to the data and

42 technologies developed during the George Barley Water Prize  
43 process; and

44 (E) That the Agency, and any other entity that the Agency  
45 contracts with for purposes of the George Barley Water Prize,  
46 will enter into a nondisclosure agreement with the Everglades  
47 Foundation for data collected in the Grand Challenge testing  
48 stage of the competition."

49 The motion was \_\_\_\_\_ agreed to.

50 SYNOPSIS

51 **Environmental Protection Agency**

52 **Sections 277.10 and 277.20**

53 Creates GRF line item 715506, George Barley Water Prize,  
54 with an appropriation of \$125,000 in fiscal year 2020, and  
55 requires those amounts in each fiscal year to be used to support  
56 the final stage of the awards process for the Everglades  
57 Foundation's George Barley Water Prize.

58 Permits the Director of Environmental Protection, on July  
59 1, 2020, or as soon as possible thereafter, to certify to the  
60 Director of Budget and Management an amount up to the  
61 unexpended, unencumbered balance of GRF appropriation item  
62 715506, George Barley Water Prize, to be reappropriated from FY  
63 2020 to FY 2021. Appropriates the amount certified.

64 **Memorandum of understanding between EPA and the Everglades**  
65 **Foundation**

66 **Section 737.\_\_\_\_**

67 Requires the Director of Environmental Protection to enter  
68 into a memorandum of understanding with the Everglades  
69 Foundation prior to disbursing any money appropriated to the  
70 Environmental Protection Agency for the Foundation and requires



71 the memorandum to be signed by the Director, a representative  
72 from any entity that OEPA contracts with for purposes of the  
73 George Barley Water Prize, and a representative from the  
74 Everglades Foundation.

75 Requires the memorandum to specify all of the following:

76 1. That the money will be used to support the final stage  
77 of the awards process for the Everglades Foundation's George  
78 Barley Water Prize;

79 2. That the State of Ohio or OEPA will be listed as a  
80 sponsor of the George Barley Water Prize;

81 3. That OEPA, and any other entity that OEPA contracts with  
82 for purposes of the George Barley Water Prize, may assist in the  
83 development of testing parameters for data collection in the  
84 Grand Challenge testing stage of the competition;

85 4. That OEPA, and any other entity that OEPA contracts with  
86 for purposes of the George Barley Water Prize, will have access  
87 to all data collected during the George Barley Water Prize's  
88 campaign as well as access to the data and technologies  
89 developed during the George Barley Water Prize process; and

90 5. That OEPA, and any other entity that OEPA contracts with  
91 for purposes of the George Barley Water Prize, will enter into a  
92 nondisclosure agreement with the Everglades Foundation for data  
93 collected in the Grand Challenge testing stage of the  
94 competition.

\_\_\_\_\_ moved to amend as follows:

1 After line 82575, insert:

2 "Section 755.\_\_\_\_. (A) There is hereby created the Ohio  
3 Maritime Commission Study Committee, composed of the following  
4 members:

5 (1) One consultant appointed by the Director of  
6 Transportation who is experienced in maritime matters to act as  
7 chairperson of the Study Committee;

8 (2) Ten members representing the Ohio River region, all  
9 appointed by the Speaker of the House of Representatives, five  
10 of whom represent the private sector and five of whom represent  
11 the public sector for that region;

12 (3) Ten members representing the Lake Erie region, all  
13 appointed by the President of the Senate, five of whom represent  
14 the private sector and five of whom represent the public sector  
15 for that region.

16 (B) The Study Committee shall examine whether Ohio would  
17 benefit from the creation of a maritime commission. In examining  
18 the potential benefits of having such a commission, the Study

19 Committee shall examine and gather information on all of the  
20 following:

21 (1) Other states that have created a maritime commission  
22 and the roles and responsibilities of such commissions;

23 (2) The benefits and structure of other similar commissions  
24 currently in Ohio;

25 (3) The current need in the Ohio River and Lake Erie  
26 regions for a commission that would oversee maritime activities  
27 in those regions;

28 (4) Input from private and public sector businesses in the  
29 Ohio River and Lake Erie regions that would be impacted by the  
30 creation of a maritime commission in Ohio.

31 (C) The Study Committee shall prepare a report that  
32 summarizes the information gathered by the Study Committee and  
33 shall make recommendations regarding whether a maritime  
34 commission would benefit Ohio. Not later than six months after  
35 the effective date of this section, the Study Committee shall  
36 submit the report to the Governor, the President of the Senate,  
37 the Speaker of the House of Representatives, and the majority  
38 and minority leadership of the General Assembly.

39 (D) Upon submission of the report, the Study Committee  
40 shall cease to exist."

41 The motion was \_\_\_\_\_ agreed to.

42

SYNOPSIS

43

**Ohio Maritime Commission Study Committee**

44

**Section 755. \_\_\_\_**

45

Creates the Ohio Maritime Commission Study Committee  
46 consisting of the following members:

47

1. A consultant appointed by the Director of  
48 Transportation, experienced in maritime matters, to act as  
49 chairperson of the Study Committee;

50

2. Ten members from the Ohio River region appointed by the  
51 Speaker of the House (five representing the private sector and  
52 five representing the public sector); and

53

3. Ten members from the Lake Erie region appointed by the  
54 President of the Senate (five representing the private sector  
55 and five representing the public sector).

56

Requires the Study Committee to examine whether Ohio would  
57 benefit from the creation of a maritime commission, specifically  
58 by gathering information on all of the following:

59

1. Other states that have created a maritime commission;

60

2. The benefits and structure of other similar Ohio  
61 commissions;

62

3. The current need in the Ohio River and Lake Erie regions  
63 for a maritime commission; and

64

4. Input from private and public sector businesses in the  
65 regions that would be impacted by the creation of a maritime  
66 commission in Ohio.

67

Requires the Study Committee to submit a report to the  
68 Governor, President of the Senate, Speaker of the House of  
69 Representatives, and the majority and minority leadership within  
70 six months of the effective date of the bill that summarizes the  
71 Committee's findings and makes recommendations regarding the  
72 creation of a maritime commission.



## ***Testimony on House Bill 166***

**Laurie A. Stevenson, Director**

Good morning Chairman Schuring, Vice Chair Rulli, Ranking Member O'Brien, and members of the Senate General Government and Agency Review Committee, my name is Laurie Stevenson, and I am the Director of the Ohio Environmental Protection Agency. I appreciate the opportunity to provide testimony today on Ohio EPA's portion of House Bill 166, Governor DeWine's budget proposal.

Ohio EPA was established in 1972 and we have a mission of ensuring that Ohio's citizens are safe and protected from exposure to contamination in our water, air and on our land. We also have a responsibility to oversee the protection of our wonderful natural resources, so that they can be enjoyed by all of Ohio for generations to come. To fulfill these important responsibilities, we currently have 1,140 full-time staff working throughout the state. During our busy field sampling months, we also employ around 100 seasonal interns who are instrumental in helping us collect important water quality data and information.

We have a headquarters office in Columbus, a field office in Groveport, a laboratory in Reynoldsburg and five district offices. Our diverse team includes biologists, geologists, chemists, engineers, data experts, program managers, communication specialists and administrative support staff. Our core mission is to ensure compliance with environmental laws and regulations, and we do this in many ways. We issue permits to thousands of businesses throughout the state to control discharges of pollution. We conduct field inspections, collect samples and review monitoring reports and data. We respond to complaints from citizens regarding potential environmental problems and have an emergency response team available 24/7 to respond to spills and other emergencies.

Much of the work we do directly relates to Governor DeWine's mission of protecting families and children, including reducing air pollution, protecting sources of drinking water, cleaning up hazardous chemicals and controlling scrap tire dumps to prevent mosquito borne illnesses.

As Director, I take our commitment to ensuring the protection of human health through compliance of our laws very seriously. I began my own career at Ohio EPA as a field inspector, overseeing compliance with the hazardous waste regulations. However, I

also recognize that the environmental regulations can be complex and sometimes difficult to understand. This is especially true for small business owners who are working hard to run a successful business, but are not necessarily environmental experts. Small business owners wear many hats in running a business and it can be challenging for them to keep up with changes in the environmental regulations. Small communities responsible for environmental compliance face similar challenges.

For the past 20 years of my career, I have worked in various compliance assistance programs within Ohio, because it is my belief that we have an equally important responsibility to help businesses and communities get access to the tools, information and resources to achieve compliance and be successful. Within Ohio EPA, we have built a strong foundation of assistance programs and services, including helping small businesses with permit applications and other EPA paperwork, providing training and workshops to help businesses understand the regulations, helping small wastewater plants improve their operations and providing funding for communities to address their wastewater and drinking water infrastructure needs. We also help businesses and communities identify and implement sustainable practices to reduce waste and save them money. In 2017, Ohio was the first state in the nation to set up a materials marketplace, a free online tool for businesses and communities to find outlets for their recyclable and reusable materials that would otherwise go to landfills.

Because of these efforts, we believe Ohio EPA is a national leader in the protection of human health and the environment, and an asset when assisting companies locate and expand in Ohio. It's my priority to ensure we maintain this very important balance of using our regulatory/enforcement tools and our business assistance tools together to help Ohio grow and maintain a healthy environment.

To support the important work we do in all of these areas, our budget proposal for fiscal year 2020 totals \$219.7 million. Funding for fiscal year 2021 is proposed to be \$220.5 million, a slight 0.4 percent increase from fiscal year 2020. By way of background, many of Ohio EPA's programs are funded through permitting, waste disposal and pollution emission fees collected from facilities we regulate. Only a small proportion of our overall budget, about five percent, is from General Revenue Funds to support the E-Check auto emissions testing program. For each fiscal year in 2020 and 2021, our budget proposes approximately \$11 million in General Revenue Funds for administering the E-Check program, which is required in seven Northeast Ohio counties that are not meeting federally mandated ozone air quality standards.

Ohio EPA's budget does not include any fee **increases**. We are asking to continue our existing fees through the FY20-21 biennium. These fees support air pollution control, surface water and drinking water protection, environmental remediation, emergency response and waste management. These fees support 66 percent of the Agency's budget.

Through restructuring, attrition and careful evaluation of our personnel needs, our proposed budget will reduce our number of full-time equivalents by 41 positions. As vacancies occur, we assess both needs and resources to determine if there are more efficient ways to get work done without diminishing our core program responsibilities. We are mindful of our responsibility for administering the state's dollars carefully and adjusting staffing within our resources, not automatically refilling a vacancy or simply adding more staff when a new program comes along. I will continue to focus in this area to ensure we are operating as efficiently as possible. I am a strong proponent of strategic planning and establishing goals and objectives to keep Agency staff focused and working efficiently towards a common vision. I'm also very interested in getting feedback from our customers and stakeholders so that we can continuously look for ways to improve how we serve them.

I'd like to highlight two noteworthy areas of our budget request that we are excited about because of their alignment with the Governor's vision for investing in Ohio's children and Ohio's future.

The Volkswagen Settlement provides Ohio a unique opportunity in this budget to protect children from dangerous diesel emissions. Children are the most vulnerable population to the pollutants in diesel exhaust, as their lungs are still developing and they breathe at a faster rate than adults. In two rounds of public comments as we were crafting Ohio's plan to distribute the state's allotment from the VW lawsuit, the most requested use for these funds was school bus replacements. Our plan designates \$15 million dollars for SFY 19 through SFY 21 for grants to replace aging diesel school buses with new clean diesel, propane or compressed natural gas buses.

The first \$5 million in grants is already at work, replacing 179 old school buses with 19 propane and 160 new clean diesel buses, and reducing more than 38 tons of pollution each year. This benefit should triple when the remaining funds for school bus replacements are awarded. VW funds also are supporting other projects to protect both children and adults, such as replacing refuse collection and delivery trucks operating daily in neighborhoods; transit buses; and big diesel engines in locomotives and tugboats. We are

excited about the opportunity to help Ohio fleet owners retire old polluting vehicles more quickly and replace them with cleaner alternatives.

As emphasized in his first State of the State speech, and displayed in the Executive budget proposal, Governor DeWine is making water quality a top issue of his administration. The Governor has proposed the creation of the H2Ohio Fund to put our state on the path we need to be on to implement solutions that ensure Ohioans have access to clean and safe water. His proposal is also a call to action for all of us to invest in the protection of our most valuable natural resources for the benefit of generations who will be here long after we are gone. His vision is for Ohio because communities throughout the state face water-related challenges.

As the Director of Ohio EPA, I am very excited about his vision and am looking forward to working with him to tackle what I think will be the most important priority of my tenure. I am also looking forward to working closely with the directors of the Ohio Department of Natural Resources and Ohio Department of Agriculture to implement wide-ranging projects that will have a meaningful and measurable impact on improving water quality.

In fiscal year 2020, Ohio EPA will be responsible for administering \$8.675 million in H2Ohio funding. The areas that we have prioritized for initial and potential future funding include addressing failing home septic systems, helping provide water and sewer service in disadvantaged communities, targeting daycares for lead line replacement, funding water quality data collection efforts and measuring improvements from these efforts, and supporting research on innovative treatment technologies to address phosphorus.

In summary, we are doing everything we can as an Agency to help Ohio shine as an innovative and creative state; the place where everyone wants to work, invest and live. While we are a regulatory agency, our customer service and business assistance philosophy can be a key positive driver in creating new jobs and strengthening our communities while also protecting the environment.

As director of Ohio EPA, I share the Governor's vision for protecting our children, serving all Ohioans and preserving our natural resources. I appreciate the opportunity to speak with you today and would be happy to answer any questions you have.





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

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

**JUNE 5, 2019**

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

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

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

Ohio is home to:

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

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

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

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

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

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

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

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



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 242  
133rd General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Lang and Jones

Helena Volzer and Sam Benham, Attorney

### SUMMARY

- Prohibits local governments from imposing a tax, fee, assessment, or other charge on auxiliary containers (for example, a plastic or paper bag), the sale, use, or consumption of auxiliary containers, or on the basis of receipts received from the sale of auxiliary containers.
- Authorizes a person to use an auxiliary container for purposes of commerce or otherwise.
- Clarifies that existing law prohibiting the improper deposit of litter applies to auxiliary containers under the state anti-littering law.

### DETAILED ANALYSIS

#### Auxiliary containers

The bill enacts new law and modifies existing law governing “auxiliary containers.” Under the bill, auxiliary containers are single-use or reusable packaging such as bags, cans, bottles, or other containers made of materials such as plastic, glass, metal, or cardboard that is designed for transporting food, beverages, or other merchandise from or at a restaurant, grocery store, or other retail establishment.<sup>1</sup> In particular, the bill does all of the following with respect to auxiliary containers:

1. Prohibits a municipal corporation, charter county, or limited home-rule township from imposing a tax, fee, assessment, or other charge on auxiliary containers, the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of

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<sup>1</sup> R.C. 3736.01(K).

such containers (for a more detailed explanation of this provision, see “**Local fee and tax prohibitions**,” below);<sup>2</sup>

2. Authorizes a person to use an auxiliary container for purposes of commerce or otherwise. The bill specifies that nothing in this authorization may be construed to prohibit the authority of a county, municipal corporation, or solid waste management district from implementing a voluntary recycling program.<sup>3</sup>
3. Clarifies that existing law prohibiting the improper deposit of litter applies to auxiliary containers under the state anti-littering law. Current law prohibits a person from improperly depositing litter on public property, private property not owned by the person, or in or on waters of the state. Violation of the prohibition is a third degree misdemeanor, and a sentencing court may require the violator to remove litter from property or from the waters of the state.<sup>4</sup>

## **Local fee and tax prohibitions**

### **Municipal corporations**

Municipal corporations are endowed by the Ohio Constitution with home rule powers, which authorize them to exercise powers beyond those provided in state law and, in certain respects, contrary to state law.<sup>5</sup> In particular, municipal corporations may impose taxes without explicit authorization to do so under state law.<sup>6</sup> However, the Ohio Constitution does allow the General Assembly to enact laws limiting the power of municipalities to levy taxes and assessments.<sup>7</sup> Indeed, continuing law prohibits municipalities from levying several types of taxes, including sales taxes and gross receipts taxes.

The bill further restricts municipal taxing power by prohibiting municipal corporations from imposing a tax on auxiliary containers themselves, on the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of such containers. The bill also prohibits a municipal corporation from imposing a fee, assessment, or other charge on any of those bases (see **COMMENT**).<sup>8</sup>

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<sup>2</sup> R.C. 301.30, 504.04(B)(8), and 715.013(B).

<sup>3</sup> R.C. 3736.021.

<sup>4</sup> R.C. 3736.32 and 3767.99, not in the bill.

<sup>5</sup> Article XVIII, Section 3 of the Ohio Constitution.

<sup>6</sup> *Gesler v. City of Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76 (2013).

<sup>7</sup> Article XIII, Section 6 of the Ohio Constitution and Article XVIII, Section 13 of the Ohio Constitution.

<sup>8</sup> R.C. 715.013(B).

## Charter counties

In general, counties possess only those powers expressly delegated to them by state law, or those which are necessarily implied from those powers.<sup>9</sup> However, the Ohio Constitution allows counties, with voter approval, to adopt a charter, which may endow the county with the same home rule powers exercised by municipal corporations, including the power of taxation.<sup>10</sup> However, the charters of both of the counties in Ohio that have adopted charters, Cuyahoga and Summit, specifically disclaim the power to levy any tax other than the taxes permitted under state law for noncharter counties.<sup>11</sup>

As with municipal corporations, the bill prohibits a charter county from imposing a tax, fee, assessment, or other charge on auxiliary containers, on the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of the containers (see **COMMENT**). But the bill specifies that charter counties may still impose their general sales and use taxes on such containers to the extent the sale of such containers is taxable or becomes taxable in the future under the state's sales and use tax law.<sup>12</sup>

## Limited home-rule townships

Similar to counties, townships are generally limited to acting in accordance with powers delegated to them under state law.<sup>13</sup> Continuing law authorizes certain townships with at least 3,500 residents to form a limited home-rule government, which is allowed to exercise home-rule powers, subject to certain exceptions. Among other exceptions is a prohibition against levying taxes not authorized under state law for all townships.<sup>14</sup> Accordingly, even limited home-rule townships are prohibited from levying taxes not authorized by state law, but this does not necessarily imply that they lack power to impose fees or other charges for regulatory purposes that are not regarded as taxes.

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<sup>9</sup> See *Geauga County Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579 (1993); *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84 (1935), syllabus, paragraph 1.

<sup>10</sup> Article X, Section 3 of the Ohio Constitution.

<sup>11</sup> Article I, Section 1.02, Charter of Cuyahoga County, available at: <http://council.cuyahogacounty.us/en-US/Charter-CuyahogaCounty.aspx>, and Article I, Section 1.02, Charter of Summit County, available at: <https://co.summitoh.net/index.php/executive/charter-government>.

<sup>12</sup> R.C. 301.30. Current sales and use tax law appears to exempt a broad range of items, some of which might qualify as auxiliary containers, when purchased by retailers for their customers' use—see R.C. 5739.02(B)(15).

<sup>13</sup> See *State ex rel. Schramm v. Ayres*, 158 Ohio St. 30 (1952) and *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186 (2012).

<sup>14</sup> R.C. 504.04(A)(1).

The bill expressly prohibits home-rule townships from imposing a fee, assessment, or other charge on auxiliary containers, on the sale, use, or consumption of the containers, or on the basis of receipts received from the sale of the containers.<sup>15</sup>

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## COMMENT

The bill prohibits municipal corporations and charter counties from imposing a “fee, assessment, or other charge” on auxiliary containers, on the sale, use, or consumption of such containers, or on the basis of receipts received from the sale of such containers.<sup>16</sup> Although the Ohio Constitution and county charters appear to allow state law’s limitation on each subdivision’s respective taxing power, it is unclear whether the Ohio Constitution authorizes the General Assembly to limit “fees and other charges” that might be imposed by a municipal corporation or charter county for regulatory or other public welfare purposes.<sup>17</sup>

Because the bill restricts municipal and charter county authority to impose fees and charges, it may interfere with a municipal corporation’s or charter county’s home-rule authority.

Indeed, courts have held that a statute enacted by the General Assembly that purports to limit that constitutional authority may be invalid as applied to these home-rule subdivisions.<sup>18</sup> The same issue does not arise with limited home-rule townships, as their home-rule authority is granted by state law and not the Ohio Constitution.

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## HISTORY

Action	Date
Introduced	05-13-19

H0242-I-133/ts

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<sup>15</sup> R.C. 504.04(B)(8).

<sup>16</sup> R.C. 301.30 and 715.013(B).

<sup>17</sup> See *Drees, infra*. for discussion of legal distinction between taxes versus fees and other government exactions.

<sup>18</sup> See *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005.



May 1, 2019

**VIA Electronic Mail (dsw\_rulecomments@epa.ohio.gov)**

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

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

Dear Sir/Madam:

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

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

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

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



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

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

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

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

Sincerely,



Rob Brundrett  
Director, Public Policy Services

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



April 15, 2019

Via email [PCS@orsanco.org](mailto:PCS@orsanco.org)  
ORSANCO  
5735 Kellogg Avenue  
Cincinnati, OH 45230

**Re: OMA Comments on ORSANCO's Pollution Control Standards**

Dear Commissioners:

Pursuant to ORSANCO's Notice of Public Hearings and comment instructions dated March 1, 2019, The Ohio Manufacturers' Association (OMA) is hereby providing the Ohio River Valley Water Sanitation Commission (ORSANCO) with written comments in response to potential revisions to its Pollution Control Standards (PCS).

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

The OMA would like to thank ORSANCO for the opportunity to provide additional comments and react to the Commission's most recent announcement concerning the PCS. The OMA appreciates the role ORSANCO plays in helping protect and preserve water quality in the Ohio River, as well as the Commission's role in collecting and providing data and information for the river's many stakeholders. This additional comment period offers an important opportunity to review the role of ORSANCO in light of both regulatory developments and improvements in water quality in the Ohio River since ORSANCO's inception more than 70 years ago.

When ORSANCO was created in 1948, the need for water quality improvements in the Ohio River was clear. Since the creation of ORSANCO, there have been numerous changes to the regulatory system, most notably the passage and enactment of the Clean Water Act and a comprehensive system of federal and state water quality programs and standards developed and implemented in all of the ORSANCO Compact states. As a result of these changes, there has been a dramatic improvement in the quality of the Ohio River, as well as its tributaries and other feeder streams.

Today, all the Compact States implement a federally-enforceable water quality program approved by the U.S. EPA. These programs have been effective in addressing each state's streams as aquatic habitats, as well as supporting their uses for recreation and drinking water.

The water quality goals of the Compact are being effectively addressed by the Clean Water Act and the PCS no longer provide the value and impact they once did. Today, the differences between the PCS and Clean Water Act standards can and do lead to confusion for the manufacturing community. Moreover, these differences can create complications in the

permitting process, where there is often no effective way to question or challenge the appropriateness or applicability of the underlying PCS in specific permitting situations.

The more valuable role for ORSANCO today is to concentrate on its scientific and technical information gathering and research. This would allow ORSANCO to provide valuable information to the states when carrying out their obligations to preserve and protect water quality under the Clean Water Act.

The OMA's response to the proposed modification is that the PCS should be removed from the ORSANCO program. The language, as proposed, is confusing and will only serve to cause misunderstanding and uncertainty, while failing to accomplish any additional environmental benefit.

If the Commission must keep the PCS in some form, we respectfully ask that clarification be added to address the litany of concerns expressed by interested parties about ORSANCO's advisory role and the obligations of member states in regards to the PCS. We also ask that language be added to clarify that member states set applicable water quality standards, and that any existing PCS are simply recommendations and guidance set for member states. It should be a priority of the Commissioners to provide clarity so that regulators and the public interacting with ORSANCO understand and can be supportive of the ongoing mission.

Thank you for the opportunity to provide comments. We look forward to working with the Commission throughout this process, and appreciate the opportunity to convey our most recent thoughts. We look forward in participating in any future meetings or comment periods regarding the PCS as the Commission further evaluates the program.

Sincerely,



Rob Brundrett  
Director, Public Policy Services

# Ohio River water quality standards diluted by multi-state agency

**DON HOPEY**

Pittsburgh Post-Gazette  
[dhopey@post-gazette.com](mailto:dhopey@post-gazette.com)

**JUN 6, 2019**

The multi-state agency that for the last 60 years has set water quality standards protecting the Ohio River Thursday approved industry-backed changes to make those rules voluntary.

The Ohio River Sanitation Commission, known by the acronym ORSANCO, voted 19-2 with one abstention to make the changes at its meeting in Covington, Ky., even though public comments on the policy proposal totaled 4,150 opposed and nine in support.

Jordan Lubetkin, a regional spokesman for the National Wildlife Federation, said the commission presented no analysis, justification or data supporting the decision to make the standards voluntary.

“This is a monumental step backwards that will jeopardize the health of the Ohio River,” Mr. Lubetkin said. “The commissioners should be ashamed.”

Mr. Lubetkin said the Ohio River continues to face serious threats from sewage contamination, toxic pollutants from industry and farm runoff, resulting in drinking water problems, fish consumption advisories and restrictions on swimming and boating.

ORSANCO Executive Director Richard Harrison said in a phone interview Thursday afternoon that the commission remains committed to protecting the river’s water quality, but wanted to give states different ways to do that.

“ORSANCO and the member states largely adopt [U.S. Environmental Protection Agency] criteria,” Mr. Harrison said. “This change gives them the flexibilities they needed in terms of implementing those programs.”

Pennsylvania is represented on the commission by Davitt Woodwell, president of the Pennsylvania Environmental Council, Charles “Chuck” Duritsa, retired southwest regional director at the Pennsylvania Department of Environmental Protection, and Patrick McDonnell, DEP secretary. Jennifer Orr-Greene, from the DEP’s office of water resources planning, attended representing Mr. McDonnell. All three Pennsylvania representatives voted in favor of the revision.

The new policy is effective immediately.

The only two votes against adopting the new policy were from George Elmaraghy, one of the two federal representatives, and Douglas Conroe, executive director of the

Chautauqua Lake Association Inc., representing New York. Other states represented on the commission are Ohio, West Virginia, Indiana, Illinois, Kentucky and Virginia.

Mr. Woodwell acknowledged the opposition from environmental organizations but insisted that the new policy will maintain the river's protections.

"This is something that, in my mind, keeps the standards in place," he said. "The proposal was characterized by some people as voluntary but it's not. States still have to protect water quality and meet ORSANCO standards, but they have options on how to do that. This doesn't roll back protections on the main stem of the river in my opinion."

Critics said that while the use standards remain, the mandate that states use those standards in permitting water discharges into the river is gone, making them guidelines rather than rules.

ORSANCO was established in 1948 to improve and protect water quality in the eight states along the 981-mile "working river" that flows from Pittsburgh's Point to Cairo, Ill., where it joins the Mississippi River.

It has set standards to limit pollution discharges of heavy metals and hazardous chemicals from industrial facilities and coal-burning power plants, improving water quality in the river that provides drinking water to more than 5 million people.

At an April 1 public hearing on the proposal in Pittsburgh, one of three held by the commission in Ohio River watershed states, 17 people offered comments and none supported the proposal. Several said it was driven by the shale gas industry and plastics manufacturers that wanted fewer regulations on wastewater discharges into the river.

One of those was John Stolz, a professor of biological sciences and director of the Center for Environmental Research and Education at Duquesne University, who said the changes will undermine the commission's ability to monitor and control pollution at a time when rapid development of petrochemical facilities and more wastewater discharges are taking place along the river.

ORSANCO's review of its pollution standards began four years ago and its initial proposal in July 2018 would have eliminated those rules completely. Public opposition caused the commission to pull back that proposal, Commission Chairman Ron Potesta of West Virginia said at the April hearing, and substitute a measure that allows member states "discretion" in meeting them.

Entities that filed supporting comments about the revised policy include the Kentucky Chamber of Commerce, the Ohio Manufacturers Association, and ORSANCO's own Chemical industry Advisory Committee.

AK Steel Corp. in Butler, Butler County, submitted comments urging the commission to adopt the 2018 policy proposal that would have eliminated the water quality standards.

Among the thousands of public comments in opposition to the regulatory changes are those from the mayor of Evansville, Ind.; the Ohio Environmental Council; Kentucky Waterways Alliance; Ohio and Illinois chapters of the Sierra Club; the city of Cincinnati and the Greater Cincinnati Water Works, Ohio Valley Environmental Coalition, Ohio River Foundation, West Virginia Rivers Coalition, and Lawrenceville-based Fair Shake Environmental Legal Services.

“ORSANCO’s new proposal maintains the Pollution Control Standards, but eliminates the mandate that states adopt and implement those standards in their water permitting,” Josh Eisenfeld of Fair Shake wrote. “In short, it maintains the [standards], but turns them into guidance as opposed to mandates.

“This will result in inconsistent standards between states, increasing the states’ vulnerability to political pressure, and facilitates a race to the bottom as states seek to become more attractive to industrial development.”

*Don Hopey: [dhopey@post-gazette.com](mailto:dhopey@post-gazette.com) or 412-263-1983. Twitter: @donhopey.*



April 15, 2019

Filed electronically at [www.regulations.gov](http://www.regulations.gov)  
Docket No. EPA-HQ-OW-2018-0149

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

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

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

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

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

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

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

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

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

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

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



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

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

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

Sincerely,



Rob Brundrett  
Director, Public Policy Services

## Environment

### **New Bill Would Pre-Empt Local Plastic Bag Bans May 31, 2019**

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

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

### **Analysis: New Green Deal Signifies New Phase in Climate Change Debate May 17, 2019**



In the latest issue of its “Climate Report,” global law firm Jones Day analyzes the Green New Deal proposed by some federal lawmakers. According to the firm, **the resolution** — which calls for “high-quality union jobs that pay prevailing wages” and “wage and benefit parity for workers affected by the transition” — signifies a “new phase in the national debate over climate change policy in America.” Specifically, the Green New Deal poses the question “whether Congress should curtail fossil fuel use ... through a broad array of social and economic reforms and public works projects.” Jones Day adds: “The potential impact of the ensuing debate will vary from company to company but, in almost all cases, warrants serious attention in business, political, and legal planning efforts.”

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

### **House Introduces New H2Ohio Funding Bill May 17, 2019**

The House this week introduced **House Bill 7** as part of a priority bill package with bipartisan support. HB 7 creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio's lakes and rivers. Gov. Mike DeWine included in his budget the creation of H2Ohio, and the program is one of his top priorities.

The House reduced the funding provisions suggested by the administration and instead is creating a bond package to ensure long-term, stable funding of the program. The bill had its first hearing this week in the House. You can see the testimony **here**. *5/16/2019*

### **Half a Million Sliders a Day! May 17, 2019**

This week, OMA's **Sustainability Peer Network** toured the White Castle frozen food manufacturing facility in Vandalia to observe waste reduction innovations and processes. Angel Arroyo-Rodriguez, Program Leader, Materials and Waste Management at Ohio EPA, joined the group and shared information about food waste disposal options.

The OMA thanks White Castle's Rob Camp, vice president of retail operations, as well as Shannon Tolliver, social responsibility and environmental sustainability manager, for hosting this event.

OMA's Sustainability Peer Network was created to help OMA members network, learn and share about sustainability goals, practices and projects. Manufacturing members can **sign up here** to receive invitations to future tours and events. *5/15/2019*



*OMA's Sustainability Peer Network toured White Castle's frozen food plant in Vandalia on Wednesday, May 15.*

### **Ohio EPA Director Testifies in Senate as House Makes Key Changes in Budget May 10, 2019**

Ohio EPA Director Laurie Stevenson on Wednesday provided **budget testimony** to the Ohio Senate. The same evening, the House Finance Committee put its finishing touches on the state budget bill (HB 166).

Among the House's budget changes affecting Ohio EPA were the removal of the **Best Available Technology** language; an **amendment** addressing the **Lake Erie Bill of Rights** by explicitly denying an eco-system standing in courts; and an appropriation to the **George Barley Water Prize**, which is a contest to help solve water issues. *5/8/2019*

### **OMA Comments on Water Quality Standards May 3, 2019**

This week, the OMA submitted **comments** on Ohio EPA's draft rules on **Human Health Water Quality OAC 3745-1**. These standards — designed to protect surface water from pollution — are being amended as part of the agency's Triennial Water Quality Standards Review. The changes being considered by Ohio EPA include implementing maximum contaminant levels (MCLs) statewide (as opposed to only the Ohio River Basin), as well as an updated water quality table.

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

Contact **Rob Brundrett** at the OMA if you have any questions or thoughts. *5/2/2019*

### **A Few Spots Left for White Castle Frozen Food Plant Tour April 26, 2019**

Register soon for this! On Wednesday, May 15, 2019, OMA's **Sustainability Peer Network** heads to Vandalia to tour White Castle's frozen food manufacturing plant, which is certified LEED Gold. White Castle's energy, water, waste and other sustainability initiatives will be showcased. Learn **more and register here**. Manufacturers only, please. *4/22/2019*

### **OMA Comments on ORSANCO's Proposed Revisions to Pollution Control Standards April 19, 2019**

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

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

For the full text of the letter, **click here**. *4/16/2019*

### **OMA Submits Comments on WOTUS Revisions April 19, 2019**

Earlier this week, the OMA weighed in with comments on the Trump Administration's efforts to rewrite the federal water pollution rule known as the Waters of the United States (WOTUS) — which defines the scope of federal regulatory jurisdiction under the Clean Water Act (CWA).

Because the courts have rejected the Trump Administration's effort to suspend operation of Obama-era revisions to WOTUS, the Environmental Protection Agency and U.S. Army Corps of Engineers have proposed a narrower rule that may survive judicial scrutiny. The Trump Administration's WOTUS definition is more restrained and observes traditional limits on the scope of federal power. The public comment period ended this week.

In its comments, the OMA wrote, “The proposed rule strikes an appropriate balance between protecting waters and wetlands, and providing clarity and predictability to stakeholders and regulators,” and would curtail the regulatory “creep” of WOTUS as it affects manufacturing activity. Additionally, the OMA suggested possible improvements to the proposed rule changes, including in the areas of stormwater control features, waste treatment systems, traditional navigable waters, tributaries and ditches.

For the full text of the OMA letter, [click here](#). 4/18/2019

**Ohio EPA Director Visits OMA Environment Committee**  
**April 12, 2019**



Ohio Environmental Protection Agency (EPA) Director **Laurie Stevenson** addressed the OMA Environment Committee this week, the first of three scheduled committee meetings for the year.

Appointed in January by Gov. Mike DeWine, Stevenson is a 30-year veteran of the agency. She most recently served as deputy director for the agency’s business relations, where she worked closely with the regulated community.

Stevenson told committee members that in addition to enforcing the state’s environmental standards, the agency “has an equal responsibility to helping businesses get from Point A to Point B” regardless of whether the business is large or small. She also briefed the committee on the administration’s budget priorities related to environmental issues, including surface water protections and “best available technology” permitting.

Stay on top of the environmental issues affecting Ohio’s manufacturers by visiting the [OMA website](#). 4/10/2019

**Ohio EPA Director Stevenson Lays Out Budget Priorities**

**April 5, 2019**

Ohio EPA Director **Laurie Stevenson** provided **testimony** on behalf of her agency’s budget proposal this week in the House of Representatives.

A budget proposal of note for manufacturers is removing the rule process requirement for EPA to impose Best Available Technology (BAT), and instead require the BAT method for an air contaminant source to be established in the permit to install issued for that source.

Director Stevenson will be at the OMA Environment Committee on Wednesday, April 10 to discuss this issue and much more. **Register today** and join your colleagues at the OMA next week. 4/4/2019

**Senate Hears Support for Solid Waste Fee Increase**  
**April 5, 2019**

This week the House Finance Committee heard from a supporter of **Senate Bill 50**, which would increase from 25-cents per ton to 50-cents per ton one of the state fees levied on the transfer or disposal of solid waste.

The proceeds of the increase would be used to provide more funding to the local Soil and Water Conservation Districts. Carmella Shale, director of the Geauga County Soil and Water Conservation District, **testified** that the increase is needed because of decreases in state funding over the past ten years.

The OMA and other business interests oppose any new fees on solid waste, especially in light of new funding provisions in **House Bill 166**, the state budget bill, for soil and water conservation districts. 4/4/2019

**DeWine Announces \$900M Water Quality Initiative**  
**March 15, 2019**

When in Toledo this week, Governor Mike DeWine **announced a new water quality initiative**, H2Ohio. The initiative will be included in his proposed state budget which is expected to be unveiled today.

DeWine said the new initiative could provide funding of as much as \$900 million over ten years to protect Ohio’s water quality.

Investments would be made in programs affecting state waters including Lake Erie and

other rivers, lakes, and waterways. Efforts could include pollution prevention, land-based management programs, water-based restoration programs, as well as science, research and measurement. 3/14/2019

### **Senate Debates Solid Waste Fee Increase** **March 15, 2019**

This week the Senate Finance Committee heard **sponsor testimony** on **Senate Bill 50**, which would increase from 25¢/ton to 50¢/ton one of the state fees levied on the transfer or disposal of solid waste. The proceeds of the increase would be used to provide more funding to the local Soil and Water Conservation Districts.

The bill sponsor, Senator **John Eklund** (R-Munson Township), also introduced this bill in the 132<sup>nd</sup> General Assembly. The OMA opposes the increase of the solid waste fee to protect the competitiveness of regulated entities. 3/14/2019

### **EPA Decides to Retain 2010 SO2 NAAQS** **March 8, 2019**

From OMA Connections Partner Dinsmore: “On February 26, 2019, EPA announced its decision to retain the current sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The current primary SO<sub>2</sub> NAAQS of 75 parts per billion (ppb) averaged over one hour was established in 2010. ...

“Several industry groups asserted that the current SO<sub>2</sub> NAAQS was too tough and argued that EPA should weaken the standard. They recommended that EPA raise the NAAQS to 110 – 150 ppb, but environmental groups argued the standard was not protective enough of human health and should be lowered to 50 ppb. Ultimately, EPA rejected both arguments and determined the current standard “is requisite to protect public health, with an adequate margin of safety, from effects of SO<sub>2</sub> in ambient air.” It noted that this was consistent with the April 2018 recommendation of the Clean Air Scientific Advisory Committee, an independent advisory board. EPA also supported its decision by reiterating that SO<sub>2</sub> levels in the United States had dropped by more than 85 percent between 1990 and 2017 and more than 60 percent since 2010.

“As a result of this decision, revisions to state implementation plans will not be triggered, and

existing sources will not face potential imposition of requirements for installation of additional controls for SO<sub>2</sub>. However, the one-hour standard remains a potential barrier to permitting new projects with significant SO<sub>2</sub> emissions.”  
**Read the full post here.** 3/1/2019

### **Ohio EPA Helps Businesses Improve Sustainability** **March 8, 2019**

The **Ohio Materials Marketplace** is a free online platform of the Ohio EPA that allows businesses and organizations to connect and find reuse and recycling solutions for waste and by-product materials.

- Several new materials have been added to the marketplace including: scrap cardboard, expanded polystyrene foam, commingled recyclables, pallet racking, miscellaneous calcium compounds and more!
- 980 members are now in the marketplace.
- The marketplace has helped divert more than 1763 tons (3,526,830 pounds) from the landfill!

Ohio EPA will be hosting its Sustainability Conference in Columbus on April 17, 2019. More information about the conference and registration can be found **here**. 3/4/2019

### **Toledo Passes Lake Erie Bill of Rights – Choppy Waters Ahead** **March 1, 2019**

In a February 26, 2019 special election, Toledo’s voters passed the **Lake Erie Bill of Rights** (the LEBOR). The LEBOR is an amendment to the City of Toledo’s Charter that creates a new cause of action for the violation of the right of Lake Erie and its watershed to “exist, flourish, and naturally evolve.”

The LEBOR initiative is similar to many other community rights proposals that seek to establish rights for natural resources that citizens can protect through legal action.

The corporations or entities that could be impacted by the LEBOR’s enactment range far and wide. Generally, companies that have an

Ohio EPA issued water discharge permit authorizing them to discharge into surface waters within the Lake Erie watershed could be affected.

On February 27<sup>th</sup>, ***Drewes Farm Partnership v. City of Toledo*** was filed in federal court in Toledo, asserting many challenges to the LEBOR, including the argument that the LEBOR exceeds Toledo's limited authority to pass legislation and is in violation of state and federal preemption laws. The Drewes case seeks a preliminary injunction to stop the LEBOR going into effect before its defects are litigated. These, and other legal challenges, are anticipated in the near future, with industry groups, agricultural interest groups, and businesses all interested in challenging the LEBOR for its overreach and broad declarations.

More information can be found in this **memorandum** from OMA environmental counsel Bricker & Eckler LLP. 2/28/2019

**Ohio EPA Offers Compliance Help with Conditional Exemption for Hazardous Waste Contaminated Wipes and Apparel**  
**March 1, 2019**

The Ohio EPA has established a **web page** to help manufacturers interested in taking advantage of the recently introduced conditional exemption for hazardous waste contaminated wipes and apparel that are laundered and returned for reuse.

The exemption includes – but is not limited to – rags, mops, drop cloths, and apparel (for example, gloves, uniforms, smocks and coveralls), which can be made of woven or unwoven and natural or synthetic materials (fabric, leather or rubber-like material).

Because many of these contaminated textiles are intended to be cleaned onsite or sent to a laundry or similar facility for cleaning, they may be excluded from the hazardous waste regulations provided the facility that generated the material meets all conditions of the exclusion. 2/28/2019

**Environment Legislation**  
**Prepared by: The Ohio Manufacturers' Association**  
**Report created on June 11, 2019**

- HB7**      **H2OHIO PROGRAM** (GHANBARI H, PATTERSON J) To create the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality, to create the H2Ohio Advisory Council to disburse money from the Fund for water quality programs, and to create the H2Ohio Endowment Board to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.  
*Current Status:* 6/4/2019 - House Finance, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-7>
- HB94**      **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
*Current Status:* 3/5/2019 - Referred to Committee House Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95**      **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.  
*Current Status:* 3/5/2019 - Referred to Committee House Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB246**      **PUCO/OCC REFORM** (VITALE N) To reform and modernize the Public Utilities Commission and the Consumers' Counsel.  
*Current Status:* 5/21/2019 - Referred to Committee House Public Utilities  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-246>
- SB2**      **STATEWIDE WATERSHED PLANNING** (PETERSON B, DOLAN M) To create a statewide watershed planning structure for watershed programs to be implemented by local soil and water conservation districts.  
*Current Status:* 6/12/2019 - Senate Agriculture and Natural Resources, (Fourth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-2>
- SB50**      **INCREASE SOLID WASTE DISPOSAL FEE** (EKLUND J) To increase state solid waste disposal fee that is deposited into the Soil and Water Conservation District Assistance Fund, and to make an appropriation.  
*Current Status:* 4/2/2019 - Senate Finance, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-50>