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

February 12, 2020

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2020 Environment Committee Calendar
Meetings will begin at 10:00 a.m.

Thursday May 28
Tuesday September 29

OMA Environment Committee Meeting Sponsor:

SQUIRE PATTON BOGGS

OMA Environment Committee

February 12, 2020

Agenda

Welcome & Roll Call	Chairman Julianne Kurdila, ArcelorMittal
PFAS Update	Member Discussion
Waters of the United States	Member Discussion
Storm Water presentation	Tim Ling, Corporate Environmental Director Plaskolite, LLC.
Counsel's Report	Frank Merrill, Bricker & Eckler LLP
Guest Speaker	Anne Vogel, Assistant Policy Director, Office of Governor Mike DeWine
Public Policy Report	Rob Brundrett, OMA Staff
Lunch	

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

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

OMA Environment Committee Meeting Sponsor:

SQUIRE PATTON BOGGS

Anne Vogel

Assistant Policy Director

Office of the Governor Mike DeWine

Anne Vogel is Assistant Policy Director in the office of Governor Mike DeWine, covering policy issues for the Departments of Agriculture, Natural Resources, the Ohio Environmental Protection Association and the Public Utilities Commission. Anne previously was with American Electric Power Company in various roles, most recently working out of Washington D.C. as Managing Director for Federal Energy Policy. Following law school, Anne started her career at the Columbus law firm of Porter Wright, and clerked for Judge Sargus, U.S. District Court for the Southern District of Ohio.

Biographical Information

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Mr. Ling is the Corporate Environmental Director for Plaskolite LLC., a Columbus-based manufacturer of continuously processed plastic sheet. Mr. Ling is responsible for Plaskolite's environmental compliance at its 10 manufacturing facilities in North America. He has almost 30 years of experience in environmental engineering, both as a consultant to businesses, and now as in-house environmental manager. He has spoken and written on a wide range of energy and environmental topics.

Mr. Ling graduated with a Bachelor of Science degree in Civil Engineering from the Florida Institute of Technology (1989), and Master of Science degree in Civil Engineering from the University of Notre Dame (1991). He is a Registered Professional Engineer in the states of Ohio and Florida, and a Qualified Industrial Storm Water Practitioner (QISP) in the state of California.

Ohio Releases Statewide PFAS Action Plan for Drinking Water

December 02, 2019

(COLUMBUS, Ohio)—Following a call from Ohio Governor Mike DeWine to prepare a plan to address potential threats to drinking water systems, the Ohio Environmental Protection Agency (Ohio EPA) and Ohio Department of Health (ODH) today released a statewide action plan to analyze the prevalence of per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water.

PFAS are manmade chemicals that are used in products such as carpeting, upholstery, cookware, food packaging, and firefighting foam. PFAS contamination from manufacturing operations and firefighting activities can migrate through soil, posing potential contamination threats to surface and ground waters. Although the health impacts of exposure to PFAS chemicals are not fully known, some studies have shown that several chemicals within the PFAS family could negatively impact health.

"We must fully evaluate the prevalence of PFAS in Ohio's drinking water to protect public health and the state's natural resources," said Governor DeWine. "This plan is the first step in learning if the chemicals have a widespread presence."

Under the plan, Ohio EPA will coordinate testing for close to 1,500 public water systems, including those that serve communities, schools, daycares and mobile home parks. Together, these public water systems supply water for about 90 percent of Ohio's population. When PFAS have been detected in a public water system, ODH will work through local health departments to give private water system owners information about PFAS, how to get their water tested, how to reduce exposure risks, and point-of-use treatment options like special water filters. ODH will coordinate with Ohio EPA and other stakeholders to identify potential resources available to assist private water system owners with sampling and analysis for PFAS, and installation and maintenance of water treatment systems.

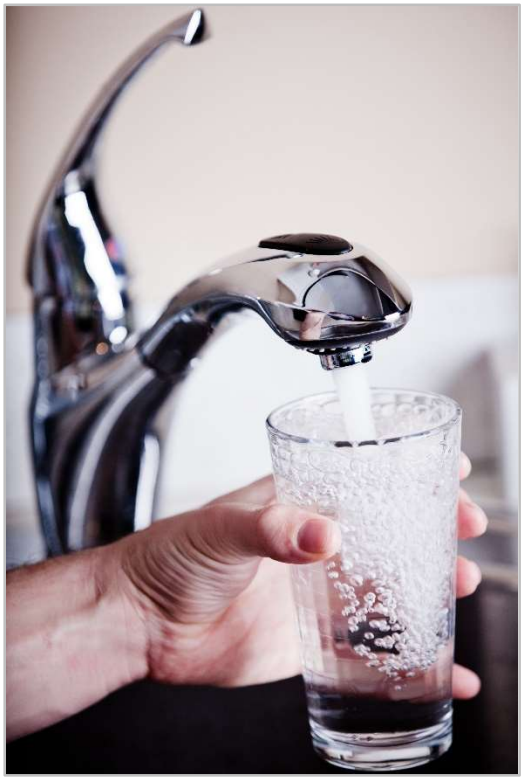
There are currently no national drinking water standards for PFAS compounds. The establishment of national drinking water standards, called Maximum Contaminant Levels or MCLs, is under consideration by United States Environmental Protection Agency (U.S. EPA). In 2016, U.S. EPA set Health Advisory Levels (HALs) of 70 parts per trillion (ppt) for two of the most studied PFAS chemicals, PFOA and PFOS. Ohio's action plan includes the use of these HALs for PFOA and PFOS and establishes action levels for four additional chemicals in the PFAS family, including GenX, PFBS, PFHxS, and PFNA.

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

"The science is still evolving regarding PFAS chemicals, but we know that certain people like unborn babies, infants and children are at higher risk for negative health effects if exposed to them," said ODH Director Amy Acton, MD, MPH. "ODH and Ohio EPA look forward to working with public and private water systems and local health departments to protect the health of all Ohioans."

Public system water sampling is expected to be complete by the end of 2020. Ohio has developed a website for more information at http://pfas.ohio.gov.

Ohio Per- and Polyfluoroalkyl Substances (PFAS) Action Plan for Drinking Water



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List of Acronyms

CCR	Consumer Confidence Report
CWS	community water systems
DDAGW	Ohio EPA's Division of Drinking and Ground Waters
DES	Ohio EPA's Division of Environmental Services
EPA	Environmental Protection Agency (state – Ohio EPA, federal – U.S. EPA)
HAL	health advisory level
LHD	local health department
MCL	maximum contaminant level
MRL	method reporting limits
NTNC	non-transient, non-community systems
OAC	Ohio Administrative Code
ODH	Ohio Department of Health
ORC	Ohio Revised Code
PFAS	per- and polyfluoroalkyl substances
PPT	parts per trillion
PWS	public water system
QAPP	quality assurance project plan
SWAP	Source Water Assessment and Protection
WPAFB	Wright-Patterson Air Force Base

Executive Summary

Ohio and states nationwide are faced with challenges related to per- and polyfluoroalkyl substances (PFAS), which have been manufactured and used for years in everyday items such as nonstick cookware, water-resistant clothing and personal care products. PFAS chemicals have also been widely used in firefighting foams, at military installations and fire training facilities.

On Sept. 27, 2019, Governor Mike DeWine announced the establishment of an inter-agency workgroup to address the emerging issue of PFAS in Ohio, both for the protection of our natural resources and public health. In his announcement, he directed the Ohio Environmental Protection Agency (Ohio EPA) and Ohio Department of Health (ODH) to work together on developing a statewide PFAS action plan to address potential threats to both public and private drinking water systems.

In developing the action plan, Ohio EPA and ODH will work with other key stakeholders to more fully evaluate the risks of PFAS in Ohio and assist our communities in addressing these risks.

While the initial focus of the action plan is on potential risks associated with PFAS in drinking water, there are other emerging areas of national research related to PFAS, including identifying safer chemical substitutes for PFAS, soil remediation technologies and other treatment methods to address PFAS.

Earlier this year, Governor DeWine, along with 14 governors signed a letter to both the United States Senate and House Armed Services Committees calling for more comprehensive national legislation on PFAS and action to address PFAS contamination in and around military bases.

To this end, Ohio EPA and ODH will keep abreast on these developments and ensure this plan is adapted as the science and the national regulatory framework on PFAS unfolds.

Action Plan Objectives

- Gather and provide sampling data from specific types of public water systems to determine if PFAS is present in raw and finished drinking water.
- Assist private water system owners with guidelines and resources to identify and respond to potential PFAS contamination.
- Establish Action Levels for drinking water systems in Ohio to aid in appropriately responding to PFAS contamination for the protection of public health.
- Work with Ohio communities to identify resources to assist their public water systems in implementing preventative and long-term measures to reduce PFAS-related risks.
- Develop and disseminate educational information to the public to increase awareness and understanding of PFAS-related compounds and relative risk of exposure to PFAS through drinking water and other exposure pathways.
- Continue ongoing engagement to ensure this action plan for Ohio is adapted as the scientific body of knowledge expands and the regulatory framework progresses at the national level.

Introduction

Per- and Polyfluoroalkyl Substances (PFAS)

PFAS is a family of over 4,000 man-made chemicals that have been used in a variety of industrial, commercial and consumer products. With strong carbon-fluorine bonds, these chemicals are extremely effective in making everyday items more resistant to stains, grease, and water. They have been widely used to manufacture paper and cardboard packaging, carpeting, leather products, textiles and personal care products. They are used extensively in the manufacture of materials that have non-stick properties. PFAS have also been widely used in fire suppression foams. Two specific chemicals of the PFAS family, PFOA and PFOS have been the most extensively produced and most widely studied to date.

The major source of exposure to PFAS is through ingestion. Data suggest that PFAS are not easily or readily metabolized by the human body and are commonly found in human blood across the nation. With more scientific data emerging on PFAS, studies indicate that potential health risks associated with PFAS exposures can include liver damage, thyroid disease, elevated cholesterol, decreased antibody response to vaccines, and pregnancy-induced hypertension, decreased fertility and small decreases in birthweight, developmental and immune toxicity.

While PFAS do not occur naturally, they may be found throughout the environment due to a long history of manufacturing and use. PFAS chemicals are very stable and do not easily biodegrade. PFAS contamination in soils is of particular concern for drinking water due to potential impacts to surface and ground water sources.

Public and Private Water System Oversight

Public water systems are regulated by the Ohio EPA. Community water systems (CWS) serve at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents. Examples include cities, mobile home parks and nursing homes. Non-transient, non-community systems (NTNC) serve at least 25 of the same persons over six months per year. Examples include schools, hospitals and factories.

Private water systems are regulated by the ODH. Private water systems are defined as any water system for the provision of water for human consumption, if the system has fewer than 15 service connections and does not regularly serve an average of at least 25 individuals at least 60 days out of the year (e.g. private homes, small churches, etc.).

PFAS in Ohio

The Safe Drinking Water Act requires U.S. EPA to identify up to 30 unregulated contaminants to be monitored by public water systems every five years, to provide a basis for future regulatory actions to protect public health. The third cycle of the Unregulated Contaminant Monitoring Rule required monitoring for 28 chemicals and included six PFAS chemicals. In Ohio, 186 public water systems participated in the monitoring during 2013-2015. As a result of this sampling, one public water system serving Wright-Patterson Air Force Base (WPAFB) reported PFAS at elevated levels.

In 2016, the U.S. EPA set a health advisory level (HAL) of 70 parts per trillion (ppt) for PFOA and PFOS in drinking water to help ensure sensitive populations were protected from adverse health effects associated with these chemicals. While a HAL has been established for these chemicals, U.S. EPA is working on a national framework to set regulatory standards for PFAS, including national safe drinking water standards (known as a maximum contaminant level or MCL).

The establishment of the HAL prompted additional coordination between Ohio EPA, communities and military installations to gather more information on potential PFAS risks in drinking water. There has been ongoing data collection, assessment efforts and coordination between WPAFB, Ohio EPA and the City of Dayton to monitor impacts to public water systems that serve both WPAFB and the City of Dayton.

As a proactive measure, the Ohio National Guard also worked with Ohio EPA to obtain sample results for private water supply wells near its bases, including former fire training areas, to ensure that these wells were not contaminated by PFAS. As a result of this sampling, one private well near the Toledo Air National Guard base was connected to a public water system due to the detection of contamination.

PFAS contamination has also been identified from manufacturing activities associated with the Chemours (formerly known as DuPont) Washington Works facility, located near Parkersburg, West Virginia. Remediation requirements, including treatment for several public and private water supply systems are included in a federal consent order, entered into between U.S. EPA, Chemours and DuPont.

Ohio's statewide action plan will focus on gathering additional data to assist in identifying, responding to and communicating PFAS-related drinking water risks in Ohio. This plan has been developed and will be implemented in partnership between Ohio EPA and ODH.

PFAS Action Plan — Objectives and Strategies

Objective 1: Gather sampling data from public water systems statewide to determine if PFAS is present in drinking water.

Ohio EPA will coordinate sampling of approximately 1,500 public water systems statewide. These systems provide water to cities, mobile home parks, schools, and daycares and serve approximately 90 percent of Ohio's population.

Raw and finished water samples will be collected at these public water systems, with a goal of completing sampling efforts by the end of 2020. Finished water samples will be collected at an entry point to the distribution system, which is a location in the public water system after treatment or chemical addition.

Sampling efforts will be coordinated by Ohio EPA under contracts with qualified consultants and laboratories. Contract labs will conduct analyses in accordance with a quality assurance project plan (QAPP) and U.S. EPA-approved methods for drinking water. Some sampling may also be conducted by trained technicians from Ohio EPA and analyzed by Ohio EPA's Division of Environmental Services (DES), which has also been approved for U.S. EPA methods.

PFAS sampling results for public water systems will be published on Ohio's PFAS web page to allow public access to the data.

Objective 2: Assist private water system owners with guidelines and resources to identify and respond to potential PFAS contamination.

ODH will evaluate the PFAS source water results from the public water systems sampled by Ohio EPA. If the data suggest that nearby private water system sources may potentially be contaminated, ODH will coordinate with local health districts and private water system owners for appropriate response measures, including providing guidance on testing recommendations and steps to reduce risks, including treatment options for private water systems.

ODH has established fact sheets, guidance and videos for the public related to health effects from exposure to PFAS, ways the public can reduce their exposures, and information on systems available to private water system owners for the treatment and removal of PFAS. These materials and other PFAS resources will be available and updated, as needed, on Ohio's PFAS webpage.

Objective 3: Establish Action Levels for drinking water in Ohio to aid in appropriately responding to PFAS contamination for the protection of public health.

There are currently no national drinking water standards for PFAS compounds. The establishment of national drinking water standards, called Maximum Contaminant Levels or MCLs, is under consideration by U.S. EPA. In 2016, U.S. EPA set Health Advisory Levels (HALs) of 70 parts per trillion (ppt) for two of the most studied PFAS chemicals, PFOA and PFOS. In Table 1, the Ohio Action Levels for PFOA and PFOS utilize the established U.S. EPA HALs. Because HALs are not available for other PFAS chemicals at this time, the Ohio Action Levels for GenX, PFBS, PFHxs, and PFNA are calculated using the U.S. EPA's established Drinking Water Equivalent Level method and toxicity data. These levels will be re-evaluated as U.S. EPA finalizes toxicity assessments. Additional information used to develop the action levels will be provided on Ohio's PFAS web page.

Ohio EPA and ODH will use these action levels as thresholds in providing guidance to drinking water system owners/operators in mitigating health risks.

Table 1 — Ohio PFAS Action Levels

	PFAS Chemicals[1]					
	PFOA	PFOS	GenX	PFBS	PFHxS	PFNA
Action Level (ppt)	>70 single or combined with PFOS	>70 single or combined with PFOA	> 700	>140,000	> 140	> 21

Ohio EPA will be establishing response protocols for public water systems in Ohio when action levels are exceeded, including public notification and issuance of drinking water advisories. ODH will be establishing response protocols to PFAS detections for private water systems in Ohio when action levels are exceeded.

Table 2 summarizes agency responsibilities in sampling and responding to PFAS detections and exceedances in drinking water at public and private water systems.

Table 2 — Summary of Agency Responsibilities

Event	Ohio EPA Responsibilities (Public Water Systems)	ODH Responsibilities (Private Water Systems)
Sampling and Data Collection	• Develop and implement statewide public water system sampling plans. • Coordinate sampling with public water systems. • Ensure results posted and available to the public in a timely manner.	• Review public water system raw sample data in coordination with Ohio EPA to evaluate potential contamination of private water systems.
PFAS Detection	• Notify the public water system and ODH of detections. • Work with the public water system to develop approaches to address PFAS source and establish monitoring frequency.	• Notify private water system owners of detections in coordination with local health districts. • Provide information to affected homeowner(s) on potential PFAS health effects and ways to reduce exposures.
Action Level Exceeded	• Public water system notifies consumers of results and advice using Ohio EPA templates. • Work with the public water system to identify and implement short-term and long-term response measures to reduce exposure risks, including source water management and treatment.	• Notify private water system owners of action level exceedances in coordination with local health districts. • Work with private water system owners to identify appropriate short-term and long-term measures to reduce exposures.

Detection levels are based on the lowest achievable method reporting limits (MRL) by the laboratory. A survey of state and federal laboratories taken at the writing of this document indicate achievable MRLs for PFOA is 5 ppt, PFOS is 5 ppt, GenX is 25 ppt, PFBS is 5 ppt, PFHxS is 5 ppt and PFNA is 5 ppt.

[1] 1 PFOA (Perfluorooctanoic Acid), PFOS (perfluorooctane Sulfonate), GenX (HFPO dimer acid), PFBS (perfluorobutanesulfonic acid), PFHxS (perfluorohexane sulfonic acid), and PFNA (perfluorononanoic acid).

Objective 4 — Work with Ohio communities to identify resources to assist their public water systems in implementing preventative and long-term measures to reduce PFAS-related risks.

Ohio EPA's Division of Environmental and Financial Assistance will provide communities with information on available loans and technical assistance to help communities with planning, design and installation of treatment or other infrastructure improvements.

Ohio EPA will work with communities to support and develop source water protection capabilities, including conducting source water protection workshops to help communities understand measures they can take to identify potential sources of PFAS contamination and preventative measures to reduce impacts to their drinking water sources.

ODH will coordinate with Ohio EPA and other stakeholders to identify potential resources available to assist private water system owners with sampling and analysis for PFAS, and installation and maintenance of water treatment systems.

Objective 5 — Develop and disseminate educational information to the public to increase awareness and understanding of PFAS-related compounds and relative risk of exposure to PFAS through drinking water and other exposure pathways.

Ohio EPA and ODH will collaborate in developing and disseminating educational information to increase awareness and understanding of PFAS-related compounds and relative risk of exposure to PFAS through drinking water and other exposure pathways. The public will receive this information through a PFAS web page, social media, and other communication vehicles. Topics will include:

- Results/data from public water system sampling;
- Health-based information on PFAS exposure and risks;
- Interpretation of detections;
- Information on reducing potential exposure risks;
- Public and private water systems toolkits directing responses to detections and action level exceedances;
- Technical support documentation and helpful resources;
- Guidelines and educational information for private water system owners; and
- Updates on PFAS-related activity occurring at the national level.

Objective 6 — Continue ongoing engagement to ensure this action plan for Ohio is adapted as the scientific body of knowledge expands and the regulatory framework progresses at the national level.

While the initial focus of the action plan is on potential risks associated with PFAS in drinking water, there are other emerging areas of national research related to PFAS, including development of analytical methods, identifying safer chemical substitutes for PFAS, addressing other exposure pathways, and PFAS treatment and remediation technologies.

To this end, Ohio EPA and ODH will keep abreast on these developments and ensure the plan is adapted as the science and the national regulatory framework on PFAS unfolds. Both agencies will also continue to network with research organizations and other states in advancements in the understanding of PFAS to determine future actions to protect natural resources and public health in Ohio.

Lawmakers Seek Limits On Harmful Chemicals In Drinking Water

Supporters of a new bill to clamp down on harmful "forever chemicals" say the effort will complement Gov. Mike DeWine's recent call to explore the issue.

The plan (HB 497) from Rep. Mary Lightbody (D-Westerville) and Rep. Allison Russo (D-Upper Arlington) would require the state to establish maximum allowable contaminant levels for per- and polyfluoroalkyl substances in drinking water.

Commonly called PFAS, those chemicals are thought to negatively affect health through increased cancer risk, reduced fertility and other impacts, although their effects are not fully known.

"People across Ohio are being exposed to unsafe drinking water that is polluted with dangerous toxins and contaminants, putting our citizens' health and safety at risk simply by drinking the water that flows into their homes and public places," Rep. Russo said.

"Our legislature has an obligation to ensure every resident in every community of Ohio has access to safe and clean drinking water. By introducing the Safe Drinking Water Act, we can ensure Ohioans have safe drinking water, as well as set a national example for other states to follow."

Gov. DeWine in September called for a plan to assess how prevalent those chemicals are in the state. In December, the Environmental Protection Agency and the Department of Health announced that testing plan, which they called "the first step in learning if the chemicals have a widespread presence." (See Gongwer Ohio Report, December 2, 2019)

Building on that effort, the legislation would require the Environmental Protection Agency director to adopt rules establishing maximum levels for both drinking and surface water. Among specific chemicals to be policed include Chromium-6, the so-called "Erin Brockovich Chemical," and 1.4 dioxane.

"The scientific data being gathered on these dangerous toxins has created an imperative to address the need for clean water and the elimination of pollutants in our environment," Rep. Lightbody said. "Recent changes in federal water standards make it critical that we set standards in Ohio to protect our water sources from 'forever' chemicals such as those in this bill. We serve communities across Ohio and future generations deserve advocates who act now in the best interests of their health and well-being."

In forming the rules, the OEPA director would be asked to consider limits adopted by other states, studies and scientific evidence, materials produced by the federal government and recent independent and government agency peer-reviewed studies.

The limits, which would be annually reviewed, must be protective of the public health and no less stringent than limits adopted by the federal government, according to the bill.

Peter Bucher, advocate for the Ohio Environmental Council Action Fund, cheered the introduction of the bill.

"Ohioans deserve clean and safe drinking water. We must protect water both at the source and the tap," he said.

"This legislation, combined with the DeWine Administration's PFAS Action Plan, moves Ohio one step closer to safeguarding communities from currently unregulated contaminants," he added.

Michigan Suing 17 Companies Associated With State's PFAS Epidemic

Attorney General Dana Nessel announced this afternoon the state is suing 17 companies, including the Minnesota Mining and Manufacturing and Dupont, for their hand in spreading and contaminating Michigan waters and lands with per- and polyfluoroalkyl substances.

"We assert these 17 defendants knowingly … used PFAS or PFAS containing products in such a way so as to cause harm to our state's natural resources and its residents," Ms. Nessel said, adding that the companies knew the chemical could cause cancer, destroy the environment and would be impossible to destroy.

Ms. Nessel also asserted the companies charged intentionally knew the harm PFAS caused and suppressed evidence which would prove the hazards it caused to human and environmental health, calling their actions "beyond unconscionable."

"These companies went to great length to promote the lie that PFAS was safe," Ms. Nessel said.

Also in attendance at Tuesday's press conference were Governor Gretchen Whitmer and Department of Environment, Great Lakes and Energy Director Liesl Clark, along with members from the Michigan PFAS Action Response Team.

"It's time that these companies step up, take responsibility and address what has taken place," Ms. Whitmer said. "We cannot and will not stop until everyone has access to clean drinking water. … We've made some real meaningful strides in this space, but we still have much work to do."

PFAS exposure to Michigan residents is primarily being done through ingesting water, though it has been found in fish, due to its ability to bioaccumulate in animals, as well as firefighting foam and certain plastics used to wrap fast food.

Ms. Clark said Michigan entered 2020 with more than 70 active PFAS sites within the state, many of which are abandoned manufacturing facilities. None have been fully remediated.

Column: Hollywood, ‘Jackpot Justice’ won’t derail Ohio manufacturing

Andrew O. Smith

Posted Jan 2, 2020 at 4:15 AM

To me — like so many others — manufacturing means opportunity and an honorable way of life. I got my start in a shoe factory, working to help cover costs in college. Manufacturing in the United States saved western civilization during World War II, then built a broad middle class back home and today employs millions of skilled workers who drive advances in efficiency and technology that enhance our everyday lives.

Today, as CEO of a paint manufacturer that has called Columbus home for 100 years, I’m honored to continue offering opportunities for rewarding careers to people who make products that protect, beautify and preserve our environment. I’m not alone. The manufacturing industry is full of people who care deeply about the communities where we live and work.

I am particularly proud to be part of the chemical industry, which has among the lowest accident rates among all manufacturers (and less than half that of elementary schools); has developed the Responsible Care system to reduce environmental impacts, increase safety and ensure security; and supports many charitable organizations in the communities we serve.

I have never met a chemical industry executive who cares less about the environment or their fellow employees than the most ardent social activist.

Manufacturing is the backbone of our economy in the Buckeye State — employing more than 700,000 Ohioans — but our continued strength and leadership cannot be taken for granted. Our industry is under increasing threats on several fronts, including from lawsuits that can destroy jobs and harm communities.

In my 2013 book “Sand in the Gears: How Public Policy Has Crippled American Manufacturing,” I detailed how the legal system has been corrupted by a system of “Jackpot Justice” where trial lawyers and special-interest groups extort huge payouts and regulate manufacturing through litigation.

These efforts are sophisticated, well-funded and harmful. My book shows these lawsuits impose a cost on our country equal to roughly 9.4% of GDP or about $2 trillion annually in dead-weight losses, showing up in higher costs for goods and services to the tune of $6,000 for every man, woman and child in this country, every single year.

When we pillory our business corporations, we had better be careful what we wish for. The attacks being made on business, and in particular manufacturers, are sometimes made by naïve young people who have been fed a diet of anti-capitalist, anti-business, anti-American agitprop by their schools and the media, and so might be forgiven. But when leading candidates for public office proudly proclaim their socialist street-cred, boldly propose the confiscation of property and ooze contempt for American businesses out of their every pore, we should be alarmed.

These trends are exacerbated by Hollywood. Take the movie “Dark Waters.” It is a highly entertaining and gripping drama, with corporate villains and a heroic lawyer (it happens) fighting the good fight to alert the public about an emerging public health crisis. But the film takes liberties with the facts and simplifies some very complicated and still-emerging science.

The movie extrapolates from an isolated (if significant) occurrence of alleged corporate malfeasance and unfairly stigmatizes not just an entire industry but our entire system of commerce, law and governance. Moreover, these dramatizations can cause overreactions and panic, leading to bad public policy and ultimately hurting the American economy.

Attacks also come from the large network of trial attorneys and activist groups using lucrative contingency-fee arrangements to pursue lawsuits against manufacturers often based on unproven science, undermining our country's economic base. Under contingency-fee agreements, private trial lawyers — empowered by state attorneys general — are able to investigate and press cases using the full power of the government. Yet unlike civil servants who are expected to balance many competing interests, these private attorneys have a personal incentive to seek the largest awards possible.

The terrible damage caused by this Jackpot Justice system does not mean that business regulation is unnecessary, that government action is unneeded or that the rare misconduct by a corporation should go unpunished. Vigilance is warranted, particularly as science continues to increase our understanding of the many factors that contribute to health and illness. Manufacturers continue to step up, with strong new commitments to innovation and sustainability. This represents the better approach — in which scientists, industry, regulators, elected leaders and communities collaborate to solve problems and balance priorities.

Let's give this process a chance to produce consensus, to the benefit of all Ohioans, and keep public policy decision-making out of the courtroom.

Andrew O. Smith is the CEO of Yenkin-Majestic Paint Corp. and a member of the board of trustees of the Buckeye Institute.

Two Views on "Dark Waters"

In "Dark Waters," Experience the Emotional Toll of an Attorney Fighting for Truth

By Chris Tavenor

As a public interest attorney at the Ohio Environmental Council (OEC), I've worked on water quality issues including PFOA and other perfluoroalkyl substances (PFAS). I'd heard Rob Bilott's story before — he was a speaker at the OEC's inaugural Ohio Public Interest Environmental Law Conference in 2018. We invited him to speak not only due to his Ohio connection, but because his lawsuits are incredibly important to the future of global human health. The science is certain on the dangers of PFOA, as revealed by Bilott's work — and we're just starting to recognize the risks of a thousand similar chemicals.

I expected Hollywood to approach PFOA with its usual hammer in "Dark Waters," rather than with a scalpel. I was certain they would skirt over the details of the law, the legal system and the human health risks, instead crafting a fast-paced narrative intended to thrill and wow audiences with unrealistic fearmongering.

Instead, "Dark Waters" presents a harrowing, character-driven tale illustrating the stress and emotional toll of fighting against corporate-powers-that-be. Mark Ruffalo shines as Rob Bilott, the attorney . . . and Rob Bilott the scared son, and father, husband, and human seeking answers to murky questions. Anne Hathaway, playing Sarah Bilott, masterfully portrays a woman simultaneously supportive of the eccentricities of her ambitious husband while fighting against the sacrifices made in her own life.

Moviegoers may expect a tale of corporate espionage and chemical terror, but in reality, "Dark Waters" is all about Rob Bilott's real life. And it works. Rather than compress and combine legal narratives into a single case, "Dark Waters" shows the true scope of Bilott's fight against DuPont, starting in 1999 and ending the film in 2015. Sixteen years of legal battles - and those are only the fights shown in the film! Bilott's fight continues, even today.

From depositions to discovery, from procedural motions to oral arguments, "Dark Waters" explores the grueling path through the courts taken to unveil DuPont's treachery against the people of Parkersburg, West Virginia. At the same time, 16 years of fighting takes a toll both on Bilott and the people actually threatened by PFOA. "Dark Waters" is a film of details, including the unsung, emotional tragedies of the people Bilott fights to protect.

Through expert (albeit cliché) on-screen storytelling, we see the dangers presented by PFOA and other similar substances. In an archetypical dingy bar scene, a chemist draws on a notepad, showing Bilott the true nature of C8. Similarly, using real footage and photos from the original lawsuit protecting a farmer from DuPont, the film illustrates the risk to animals ingesting contaminated water. It also shows the political and cultural risks of pursuing restitution through the courts — and how long it can take to resolve complicated cases.

However, the movie truly shines through the portrayal of Bilott's personal experience fighting against the bad actors. Often personified by older, traditionalist attorneys (some employed by Taft itself, the firm for which Bilott still works), numerous antagonists push against Bilott's efforts to reveal the dangers of PFOA. And even as Sarah Bilott rallies behind her husband, she too expresses discomfort at his work. She sacrificed her career for him, and he might throw that away on a doomed crusade against a multi-billion dollar company? He puts stress upon himself, too, for he often doubts whether he's doing the right thing. It's brilliantly raw, visual storytelling. It's clean and concise, even when skipping year-to-year.

I give "Dark Waters" 3.5/4 stars. Rob Bilott dove into darkness, taking on a corporation with near-unlimited resources and holding them accountable to truth. It nearly killed him, but by the end of the movie, viewers will recognize why he never stopped fighting — and continues fighting to this day. Perhaps it'll inspire others to join the fight, too.

About the Author

Chris Tavenor is the Ohio Environmental Council Law Center's staff attorney, supporting the legal and policy teams in their efforts to ensure clean air, clean water and clean energy for Ohio. In 2018, he co-authored a Petition for Rulemaking to the US EPA regarding PFOA and other PFAS, requesting regulations under the Safe Drinking Water Act and Clean Water Act. Tavenor is a graduate of the Ohio State University Moritz College of Law.

To learn more about Dark Waters and see an interview with attorney Rob Bilott, visit **OhioBar.org/DarkWaters**

"Dark Waters" Falls Flat

By Rob Brundrett

"To Kill a Mockingbird," "12 Angry Men," "A Few Good Men" and "My Cousin Vinny" can all rest easy. Their places in the pantheon of legal movies are safe for now. "Dark Waters" falls well short of earning a place among the great American legal dramas.

"Dark Waters" is the fictionalized account of attorney Rob Bilott's legal battle against DuPont. The story takes place over 20 years, depicting impacts of the case on his law firm (managing partner played by Tim Robbins), family (wife played by Anne Hathaway), and health. The movie, based loosely on a New York Times Magazine article, works overtime to try to convince the audience that DuPont was negligent in its business practices and put the lives of its workers and communities along the Ohio River at risk. Bilott, played by a dour Mark Ruffalo, claims the company's use of the compound, C8, which is part of the Perfluorooctanoic acid (PFAS) family of chemicals, is poisoning humans and animals in the Parkersburg, West Virginia community.

For those who might not be familiar, PFAS chemicals have been ubiquitous in modern life since at least the 1940s. Many items we rely on every day include these substances – including rainproof gear, carpet protectant, medical devices, aircraft, low-emissions vehicles and electronics. "Dark Waters" seeks to play on the public's lack of knowledge about these substances to build fear and paranoia. However, many of the movie's claims have been outright refuted.

"Dark Waters" wants to be a David versus Goliath story – but getting to the conclusion requires epic tolerance. On one hand, the two-hour movie often drags as Bilott explains – at length – the case facts and legal minutia to whichever character happens to be stuck with him. In other moments, the production seeks desperately to spice things up with deception, danger and violence. The film uses everything from potential car bombs, to arson, to shady characters in trench coats in an attempt to keep viewers hanging around. Of course, anyone who has followed the real case knows that these dramatized events are simply that - creations to make the movie more sensational than your typical corporate civil litigation case.

The film purports that C8 contaminated a small farm and killed a cattle herd. While the farmer honestly believed this to be true, the facts showed otherwise. A 1999 investigative report, co-authored by leading scientists, veterinarians and the U.S. EPA, concluded that the cows died as a result of malnutrition, endophyte toxicity, pinkeye and copper deficiency – not C8 exposure. Specifically, the report concluded that the cattle had been fed fungus-containing food, which lead to the endophyte toxicity.

The movie leads viewers to believe that PFAS and PFAS alone cause illness, cancer and birth defects. Like just about every other thing on the planet, either synthetic or naturally occurring, presence alone does not equate to toxicity. The movie fails to thoroughly disclose the results of the C8 Science Panel – the largest community health study ever conducted on these issues. This panel determined that there is no relationship between PFAS and birth defects, yet this was a central theme of the movie.

It would be fascinating to hear what the people of Parkersburg think of this portrayal of their community and their lives. The movie casts the company as the worst type of villain and the local people as rubes. A group of West Virginia lawmakers recently decried images of people in the film as "literally toothless hillbillies."

In its attempt to thrill audiences and drive an agenda, it puts forward a narrative that even the most hardcore fans of legal genres will question. If you came into the movie thinking that corporate America cares about nothing but profits this movie will certainly leave you feeling justified. But if you dig into the facts and history, sort the fact from the Hollywood fiction, you might just find yourself wondering what really happened along the Ohio river.

Lawmakers and regulators – both in Ohio and Washington – need to rely on sound science, and not Hollywood, as they consider how best to advance health and safety when it comes to environmental policy.

About the Author

Rob Brundrett is the Director of Public Policy Services for The Ohio Manufacturers' Association (OMA). In this role, Rob coordinates the OMA's day-to-day lobbying efforts at the statehouse and before the executive branch. He works extensively with manufacturing leaders on a variety of issues impacting manufacturing including workers' compensation, environment, healthcare, workforce and taxes.

EPA and Army Deliver on President Trump's Promise to Issue the Navigable Waters Protection Rule – A New Definition of WOTUS

01/23/2020
Contact Information:
EPA Press Office (press@epa.gov)

LAS VEGAS (Jan. 23, 2020) — Today, at an event at the National Association of Home Builders International Builders' Show in Las Vegas, EPA Administrator Andrew Wheeler and Assistant Secretary of the Army for Civil Works R.D. James will announce a new, clear definition for "waters of the United States." With the *Navigable Waters Protection Rule*, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) are delivering on President Trump's promise to finalize a revised definition for "waters of the United States" that protects the nation's navigable waters from pollution and will result in economic growth across the country.

"EPA and the Army are providing much needed regulatory certainty and predictability for American farmers, landowners and businesses to support the economy and accelerate critical infrastructure projects," **said EPA Administrator Andrew Wheeler.** "After decades of landowners relying on expensive attorneys to determine what water on their land may or may not fall under federal regulations, our new *Navigable Waters Protection Rule* strikes the proper balance between Washington and the states in managing land and water resources while protecting our nation's navigable waters, and it does so within the authority Congress provided."

"Having farmed American land myself for decades, I have personally experienced the confusion regarding implementation of the scope of the Clean Water Act," **said R.D. James, Assistant Secretary of the Army for Civil Works.** "Our rule takes a common-sense approach to implementation to eliminate that confusion. This rule also eliminates federal overreach and strikes the proper balance between federal protection of our Nation's waters and state autonomy over their aquatic resources. This will ensure that land use decisions are not improperly constrained, which will enable our farmers to continue feeding our Nation and the world, and our businesses to continue thriving."

The *Navigable Waters Protection Rule* ends decades of uncertainty over where federal jurisdiction begins and ends. For the first time, EPA and the Army are recognizing the difference between federally protected wetlands and state protected wetlands. It adheres to the statutory limits of the agencies' authority. It also ensures that America's water protections – among the best in the world – remain strong, while giving our states and tribes the certainty to manage their waters in ways that best protect their natural resources and local economies.

The revised definition identifies four clear categories of waters that are federally regulated under the Clean Water Act: the territorial seas and traditional navigable waters, like the Atlantic Ocean and the Mississippi River; perennial and intermittent tributaries, such as College Creek, which flows to the James River near Williamsburg,

Virginia; certain lakes, ponds, and impoundments, such as Children's Lake in Boiling Springs, Pennsylvania; and wetlands that are adjacent to jurisdictional waters.

These four categories protect the nation's navigable waters and the core tributary systems that flow into those waters.

This final action also details what waters are not subject to federal control, including features that only contain water in direct response to rainfall; groundwater; many ditches, including most farm and roadside ditches; prior converted cropland; farm and stock watering ponds; and waste treatment systems.

The final definition achieves the proper relationship between the federal government and states in managing land and water resources. The agencies' *Navigable Waters Protection Rule* respects the primary role of states and tribes in managing their own land and water resources. All states have their own protections for waters within their borders and many already regulate more broadly than the federal government. This action gives states and tribes more flexibility in determining how best to manage their land and water resources while protecting the nation's navigable waters as intended by Congress when it enacted the Clean Water Act.

Despite prior reports, there are no data or tools that can accurately map or quantify the scope of "waters of the United States." This is the case today, and it was the case in 2014 when the Obama Administration issued its blog titled "Mapping the Truth." Therefore, any assertions attempting to quantify changes in the scope of waters based on these data sets are far too inaccurate and speculative to be meaningful. While this Administration agrees that the current data and tools are insufficient, we are committed to supporting the development and improvement of the technology needed to map the nation's aquatic resources.

This final action is informed by robust public outreach and engagement on the *Navigable Waters Protection Rule*, including pre-proposal engagement that generated more than 6,000 recommendations and approximately 620,000 comments received on the proposal. The final definition balances the input the agencies received from a wide range of stakeholders.

More information, including a pre-publication version of the Federal Register notice and fact sheets, is available at: https://www.epa.gov/nwpr.

Into the Storm…Again

Ohio Storm Water Permitting In Light Of The 2020 Renewal of USEPA's Storm Water NPDES Multi-Sector General Permit

Timothy W. Ling, P.E.
Corporate Environmental Director
Plaskolite, LLC.

Topics

- Recap Ohio storm water program
- 2019 NAS storm water study
- 2020 USEPA MSGP renewal
- Future trends

Ohio Storm Water Permits

- **Industrial: 6/1/17 - 5/31/22**
- **Construction: 4/23/18 – 4/22/23**
- **Oil & Gas Lines: 9/17/18 – 9/16/23**

Ohio Environmental Protection Agency

Ohio Environmental Protection Agency

Ohio Industrial SWGP

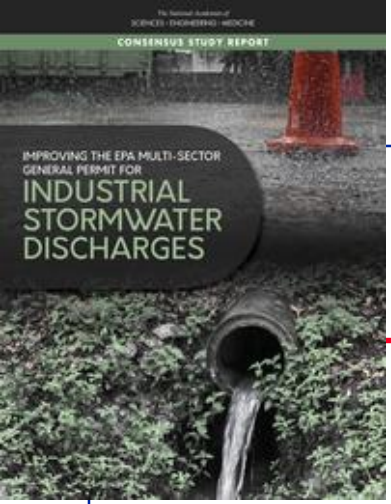
- Benchmark sampling by 6/1/2020
- Workable benchmark provisions
  - Neighbor run-on
  - Alternate benchmarks
  - "Non-industrial" sources
- Overall, good SWGP – BUT…

Ohio Industrial SWGP

- Expires May 31, 2022
- Renewal activities anticipated to start 2021
- Influenced by USEPA MSGP due for renewal June 4, 2020

Waterkeeper Alliance v. United States EPA (2016)

"We are deeply disappointed with EPA's failure to set numeric limits in this permit after spending so much time and effort to bring 'Big Data' to the world of water pollution…Today, EPA can draw on hundreds of thousands of data points collected by polluters across the country, in every line of business, to set clear, achievable pollution limits for industrial stormwater. But EPA didn't even consider trying to set clear, numeric limits."



NAS Storm Water Study

- USEPA-funded to inform the next MSGP renewal in 2020
- "Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges" (http://nap.edu/25355)

NAS Study Committee

- Allen Davis, Chair, Univ. of Maryland
- Roger Bannerman, Wisconsin DNR (Ret.)
- Shirley Clark, Penn State - Harrisburg
- L. Donald Duke, Florida Gulf Coast Univ.
- Janet Kieler, Denver International Airport
- John Stark, Washington State Univ.
- Michael Stenstrom, UCLA
- Xavier Swamikannu, UCLA & CA Water Board, LA Region (Ret.)

NAS Study Conclusions

1) Industry-wide monitoring for pH, TSS, COD/TOC

2) Periodic review & update sector-specific requirements

3) Extend monitoring to non-industrial facilities with similar activities

NAS Study Conclusions

4) Basis for benchmarks tied to short-term or intermittent exposures
   - ➢Re-look Fe, As, Se benchmarks
   - ➢Suspend Fe & Mg benchmarks

5) Collect additional “storm water control measure (SCM)” data

NAS Study Conclusions

6) **No Numeric Effuent Limit (NEL) recommended for any sector**
   - ➢ **Due to existing data, data gaps & likelihood of gap filling**

7) **Strengthen monitoring & analysis protocols**

NAS Study Conclusions

8) Allow/promote composite sampling

9) Quarterly sampling inadequate

10) Adoption of national laboratory accreditation programs

NAS Study Conclusions

11) **Expand tiered monitoring approach based on facility risk, complexity & past performance**

- **Inspection only**
- **Industry-wide monitoring**
- **Benchmark monitoring**
- **Enhanced monitoring (AIM?)**

NAS Study Conclusions

12) Enhance electronic data reporting, analysis and visualization tools

13) Rigorous groundwater protection

14) National retention standards infeasible because very site specific

NAS Study Conclusions

15) Incentives to encourage industrial stormwater infiltration (capture/use)

16) Groundwater protection guidance for stormwater retention/infiltration

Additional Implementation Measures (AIM)

- Part of 2016 USEPA settlement
- USEPA must propose AIM
- 3 tiers, based on exceedances
  - Tiers 1 & 2 - Review/implement SCM, can be non-structural
  - Tier 3 - Structural SCM

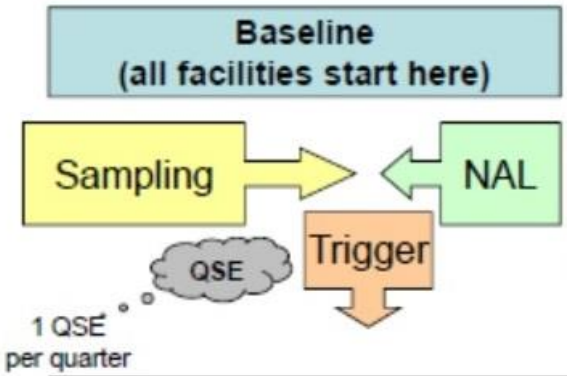
2020 USEPA MSGP

- Things to watch for
  - AIM Tiers
  - Industry-wide monitoring (pH, TSS, COD/TOC, O&G)
  - Additional industrial sectors
  - Lower benchmarks
  - Composite sampling
  - More frequent sampling

The Future? California…

- July 1, 2015 – June 30, 2020
- 4 samples per year
- Benchmarks = NAL
  - Instant Max. NAL = O&G,TSS,pH
  - By SIC - Annual NALs

EXCEEDANCE RESPONSE ACTIONS

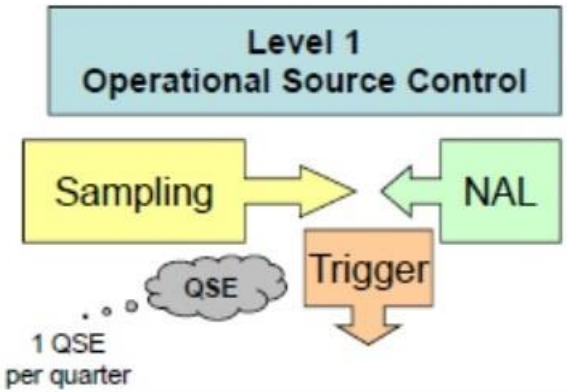


NALs do not take effect until 1 year after effective date of permit.

There are two types of NALs - annual and instantaneous

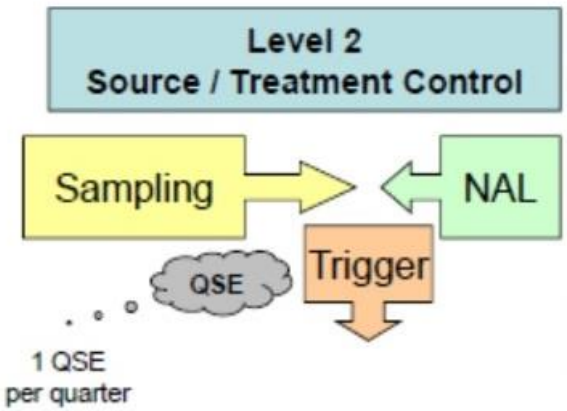
YEAR

1



Discharger must review SWPPP and implement operational source control BMPs and submit Level 1 ERA Report

2



Certify one of the following:
(1) BAT/BCT and no more BMPs; or
(2) exceedances not from industrial activity ("background").

Submit a Level 2 ERA Report and provide new NAL.

3

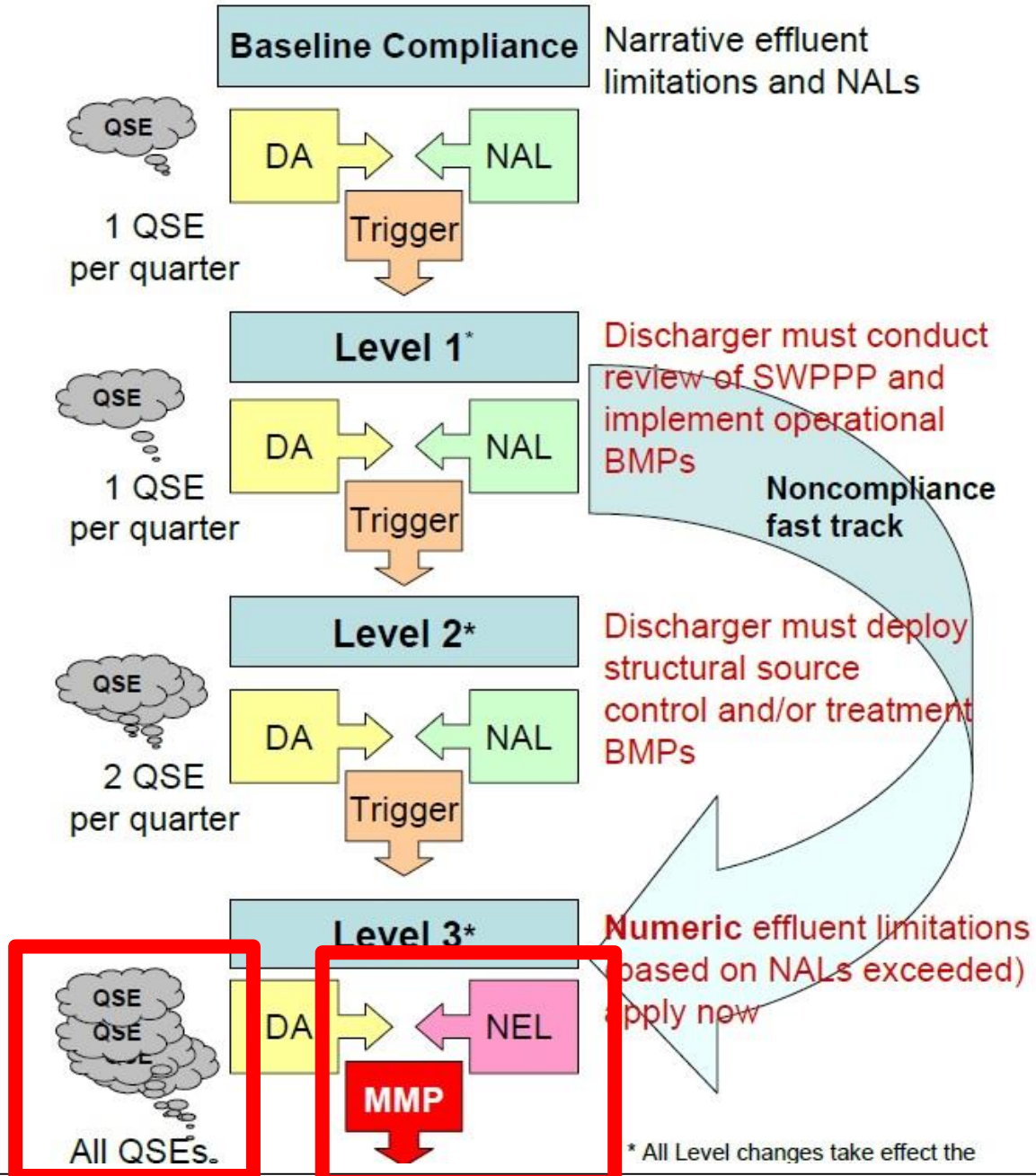
California General Permit

- 50% “flunked” => Level 1
- 25-50% failure => Level 2
- *“Perpetual exceedance”*
  - Must pass 4 back-to-back storms
  - “1-strike” back to Level 2
  - Natural background demo
  - Non-industrial source demo
  - Target for citizen suits

California Storm Water TMDLs

- **Effective 7/1/2020**
- **TMDLs @ Long Beach Harbor**
  - **Same NALs until 5/5/2032, then instant max. NAL (NOT NEL)**
  - **Copper = 5.8 ug/l (from 33.2 ug/l)**
  - **Zinc = 95 ug/l (from 260 ug/l)**

LEVELS OF CORRECTIVE ACTION SCHEMATIC



The Future…

- ~~BMPs~~ → Sample/Corrective Action
- More sampling
  - New, lower benchmarks [for ALL]
  - Benchmarks today, NELs tomorrow
  - Storm water TMDLs are coming
- Non-compliance in perpetuity

Final Thoughts

- Be active in 2020 USEPA MSGP renewal (AIM, NAS study)
- Plan for OHR000007 in 2022
- Want as little change in 2022 Ohio EPA SWGP renewal

Burning Questions

BEVERIDGE & DIAMOND PC

Proposed Benchmark Monitoring Implementation Tiers for Next MSGP

Implementation Action Tiers	Action Trigger	Action Required	Exception(s)
2015 MSGP	• Average of 4 quarterly sampling results > benchmark • Sum of less than 4 quarterly sample results > 4 x benchmark	• Review SWPPP to determine if modifications are necessary • Immediately take reasonable steps necessary to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational • Complete additional actions within 14 days, or 45 days if 14-day window is infeasible. • If run-on to facility causes exceedance, review/ revise SWPPP and notify operators of contributing run-on to abate their pollutant contribution	• Exceedance is solely attributable to natural background sources • No further pollutant reductions are technologically available and economically practicable and achievable in light of best industry practice
Tier 1	• Annual average > benchmark • Single sample result > 4 x benchmark	• Immediately review selection, design, installation, and implementation of control measures to determine whether modifications are required • Implement modifications within 14 days, or no later than 45 days if 14-day window infeasible	• Exceedance is solely attributable to natural background sources • EPA agreement that exceedances is solely attributable run-on sources
Tier 2	• 2 consecutive annual averages each > benchmark • 2 sample results w/in a 2-year period each > 4 x benchmark • Single sample result > 8 x benchmark	• Implement all feasible control measures for applicable sector • Implement controls within 14 days, or no later than 45 days if 14-day window infeasible	• Exceedance is solely attributable to natural background sources • EPA agreement that exceedances is solely attributable run-on sources • If single sample result (8 x benchmark) constituted an aberration: o document in facility SWPPP measures to prevent reoccurrence o conduct follow up sampling in next qualifying rain event to confirm o Note: aberration exception only available on time per parameter per outfall

BEVERIDGE & DIAMOND PC

Proposed Benchmark Monitoring Implementation Tiers for Next MSGP

Implementation Action Tiers	Action Trigger	Action Required	Exception(s)
Tier 3	• 3 consecutive annual averages each > benchmark • 3 sampling results w/in a 3-year period each > 4 x benchmark • 2 sampling results w/in a 3-year period each > 8 x benchmark • 4 consecutive samples > benchmark and the average > 2 x benchmark	• Install structural source controls (e.g., berms, secondary containment, etc.) and/or treatment controls (e.g., oil-water separators, infiltration structures, etc.), with assistance from a professional engineer or geologist • Install controls within 30 days, or no later than 90 days if 30-day window is infeasible • Controls must be installed at all substantially identical outfalls	• Exceedance is solely attributable to natural background sources • EPA agreement that exceedances is solely attributable run-on sources • Facility demonstrates to EPA within 30 days that the discharge does not result in the exceedance of water quality standards, and EPA approves o Facility demonstrations would be made publicly available.
N/A	• Sample results for a parameter continue to exceed benchmark after structural source or treatment controls are installed	• EPA may require facility to apply for an individual NPDES permit	N/A

Beveridge & Diamond's 100 lawyers – including 50 litigators – concentrate their practice on environmental, sustainability, and natural resources law, litigation, and dispute resolution. Widely recognized as one of the premier environmental law and litigation firms in the U.S., the Firm helps clients in diverse industry sectors resolve critical environmental and sustainability issues relating to their facilities, products, and operations around the world. Learn more at www.bdlaw.com.

Regulatory Forecast: 2020 MSGP for Stormwater Discharges Associated with Industrial Activity

NPDES Industrial MSGP

The 2015 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (commonly referred to as the "Multi-Sector General Permit" or "MSGP") is about halfway through its five-year permit cycle. For the 2020 renewal of the MSGP, the United States Environmental Protection Agency (USEPA) is expected to propose a revised system of benchmark monitoring and corrective action requirements to replace those in the current 2015 MSGP. These revisions may have broad implications for industrial facilities currently covered under a MSGP. Though the federal MSGP directly applies only in a few states, the District of Columbia, the United States territories, and tribal lands, other state MSGPs are required to be at least as stringent as the federal stormwater permit.

In 2016, USEPA entered into a settlement agreement with environmental groups that challenged the issuance of the 2015 MSGP (*Waterkeeper Alliance v. EPA* [2d Cir. 15-02091]). [1] The settlement agreement has no effect on the terms and conditions of the current 2015 MSGP, which remains in place until June 2020. However, facilities subject to benchmark monitoring should be aware of the changes that are proposed for the upcoming issuance of the 2020 MSGP. Under the current MSGP, benchmark exceedances do not specifically result in noncompliance. But presently, benchmark exceedances can trigger the need for enhanced stormwater management practices (known as Best Management Practices [BMPs]). [2]

Benchmark Monitoring: New Tiered Responses to Benchmark Exceedances

When it drafts the 2020 MSGP, USEPA has agreed to propose a three-tiered series of escalating responses or "implementation actions" that will be required whenever permit holders' stormwater discharges exceed the benchmark monitoring levels stipulated in their MSGPs. Under the proposed 2020 MSGP, permittees would be required to implement corrective actions depending on the extent and duration of their noncompliance. Specifically, when USEPA signs a notice for the *Federal Register* announcing the proposed 2020 MSGP for public comment, the agency has agreed to include in the benchmark monitoring section of the proposed permit "Additional Implementation Measures" requirements. The tiered implementation measures are outlined in the 2016 settlement agreement. [1] Beveridge & Diamond, P.C. (2016), a law firm that specializes in environmental law, presents a summary of the proposed tiers in a table from an article on their website (available at http://www.bdlaw.com/news-1953.html). [2] The table also shows a comparison to the requirements of the 2015 MSGP (available at http://www.bdlaw.com/assets/htmldocuments/2016-08-29%20Attached%20Table.pdf).

No More Coal Tar-Based Pavement Sealants

According to Taylor Lewellyn (2017), a Legal Editor at *Business & Legal Resources*, another component of the proposed 2020 MSGP is the exclusion of industrial facilities that use coal tar-based pavement sealants from coverage under the MSGP. [3] Such pavement sealants contain polycyclic aromatic hydrocarbons (PAHs), which are a class of chemicals that occur naturally in coal, crude oil, and gasoline. According to USEPA and the Centers for Disease Control and Prevention, several PAHs or specific mixtures of PAHs are known carcinogens. PAHs from coal tar-based pavement sealants are found in stormwater discharges from facilities that use them on surfaces such as driveways and parking lots. Facilities that use these pavement sealants will be required either to eliminate such discharges or to apply for an individual stormwater permit. [1]

Other Proposed Changes

USEPA has also agreed to sponsor and fund a study by the National Research Council to evaluate and recommend (1) possible improvements to the benchmark monitoring requirements of the current MSGP to more accurately evaluate the performance of BMPs; (2) the feasibility of numeric retention standards for industrial stormwater discharges; and (3) the industrial facilities or sectors that USEPA should prioritize for the consideration of additional discharge characterization and/or monitoring. In addition, USEPA will propose measures to prevent stormwater discharges that could recontaminate federal Superfund sites. [1]

Preparing for the Proposed Permit Changes

The 2016 settlement agreement forecasts potential changes to the MSGP and similar state-issued stormwater general permits. These changes could impact a broad range of industrial facilities subject to stormwater permitting under the National Pollutant Discharge Elimination System (NPDES). In particular, current MSGP permittees that continue to use coal tar-based sealants on pavement and parking lots at their facilities may be required to seek an individual stormwater permit. The application and submittal requirements for an individual stormwater permit are often resource-intensive and time-consuming procedures.

EnviroScience (ES) has NPDES permitting experts on staff, formerly with the Ohio Environmental Protection Agency, who are very familiar with NPDES MSGP regulations. Professional engineers and scientists in the Compliance Services group at ES have over 125 years of combined experience in regulatory affairs. Compliance Services can develop regulatory compliance strategies and plans for clients, including services related to stormwater permitting, stormwater pollution prevention plan development and training, design and implementation of BMPs, site assessment/inspections, and field sampling/monitoring. In anticipation of the potential changes in 2020, permittees that want to maintain MSGP eligibility should assess the costs and benefits of using available non-coal tar pavement sealants and/or the treatment costs for removing sealant pollutants from their stormwater discharges. ES can assist clients with cost-benefit analyses and help clients navigate through the continually changing and often time-consuming stormwater regulations. Call us at 800-940-4025 or read more about our services here.

References

[1] *Waterkeeper Alliance v. EPA* (2d Cir. 15-02091, 2016). Retrieved January 31, 2018, from http://waterkeeper.org/wp-content/uploads/2016/08/Waterkeeper_Alliance_Settlement_Agreement_08162016-EPA-MSGP.pdf.

[2] Richmond, Stephen M., & Roveillo, Virginie K. (*Beveridge & Diamond, P.C.*, 2016). Stormwater Forecast: Prepare for More Aggressive Benchmark Monitoring and Corrective Action Requirements under the Next Proposed MSGP. *Beveridge & Diamond, P.C.* Retrieved February 1, 2018, from http://www.bdlaw.com/news-1953.html.

[3] Lewellyn, Taylor. (2017). EPA's 2020 MSGP: A Look Ahead. *Enviro.BLR.com*. Retrieved January 31, 2018, from https://enviro.blr.com/environmental-news/water/Stormwater-Industrial-Facilities/EPAs-2020-MSGP-A-look-ahead.

COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP
Counsel to the OMA
February 10, 2020

A. Ohio EPA Activities of Note

1. PFAS Regulation in Ohio[1]

On December 2, 2019, Governor Mike DeWine released a statewide action plan to analyze per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water. As part of the plan, the Ohio Environmental Protection Agency (Ohio EPA) will test nearly 1,500 public water systems for six PFAS chemicals: PFOA, PFOS, GenX, PFBS, PFHxS and PFNA. All test results will be posted on a website designed for the implementation of this action plan. If PFAS chemicals are detected, additional steps will be triggered by the Ohio Department of Health and Ohio EPA. The action plan will utilize the U.S. EPA health advisory level of 70 parts per trillion ("ppt") for PFOA and PFOS as an action level and U.S. EPA's established Drinking Water Equivalent Level method and toxicity data for the other four PFAS chemicals. Testing is scheduled to commence the first quarter of 2020 and will be complete by the end of 2020. Unless PFAS chemicals are detected, public drinking water systems will only be tested once to establish this baseline "snapshot" of PFAS chemicals in Ohio's public drinking water systems.

As part of the action plan, Governor DeWine established six main objectives designed to address PFAS contamination where present in the state:

- Gather and provide sampling data from specific types of public water systems to determine if PFAS is present in raw and finished drinking water.
- Assist private water system owners with guidelines and resources to identify and respond to potential PFAS contamination.
- Establish Action Levels for drinking water systems in Ohio to aid in appropriately responding to PFAS contamination for the protection of public health.
- Work with Ohio communities to identify resources to assist their public water systems in implementing preventative and long-term measures to reduce PFAS-related risks.

[1] Recently, California established PFAS regulations. Since August of 2019, the California State Water Board has been collecting data related to PFAS chemicals in around 600 water systems across the state. Thereafter, the State Water Board announced its intention to enact some of the strictest water quality standards related to PFAS chemicals in drinking water in the country. The new standards include a response level of 10 ppt for PFOA and 40 ppt for PFOS. The newly announced standards come in response to passage of a California law that requires that a water system must be taken out of service and treated if PFAS levels exceed those set by the Board, as well as a requirement that the water system notify its customers if levels are exceeded.

- Develop and disseminate educational information to the public to increase awareness and understanding of PFAS related compounds and relative risk of exposure to PFAS through drinking water and other exposure pathways.
- Continue ongoing engagement to ensure this action plan for Ohio is adapted as the scientific body of knowledge expands and the regulatory framework progresses at the national level.

2. Ohio's Domestic Action Plan 2020

On January 28, 2020, the State of Ohio and the Ohio Lake Erie Commission released its updated draft of the Ohio Domestic Action Plan ("DAP")—aimed at reducing the amount of phosphorus that enters Lake Erie. The DAP furthers a previous draft aimed at the same goal that was finalized in 2017 and Governor DeWine's mission as set out in his H2Ohio plan released in November of 2019. Major agencies in Ohio—including the Ohio EPA, the Departments of Agriculture and Health, and the Ohio Department of Natural Resources—all share responsibility for implementation of the DAP with the Ohio Lake Erie Commission.

According to a press release issued by the Ohio EPA, the DAP is focused on the following goals:

- Establishing science-based priorities for agricultural best management practices and state programs to support H2Ohio efforts to encourage farmers to implement scientifically backed best practices;
- The importance of wetland restoration and outlining ODNR efforts to create, restore, and enhance wetlands for nutrient reduction as part of H2Ohio;
- Updated actions for communities including H2Ohio support for home sewage treatment system remediation;
- Integrating the role of watershed planning at the local level for siting projects to reduce nutrients efficiently, including a distribution of the load reduction throughout the Maumee River watershed based on the Ohio EPA Nutrient Mass Balance method.

Public comments are currently being accepted on the DAP as currently drafted and will be accepted until close of business on March 2, 2020.

3. Lake Erie Protection and Restoration Plan 2020

On February 7, 2020, the Ohio Lake Erie Commission released its draft Lake Erie Protection and Restoration Plan 2020 (LEPR) for public comment. The 2020 LEPR outlines the following nine priorities in which investments, policies and programs will be focused by the Commission:

- Nutrient Pollution Reduction;
- Habitat and Species;
- Invasive Species;
- Dredge Material Management and Maritime Infrastructure;
- Areas of Concern;
- Toxic Pollutants;
- Beach and Recreational Use;
- Tourism, Jobs and Economy;
- Water Withdrawals

The public comment period on the draft plan will close on February 28, 2020.

4. Greenhouse Gas Emissions rules, O.A.C. 3745-31-34

On December 10, 2019, the Ohio EPA proposed an amendment to its request for SIP approval of OAC 3745-31-34. The amended request specifically proposed no action to be taken by U.S. EPA under Subparagraph (B) of said rule, noting that further amendments to the provisions of O.A.C. 3745-31-34 were being considered. The OMA, Ohio Chemistry Technology Council, and the Ohio Chamber of Commerce presented a combined comment in favor of Ohio EPA's amendment in relation to the U.S. EPA's proposed approval of the Ohio's PSD permitting requirements for greenhouse gas emissions.

5. Hazardous Waste Program Rules

On December 4, 2019, the Ohio EPA announced that it was amending its Hazardous Waste Program rules to, among other things, bring its rules in line with the U.S. EPA's RCRA Subtitle C Program. For manufacturers, the major proposed changes include: (i) consolidation of, under certain conditions, Very Small Quantity Generator waste at a Large Quantity Generator; (ii) improvement of hazardous waste risk communication and updates to the emergency management requirements; (iii) reorganization of the generator regulations to improve readability for the regulated community; (iv) streamlined standards for handling hazardous waste pharmaceuticals; and (v) a prohibition on disposing hazardous waste pharmaceuticals by sewer (a requirement that already exists in Ohio). The comment period on the draft rules closed on January 20, 2020.

6. ISW/RSW Rules, O.A.C. Chapters 3745-29 and 3745-30

On January 21, 2020, the OMA submitted comments in favor of Ohio EPA's proposed amendment to Chapters 3745-29 and 3745-30 of the Ohio Administrative Code. As part of the amendments, Ohio EPA proposed to merge the Industrial Waste Programs and the Residual Waste Programs—meaning that non-hazardous, non-municipal wastes streams will now be classified as industrial or manufacturing waste or "IMW". Relatedly, as the Residual Waste Program is likely

to see a reduction following the merger, the Ohio EPA has proposed to limit the Residual Waste Program to only two classifications (as opposed to the previous four). OMA submitted comments in favor of these changes along with others, including proposed improvements as to clarity and consistency and Ohio EPA's effort to create a more streamlined approach to the Residual Waste Program.

7. Monitoring for NOx

In 2019, U.S. EPA released a proposed rule which would approve Ohio's amendment to its State Implementation Plan ("SIP") to establish alternative monitoring requirements for certain covered sources for NOx SIP Call purposes other than Part 75 monitoring requirements, in particular alternatives to the currently required continuous emission monitors (i.e. "Part 75 CEMS"). Specifically, U.S. EPA's proposed rule would provide much needed regulatory relief to large non-electric generating unit ("Non-EGUs") boilers and turbines, and the proposal would allow alternative monitoring to costly Part 75 CEMS while still providing the necessary assurance that covered units are achieving the required emission reductions under the NOx SIP Call. OMA provided comments in favor of the U.S. EPA's proposed rulemaking in November of 2019.

B. U.S. EPA Activities of Note

1. TRI Reporting Requirements and TSCA Amendments Related to PFAS

In December of 2019, President Trump signed into law the National Defense Authorization Act for FY 2020 ("NDAA"), which included provisions related to the existence of PFAS chemicals in drinking water.[2] The important provisions related to PFAS regulation in the NDAA included: (i) a requirement that the Department of Defense cease using substances that contain PFAS chemicals by 2024 and to begin cleaning up water resources contaminated with PFAS that was caused by military uses; (ii) reporting requirements to the U.S. EPA's Toxics Release Inventory ("TRI") for users of PFAS chemicals, including manufacturers, for instances where a release of PFAS chemicals into the environment has occurred; (iii) a requirement that public water systems begin monitoring for several PFAS chemicals in their water supply; (iv) an amendment to the Toxic Substances Control Act ("TSCA") that requires PFAS manufacturers to report various data to the U.S. EPA about their products and a requirement that the EPA complete TSCA rulemaking on long-chain PFAS chemicals by mid-2020.

[2] The following provisions related to PFAS regulation were left out of the bill, but are issues to monitor closely in the future: (i) designation of PFAS chemicals as "hazardous substances" under CERCLA, and (ii) federal PFAS drinking water standards.

Importantly for OMA members, the TRI requirements set a yearly threshold maximum of 100 pounds for each of the listed[3] PFAS compounds. In other words, a manufacturer (who employs more than 10 individuals) who manufactures, processes or otherwise uses more than 100 pounds of any of the listed PFAS chemicals will be required to collect data related to said use and report any releases of the PFAS chemicals pursuant to the TRI requirements. All reporting pursuant to the TRI requirements must be made by July 1, 2021, and failure to report by that deadline could result in civil penalties.

2. U.S. EPA Releases Guideline for PFAS in Groundwater

On December 19, 2019, the U.S. EPA issued interim recommendations (its first guidance on this issue) for addressing PFAS contamination in groundwater. The U.S. EPA recommended using a screening level of 40 ppt to determine if PFAS is present at the given site. Additionally, the EPA recommended using its PFAS lifetime drinking water health advisory level (70 ppt) as the remediation goal at contaminated sources (where no other regulatory maximum levels exist). It is expected that these recommendations will be submitted in finalized form to the Office of Management and Budget sometime in late 2020 or 2021.

3. Aerosol Cans Under the Universal Waste Program

On December 9, 2019, the U.S. EPA added aerosol cans to the universal waste program under RCRA, 84 FR 67202. The new regulation is designed to ease regulatory burdens on some businesses that discard hazardous waste aerosol cans, promote the collection and recycling of hazardous waste aerosol cans, and encourage the development of municipal and commercial programs that reduce the quantity of hazardous waste aerosol can wastes going to municipal solid waste landfills or combustors.

4. Interpreting "Adjacent" for NSR and Title V Source Determinations

On November 26, 2019, U.S. EPA issued a guidance document related to the interpretation of "adjacent" to a "stationary source" for purposes of the New Source Review ("NSR") and Title V Clean Air Act programs. Changing direction from its previous guidance, U.S. EPA stated: "EPA interprets the term 'adjacent' to entail physical proximity between properties. From this point forward, EPA will consider properties … to be 'adjacent' only if the properties are nevertheless nearby, side-by-side, or neighboring (with allowance being made for some limited separation by, for example, a right of way)." U.S. EPA specifically disclaimed the establishment of a bight-line test, reasoning that "[i]n each case, this determination should ultimately approximate the 'common sense notion of a plant.'" Ultimately, while the new "adjacency" determination should be considered by a manufacturer for purposes of choosing a location for a new facility, the guidance

[3] U.S. EPA has identified some 160 different PFAS chemicals that must be monitored under the NDAA, including compounds such as PFOA, PFOS, and GenX chemicals.

document specifically exempted U.S. EPA-approved permitting authorities (like Ohio EPA) from being required to apply the new "adjacent" rule.

5. Navigable Waters Protection Rule (new WOTUS Rule)

On January 23, 2020, U.S. EPA and the U.S. Army Corps of Engineers released the much-anticipated new final WOTUS rule. This rule eliminates the 2015 WOTUS rule's "significant nexus" test and instead provides categories of jurisdictional and non-jurisdictional waters. The new final rule interprets jurisdictional waters as being "relatively permanent flowing and standing waterbodies that are traditional navigable waters in their own right or that have a specific surface water connection to traditional navigable waters, as well as wetlands that abut or are otherwise inseparably bound up with such relatively permanent waters." The final definition accordingly includes four categories of jurisdictional waters:

a. The territorial seas and waters capable of being used in interstate or foreign commerce (i.e., traditional navigable waters);
b. Tributaries directly or indirectly contributing surface water flow to traditional navigable waters in a typical year;
c. Lakes and ponds, and impoundments of jurisdictional waters directly or indirectly contributing surface water to traditional navigable waters in a typical year; and
d. Wetlands adjacent to these jurisdictional waters.

The final rule also identifies the following eleven categories of non-jurisdictional waters, which cannot quality as one of the four types of jurisdictional waters listed above:

a. Groundwater;
b. Ephemeral streams;
c. Diffuse stormwater runoff and directional sheet flow over upland;
d. Ditches that are not traditionally navigable or constructed in a tributary to traditional navigable waters, as well as ditches constructed in adjacent wetlands that do not qualify as adjacent wetlands;
e. Prior converted cropland;
f. Artificially irrigated areas that would revert to upland if irrigation ceased;
g. Artificial lakes and ponds constructed in upland areas or in non-jurisdictional waters;
h. Water-filled depressions incidental to mining, and pits excavated to obtain fill, sand, or gravel, that are located in upland areas or non-jurisdictional waters;
i. Stormwater control features constructed in upland or in non-jurisdictional waters;

j. Groundwater recharge, water reuse, and wastewater recycling structures constructed in upland or in non-jurisdictional waters; and
k. Waste treatment systems.

The new rule will become effective 60 days after its publication in the *Federal Register*.

C. Judicial

1. *Conservation Law Foundation, Inc. v. Longwood Venues and Destinations Inc. et al.*, 2019 WL 6318530 (D. Mass.)

On November 26, 2019, a district court judge in the District of Massachusetts held that a Clean Water Act ("CWA") permit is not required for pollutants reaching surface waters as a result of releases into groundwater. That decision—which reached a conclusion that conflicts with holdings of cases from the Fourth and Ninth Circuits on this precise issue—joined the Sixth Circuit in holding that an NPDES permit is not required prior to a release of pollutants into groundwater. The *Longwood* decision is the first in the nation to rely on the April 2019 EPA interpretive statement from the U.S. EPA related to groundwater discharges (which affirmatively stated that releases through groundwater are excluded from the NPDES permit requirement). Ultimately, the *Longwood* decision is the fourth decision on this issue in the country ahead of the long-awaiting decision from the U.S. Supreme Court in *County of Maui v. Hawaii Wildlife Fund*, No. 18-260—the appeal from the Ninth Circuit on this precise issue.

2. *State of Ohio ex rel. DeWine v. E.I. Du Pont de Nemours and Co., et al., 2020-Ohio-197 (4th Dist.)*

On January 16, 2020, the Fourth District Court of Appeals issued its opinion in an appeal from the decision of the Washington County Court of Common Pleas, which denied the motion to intervene of the Little Hocking Water Association, in the lawsuit filed by the State of Ohio against E.I Du Pont de Nemours and Co. and The Chemours Company ("DuPont") for PFOA contamination in the Ohio River and several Ohio landfills. The Fourth District held that the Little Hocking Water Association could litigate the claims it possessed (or protect its rights) in a different lawsuit, so the Fourth District lacked jurisdiction to hear the appeal. Thus, this case will now head back to the trial court and proceed between the State of Ohio and DuPont.

3. *Michigan Dept. of Environmental Quality v. Wolverine World Wide, Inc. (No. 1:18-cv-00039) (Feb. 3, 2020) (W.D. Mich.)*

In a consent decree filed in U.S. District Court, Defendant Wolverine World Wide agreed to pay up to $69.5 million to resolve claims alleging that Wolverine contaminated public drinking water supplies with PFAS. Wolverine historically used PFAS to waterproof clothing at its Michigan facility.

NOV 14, 2019 | NEWS RELEASE

Governor DeWine Announces H2Ohio Water Quality Plan

Ohio Governor Mike DeWine today unveiled H2Ohio, a comprehensive, data-driven water quality plan to reduce harmful algal blooms, improve wastewater infrastructure, and prevent lead contamination.

“We have a moral obligation to preserve and protect our natural resources,” Governor DeWine said during a speech at the National Museum of the Great Lakes in Toledo. “My H2Ohio plan is a dedicated, holistic water quality strategy with long-lasting solutions to address the causes of Ohio’s water problems, not just the symptoms.”

Governor DeWine’s H2Ohio plan is an investment in targeted solutions to help reduce phosphorus runoff and prevent algal blooms through increased implementation of agricultural best practices and the creation of wetlands; improve wastewater infrastructure; replace failing home septic systems; and prevent lead contamination in high-risk daycare centers and schools. The Ohio General Assembly invested $172 million in the plan in July, and since then, H2Ohio experts have been developing strategies for long-term, cost-effective, and permanent water quality solutions.

Reducing Agricultural Phosphorus Runoff to Prevent Algal Blooms

The H2Ohio plan will invest substantially to help farmers reduce phosphorus runoff from commercial fertilizer and manure to prevent harmful algal blooms.

Algal blooms in Ohio’s lakes, rivers, and streams can threaten drinking water and impact the health of people and animals. Although studies have shown that phosphorus runoff from farms is the primary reason for algal blooms in Lake Erie, Ohio has not previously placed a significant focus on addressing this problem.

“Ohio has supported many programs to help farmers reduce nutrient loss over the years, but the state hasn’t done nearly enough, nor have previous plans focused enough, on reducing phosphorus runoff from agriculture,” said Governor DeWine. “That changes now.”

As a result of intensive scientific and economic studies, H2Ohio identified the 10 most effective and cost-efficient practices that have been proven to reduce agricultural phosphorus runoff. Through a certification process, H2Ohio will provide economic incentives to farmers who develop a nutrient management plan that includes a combination of the best practices listed below:

The H2Ohio phosphorus reduction plan will focus first on reducing runoff into the Maumee River Watershed and Lake Erie and will eventually be offered to other parts of the state in the future. Farmers in the Maumee River Watershed will be able to enroll in H2Ohio programs for funding incentives in time for spring 2020 planting.

“For now, we will not mandate the use of these best practices because we believe our strategy will lead to significant changes within our current laws,” said Governor DeWine. “By helping farmers implement these practices today, H2Ohio will ultimately save them money, increase their profits, and reduce their phosphorus runoff in the future. Although a decrease in Lake Erie algal blooms will take time, we must invest now if we want clean water for future generations.”

As part of the H2Ohio plan, counties in the Maumee River Watershed will each have a localized phosphorus target to help ensure accountability. Individualized nutrient management plans will also be developed for participating farms to identify which H2Ohio best practices will reduce the most phosphorus runoff at each location.

Soil and Water Conservation District Offices in each county will lead local efforts to help farmers enroll in the H2Ohio program and to help them implement the H2Ohio best practices.

The overall progress of the H2Ohio phosphorus reduction plan will be regularly assessed and aggregate data will be publicly available.

The plan was developed with input from a broad coalition of agriculture, education, research, conservation, and environmental partners. H2Ohio will be led by the Ohio Department of Agriculture, Ohio Department of Natural Resources, Ohio Environmental Protection Agency, and Lake Erie Commission with support from the Ohio Agricultural Conservation Initiative, Ohio Farm Bureau, U.S. Department of Agriculture, and others. Several of the country's largest agribusiness operations, including Land O'Lakes, Nutrien, and The Andersons, have voiced support for the plan and have agreed to promote H2Ohio to their customers to help increase the number of acres enrolled in best practices.

Learn about OACI

Ensuring Safe, Clean Water

H2Ohio will address water and sewer needs in Ohio, including failing home septic systems in disadvantaged communities and possible lead contamination in high-risk daycare centers and schools.

“Ohio’s communities rely on clean drinking water and wastewater infrastructure to protect public health, provide for a high quality of life, and enable economic vitality,” said Governor DeWine. “It is wrong that Ohio children are potentially being exposed to lead in drinking water because of antiquated piping and fixtures in daycare centers or they can’t play outside because their backyards are covered in sewage from failing septic systems. H2Ohio is going to help.”

Under the direction of the Ohio Environmental Protection Agency, H2Ohio will fund infrastructure projects in disadvantaged communities to help ensure they have safe drinking water and quality sewer infrastructure.

H2Ohio will also help replace hundreds of failing home sewage treatment systems in low-income households to prevent the release of raw sewage onto property or into waterways.

Additionally, through a combination of state and federal funds, H2Ohio will assess lead exposure in daycare centers and schools in high-risk areas of Ohio and will help replace lead pipes and fixtures.

The Ohio EPA will announce detail

s of new projects in the coming weeks.

H2Ohio Support for H2Ohio

Ohio Pork Council

"Ohio's pig farmers are eager to participate in this science-based program that will push them toward their goal of continuously improving on-farm practices to preserve Ohio's waterways. As an Ohio pig farmer, I believe the H2Ohio program will challenge farmers to make positive changes to benefit water quality."

– *Dave Shoup, President, Ohio Pork Council*

Ohio Soybean Association

"The H2Ohio plan is a comprehensive, positive step forward with input from agriculture, environmental groups, universities, and government agencies. The Ohio Soybean Association is proud to support Governor DeWine and his strategic vision, and look forward to seeing H2Ohio implemented for the benefit of all Ohioans."

– *Scott Metzger, Ohio Soybean Association president and soybean farmer from Ross County*

Ohio Poultry Association

"Ohio's egg, chicken and turkey farmers have long recognized the important role we play in protecting the environment and addressing water quality issues. We are proud to support Governor DeWine's H2Ohio plan that will provide resources and education that farmers need to implement science-based practices on their farms to support healthy waterways in our state."

– *Jim Chakeres, Executive Vice President, Ohio Poultry Association*

The Nature Conservancy

"H2Ohio represents a huge advancement in addressing the sources of Ohio's water quality problems and we are especially pleased to see included in the plan natural solutions such as wetland creation and floodplain restoration, which will filter out nutrients and sediments that contribute to harmful algal blooms. To be successful, we agree with Governor DeWine that it will take time to achieve goals and that H2Ohio must have a dependable and longer-term source of funding. Monitoring of water quality over time, with accountability of fund recipients to continually improve until goals are reached, will be essential to success. We appreciate that this kind of approach is being discussed."

– *Bill Stanley, State Director, The Nature Conservancy in Ohio*

Nutrien

"Nutrien congratulates Governor DeWine on today's announcement and looks forward to working with the Administration as a partner in the H2Ohio program. This is an important step to meet our shared goal of improved water quality in the state and particularly in the Western Lake Erie Basin. As an ag retailer in Ohio, we recognize our role in helping solve crucial environmental issues. We are proud to support the Ohio 4R Certification program and of our work with growers to increase crop input efficiency using innovative solutions. Through the Governor's leadership and the H2Ohio program, we can expand sustainable farming practices and continue to improve the health of Lake Erie, while enhancing yields and strengthening Ohio's agriculture economy.

– *Nutrien*

H2Ohio Support for H2Ohio

The Andersons

"The Andersons believes that improving and protecting Ohio's waterways requires the collaborative efforts of government agencies, farmers, agribusinesses, universities and environmental groups. From what we've seen so far, we feel H2Ohio is a very promising initiative and will help bring the necessary parties together to find effective solutions."

– The Andersons

Ohio Sheep Improvement Association

"The Ohio Sheep Improvement Association is proud of our growing industry and the need to increase our environmental stewardship as the demand for sheep, lamb and wool increases. Ohio sheep farmers support Governor DeWine and the unique collaboration to bring all agricultural industry groups to the table as we increase the adoption of on-farm best management practices."

– Ohio Sheep Improvement Association

Ohio Dairy Producers Association

"Ohio dairy farmers are firmly committed to protecting Ohio's waterways. We are looking forward to working collaboratively with Governor DeWine and Ohio's agriculture and environmental leaders to identify and provide resources and education that our farmers need to implement science-based practices on their farms to ensure continued water quality improvements over time."

– Scott Higgins, CEO of the Ohio Dairy Producers Association

Environmental Defense Fund

"Since day one, Governor DeWine has made water quality a cornerstone of his administration through the H2Ohio program and Environmental Defense Fund (EDF) supports his efforts. For more than 50 years, EDF has been guided by science and economics to find practical solutions to our nation's most serious environmental challenges and we look forward to collaborating with the DeWine administration in implementing H2Ohio to overcome urgent water quality challenges."

– Mark W. Rupp, Environmental Defense Fund

The Fertilizer Institute

"The Fertilizer Institute supports the DeWine Administration's collaborative and comprehensive approach to water quality and soil health. TFI is committed to being more efficient and protective of our natural resources through minimizing nutrient loss, conserving and preserving water, and ensuring our products are properly handled and used. We look forward to being a part of the H2Ohio program as we encourage the widespread adoption of fertilizer best practices, through outreach and education of nutrient stewardship."

– Lara Moody, The Fertilizer Institute

Land O'Lakes, Inc.

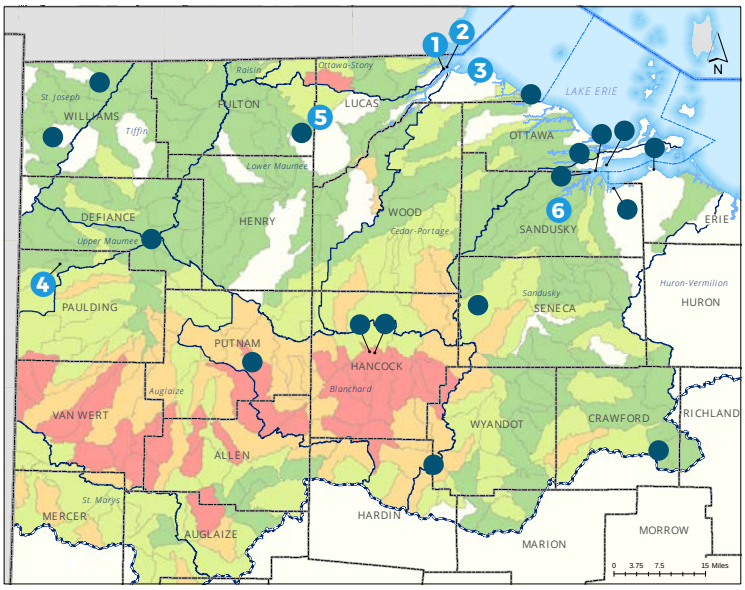
"As a farmer-owned cooperative, Land O'Lakes, Inc. believes strong collaboration is critical to address water quality and we applaud Governor DeWine and his Administration for engaging a wide range of stakeholders, including Land O'Lakes, in the H2Ohio Initiative. We look forward to further exploring opportunities to work together with the State of Ohio, with the aim of delivering water quality outcomes while helping Ohio farmers focus on the health of their business into the future."

– Land O'Lakes, Inc.

H2Ohio RESTORING WETLANDS

H2Ohio will develop new wetlands in strategic, targeted areas to reduce phosphorus runoff and prevent pollutants from entering the Western Lake Erie Basin. These projects will provide nutrient reduction, fish and wildlife habitat, and riparian protection.

PRIORITY WETLAND PROJECTS



● Proposed Future Projects

1 CULLEN PARK FLOW-THROUGH WETLAND RESTORATION

Lucas County | Maumee River Watershed

The proposed project is located within the embayment adjacent to Cullen Park. Maumee River flow will be redirected through the restored **flow-through wetland** into protected shallow-water areas that will support vegetation, trap sediment, process nutrients, create new fish and wildlife habitat, and will enhance recreational opportunities.

Project size: 100 Acres
Proposed Start: Fall 2019, Spring 2020
Partners: Toledo-Lucas County Port Authority & City of Toledo

2 GRASSY ISLAND FLOW THROUGH WETLAND RESTORATION

Lucas County | Maumee River Watershed

The proposed project is located north of the opening between Grassy Island and the Cullen Park causeway. Maumee River flow will be redirected through the restored flow-through wetland into protected shallow-water areas that will support vegetation, **trap sediment, process nutrients**, and create new fish and wildlife habitat.

Project size: 75 Acres
Proposed Start: Fall 2019, Spring 2020
Partners: Toledo-Lucas County Port Authority & City of Toledo

3 MAUMEE BAY STATE PARK WETLAND RESTORATION

Lucas County | Lake Erie Watershed

This project will restore a **phragmites dominated wetland** to a marsh with desired vegetation and re-connect the marsh with Lake Erie so that nutrient loads can be filtered by restored wetland plants.

Planned size: 137 Acres
Earliest Start: Fall 2019, Spring 2020
Partners: Ohio State Parks, The Nature Conservancy, Ohio EPA, EPA

4 MAUMEE SCENIC RIVER FORDER BRIDGE

Paulding County | Maumee River Watershed

This **riparian restoration** project will create a series of wetlands along an intermittent stream on the Forder Bridge Property. This wetland series will help capture nutrients and restore headwater stream habitat to the Maumee River.

Project size: 54 Acres
Proposed Start: Fall 2019
Partners: Black Swamp Conservancy

5 OAK OPENINGS PRESERVE METROPARK EXPANSION

Lucas County | Maumee River Watershed

This project will regrade and restore previously farmed lands into a restored wetland habitat. Approximately 22 acres of new **forested wetlands** will be restored along with 8 acres of new prairie / savanna habitat will be added along Ai Creek.

Project size: 37 Acres
Proposed Start: 2020
Partners: Metroparks Toledo

6 SANDUSKY REDHORSE BEND WETLAND RESTORATION

Sandusky County | Sandusky River Watershed

This project will restore 55 acres of floodplain habitat along the Sandusky River. In addition, two ditches flowing through the site will be restored to headwater streams to encourage **natural filtration of stormwater runoff**.

Project size: 55 Acres
Proposed Start: Fall 2019
Partners: Black Swamp Conservancy

For Immediate Release
February 5, 2020

Ohio Lake Erie Commission Releases 2020 Draft Plan to Protect Lake Erie

Sandusky -- The Ohio Lake Erie Commission released its draft *Lake Erie Protection & Restoration Plan 2020* (LEPR) for public comment. The LEPR, last published in 2016, reflects actions that the Ohio Lake Erie Commission and its member agencies will take over the next several years to protect, preserve, and restore our Great Lake. The State's actions complement federal and local partners' initiatives in the Lake Erie basin and across the region.

The plan is organized into nine priority areas that address current and emerging issues in the Ohio Lake Erie basin. The plan features a variety of topics affecting Lake Erie, including nonpoint source pollution, invasive species, and tourism. Goals, strategic objectives, and general activities to support each priority area are identified to meet restoration and protection goals for Lake Erie. Future steps are identified to further develop measures and reporting of progress.

The Commission will host one public meeting and webinar to present the plan and solicit public comment on Tuesday, Feb. 18, from 4-6 p.m. Interested persons can join the meeting live at the Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, or join online at https://ohioepa.webex.com/mw3300/mywebex/default.do?siteurl=ohioepa&service=6. For more information and additional meeting details, visit the Commission's website: http://lakeerie.ohio.gov. The public comment period will close Friday, Feb. 28. Comments may be submitted at the public meeting, through the webinar, or by submitting them to the Commission at lakeeriecommission@lakeerie.ohio.gov.

OLEC was established to preserve Lake Erie's natural resources, protect the quality of its waters and ecosystem and promote economic development in the region. The director of the Ohio Environmental Protection Agency (Ohio EPA) serves as the commission's chairman. Additional members include the directors of the state departments of Transportation, Health, Development, Agriculture and Natural Resources.

For more information, contact:
Heidi Griesmer, Ohio EPA
(614) 644-2160
Lynn Garrity, OLEC
(614) 506-0619

For Immediate Release
January 28, 2020

Ohio Releases Updated Domestic Action Plan Draft

The Ohio Lake Erie Commission and the State of Ohio have released an updated draft of the Ohio Domestic Action Plan to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement.

This draft Ohio plan is a continuation of the Western Basin of Lake Erie Collaboration Implementation Framework finalized by the State of Ohio in early 2017 and supports Governor DeWine's H2Ohio plan, which was released in Nov. 2019.

The Ohio Lake Erie Commission will finalize the update of the Ohio Domestic Action Plan in coordination with Ohio EPA, Ohio Department of Agriculture (ODA), Ohio Department of Health (ODH) and Ohio Department of Natural Resources (ODNR), which each share responsibility for implementing the plan.

New action items included in the draft focus on:

- Establishing science-based priorities for agricultural best management practices and state programs to support H2Ohio efforts to encourage farmers to implement scientifically backed best practices;
- The importance of wetland restoration and outlining ODNR efforts to create, restore, and enhance wetlands for nutrient reduction as part of H2Ohio;
- Updated actions for communities including H2Ohio support for home sewage treatment system remediation;
- Integrating the role of watershed planning at the local level for siting projects to reduce nutrients efficiently, including a distribution of the load reduction throughout the Maumee River watershed based on the Ohio EPA Nutrient Mass Balance method.

Through the H2Ohio plan, Ohio is investing in targeted solutions to help ensure safe and clean water through new programs for nonpoint source nutrient reduction.

The adaptive management process is central to the long-term implementation of the Ohio Domestic Action Plan so that the plan can be adjusted as new nutrient reduction actions are developed and evaluated to meet the goals of the binational Great Lakes Water Quality Agreement. This plan is being updated to ensure Ohio is focusing on the correct practices to achieve significant nutrient reductions.

The draft plan is available at https://lakeerie.ohio.gov/LakeEriePlanning/OhioDomesticActionPlan2018.aspx. Public comments can be emailed to dap@lakeerie.ohio.gov and are being accepted until the close of business on March 2, 2020.
OLEC was established to preserve Lake Erie's natural resources, protect the quality of its waters and ecosystem and promote economic development in the region. The director of the Ohio Environmental Protection Agency (Ohio EPA) serves as the commission's chairman. Additional members include the directors of the state departments of Transportation, Health, Development Services, Agriculture, Natural Resources and five additional members appointed by Governor Mike DeWine.

TO: **OMA Environment Committee**
FROM: **Rob Brundrett**
RE: **Environment Public Policy Report**
DATE: **February 12, 2020**

Overview

The legislature has not entertained any major or comprehensive environmental legislation through the first year of the 133rd General Assembly.

Starting in the fall, water issues once again rose to the top of the environmental agenda. In September Governor DeWine asked Ohio EPA and the Ohio Department of Health to develop a plan to review PFAS in Ohio's drinking water. The action plan was released in December.

Both the Lake Erie Commission and state released water actions plans aimed at reducing nutrient runoff into Ohio waterways, and especially Lake Erie.

Earlier this fall the Governor announced a more comprehensive plan for the new H2Ohio initiative.

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

General Assembly News and Legislation

Senate Bill 2 – Statewide Watershed Planning

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

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

House Bill 7 – H2Ohio Trust Fund

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

The House initially removed most of the funding for H2Ohio from the state budget. However, the startup funding was reinserted during House and Senate discussions along with other H2Ohio framework provisions. The House passed the bill and it has received on hearing in the Senate back in the fall.

Senate Bill 50 – Increase Solid Waste Disposal Fee

Senator Eklund has reintroduced Senate Bill 50. The bill would increase one of the state fees levied on the transfer or disposal of solid waste in Ohio. The proceeds of this increase will be deposited into the Soil and Water Conservation District Assistance Fund. Last General Assembly the OMA worked with allies to oppose the fee increase. Recently the Soil and Water

Conservation Districts have been the point agency on any new water programs to battle nutrient runoff. The bill has had two hearings. The budget bill provided increased state funding to the soil and water conversation districts.

House Bill 166 – State Operating Budget

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

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

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

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

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

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

Senate Bill 222 – Container Use Restriction

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

House Bill 242 – Container Use Restriction

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

This so-called bag bill is aimed at providing uniformity across the state regarding packaging and other products that have been ground zero for local government bans. The OMA provided strong support in committee. The bill passed the House 58-35. The Senate has yet to hold a hearing on the bill. Governor DeWine has come out a strong and vocal opponent of the bill.

House Bill 328 – PFAS Firefighting Foam

The bill prevents testing and training with firefighting foam with PFAS added. The bill which is supported by the industry has received two hearings in the House.

House Bill 497 – PFAS Drinking Standard
The bill would require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants (PFAS).

Regulations
Public Comment Period on Lake Erie Plan Closes Feb. 28
The Ohio Lake Erie Commission released its draft Lake Erie Protection and Restoration Plan 2020 (LEPR) for public comment. According to Ohio EPA, the LEPR, last published in 2016, "reflects actions that the Ohio Lake Erie Commission and its member agencies will take over the next several years to protect, preserve, and restore our Great Lake."

The public comment period on the plan will close Friday, Feb. 28.

Update to Lake Erie Phosphorus Reduction Plan
State officials announced the release of an update to the Ohio Domestic Action Plan aimed at reducing phosphorus in Lake Erie under the bi-national Great Lakes Water Quality Agreement. It's the first such iteration of the plan since Gov. DeWine's H2Ohio program was enacted. The plan focuses on four aspects:

- Establishing science-based priorities for agricultural management practices and state programs to support H2Ohio efforts to encourage farmers to implement science-based best practices;
- The importance of wetland restoration and outlining ODNR efforts to create, restore, and enhance wetlands for nutrient reduction as part of H2Ohio;
- Updated actions for communities, including H2Ohio support for home sewage treatment system remediation;
- Integrating the role of watershed planning at the local level for siting projects to reduce nutrients efficiently, including a distribution of the load reduction throughout the Maumee River watershed based on the Ohio EPA Nutrient Mass Balance method.

Previous versions of the plan required Ohio EPA to pursue legislation that would require all treatment works discharging wastewater containing phosphorus to achieve at least a monthly average effluent concentration of 1 mg/L phosphorus. The OMA and its nutrient water working group worked tirelessly with Ohio EPA and others to ensure manufacturing is not disproportionately harmed by any new regulations on nutrients. Public comments can be emailed by March 2, 2020.

OMA Submits Comments on Industrial Waste Changes
The OMA submitted comments supporting Ohio EPA's proposed amendments to merge the Industrial Waste Program and Residual Waste Programs, whereby non-hazardous, non-municipal waste streams will be called "industrial or manufacturing waste" or IMW. This change will result in the establishment of just two landfill classifications instead of the current four.

The OMA commented that it believes the approach to these updated classifications will allow for a more streamlined approach. We will continue to monitor the rule package for noteworthy changes.

OMA Submits Comments on State Implementation Plan for Non-EGUs
The OMA submitted comments regarding Ohio's State Implementation Plan (SIP) revisions to approve alternative monitoring for non-existing electric utility generating units (EGUs).

In its comments, the OMA stated: "U.S. EPA's proposed rule would provide much-needed regulatory relief to large non-EGU boilers and turbines."

EPA Approves new WOTUS Rule
In January the Army Corps of Engineers and U.S. EPA formally signed a new Waters of the United States (WOTUS) rule. The new rule is designed to bring more clarity. The OMA participated in a roundtable with new Region V Administrator Thiede in Columbus shortly after the new rule was announced.

The revised definition identifies four clear categories of waters that are federally regulated under the Clean Water Act: the territorial seas and traditional navigable waters, like the Atlantic Ocean and the Mississippi River; perennial and intermittent tributaries, such as College Creek, which flows to the James River near Williamsburg, Virginia; certain lakes, ponds, and impoundments, such as Children's Lake in Boiling Springs, Pennsylvania; and wetlands that are adjacent to jurisdictional waters.

These four categories protect the nation's navigable waters and the core tributary systems that flow into those waters.

In September, the U.S. EPA formally scrapped the Obama-era WOTUS rule. At the time the OMA formally supported the administration's proposed rule, which was more restrained and observed traditional limits on the scope of federal power.

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

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

Ohio EPA Agency News

Kurt Thiede Appointed as U.S. EPA Region 5 Administrator
Earlier this year U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced the appointment of Kurt Thiede of Wisconsin to become Region 5 administrator, overseeing environmental protection efforts in Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

Thiede will succeed Cathy Stepp, who stepped down from her post in the Great Lakes region after several years of service to the agency. The OMA established a strong working relationship with Thiede during his time as chief of staff to Administrator Stepp. We're looking forward to continuing that relationship as he begins his new role.

Governor Enters Fray on PFAS

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

In December an action plan was released to study all of Ohio's drinking water for PFAS chemicals. The plan contains education and other support for communities who's water tests positive for certain PFAS chemicals. The OMA worked with the agency to ensure that the plan would be fairly developed as concerned to Ohio's manufacturers.

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

New Movie Attacks Manufacturer, Ignores Science

The producers of a feature film that casts aspersions on a manufacturer in the Ohio River Valley region finally made its way into theaters and failed to become the critical darling it aspired to be. The film ignored sound science and truth in order to foster a trial-lawyer agenda and thoughtful movie public largely stayed away from the film.

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

Just recently the state of Michigan has filed a lawsuit in response to the discovery of certain PFAS chemicals in the drinking water of the state.

OMA Members and US EPA Region V Meeting

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

The successful meeting took place in November at the Region V headquarters in Chicago. Thank you to all the members who participated. We are working to schedule the 2020 meeting with the new Region V Administrator!

BEFORE THE SENATE LOCAL GOVERNMENT, PUBLIC SAFETY AND VETERANS AFFAIRS COMMITTEE
SENATOR NATHAN MANNING, CHAIRMAN

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

NOVEMBER 12, 2019

Mr. Chairman and members of the Senate Local Government, Public Safety, and Veterans Affairs 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 Senate Bill 222.

The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,300 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 $112 billion in GDP according to the most recent data. This amounts to nearly 17% 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.);
- 66 paper bag and coated-and-treated paper manufacturers (third most in U.S.).
- 13 metal can manufacturers (second most in U.S.); and
- 31 packaging machinery manufacturers (second most in the U.S.).

These manufacturers alone produce more than $7 billion in output for the Buckeye State. These same manufacturers employ more than 16,300 Ohioans with an average annual wage around $55,000. 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 Senate Bill 222. 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 Senator Rulli for sponsoring this important legislation to protect and grow Ohio manufacturing. We urge your prompt passage of Senate Bill 222.

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

January 21, 2020

VIA Electronic Mail (michelle.mountjoy@epa.ohio.gov)

Ms. Michelle Mountjoy
Rules Coordinator
Ohio EPA, Division of Materials and Waste Management
P.O. Box 1049
Columbus, OH 43216-1019

Re: **Comments on Ohio EPA's *Interested Party Draft – ISW/RSW Rules, OAC Chapter 3745-29 and 3745-30***

Dear Sir/Madam:

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

The OMA respectfully submits the following comments in response to the Ohio Environmental Protection Agency's ("Ohio EPA") Interested Party Period regarding proposed amendments to Ohio Administrative Code Chapters 3745-29 and 3745-30.

The OMA supports Ohio EPA's proposed amendments to Chapters 3745-29 and 3745-30, including Ohio EPA's proposal to merge the Industrial Waste Program and Residual Waste Programs, whereby non-hazardous, non-municipal waste streams will be called "industrial or manufacturing waste" or IMW. The reduction of the existing residual waste program, which previously established four landfill classifications, will result in just two landfill classifications remaining. At this preliminary stage, OMA believes the approach to these updated classifications will allow for a more streamlined approach to the program. The OMA also concurs with the revisions proposed to provide clarity and consistency with other rules in Chapter 3745.

The OMA reserves its rights to provide additional and/or different comments as the draft rule amendment process takes place. The OMA thanks Ohio EPA for the opportunity to participate in this process and would also like to thank staff for their efforts in preparing this proposed rule package.

Sincerely,

Rob Brundrett
Director, Public Policy Services

cc: Julianne Kurdila, Committee Chair
Frank L. Merrill, Esq., Bricker & Eckler LLP

November 22, 2019

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Attention Docket ID No. EPA-R05-OAR-2019-0522
Via e-mail: aburano.douglas@epa.gov

Re: Comments on Docket ID No. EPA-R05-OAR-2019-0522 (Proposed Approval of Ohio's SIP Revisions to Approve Alternative Monitoring for Non-EGUs)

Dear Administrator:

The Ohio Manufacturers' Association (OMA) is a trade organization representing more than 1,300 manufacturers throughout Ohio. OMA's mission is to protect and grow Ohio manufacturing, and for more than 100 years has supported reasonable, necessary, and transparent environmental regulations that promote the health and wellbeing of Ohio's citizens. Thank you for the opportunity to submit comments in support of U.S. EPA's proposed rule. The OMA has a strong interest in this issue and its outcome could potentially adversely and widely impact OMA members.

The OMA strongly supports U.S. EPA's proposed rule which would approve Ohio's amendment of its State Implementation Plan (SIP) to establish alternative monitoring requirements for certain covered sources for NOx SIP Call purposes other than Part 75 monitoring requirements, in particular alternatives to the currently required continuous emission monitors (i.e. "Part 75 CEMS"). U.S. EPA's proposed rule would provide much needed regulatory relief to large non-electric generating unit ("Non-EGUs") boilers and turbines. The proposal would allow alternative monitoring to costly Part 75 CEMS while still providing the necessary assurance that covered units are achieving the required emission reductions under the NOx SIP Call.

Background

The original NOx Budget Trading Program in Ohio required non-EGUs to establish reliable emissions data essential to the trading program. Part 75 CEMS were mandated on non-EGUs in Ohio to collect such data. The NOx Budget Trading Program was superseded initially by the Clean Air Interstate Rule ("CAIR") and later by the Cross-State Air Pollution Rule ("CSAPR"). Unlike the prior programs, CSAPR did not initially allow Ohio to include non-EGUs in its trading program. U.S. EPA later provided an option for states to include non-EGUs in the CSAPR trading program, but like many

states, Ohio elected not to use that option. Therefore, non-EGUs are now excluded from the emission trading program in Ohio.

Alternative Monitoring Does Not Interfere with Applicable Clean Air Act Requirements

Part 75 CEMS was integral for trading allowances. In Ohio, after recent changes to its SIP, there is no allowance trading program for NOx emissions for non-EGUs, therefore, the need to require stringent data obligations associated Part 75 CEMS monitoring does not exist.

Furthermore, non-EGUs can meet the NOx budget in Ohio even if operated every hour of the ozone season. The maximum mass emission rate for all affected non-EGUs in Ohio is 1,817 tons per ozone season, which is 45% of the 4,028-ton NOx ozone season budget for non-EGUs. For the 2018 ozone season, Ohio's large Non-EGUs reported collective NOx emissions of 543 tons which constitutes approximately 13% of the 4,028 NOx ozone season budget for non-EGUs. There is no need to require minute-by-minute NOx emissions information when the relevant compliance measure is the entire ozone season and there is such a large compliance margin. The alternative monitoring in Ohio's revised SIP will be more than sufficient to assure continued compliance.

Ohio's August 26, 2019, submission requests U.S. EPA update Ohio's SIP to incorporate the changes to Ohio Administrative Code (OAC) Chapter 3745-14 to allow for alternative monitoring for Non-EGUs. Ohio's SIP revision does not interfere or violate any applicable Clean Air Act requirements.

The Ohio SIP revisions do not alter the NOx SIP Call emission budgets. Therefore, the emissions budget will not change as a result of this action and Ohio continues to meet the requirement under 40 CFR 51.121(f)(2) for enforceable limits on Non-EGU NOx emissions during ozone season.

Furthermore, the alternative monitoring requirements in Ohio's revised SIP comply with 40 CFR 51.121(i)(1) for monitoring to ensure compliance with the NOx emission budgets. Ohio's regulations in OAC Chapter 3745-14, as set forth in Ohio's SIP revision, ensure reliable emissions monitoring. Emissions factors must be based upon historical CEMS data and stack test results. The rules require periodic stack tests to verify the emission factors are still representative of emissions. Without a trading program, there is no need for expensive minute-by-minute NOx emission monitoring. Ohio's revised SIP provisions for alternative monitoring are comprehensive and ensure compliance with the NOx emission budgets.

It is also important to recognize that Part 75 CEMS is not legally required. Federal Rule 40 CFR §51.121(i)(4) only requires Part 75 monitoring if the SIP revision contains "measures to control fossil fuel-fired NOx" as a means to staying below budget. Because no controls are needed to stay below budget (i.e. the max mass emission rate for non-EGUs is 45% of the 4,028-ton NOx ozone season budget), federal rules do not legally require CEMS monitoring under Part 75. Also, removal of CEMS for non-EGUs

will not trigger anti-backsliding under CAA §110(I) because a change in monitoring requirements does not result in additional emissions. See, *Kentucky Resources Council v. EPA*, 467 F.3d 986, 995 (6th Circuit 2006).

Providing Flexibility to the States

The OMA strongly supports U.S. EPA's willingness to provide regulatory flexibility and allow Ohio to accept alternative monitoring. As set forth in the comments above, the OMA strongly supports U.S. EPA's proposed rule and strongly encourages U.S. EPA to adopt the rule as quickly as possible to provide much needed regulatory relief to affected non-EGUs.

Sincerely,

Rob Brundrett
Director, Public Policy Services

EPA Appoints Kurt Thiede as Region 5 Administrator

01/08/2020

WASHINGTON (Jan. 8, 2020) — Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced the appointment of Kurt Thiede of Wisconsin to become regional administrator for Region 5, overseeing environmental protection efforts in Minnesota, Wisconsin, Illinois, Michigan, Indiana, and Ohio. Mr. Thiede will succeed Cathy Stepp, who is stepping down from her post in the Great Lakes region after several years of service to the agency.

“Kurt Thiede’s commitment to public service and passion for the Great Lakes region make him an excellent choice to lead the Region 5 office,” **said EPA Administrator Andrew Wheeler**. “While we will greatly miss Cathy Stepp’s leadership, I am confident that Kurt will bring the same level of dedication to the role of Regional Administrator. I look forward to working with him to further protect human health and the environment for our residents throughout the region.”

“I’m humbled and honored to be selected by Administrator Wheeler to serve as the next Regional Administrator for EPA Region 5. I look forward to helping to continue to advance this administration’s priorities of protecting public health and the environment, while promoting a strong and vibrant economy,” **said Mr. Thiede.**

Kurt Thiede comes to this role with extensive experience promoting and protecting the environmental health of the Great Lakes region. Most recently, Mr. Thiede served as the chief of staff to regional administrator Cathy Stepp.

Prior to joining the EPA, Mr. Thiede served as deputy secretary of the Wisconsin Department of Natural Resources from 2015 to 2017. As deputy, he served as the chief operations officer for the agency, overseeing a $500 million annual operating budget and providing leadership and direction to the agency’s 2,400 full-time employees. He is an 18-year veteran of WDNR, and previously spent four years as the administrator for the Land Division.

Mr. Thiede has a Bachelor of Science degree in wildlife management and biology from the University of Wisconsin-Stevens Point, and in 2016 he received an outstanding alumnus award from their school of natural resources.

Widespread Praise for Mr. Thiede’s Appointment:

“Kurt is a detail-oriented leader who works exceptionally well with Indiana and our surrounding states. We look forward to close collaboration with him,” **said Indiana Governor Eric Holcomb.**

“As co-founder of the Senate Climate Caucus I am pleased Administrator Wheeler selected Kurt Thiede to oversee Region 5 as he has spent nearly two decades at the Wisconsin DNR where he promoted and protected the Great Lakes region,” **said U.S. Senator Mike Braun (IN).** “I am confident Kurt will work on commonsense solutions pertaining to climate that build upon President Trump’s red-hot economy.”

“The selection of Kurt Thiede as Administrator for Region 5 is a solid choice. Kurt’s experience dealing with state and federal issues impacting Wisconsin lakes, shorelines, and drinking water will suit Southeast Wisconsin well,” **said U.S. Congressman Bryan Steil (WI-01).** “I look

forward to continue working with Kurt to protect our environment, grow our economy, and improve the quality of life in Wisconsin."

"Ohio EPA deeply appreciates its strong relationship with Region 5, and we have enjoyed working closely with Administrator Cathy Stepp. I would like to congratulate Kurt Thiede on his new appointment," **said Ohio EPA Director Laurie A. Stevenson.** "We are excited and look forward to working with Kurt in his new capacity. We are confident that Kurt will provide strong leadership within Region 5 and will work collaboratively with us to resolve issues that are important to Ohio."

"Kurt Thiede is a great leader and has dedicated his career to protecting the environment. I've had the privilege of working with him in recent years and I look forward to our continued collaboration as he takes on his new role as Region 5 administrator," **said Indiana Department of Environmental Management Commissioner Bruno Pigott.**

TIMELINE FOR REVIEWS OF THE OZONE & PM NAAQS

On May 9, 2018, EPA Administrator Scott Pruitt directed that the review of the primary and secondary ozone NAAQS be completed by the end of October 2020 and that the review of the primary and secondary NAAQS for PM be completed by December 31 of that year.[1] Although Mr. Pruitt is no longer Administrator, the Agency's present leadership has remained committed to this schedule.

In order to meet it, EPA's staff has indicated the following schedule for review of the ozone NAAQS:

- Spring 2019: Release of a draft Integrated Science Assessment ("ISA') for public comment and CASAC review
- Fall 2019: Release of a draft Policy Assessment ("PA") (which will contain assessments of exposure and risk that EPA has in the past generally included in a separate Risk and Exposure Analysis ("REA")) for public comment and CASAC review
- Early Spring 2020: Issuance of the final ISA and PA
- Spring 2020: Proposed decision
- Late 2020: Final decision

With regard to its review of the PM NAAQS, EPA released a draft ISA in October 2018 for public comment and CASAC review. Comments on this draft were due in December and CASAC met that month to review the draft. EPA's staff has indicated the following schedule for the completion of the PM NAAQS review:

- Summer 2019: Release of a draft PA (with analyses found in the past in a separate REA) for public comment and CASAC review.
- Late 2019-Early 2020: Issuance of the final ISA and PA
- Spring 2020: Proposed decision
- December 2020: Final decision

These timelines were both extremely ambitious. The partial government shutdown from December 21, 2018 – January 25, 2019 is a complicating factor that could further reduce the chance that EPA could meet either of them. That chance is lessened still more by CASAC's concern about (1) the lack of provision for second drafts of any of these documents: (2) the Committee's ability to provide meaningful feedback on the draft documents without assistance on some issues from additional technical experts; and, (3) the desire expressed by some members of CASAC for a stand-alone REA.

[1] Although review of the current secondary NAAQS is intended to be completed on this schedule, EPA has separated consideration of the ecological effects of PM and intends to address them together with the secondary NAAQS for NOx and SOx, perhaps through some type of joint standard.

Ozone and Particulate Matter Air Standards: EPA Review

The Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to review the standards for national ambient air quality every five years. In 2018, EPA announced strategies to expedite the National Ambient Air Quality Standard (NAAQS) review process while concurrently disbanding a pollutant-specific scientific review panel that has historically advised agency staff during their reviews. Although the CAA allows the EPA Administrator to specify the procedures for review of the NAAQS, past EPA reviews and revisions have garnered considerable congressional oversight. This In Focus discusses the status of EPA's current NAAQS reviews for ozone and particulate matter (PM), which EPA intends to complete in 2020, and issues of potential interest to Congress.

Background on Ozone and Particulate Matter

Ozone and PM are two of six principal pollutants referred to as "criteria pollutants" for which EPA has promulgated NAAQS under the CAA (42 U.S.C §7408(a)(1)).

Ground-level ozone, the primary component of smog, is formed when nitrogen oxides (NO_x) react with volatile organic compounds (VOCs) in sunlight. Ground-level ozone is associated with health effects, such as aggravated asthma, chronic bronchitis, heart attacks, and premature death. EPA has identified natural and anthropogenic sources of ozone precursors (e.g., NOx and VOCs) and ozone, including factories, lightning, power plants, vegetation, vehicles, volatile chemical products (e.g., paints and solvents) and wildfires.

PM refers to a mixture of solid particles and liquid droplets in the atmosphere. PM components may include acids, organic chemicals, metals, and soil or dust particles. The size of PM varies, ranging from tiny particles that can be seen only through a high-power microscope to larger particles (e.g., soot or smoke). Exposure to PM has been associated with adverse health effects, haze formation, and environmental impacts. The potential health effects include aggravated asthma, chronic bronchitis, decreased lung function, and premature death.

Typical sources of fine PM ($PM_{2.5}$)—measured at 2.5 micrometers or less in diameter—include direct emissions from vehicles, smokestacks, and fires. Coarse PM (PM_{10})—generally measuring 10 micrometers or less in diameter—is often associated with dust from paved and unpaved roads, construction and demolition operations, certain industrial processes and agriculture operations, and biomass burning. In addition, precursor emissions (e.g., sulfur oxides, NO_x, and VOCs) contribute to the formation of "secondary PM." $PM_{2.5}$ contains a much greater portion of secondary particles than PM_{10} does.

Notwithstanding air quality progress since 1970, ozone and PM concentrations exceed the NAAQS in some areas ("nonattainment areas"). **Table 1** lists these NAAQS and the estimated population in nonattainment areas.

Table 1. Selected NAAQS and the Estimated U.S. Population in Corresponding Nonattainment Areas

NAAQS	Primary Standard	Estimated U.S. Population in Nonattainment Areas
2015 Ozone	70 ppb	124 million
2012 Fine PM	12.0 μg/m³	22 million
1987 Coarse PM	150 μg/m³	9 million

Source: CRS, as adapted from EPA, Green Book, https://www.epa.gov/green-book. Estimated population based on 2010, rounded to nearest million. Data as of May 31, 2019.

Notes: Units of measure are parts per billion (ppb) and micrograms per cubic meter of air (μg/m³). See 40 C.F.R. Part 50 for detailed NAAQS. Table presents the most recent PM and ozone NAAQS. For other NAAQS nonattainment areas, see EPA's Green Book.

NAAQS Statutory Requirements

NAAQS do not directly limit emissions. Rather, NAAQS are concentration-based standards for ambient (outdoor) pollution. Under the CAA, Congress mandated that EPA establish two types of NAAQS for each criteria pollutant—a primary NAAQS, which must protect public health with an "adequate margin of safety," and a secondary NAAQS, which must "protect public welfare from any known or anticipated adverse effects" (42 U.S.C. §7409(b)). Public welfare includes damage to crops, vegetation, property, building materials, and climate (42 U.S.C. §7602(h)).

The CAA establishes a framework for EPA to set NAAQS based on the "latest scientific knowledge" through a notice-and-comment rulemaking process (42 U.S.C. §§7408, 7409). It requires EPA to review the NAAQS and the science upon which they are based every five years and then revise the NAAQS if necessary. The CAA also requires EPA to appoint an independent scientific review committee composed of seven members, which has become the Clean Air Scientific Advisory Committee (CASAC). The act directs CASAC to review the NAAQS every five years and recommend to the EPA Administrator "any new national ambient air quality standards and revisions … as may be appropriate" (42 U.S.C. §7409(d)(2)).

EPA's Review of the NAAQS

Beyond the aforementioned CAA requirements, procedural aspects of the NAAQS review are generally at the discretion of the EPA Administrator. Historically, the

agency has undertaken a multi-step process to review each NAAQS. Each NAAQS review typically begins with a planning phase in which EPA seeks public input and develops an Integrated Review Plan (IRP). The IRP maps out the schedule and process for the review and identifies policy-relevant science issues to guide the review.

EPA then reviews the relevant scientific literature published since the last NAAQS revision and summarizes it in a report currently known as the Integrated Science Assessment (ISA). The ISA compiles information about sources of the pollutant, exposure pathways, empirical evidence regarding the causality link between exposure and adverse health effects, and other topics. The ISA is intended as the scientific foundation for the EPA Administrator's assessment of whether the NAAQS sufficiently protect public health and welfare. EPA solicits public comment and, historically, multiple CASAC reviews before finalizing it.

The final ISA informs EPA's preparation of the Risk and Exposure Assessment (REA), which presents quantitative estimates of exposures and health risks under defined air quality scenarios. As with the IRP and the ISA, EPA has sought CASAC and public comment on the REA.

Subsequently, EPA prepares a Policy Assessment (PA), which summarizes information from the ISA and REA and provides the Administrator with options regarding the indicators, averaging times, statistical form, and numerical level (concentration) of the NAAQS. EPA solicits comment on the PA from CASAC and the public, then finalizes a decision on the NAAQS standard through the rulemaking process. The agency proposes a decision—to retain or to revise the standard—after considering information in the ISA, REA, and PA and the advice of CASAC.

EPA Restructuring of the NAAQS Reviews

The NAAQS review process has evolved over time, with multiple Administrations introducing procedural modifications intended to streamline the process, improve transparency, or strengthen the scientific basis. In 2018, EPA announced plans to streamline NAAQS reviews and obtain CASAC advice regarding background pollution and potential adverse effects from NAAQS compliance strategies. Historically, EPA has not requested CASAC to advise the agency with respect to adverse effects from NAAQS compliance strategies, although it is among the topics listed in CAA Section 109(d)(2)(C).

Under its CASAC charter, EPA may form subcommittees or workgroups, such as pollutant-specific panels, to serve under CASAC. Past panels, which included individuals with expertise in specific pollutants, assisted with the NAAQS reviews. In 2018, EPA disbanded the Particulate Matter Review Panel, which was formed in 2015, and directed the seven-member CASAC to assist EPA with the reviews for the 2012 PM and 2015 ozone NAAQS on an expedited timeline.

Some stakeholders and interest groups have raised concerns about the lack of pollutant-specific panels. CASAC recommended that EPA either reappoint the CASAC PM panel or appoint a new panel with similar expertise to inform the PM review. CASAC stated that the "breadth and diversity of evidence to be considered exceeds the expertise of the statutory CASAC members" (letter from CASAC to EPA, April 11, 2019).

CASAC also recommended "substantial revisions" to the Draft PM ISA, finding that it did "not provide a sufficiently comprehensive, systematic assessment of the available science." CASAC members did not reach consensus as to "whether there is robust and convincing evidence to support the EPA's conclusion that there is a causal relationship between $PM_{2.5}$ exposure and mortality" (CASAC letter).

EPA replied that it would make "necessary adjustments" to the PM ISA while finishing the PA by fall 2019 and reaffirmed its goal to complete the PM review by 2020. EPA has not formed a new PM-panel nor convened an Ozone panel. In its letter to CASAC, EPA stated it plans to make a "pool of subject matter consultants" available to provide feedback on the PM and ozone reviews to the CASAC chair "in a manner consistent with the Federal Advisory Committee Act" (letter from EPA to CASAC, July 25, 2019).

The current ozone review began in 2018, marking the first NAAQS review initiated in the current Administration. To date, EPA has released a draft ozone IRP and projected that the review will last a little over two-and-a-half years. The previous ozone review lasted about seven years. EPA will not develop a new REA in the current review. Instead, EPA plans to fold "REA-related analyses" into the PA (EPA, Draft IRP for Review of the Ozone NAAQS). EPA also plans to issue drafts of the ozone ISA and PA by October 2019 for "simultaneous review by the CASAC" and the public, which "should conclude" by end of 2019 (EPA letter). This approach differs from previously completed reviews, in which EPA has considered CASAC input and public comments on the ISA as it developed other milestone documents—for example, the PA.

Issues for Consideration

Congress, in its oversight capacity, may consider whether or not the EPA's current approach meets the CAA objectives to review the NAAQS and the science upon which they are based in a timely manner.

EPA's proposed modifications to the NAAQS review process underscore the tension between competing concerns. Some stakeholders, interest groups, and Members of Congress have criticized the timeliness of past NAAQS reviews, which routinely have not been completed within the five-year review cycle. Others have raised concerns about whether EPA's NAAQS decisions have been based on research that reflect the latest science and that the scientific basis is rigorous and unbiased.

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IF11288

Cincinnati Ozone Update

February 11, 2020

Bob Hodanbosi
Chief, Division of Air Pollution Control

Jennifer Van Vlerah
Assistant Chief, Division of Air Pollution Control

Ohio Environmental Protection Agency

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Background

- Ozone is formed from precursor emissions of nitrogen oxides (NOx) and volatile organic compounds (VOCs) in the presence of sunlight
- Ozone season in Ohio
  - Monitoring is required from March 1 to October 31
  - In recent years, exceedances began in mid-April or later
  - Clean Air Markets Database (CAMD) emissions reporting is required from May through September for sources in NOx trading programs (otherwise, we get annual emissions data)
- Ozone standard lowered to 70 ppb in 2015
  - based on a 3-year average of annual 4th high values (called "design value")

Ohio Environmental Protection Agency

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Background

On 8/3/18, U.S. EPA designated 3 areas as "marginal nonattainment": Cincinnati, Cleveland and Columbus

- Columbus was redesignated to attainment on 8/21/19
- Cincinnati and Cleveland continue to exceed the standard
- Cincinnati nonattainment area also includes 3 partial counties in KY

Ohio Environmental Protection Agency

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Requirements for Marginal Nonattainment Areas

- August 3, 2020: Submit Emissions Inventory and Emissions Statement
  - Historically, marginal areas were able to meet the standard with existing and planned controls - no additional controls at the state level were necessary
  - So, only areas designated moderate and above are required to submit a full attainment demonstration - including promulgating new controls
- August 3, 2021: Required to meet standard
  - 2020 is last ozone season before attainment date

Ohio Environmental Protection Agency

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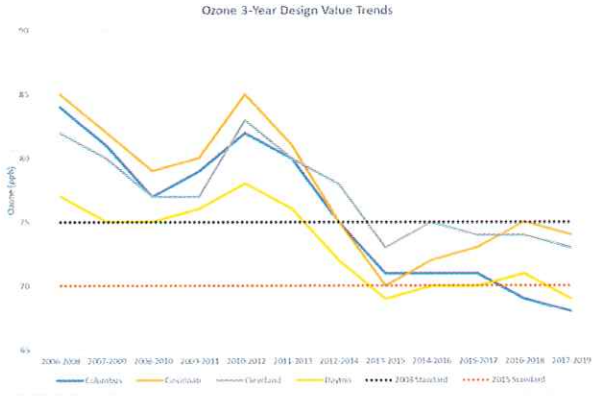
2019 4th High and Design Value

Area	AQS ID	Site Name	County	Annual 4th High				Design Value	
				2016	2017	2018	2019	2016-2018	2017-2019
Cleveland	39-085-0003	Eastlake	Lake	74	73	76	71	74	73
Cincinnati	39-061-0006	Sycamore	Hamilton	75	72	80	72	75	74
Columbus	39-049-0029	New Albany	Franklin	72	70	66	68	69	68
Dayton	39-113-0037	Eastwood	Montgomery	72	70	73	64	71	69



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Discussion/Questions

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Cincinnati Outlook

- **Cincinnati is highly unlikely to meet standard by end of 2020**
- Required to meet standard ("attain") by August 3, 2021
  - 2020 is last ozone season before attainment date
- Critical monitor (Sycamore) would need a 2020 4th high below 61 ppb
  - Lowest 4th high since 2000 was 69 ppb in 2013
  - Exceeded this value 19 times in 2017, 31 times in 2018, 22 times in 2019
- Unlikely to qualify for 1-year extension
  - All monitors in area would need 2020 4th high meeting standard (70 ppb or below)

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Cincinnati Outlook

Site Name	Site Id	County	2014 4th High	2015 4th High	2016 4th High	2017 4th High	2018 4th High	2019 4th high	2017-2019 Design Value	2020 4th high needed to violate 2015 standard	2020 4th high needed for 1 year extension
Middletown Airport	39-017-0018	Butler	69	70	73	70	76	67	71	70	70
Crawford Woods	39-017-0023	Butler				72	73	67	70	73	70
Miami University, Oxford	39-017-9991	Butler	69	68	71	69	70	65	68	78	70
Batavia	39-025-0022	Clermont	68	70	73	68	69	71	69	73	70
Sycamore	39-061-0006	Hamilton	71	72	75	72	80	72	74	61	70
Colerain	39-061-0010	Hamilton	73	70	73	68	75	67	70	71	70
Taft NCore	39-061-0040	Hamilton	69	71	73	71	72	71	71	70	70
Lebanon	39-165-0007	Warren	71	71	74	68	75	70	71	68	70

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Consequences of Not Meeting Standard

"Bump-up" from marginal to moderate nonattainment triggers additional requirements under Clean Air Act (CAA):

- NOx Reasonably Available Control Technology (RACT)
  - affects many industrial sources
- VOC Control Technique Guidelines (CTGs)
- Additional challenges permitting new and modified sources
  - NSR offset ratio 1.15:1
  - Baseline year reset
- Emissions inspection and maintenance (I/M) Program (i.e. E-check)
  - But not the E-check you may remember!
    - On-board diagnostics only; no longer tail-pipe tests

Ohio Environmental Protection Agency

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Discussion/Questions

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"Bump-up" Timeline

- CAA Required: 2015 standard (Marginal to Moderate)
  - Attainment date (marginal): 8/3/21
  - Bump-up: Required 6 months after attainment date (i.e. 2/3/22)
    - Attainment demonstration (with I/M Program, etc.) due: 8/3/21
      - Already past due at time of bump-up! U.S. EPA can adjust some deadlines as part of bump-up
    - New (moderate) attainment date: 8/3/24 (cannot be extended)
- Recent Actual: 2008 standard (Moderate to Serious)
  - Several areas including Chicago
  - Attainment date (moderate): 7/20/18
  - Bump-up: published 8/23/19
    - Deadline for some SIP requirements extended to 8/3/20
    - New (serious) attainment date: 7/20/21 (not extended)

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Evaluating Possible Control Options

- Local and/or statewide
  - Statewide would avoid common complaints about controls only in certain areas
  - On the other hand, areas in attainment would complain about controls
- In the past, primarily relied on federal control measures to meet standards
  - No new federal control measures are planned (some being rolled back)
- LADCO Project Team is also exploring options on a regional study

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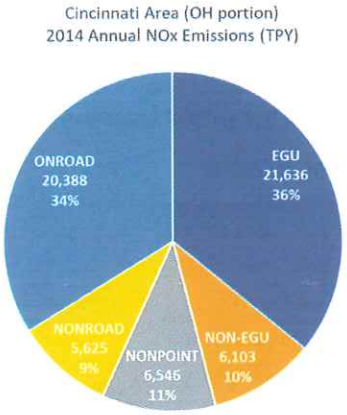
NOx Inventory



- Point sources significant
  - Electric generating units (EGUs) and non-EGUs (industrial sources)
    - Total 27,739 tons in 2014 (46%)
- Mobile significant
  - Onroad and nonroad

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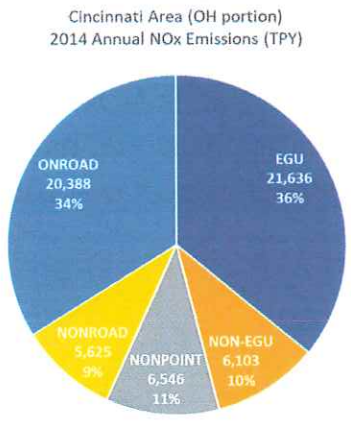
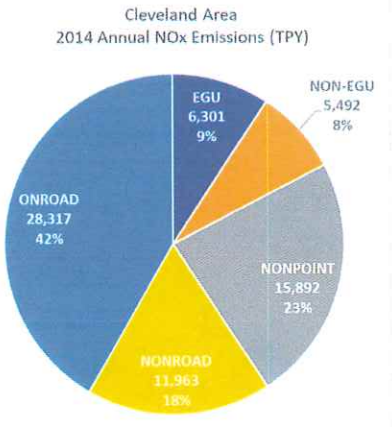
NOx Inventory
Comparison to Cleveland





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NOx Point Source Inventory

2018 Update and Comparison to Cleveland

- 2014 is the most recent available inventory that includes all types of emission sources (including mobile, nonpoint, etc.)
  - However, we do have more recent for point sources (2018)
- Compare to Cleveland for perspective

NAA	Source Type	2014 NOx (tons)	2018 NOx (tons)
Cincinnati	EGU	21,636 (36%)	15,097 (↓30%)
	Non-EGU	6,103 (10%)	4,728 (↓23%)
	Total Point	27,739 (46%)	19,825 (↓29%)
Cleveland	EGU	6,301 (9%)	1,990 (↓68%)
	Non-EGU	5,492 (8%)	3,529 (↓36%)
	Total Point	11,793 (17%)	5,529 (↓53%)

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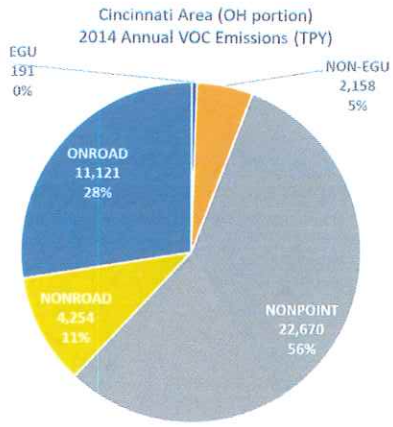
VOC Inventory



- Nonpoint is significant
- Available studies show reduction in NOx emissions would have bigger impact on ozone

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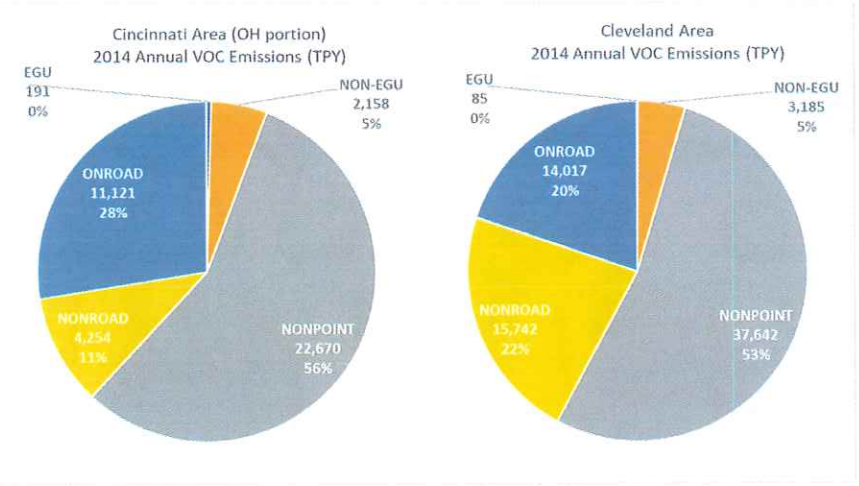
VOC Inventory
Comparison to Cleveland



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Summary

- Be prepared!
  - Cincinnati is highly unlikely to meet standard by end of 2020
  - "Bump up" to moderate may be coming, could have significant impact
- Ohio EPA will be looking at potential control options, both
  - short-term/immediate actions - probably won't get us 100%, but possibly closer to an extension
  - longer-term actions
- Point sources are significant - but other sources are, too
  - need to get creative!

Ohio Environmental Protection Agency

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Environment

Public Comment Period on Lake Erie Plan Closes Feb. 28
February 7, 2020

The Ohio Lake Erie Commission has released its draft **Lake Erie Protection and Restoration Plan 2020** (LEPR) for public comment. According to Ohio EPA, the LEPR, last published in 2016, "reflects actions that the Ohio Lake Erie Commission and its member agencies will take over the next several years to protect, preserve, and restore our Great Lake."
The public comment period on the plan will close Friday, Feb. 28. For details, see the Ohio EPA's **press release**. For questions, email the OMA's **Rob Brundrett**. *2/6/2020*

Ensuring Compliance with Ohio's Stormwater Program
February 7, 2020

The Ohio Stormwater Association, in collaboration with Ohio EPA, is offering a **free webinar** to manufacturers who want to learn more about the permitting process for the agency's stormwater program. Set for 11 a.m. on Wednesday, Feb. 12, this one-hour event will feature best practices and tips on how to comply. *2/4/2020*

Ohio EPA Compliance Assistance Conference Set for March 31 – April 1
January 31, 2020

Ohio EPA's **winter newsletter** reports that registration is open for the agency's annual **Compliance Assistance Conference**, set for March 31 – April 1, 2020 at the Greater Columbus Convention Center. The conference provides information and contacts to help your company comply with state and federal environmental standards. Among the event's presenters will be recently appointed U.S. EPA Region 5 Administrator **Kurt Thiede**. *1/27/2020*

Update to Lake Erie Phosphorus Reduction Plan
January 31, 2020

State officials have **announced** the release of an **update** to the Ohio Domestic Action Plan aimed at reducing phosphorus in Lake Erie under the bi-national Great Lakes Water Quality Agreement. It's the first such iteration of the plan since Gov. DeWine's H2Ohio program was enacted. The plan focuses on four aspects:

- Establishing science-based priorities for agricultural management practices and state programs to support H2Ohio efforts to encourage farmers to implement science-based best practices;
- The importance of wetland restoration and outlining ODNR efforts to create, restore, and enhance wetlands for nutrient reduction as part of H2Ohio;
- Updated actions for communities, including H2Ohio support for home sewage treatment system remediation;
- Integrating the role of watershed planning at the local level for siting projects to reduce nutrients efficiently, including a distribution of the load reduction throughout the Maumee River watershed based on the Ohio EPA Nutrient Mass Balance method.

Previous versions of the plan required Ohio EPA to pursue legislation that would require all treatment works discharging wastewater containing phosphorus to achieve at least a monthly average effluent concentration of 1 mg/L phosphorus. The OMA and its nutrient water working group has worked tirelessly with Ohio EPA and others to ensure manufacturing is not disproportionately harmed by any new regulations on nutrients. Public comments can be **emailed** by March 2, 2020. *1/30/2020*

OMA Submits Comments on Industrial Waste Changes
January 24, 2020

This week, the OMA **submitted comments** supporting Ohio EPA's proposed amendments to merge the Industrial Waste

Program and Residual Waste Programs, whereby non-hazardous, non-municipal waste streams will be called "industrial or manufacturing waste" or IMW. This change will result in the establishment of just two landfill classifications instead of the current four.
The OMA commented that it believes the approach to these updated classifications will allow for a more streamlined approach. We will continue to monitor the rule package for noteworthy changes. *1/23/2020*

Despite the Expanding Economy, CO2 Emissions Expected to Decline Further
January 24, 2020

In its latest Short-Term Energy Outlook, the U.S. Energy Information
Administration **forecasts** year-over-year decreases in energy-related carbon dioxide (CO2) emissions through 2021. After declining by 2.1% in 2019, energy-related CO2 emissions are expected to decrease by 2.0% in 2020, and again by 1.5% in 2021. *1/21/2020*

Charting Ohio's CO2 Emissions
January 17, 2020

The St. Louis Fed has published nearly 5,000 **new data series** examining the sources of energy-related CO2 emissions in the U.S. The data series from the U.S. Energy Information Administration show emissions by fuel type, sector, and state. Here's a look at **Ohio's industrial CO2 emissions**, which have dropped dramatically since 1980. *1/14/2020*

Honda R&D Earns Ohio EPA's Top Award
January 17, 2020

This week, Ohio EPA Director Laurie Stevenson **recognized** Honda R&D Americas, Inc. with the agency's platinum level environmental stewardship award. The company was bestowed with the honor due to its emphasis on waste reduction, community service and outreach.
Honda R&D Americas is Honda's second-largest R&D center in the world, located just outside Columbus in Raymond. *1/14/2020*

Kurt Thiede Appointed as U.S. EPA Region 5 Administrator
January 10, 2020

This week, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler **announced** the appointment of Kurt Thiede of Wisconsin to become Region 5 administrator, overseeing environmental protection efforts in Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.
Thiede will succeed Cathy Stepp, who is stepping down from her post in the Great Lakes region after several years of service to the agency. The OMA established a strong working relationship with Thiede during his time as chief of staff to Administrator Stepp. We're looking forward to continuing that relationship as he begins his new role. *1/9/2019*

Key Scientist Debunks 'Dark Waters'
January 10, 2020

The movie "**Dark Waters**" continues to be exposed for the piece of sensationalism it is. This week, one of the six scientists who wrote a report on the 1999 cattle deaths featured in the movie took issue with the film.
In a **letter to the editor**, Robert H. Poppenga says the movie perpetuates falsehoods about science to sell movie tickets — noting that his team "concluded there was no evidence that chemical contamination was associated with the cattle's health problems, which instead resulted from poor nutrition and sub-par veterinary care." The movie, he says, "ignores scientific studies that are inconvenient to the filmmakers' narrative." *1/7/2020*

OMA's Rob Brundrett Reviews 'Dark Waters'
January 3, 2020

In late 2019, a movie called "Dark Waters" was released by Hollywood activists, and promoted by trial lawyers and anti-manufacturing interests. While the movie has been a box office bust, it has succeeded in its mission of misrepresenting manufacturing in the Ohio River Valley.

The OMA's Rob Brundrett, director of public policy services, recently reviewed the film at the request of the Ohio State Bar Association. The association's magazine, *Ohio Lawyer*, has **published his critique**.
If you haven't already seen the OMA's **"Truth About Dark Waters"** website — which sets the record straight with fact sheets, videos, and a blog — be sure to do so. *1/2/2020*

Ohio Manufacturer: System of 'Jackpot Justice' Causing Financial Harm to U.S. Economy
January 3, 2020

Andrew O. Smith, CEO of Yenkin-Majestic Paint Corp. in Columbus, has also penned his thoughts on the movie "Dark Waters" and what he calls "a system of 'Jackpot Justice' where trial lawyers and special-interest groups extort huge payouts and regulate manufacturing through litigation."

In a Jan. 2 **guest editorial** published in *The Columbus Dispatch*, Smith wrote: "Lawsuits impose a cost on our country equal to roughly 9.4% of GDP or about $2 trillion annually in dead-weight losses, showing up in higher costs for goods and services to the tune of $6,000 for every man, woman and child in this country, every single year." *1/2/2020*

Ohio EPA Webinars Will Cover Recycling, Universal Waste
December 20, 2019

Ohio EPA has two upcoming educational events that may be of interest to manufacturers.

The agency's **Jan. 8 webinar** will detail its 2020 Recycling & Litter Prevention Grant application process and those activities targeted by this grant program. A **Feb. 13 webinar** will cover Ohio's universal waste rules, which are intended to promote recycling as well as proper disposal by easing certain regulatory requirements. *12/18/2019*

OMA Submits Comments on State Implementation Plan for Non-EGUs
December 13, 2019

Late last month, the OMA submitted comments regarding Ohio's State Implementation Plan (SIP) revisions to approve alternative monitoring for non-existing electric utility generating units (EGUs).

In its comments, the OMA stated: "U.S. EPA's proposed rule would provide much-needed regulatory relief to large non-EGU boilers and turbines." Read the **OMA's full comments**. *12/12/2019*

House Passes Pre-Emption Bill Addressing Auxiliary Containers
December 13, 2019

This week, on a 57-35 vote, the Ohio House passed **House Bill 242**. The bill would pre-empt local governments from placing taxes or outright bans on auxiliary containers — such as bottles, cans or bags. HB 242 is **supported** by the OMA.
The legislation has become a political flashpoint in recent weeks — not only in Ohio, but across the country. The Senate continues to debate HB 242's companion bill (**Senate Bill 222**), and will now have the House version to consider, as well. The governor recently weighed in on the issue, stating he did not want to see the legislation passed in the House.
During the last General Assembly, the House also passed a version of the pre-emption legislation, but it failed to get Senate approval. The OMA will continue working to get this proposal enacted in 2020. *12/12/2019*

State Officials Send Mixed Messages on Auxiliary Container Bill
December 6, 2019

This week, the Ohio Senate held its third hearing on **Senate Bill 222** — an **OMA-supported** bill that would pre-empt local governments from enacting taxes or bans on auxiliary packaging such as bags and containers. A litany of opponents testified on Tuesday, including the **mayor of Bexley**, whose city recently enacted a law to ban plastic bags.
Speaker **Larry Householder** announced Tuesday that he would like to get his chamber's version of the bill, **House Bill 242**, passed prior to year's end. But a day later, Gov. Mike DeWine was quoted as saying he does not support the legislation, adding that its passage would be "a mistake."
The Senate will continue its consideration of SB 222. More to come as this issue continues to play out. *12/5/2019*

Register Now for Ohio EPA Compliance Assistance Conference
December 6, 2019

Registration is open for **Ohio EPA's annual Compliance Assistance Conference**, set for March 31 – April 1, 2020 at the Greater Columbus Convention Center. The conference offers valuable information and contacts that will

help your company comply with state and federal environmental standards. Ohio EPA Director Laurie Stevenson and U.S. EPA Region V Administrator Cathy Stepp are both scheduled to address the conference. *12/3/2019*

Gov. DeWine Announces PFAS Testing Plan December 6, 2019

This week, Gov. Mike DeWine announced the state's **action plan** for testing for certain per- and polyfluoroalkyl substances (PFAS) chemicals in Ohio's public water systems. The plan, released in conjunction with Ohio EPA and the Ohio Department of Health, would coordinate testing for nearly 1,500 public water systems that supply water to roughly 90% of Ohio's population. If PFAS chemicals are detected, the state will work with local health departments to provide information to the system owners. This information will range from how to get additional testing, reducing exposure, and point-of-use treatment. The water sampling is expected to be completed by the end of 2020. A **website** has been developed to keep Ohioans informed.

The OMA has created a working group to work to address PFAS-related issues and possible impacts to Ohio manufacturers. If you would like to learn more or participate, contact **Rob Brundrett** at the OMA. *12/5/2019*

Environment Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on February 10, 2020

HB7 **H2OHIO PROGRAM** (GHANBARI H, PATTERSON J) To create the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality, to create the H2Ohio Advisory Council to establish priorities for use of the Fund for water quality programs, and to authorize the Ohio Water Development Authority to invest the money in the Fund and to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.

Current Status: 10/22/2019 - Senate Finance, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-7

HB94 **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.

Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94

HB95 **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.

Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95

HB242 **CONTAINER USE RESTRICTIONS** (LANG G, JONES D) To authorize the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.

Current Status: 12/11/2019 - **PASSED BY HOUSE**; Vote 58-35

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-242

HB340 **DRAINAGE LAW** (CUPP B) To revise the state's drainage laws.

Current Status: 1/22/2020 - House State and Local Government, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-340

HR247 **AIR QUALITY STANDARDS** (ROEMER B) To respectfully urge Congress and President Donald Trump to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program and direct the Administrator of USEPA to begin new rule-making procedures under the Administrative Procedures Act to repeal and replace the 2015 National Ambient Air Quality Standards; to respectfully urge Congress and President Donald Trump to pass legislation to achieve improvements in air quality more efficiently while allowing companies to innovate and help the economy grow; to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress and the President fail to act; and to encourage OEPA to explore alternatives to E-Check in Ohio.

Current Status: 1/28/2020 - **REPORTED OUT**, House Energy and Natural Resources, (Fifth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HR-247

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: 1/28/2020 - House Energy 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