

**10:00 a.m. (EST)**  
**1-866-362-9768**  
**552-970-8972#**



# **Environment Committee**

**June 16, 2015**

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**2015 Environment  
Committee Calendar**

**Tuesday, June 16**  
**Thursday, October 22**

**OMA Environment Committee Meeting Sponsor:**



**One Firm Worldwide<sup>SM</sup>**



## OMA Environment Committee

June 16, 2015

### Agenda

<b>Welcome &amp; Roll Call</b>	Chairman Joe Bulzan, RockTenn
<b>Guest Presentation</b>	Mark Koch, Sustainability and Environmental Engineer MillerCoors
<b>Counsel's Report</b>	Frank Merrill, Bricker & Eckler
<b>Guest Speaker</b>	Bob Hodanbosi, Chief of the Division of Air Pollution Control Ohio Environmental Protection Agency
<b>Public Policy Report</b>	Rob Brundrett, OMA Staff
<b>Lunch</b>	

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

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

**Thanks To Today's Meeting Sponsor:**



## **Bob Hodanbosi – Ohio EPA**

### PROFESSIONAL BACKGROUND

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

### PROFESSIONAL ASSOCIATIONS

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

### EDUCATIONAL BACKGROUND

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



# MillerCoors Sustainability

OMA

June 16, 2016

Mark S. Koch, PE  
Environmental and  
Sustainability Engineer



# WIB 2.1 and Embrace Sustainability

## Transform Our Portfolio

- Take share in Premium Lights
- Accelerate share in Crafts and Imports
- Re-engineer an enduring Economy business
- Build a presence in emerging specialty segment
- Deliver consumer-preferred quality

## Fuel Growth

- Simplify and standardize our work, systems and processes
- Build differentiated capabilities in strategic areas
- Establish a customer-driven supply chain
- Reinvest cost savings to accelerate top-line growth



## Earn Customer Preference

- Deliver best-in-category retail execution
- Drive disproportionate growth in chains
- Enable the most effective distributor network
- Accelerate local brand building

## Embrace Sustainability

- Promote and protect the responsible enjoyment and marketing of beer
- Embed environmental stewardship in the way we operate
- Increase awareness and commercial impact of community and multicultural partnerships

## Engage People

- Build a high-performance, high-accountability culture
- Focus people and capability development on our growth strategies
- Develop and attract a diverse workforce
- Build an inclusive, flexible and safe working environment



# GREAT BEER, GREAT RESPONSIBILITY

## VISION

Creating America's Best Beer Company

## MISSION

Great People Changing the Way America Enjoys Beer

## GOAL

Leader on Sustainability in the US Beverage Industry

## Three Pillars



### GREAT TIMES

- Helping prevent drunk driving
- Working to reduce underage drinking
- Ensuring adherence to our strict marketing standards



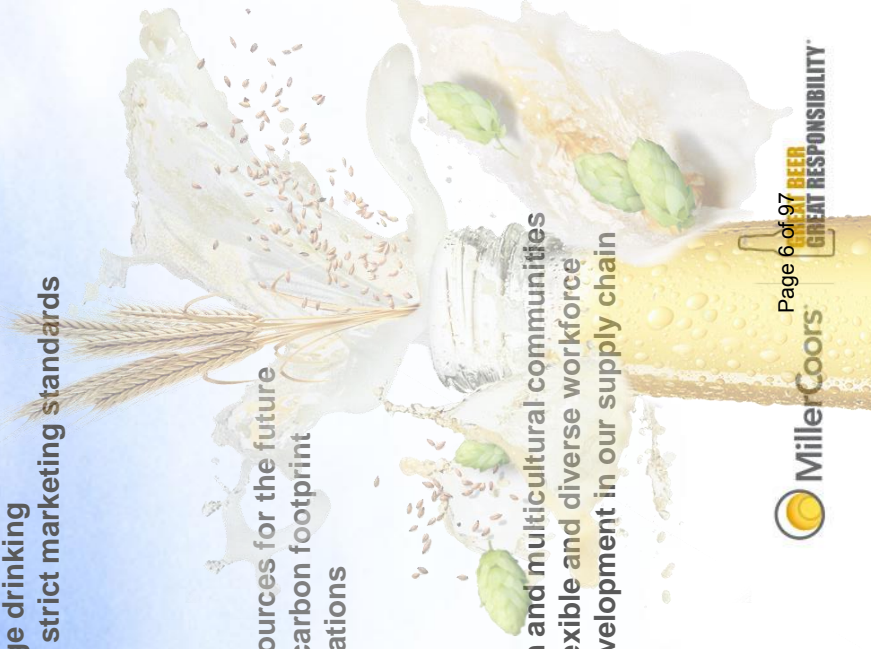
### GREAT ENVIRONMENT

- Ensuring shared water resources for the future
- Reducing our energy and carbon footprint
- Achieving zero waste operations



### GREAT COMMUNITIES

- Investing in our hometown and multicultural communities
- Anchoring an inclusive, flexible and diverse workforce
- Accelerating economic development in our supply chain



# Molson Coors Beer Print

## HOW WE SHOULD THINK ABOUT OUR BEER PRINT IN SUPPLY CHAIN:

- Saving money over the long term
- Managing risk
- Long term commitment to brewing
- Ensure integrity to Corporate Responsibility Customer and Brand agenda
- Our stakeholders expect it (customers, consumers, investors, employees, government)



## OUR RISKS & CURRENT STATE

If our annual landfill waste was stacked into 1M<sup>3</sup> dustbins, it would be

**1000m TALLER** than **MOUNT EVEREST**

Our annual electricity consumption could power

**100,000 HOMES** PER YEAR

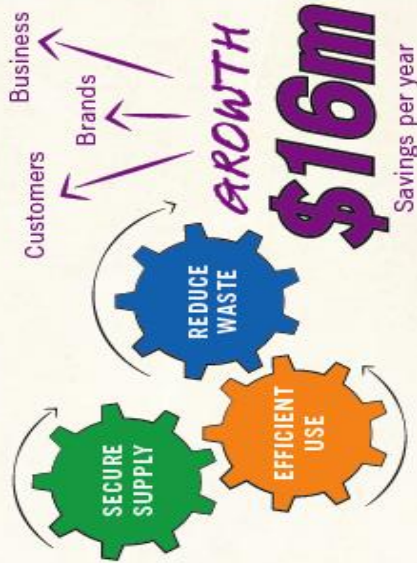
Our customers expect us to help them

**REDUCE** their **CARBON FOOTPRINT**

Every year we use the same amount of water as goes over

**NIAGARA FALLS** in **136 mins** (or 2 hours and 16 mins)

## WHAT IMPACT CAN RESOURCE EFFICIENCY MAKE?



## 2020 TARGETS

**0% WASTE TO LANDFILL** | **25% ENERGY REDUCTION** | **15% CARBON REDUCTION** | **15% WATER REDUCTION**

## WHAT WE WILL ACHIEVE

The waste we will divert by 2020 would fill up

**HALF**

The energy we will save by 2020 would

**POWER** THE *Fabulous* LAS VEGAS STRIP FOR 4-8 DAYS

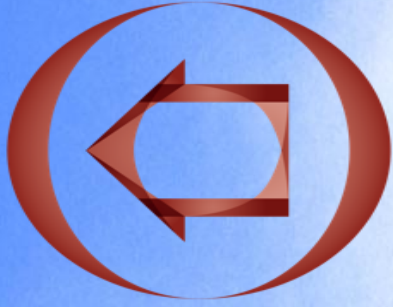
The carbon we will save would take

**10,000 TREES** 30 YEARS to offset

The breweries in water stressed areas will achieve world class water efficiency of

**3 PINTS** per pint

# SABMiller Prosper



a thriving world a sociable world a resilient world a clean world a productive world

**PURPOSE:** We bring refreshment and sociability, improve livelihoods and build communities



# Introduction - Sustainable Stairways

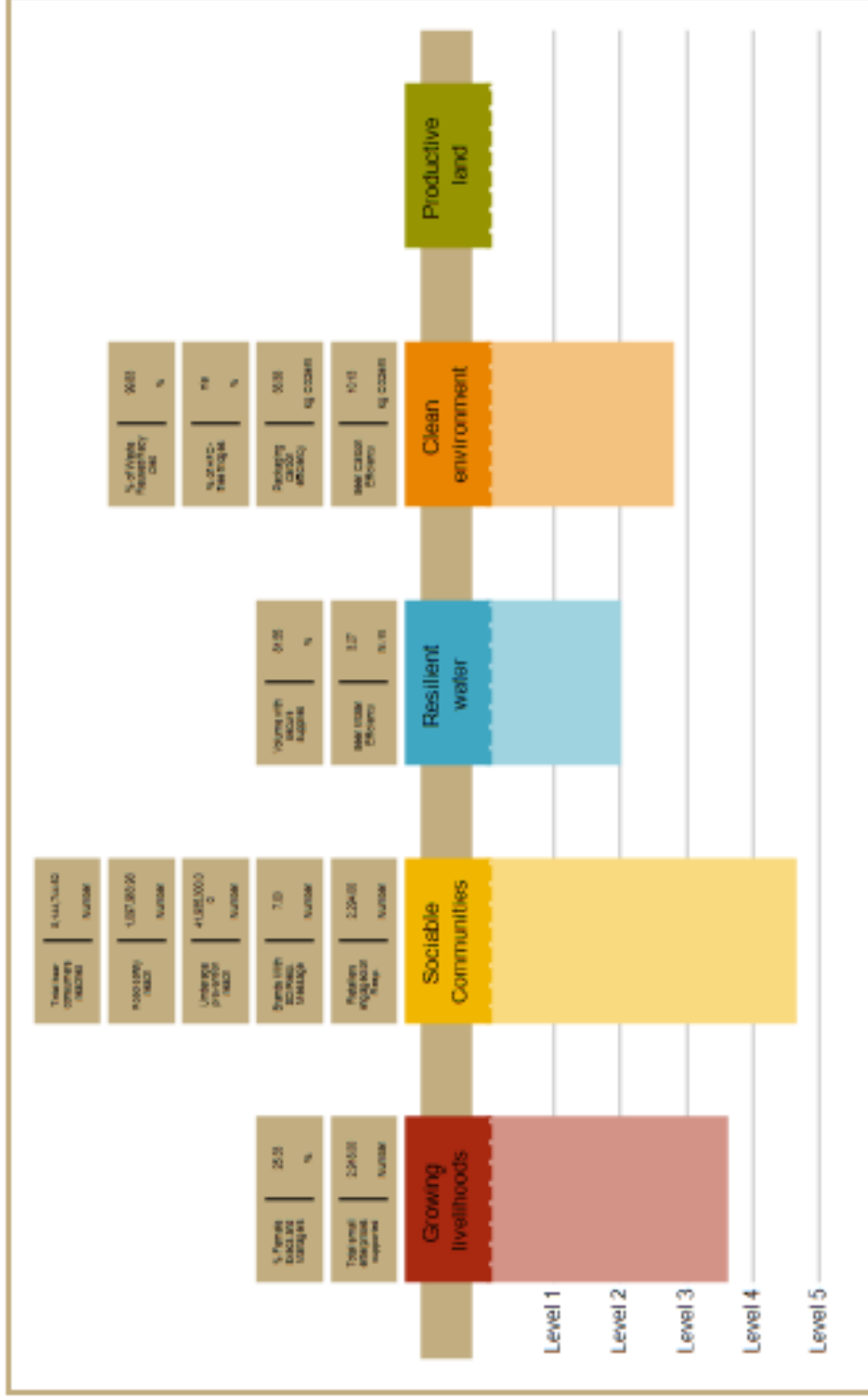
## What is SAM?

A tool used by MillerCoors & our parent companies to:

- Measure and report performance against the 5 Prosper priorities every six months
- Benchmark sustainability across 150+ breweries world-wide.



## Performance Overview



### SAM Performance Levels

5. **Leading Edge:** Achieving genuine global leadership on an issue.
4. **Best Practice:** Achieving what is currently considered to be a global best practice in a particular field.
3. **Developing Leadership:** Applying a comprehensive approach including innovative tools and widespread engagement.
2. **Progressing:** Ensuring consistent performance is achieved in a particular field.
1. **Minimum Standards:** Complying with key sustainable development risks we are facing today. (All operations must meet level 1.)

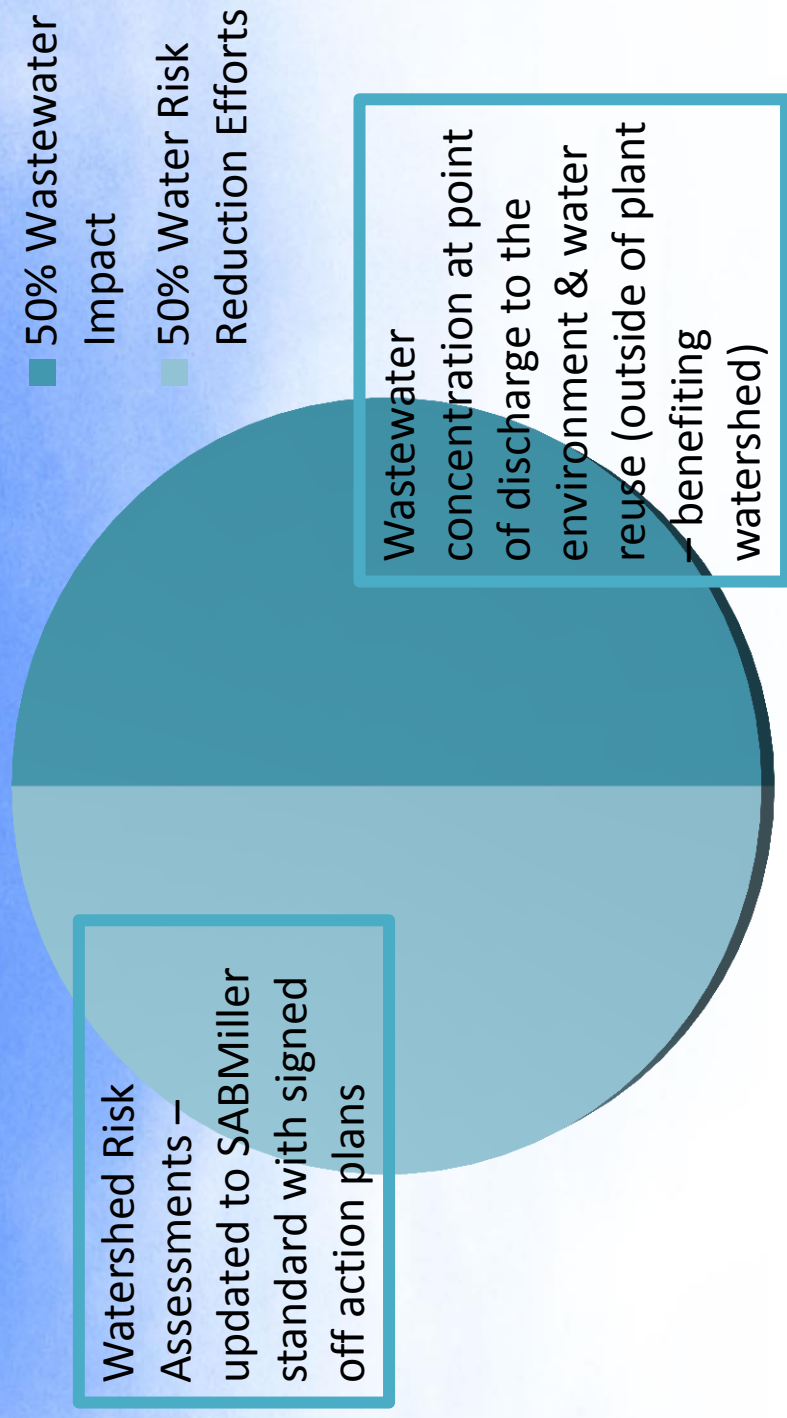


# Secure shared water resources for our business and local communities

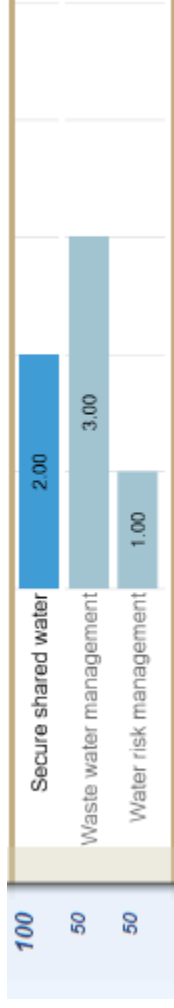


# Clean water for our Brewery & Community

Our score is made up of 2 components



# Water Stairway – April thru Sept 2014



MillerCoors



Leading Edge

Best Practice

Developing Leadership

Progressing

Minimum Requirement



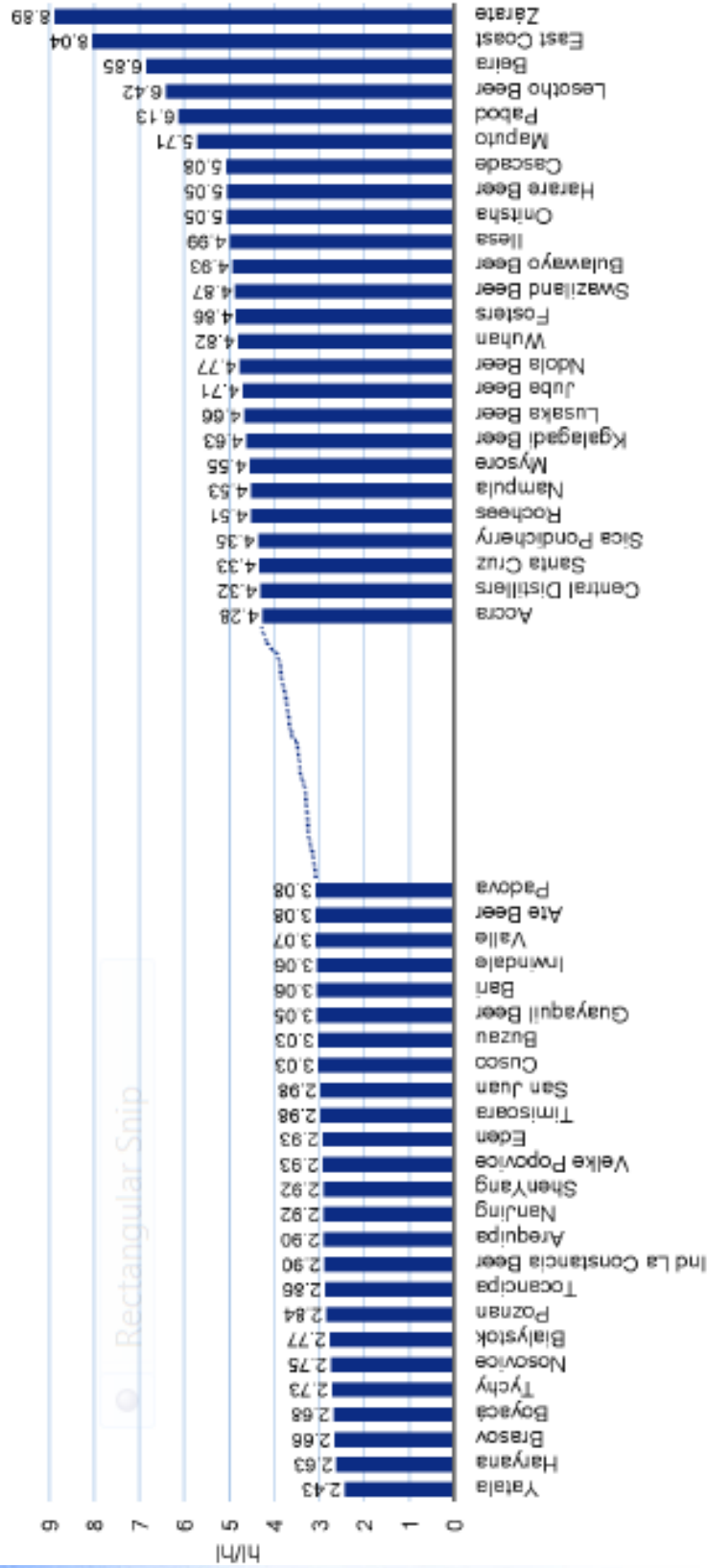
MillerCoors™

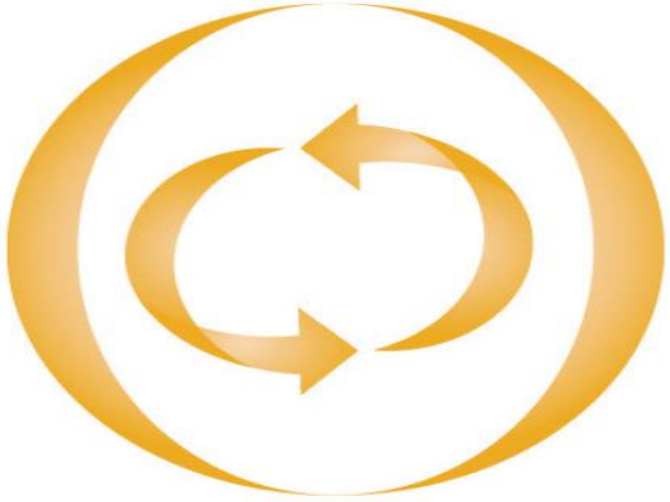
# Water Benchmarking – April thru Sept 2014



## Water Ratio (hl/hl) Sep 2014 (YTD)

Water Ratio - Best and Worst Quartile (YTD)

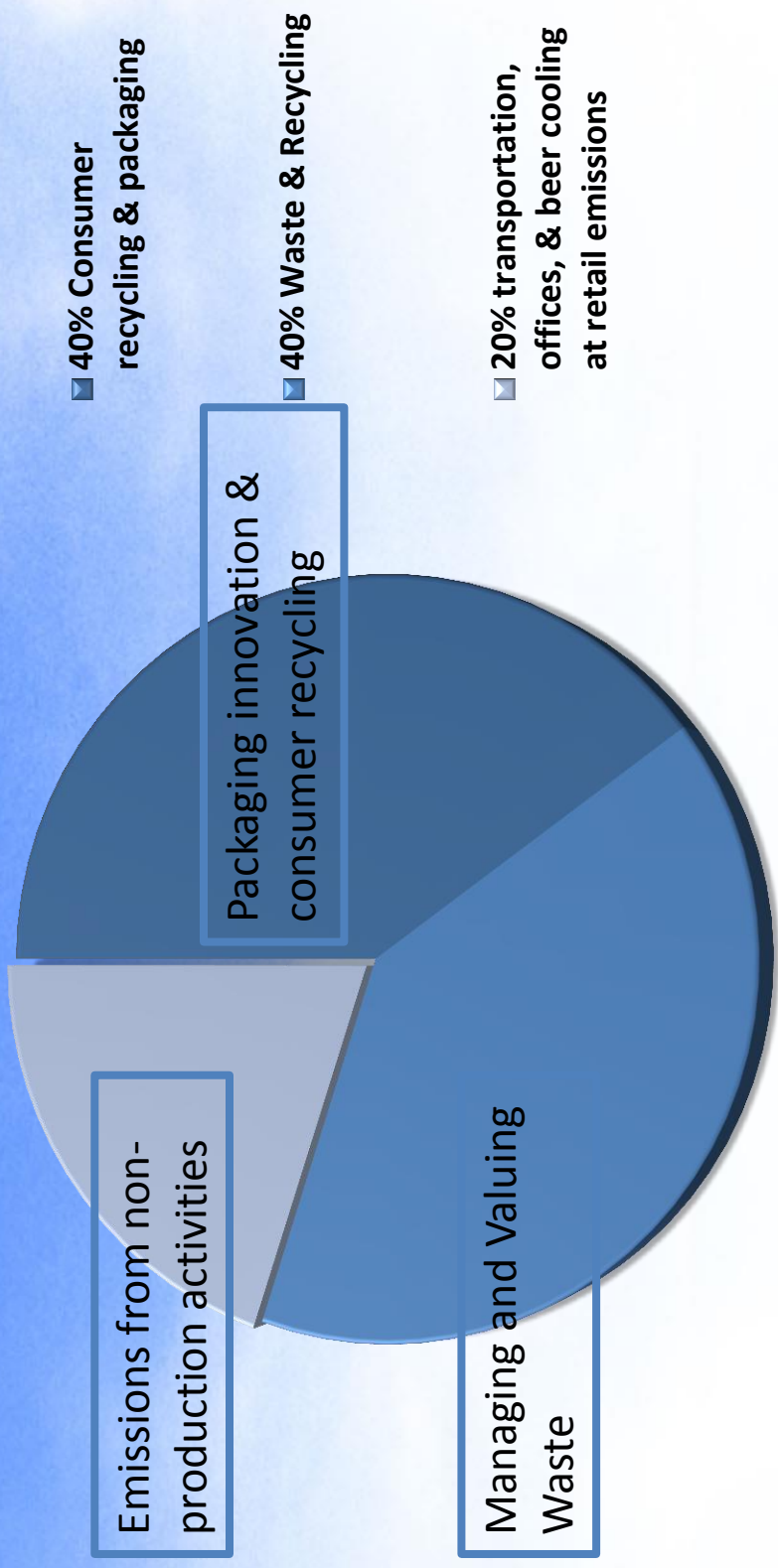




# Create value through reducing waste and carbon emissions

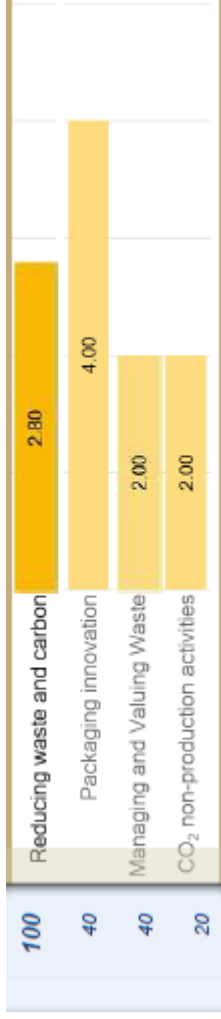
# Creating Value Through Reducing Waste & Carbon Emissions

Our score is made up of 3 components

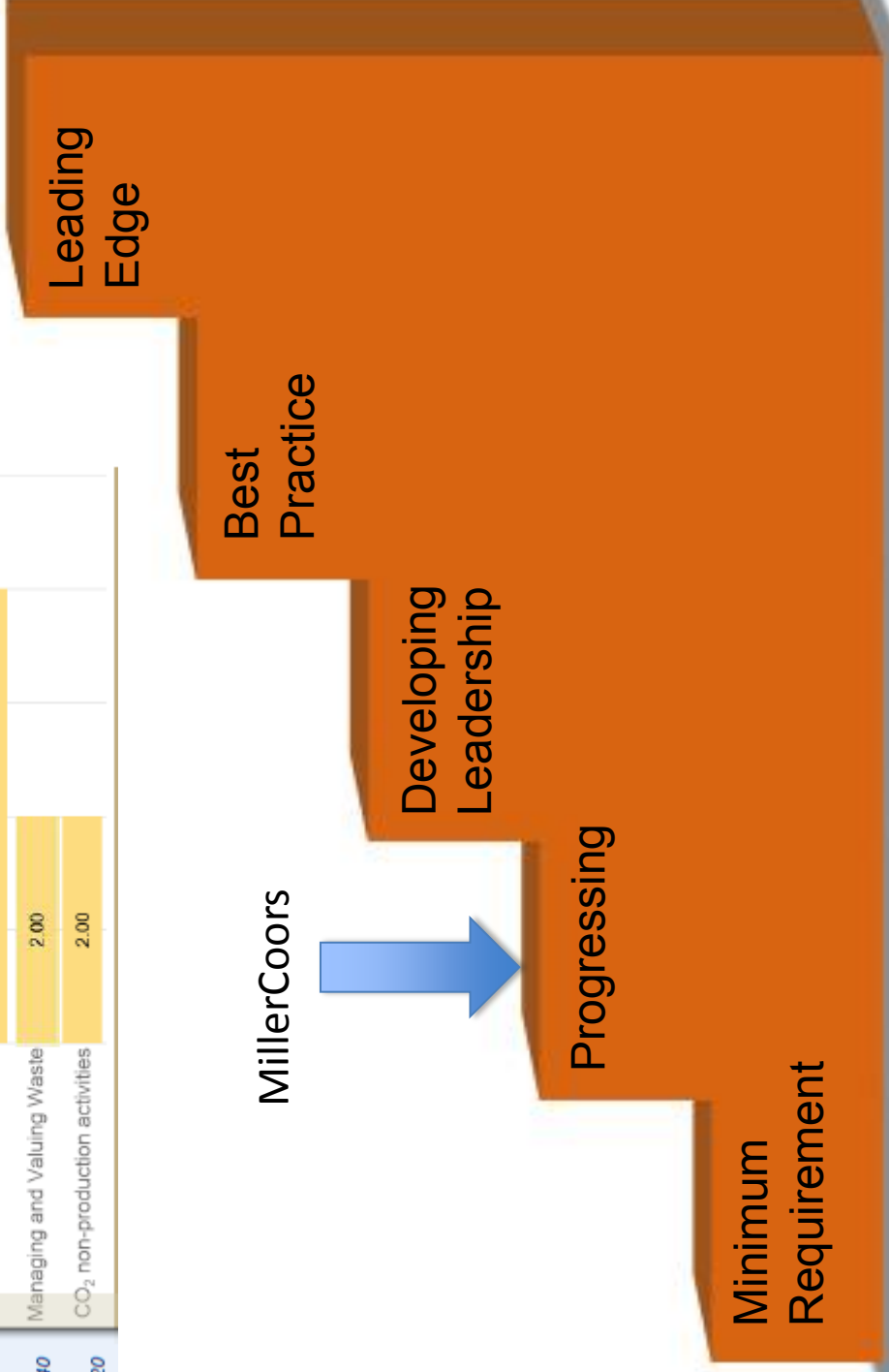




# Waste & Energy – April through Sept 2014



MillerCoors



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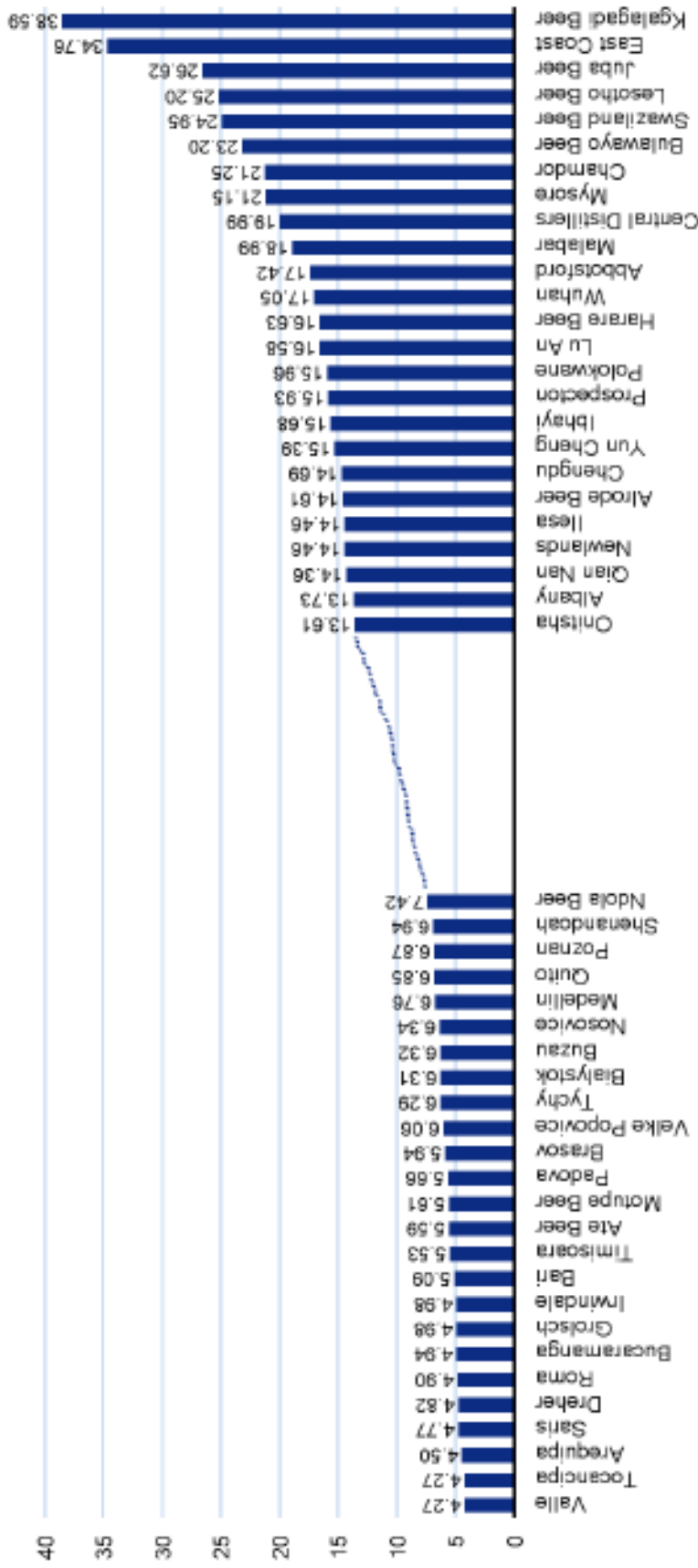
MillerCoors

# Energy Benchmarking – April thru Sept 2014



## Fossil Fuel Emissions (kgCO<sub>2e</sub>/hl) Sep 2014 (YTD)

Fossil Fuel Emissions - Best and Worst Quartile (YTD)



MillerCoors™



MillerCoors

# Operations level-What has worked!

- **High level support. Mandate has come from top down.**
- **Task teams including brewery VP, and Director of Capital**
- **Lean manufacturing self assessments include water/energy items**
- **Extra metering for specific water intensive processes**
- **Short Interval Control: Establishing trigger for operations staff to react to excess water usage. This requires metering- Report and monitor water metric (sustainability) at same priority as other key metrics such as cost, safety, and quality. Water and energy usage makes up a part of the facility evaluation and it's a DAILY operations topic!**
- **Landfill Free**

# Operations level-What has worked!

- **Capital investment carve outs for non ROI water projects. For example re-piping systems and cleaning up water to re-use in cooling towers, etc. (non product)**
- **Treasure hunts: walkthroughs focusing on hot water losses**
- **CIP (cleaning) optimization: using only rinse water needed-not extra**
- **Focus on condensate return in steam systems. Analyzing cleaning processes to optimize rinse steps. Actually improved sanitation performance!**
- **Cameras used monitor processes and avoid overuse of water**
- **MillerCoors 2014 water to beer ratio:3.36. Trenton Brewery Water to Beer ration for 2014: 3.24.**



# **Ohio Manufacturers' Association June 2015**

**Bob Hodanbosi**  
**Division of Air Pollution Control**

# Main Topics

- ▶ Particulate Matter Air Quality Standard
- ▶ SO<sub>2</sub> Update
- ▶ Ozone Progress/Proposal
- ▶ Regulation of coal utilities
- ▶ 111(d) plan

## **Particulate Matter less than 2.5 micron NAAQS**

- Particulate matter less than 2.5 micron (PM<sub>2.5</sub>)—very small particulate
- U.S. EPA has promulgated a series of standards — both annual and 24-hour standard
- U.S. EPA completes designations for both
- Designations are done independently for each standard

# PM2.5 Revisions to Annual Standard

- ▶ March 2013, U.S. EPA adopted revisions to the NAAQS for PM2.5
- ▶ Adopted new annual standard of 12.0 ug/m<sup>3</sup>
- ▶ No change in 24 hour PM2.5 standard
- ▶ No change in 24 hour PM10 standard
- ▶ New nonattainment designations issued in December 2014
- ▶ Effective date April 15, 2015



# PM2.5 24-hour Concentrations (ug/m3) Highest in Area

City	06-08	07-09	08-10	09-11	10-12	11-13	12-14
Akron	34	33	33	29	26	24	23
Canton	35*	34*	34	30	29	27	26
Cleveland	38	36	33	30	31	29	27
Columbus	32	30	29	28	26	23	22
Cincinnati	35	32	31	31	30	27	25
Dayton	32	31	29	29	27	24	24
Steubenville	37	34	30	28	27	26	25
Toledo	31	32	31	28	26	23	24
Youngstown	32	31	30	28	27	24	23
*Incomplete Data Standard 35 ug/m3							

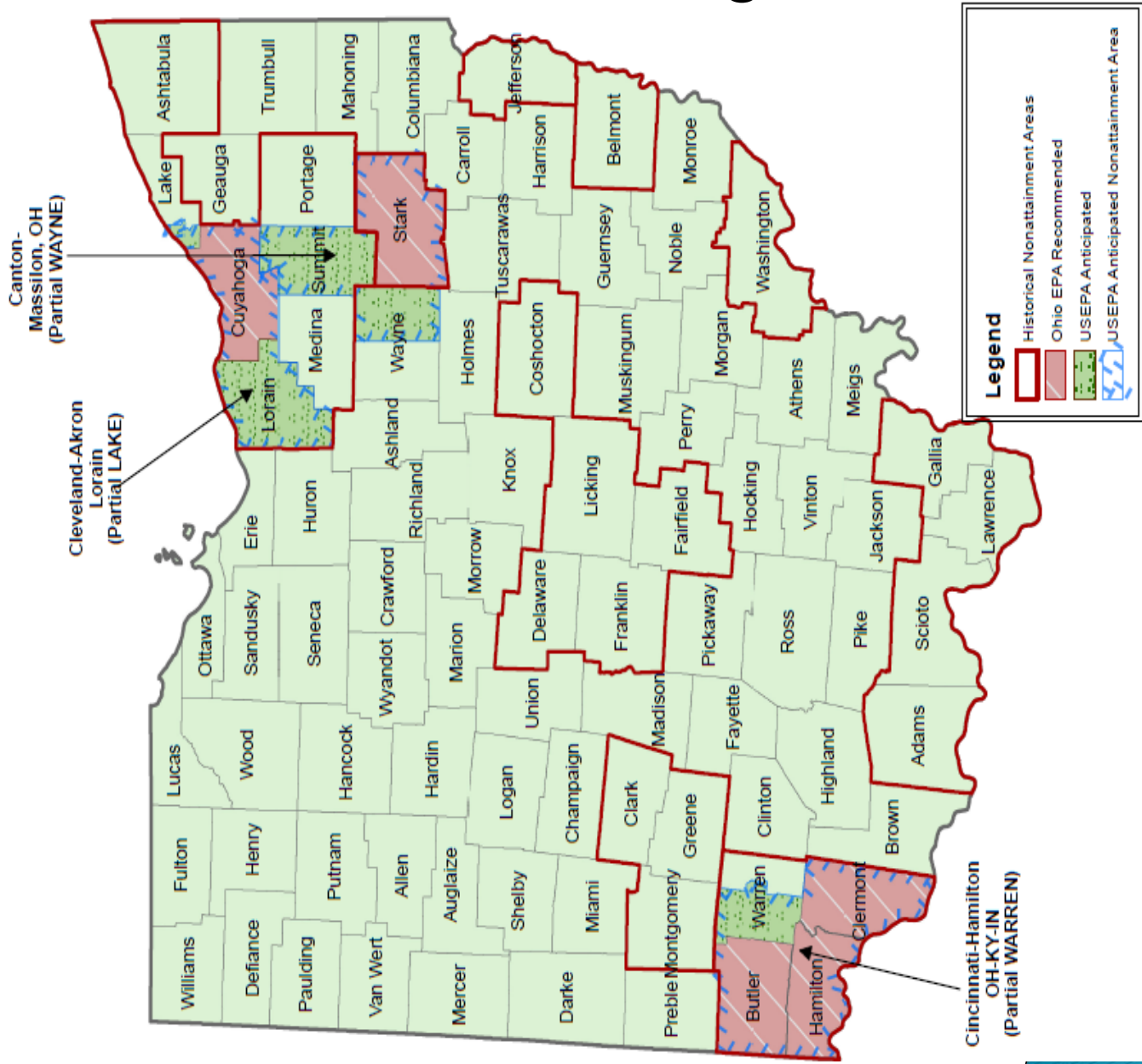
Lost site – new site <1 yr. data  
Old site 2+ yrs. data.

## PM2.5 Annual Concentrations (ug/m3) Highest in Area

City	06-08	07-09	08-10	09-11	10-12	11-13	12-14
Akron	14.0	13.7	13.2	12.6	12.0	11.0	10.7
Canton	14.8*	14.3*	13.8	13.4	13.0	12.0	11.7
Cleveland	15.1	14.4	13.6	13.1	13.1	12.5	12.4
Columbus	13.7	13.0	12.5	12.2	11.9	10.9	10.3
Cincinnati	15.7	15.0	14.4	13.8	13.4	12.3	11.7
Dayton	14.1	13.7	13.1	12.8	12.3	11.0	**
Steubenville	14.8	14.2	13.0	12.5	12.1	11.6	10.9
Toledo	13.1	12.6	11.7	11.4	10.9	10.3	10.1
Youngstown	13.6	13.0	12.3	11.8	11.2	10.7	10.5
*Incomplete Data Standard 12.0 ug/m3							** Lost site, have a new site but no 3 yrs. of data at our site

# DRAFT

## Ohio 2012 Annual PM2.5 (12.0 ug/m3) Recommended and Potential Nonattainment Areas



# PM2.5 Revisions to Annual Standard

- ▶ U.S. EPA published rules in January 15, 2015  
Federal Register
- ▶ Effective date is April 15, 2015
- ▶ U.S. EPA allowed states to submit most recent data
- ▶ Ohio EPA did – Cincinnati area and Canton area should be dropped from nonattainment designation
- ▶ Only nonattainment area for 12.0 ug/m<sup>3</sup> annual standard is Cleveland area (Cuyahoga and Lorain Counties)

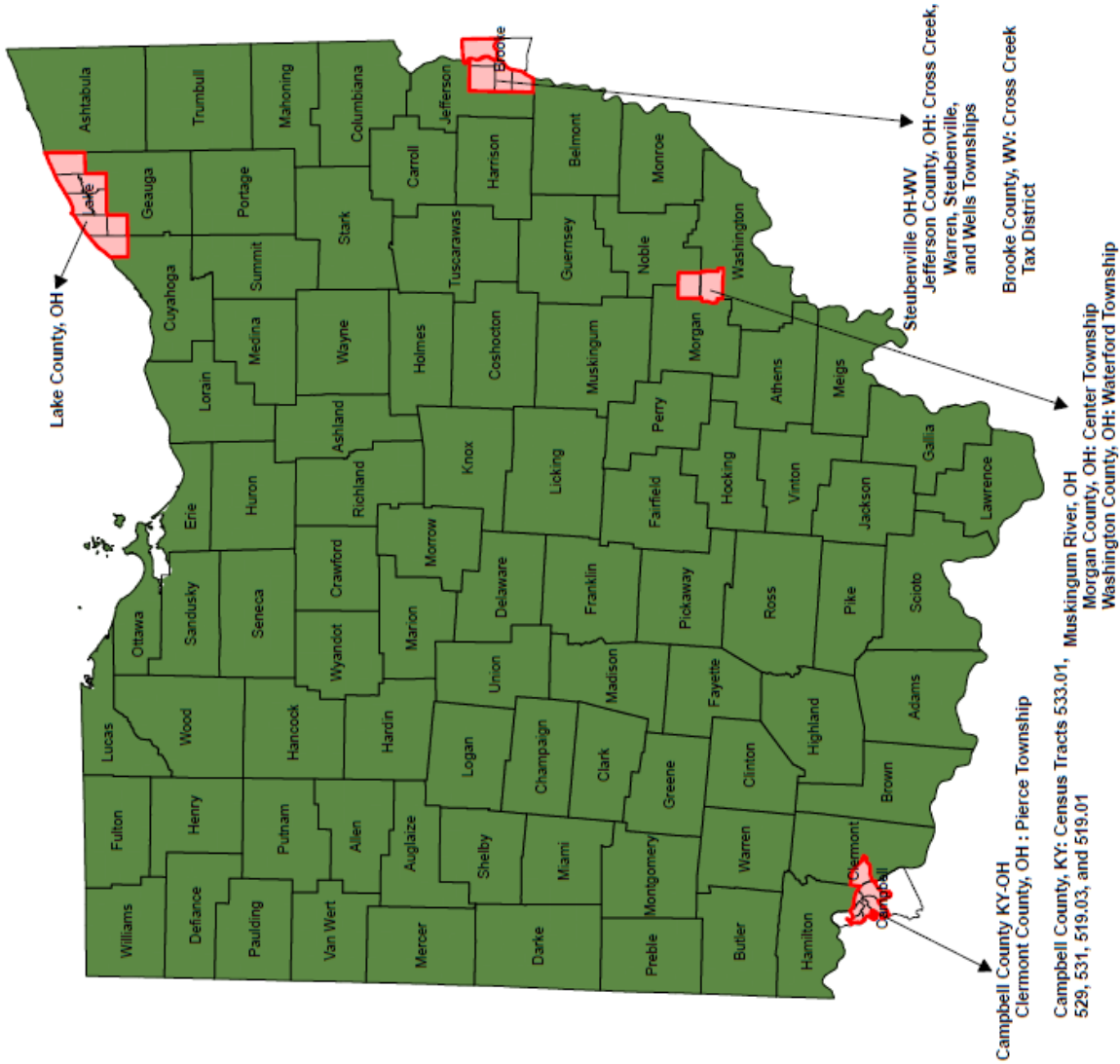
# U.S. Sixth Circuit Court of Appeals

- ▶ Sierra Club appealed the redesignation of Hamilton County area – 15.0 ug/m<sup>3</sup> standard
- ▶ Two issues – if “Cap & Trade” is enforceable & RACT/RACM is needed
- ▶ Court agreed that RACT/RACM must be in part of plan
- ▶ Not a trivial effort – will take time
- ▶ Now back to non-attainment ...so Cincinnati is attainment of 12.0 ug/m<sup>3</sup> standard, nonattainment for 15.0 ug/m<sup>3</sup> standard

# Sulfur Dioxide Standard

- ▶ U.S. EPA adopted new standard of 75 ppb, 1-hour average
- ▶ Some areas measure nonattainment
- ▶ Need to develop plan for areas exceeding standard
- ▶ Plans were due April 4, 2015, working with affected companies (two or three)

# Ohio 2010 1-Hour SO2 (75 ppb) Nonattainment Areas 10/04/2013



## Legend

 Nonattainment Areas

Ohio SO2 Nonattainment Areas	
NA Area	Townships
Lake County, OH	ALL (Entire County)
Steubenville, OH-WV	Cross Creek (OH)
	Warren (OH)
	Wells (OH)
	Steubenville(OH)
Muskingum River, OH	Cross Creek Tax District (WV)
	Center Twshp (Morgan County) Waterford Twshp (Washington County)
Campbell County, KY-OH	Pierce Twshp (Clermont County, OH) 5 Census Tracts in Campbell County, KY



# Next Steps for Sulfur Dioxide

- ▶ Finalize control strategies for nonattainment areas
- ▶ Complete modeling, develop rules, hold public hearings



# Next Steps for Sulfur Dioxide

- ▶ U.S. EPA held “stakeholder” meetings at the end of May of 2013
- ▶ Purpose was to obtain additional information/ comments on revised draft SO<sub>2</sub> implementation policy
- ▶ Dropped requirement that all attainment areas must be modeled ... but modeling or monitoring will be required around large sources
- ▶ Recently signed consent decree with Sierra Club to take action – Zimmer Plant and Gavon Plant on fast track

# Next Steps for Sulfur Dioxide

- ▶ For large sources of SO<sub>2</sub> – modeling or monitoring will be required
- ▶ Monitoring plan completed by June 2016
- ▶ Monitoring must be started no later than January 1, 2017
- ▶ Sounds like a long time ..... but it is not
- ▶ Need to work on how many, where, purchase equipment, etc.
- ▶ Recently signed consent decree with Sierra Club to take action – Zimmer Plant and Gavin Plant on fast track

# Next Steps Model/Monitor List

<del>Kyger Creek OVEC</del>
<del>General J.M. Gavin AEP</del>
Miami Fort Station Dynegy
P.H. Glatfelter Comp.
<del>W.H. Zimmer Station</del>
Conesville AEP
City of Orrville DPU
W.H. Sammis First Energy
J.M. Stuart DP&L
Killen DP&L
Carmeuse Lime Inc. Maple Grove
Morton Salt Inc.
KRATON Polymers
DTE (formerly DEGS) of St. Bernard
The Medical Center Comp.
Cleveland Thermal
Avon Lake Power Plant NRG
Bay Shore First Energy
Ashtabula First Energy
Lake Shore First Energy
Picway AEP

# U.S. EPA Proposed Revised Ozone Standard

- ▶ Proposal for new standard between 0.065 ppm – 0.070 ppm
- ▶ Taking comments as low as 0.060 ppm
- ▶ Ohio EPA filed comments – data supports keeping standard 0.075 ppm

# Timeline for Completion – Revised Ozone Standard

- ▶ A. November 26, 2014 – U.S. EPA announces that they will propose more restrictive ozone
- ▶ B. Mid-December 2014 – Federal Register notice appears with 90-day comment period. Three public hearings to be announced soon.
- ▶ C. Mid-March 2015 – Close of comment period



## **Timeline for Completion – Revised Ozone Standard (cont'd)**

- ▶ **D. October 1, 2015 – U.S. adopts new standards**
- ▶ **E. October 1, 2016 – States submit recommendations for nonattainment areas**
- ▶ **F. October 1, 2017 – U.S. EPA finalizes nonattainment areas**

# Timeline for Completion – Revised Ozone Standard (cont'd)

- ▶ G. October 1, 2020 – Attainment date for marginal nonattainment areas
- ▶ H. October 1, 2023 – Attainment date for moderate nonattainment areas



## Revised Ozone Standard

City	2010-2012 Data	2011-2013 Data	2012-2014 Data	% above standard (2012-2014)		
				at 70 ppb	at 65 ppb	at 60 ppb
Canton	78	76	70	0.0%	7.7%	16.7%
Cleveland	83	80	78	11.4%	20.0%	30.0%
Columbus	82	80	75	7.1%	15.4%	25.0%
Cincinnati	85	81	75	7.1%	15.4%	25.0%
Dayton	78	76	72	2.9%	10.8%	20.0%
Lima	74	73	71	1.4%	9.2%	18.3%
Toledo	77	74	71	1.4%	9.2%	18.3%
Youngstown- Warren	79	76	72	2.9%	10.3%	20.0%

# Regulation of Coal Utilities

- ▶ In late 1980's, acid rain was labeled as large environmental threat
- ▶ “Dead” lakes in Northeast U.S. and Canada
- ▶ 1990 Clean Air Act Amendments required sizeable reductions of SO<sub>2</sub>/NO<sub>x</sub> to reduce “acid rain” – allowed for marketable credits/trading

# Regulation of Coal Utilities (Cont'd)

- ▶ New ozone and particulate matter air quality standards developed in 1990s
- ▶ Northeast states complained that mid-west utilities prevented attainment of ozone standard due to long-range transport
- ▶ U.S. EPA promulgated NOx SIP call and Clean Air Interstate Rule (CAIR) that reduces NOx and SO2 emissions from utility plants
- ▶ More restrictive air quality standards required  
U.S. EPA to reduce more-Cross State Air Pollution Rule (CSAPR)

# Regulation of Coal Utilities – (Cont'd)

- ▶ After “acid-rain” and long range transport the next large environmental threat was mercury from coal-fired plants
- ▶ Ohio has a recommendation of reduced fish consumption in major waterways due to mercury contamination
- ▶ U.S. EPA promulgated the mercury and air toxics rule (MATS) to require control of mercury and acid gases/HCL

# Regulation of Coal Utilities (Cont'd)

- ▶ Utilities need to install carbon injection or have high efficiency sulfur dioxide controls to meet standard.
- ▶ A result of MATS rule, Ohio utilities will close 6111 MW of capacity out of 21430 MW with 15319 MW total coal capacity remaining



# Regulation of Coal Utilities – (Cont'd)

- ▶ Climate Change now in forefront
- ▶ CO2 emissions are focus
- ▶ U.S. EPA proposes plan that requires 30% reduction in emissions of CO2 under 111(d) of Clean Air Act
- ▶ 111(d) is a stationary source rule
- ▶ Control technology not practical
  - Parasitic load penalty alone of almost 30%
- ▶ Only way to reduce emissions is to reduce coal usage
- ▶ Need to build more renewable energy sources and natural gas plants

# Four Elements to Reduce Carbon Emissions Outlined in 111(d) Proposal

- ▶ Each state has individual goal based on four elements – Ohio required reduction about 29%
- ▶ Increase efficiency at coal-fired power plants
- ▶ Re-dispatch of energy generation
- ▶ Build and use renewables
- ▶ Increase energy efficiency
- ▶ Last three are “outside the fenceline” approaches – areas where Ohio EPA traditionally does not regulate

# U.S. EPA Proposal – Bucket No. 1

- ▶ Increase efficiency of coal-fired power plants
  - Require heat rate improvements that equate to an overall 4-6% efficiency improvement at coal-fired power plants nationwide
  - U.S. EPA misapplied a study on possible improvements that identified at least 15 different items to produce heat rate improvements
  - Concern: most of these improvements have been completed at remaining coal-fired fleet after MATS
  - 5% of 30% needed reductions



# U.S. EPA Proposal – Bucket No. 2

- ▶ Employ emission dispatch for power plants
  - Make natural gas plants generate more “base load” electricity; and make coal plants generate less electricity
  - Minimum of 70% utilization of natural gas plants
  - Replaces current least cost dispatch model with least carbon emissions model
  - Concern: Plant dispatch is dictated by a organization called PJM – not Ohio EPA or PUCO
  - 5% of 30% of needed reductions

# U.S. EPA Proposal – Bucket No. 3

- ▶ Increase amount of renewables built and used
  - States required to mandate renewable energy programs
  - U.S. EPA must approve Ohio's plan
  - Emissions monitoring and verification likely incompatible with Ohio's Renewable Portfolio Standard
  - Concern: U.S. EPA proposal would make Ohio Plan “federally enforceable” - Ohio would have to ask US EPA to approve any future changes to the plan
  - Concern: U.S. EPA did not consider how states are obtaining out-of-state renewable targets when individual state goals were developed
    - 10% of 30% of needed reductions

# U.S. EPA Proposal – Bucket No. 4

- ▶ Deploy energy efficiency projects
  - States required to develop programs to reduce demand-side power consumption
  - Must directly reduce electricity usage from power plants
  - Concern: Who is the regulated entity in this stationary source power plant rule?
  - 10% of 30% of required reductions

# U.S. EPA Proposal - Schedule

- ▶ June 2014 – 111(d) Proposed rule
- ▶ Summer 2015 – 111(d) Rule finalized
- ▶ Summer 2015 – U.S. EPA proposes Federal Implementation Plan for State facility to submit State plan
- ▶ July 2016 – 111(d) State plans due (one or two year extensions possible) – but states must meet/submit a package that addresses ten separate items to obtain extension

# U.S. EPA Proposal – Schedule (Cont'd)

- ▶ Summer 2016 – U.S. EPA issues final federal plan
- ▶ Summer 2017 – States individual plans due with extension
- ▶ Summer 2018 – States multi-state plans due with extension
- ▶ January 2020 – First round of reductions must be implemented
- ▶ January 2030 – Final compliance date

# U. S. EPA 111(d) Proposal

- ▶ Ohio EPA prepared extensive comments in response to the proposal
- ▶ See <http://epa.ohio.gov/dapc/111drule.aspx>



# Questions

- ▶ [Robert.Hodanbosi@epa.ohio.gov](mailto:Robert.Hodanbosi@epa.ohio.gov)





## COUNSEL'S REPORT

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June 16, 2015

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### A. ADMINISTRATIVE

#### 1. Ohio EPA Activities of Note

##### a. Universal Waste

OMA representatives have had several meetings with Ohio EPA to discuss the possible expansion of the scope of Ohio's universal waste rule, which is an exception from the hazardous waste rules. OMA had petitioned Ohio EPA approximately two years ago to add paint residue waste to the list of universal waste, as is the practice in Texas. Ohio EPA never formally acted on OMA's request and never responded in writing. OMA representatives and members had a conference call on September 10, 2014 with Pam Allen of Ohio EPA regarding this issue.

On February 15, 2015, at Ohio EPA's request, OMA submitted draft regulatory language for Ohio EPA's review to implement a regulatory change to add paint and paint waste to the designation of universal waste. Ohio EPA has followed up with questions to OMA regarding the specific types of "paint waste" to be covered under the proposed rule.

##### b. Slag Exemption

At the request of several OMA members, H.B. 64 includes a provision to exclude slag from the definition of "industrial waste" under Ohio Revised Code Chapter 6111 (Ohio's Water Pollution Control statute). "Slag" is already excluded from the definition of "solid waste", but industry has had concerns of Ohio EPA's treatment and regulation of this useful product as a "waste" under ORC Chapter 6111.

On May 4, 2015, OMA representatives met with Ohio EPA Director Butler and his senior staff to discuss the proposed slag amendment. Ohio EPA strongly opposes the amendment and indicated that they will lobby Governor Kasich to veto the amendment if included in a passed version of the budget bill. Ohio EPA has committed to addressing the industry's concerns outside of the budget bill in either stand-alone legislation or through rulemaking.



c. Clay and Shale Products Exclusion

At the request of OMA members, H.B. 64 also includes a provision to exclude “clay and shale products” from the definition of “solid waste” under ORC Chapter 3734 (Ohio’s Solid and Hazardous Waste statute) and from the definition of “industrial waste” under ORC Chapter 6111. A similar exclusion from the definition of “solid waste” was included in the 2005 budget bill passed by the General Assembly but was vetoed by Governor Taft. In his veto message, Governor Taft noted as follows:

I recognize that our existing regulatory scheme for these materials may be overly prescriptive and burdensome to Ohio companies. Consequently, I am directing the Ohio EPA to develop rules by December 1, 2005 to protect public health and the environment and to allow less costly disposal options for this waste. This veto is in the public interest.

At the urging of members of the General Assembly, Ohio EPA has proposed that clay and shale products be excluded from the definition of “solid waste” and only be regulated under Ohio Rev. Code Chapter 6111 (Ohio’s Water Pollution Control statute) under certain circumstances and under certain conditions (e.g., not located within a sole source aquifer, no exceedances of water quality standards).

d. Asbestos Labeling

On May 8, 2015, OMA submitted a letter to Ohio EPA Director Butler noting that, effective June 1, 2015, OSHA will be requiring new labels for asbestos waste containers which contains language that is different from the language required under Ohio EPA’s regulations (OAC 3745-20-05(c)(1)) and under U.S. DOT regulations. OMA requested that Ohio EPA issue guidance clarifying that compliance with the OSHA labeling requirements for asbestos waste containers also satisfies Ohio EPA’s requirements.

On May 21, 2015, Director Butler issued a letter to OMA indicating that compliance with the OSHA requirements also satisfies Ohio EPA’s requirements.

e. Beneficial Use Rules

On May 14, 2015, Ohio EPA issued draft beneficial use rules for public comment. Ohio EPA will be accepting comments until June 22, 2015. Ohio EPA held a stakeholder meeting on the draft rules on June 10, 2015, and comments are due by June 22, 2015.

Current rule package only includes following four “beneficial use byproducts” (new term being used by Ohio EPA instead of “select waste”):

- 1) foundry sand
- 2) water treatment plant residuals (e.g., alum sludge);
- 3) waste used as a fuel (to correspond with U.S. EPA’s regulations); and
- 4) dredged material from navigable water for maintenance activities (i.e., the Lake Erie harbor dredging issue/dispute with U.S. Army Corps of Engineers).

Ohio EPA is willing to include or consider other byproducts if comments received proposing same.

2. U.S. EPA Activities of Note

a. Ozone Standards

By court order, U.S. EPA had until the end of 2014 to issue a draft ozone rule. In 2008, the Bush Administration set a new ozone limit at 75 ppb, which was more stringent than the previous limit, but weaker than the 60 to 70 ppb limit recommended by U.S. EPA’s scientific advisory panel. On November 26, 2014, U.S. EPA announced its intention to tighten the ozone standard from 75 ppb to within a range of 65 to 70 ppb. NAM estimates that the cost of this regulation will be \$200 billion annually. Interested parties have until March 17, 2015 to submit comments, and the final rule is scheduled to be released by October 1, 2015.

b. U.S. EPA’s “Clean Power Plan”

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

The timeline for the rulemaking is as follows:

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

U.S. EPA has indicated that it will not meet the June 2, 2015 deadline and state guidelines will be issued later this summer.

3. Judicial

a. State Cases

i. Fairfield Cty. Bd. of Commrs. v. Nally, Ohio Supreme Court, 2015-Ohio-991

On March 24, 2015, the Ohio Supreme Court, in a 5-2 vote, issued a decision invalidating a phosphorus limit that was imposed on a Fairfield County wastewater treatment plant. The decision in Fairfield Cty. Bd. Of Commrs. v. Nally, Ohio Supreme Court, 2015-Ohio-991, provides that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

This case stems from 2006 when the Ohio EPA issued a renewal to a wastewater discharge permit for the Tussing Road Water Reclamation Facility ("Tussing plant"), owned by Fairfield County, Ohio. Because the wastewater treatment plant discharges pollutants into nearby Blacklick Creek, part of the Big Walnut Creek watershed, the plant is required to obtain a National Pollutant Discharge Elimination System ("NPDES") permit from the Ohio EPA, pursuant to the federal Clean Water Act and state law. The Clean Water Act also requires each state to establish a total maximum daily load ("TMDL") for certain bodies of water. The TMDL establishes the maximum amount of a pollutant that may be discharged without causing the receiving body of water to violate water-quality standards.

Based upon Ohio EPA's TMDL for the Big Walnut Creek watershed, the renewal permit for the Tussing plant included a new condition limiting the discharge of phosphorus. The Ohio EPA imposed this new limit based on a survey in which the Ohio EPA collected biological and chemical data for the area. Its survey suggested that the Tussing plant was contributing to a negative environmental situation in Blacklick Creek. Fairfield County appealed Ohio EPA's imposition of the new phosphorus limit in its NPDES permit to the Ohio Environmental Review Appeals Commission, and subsequent appeals were made to the Tenth District Court of Appeals and eventually the Ohio Supreme Court.

In the opinion, written by Justice Judith Ann Lanzinger, the Court held that a TMDL established by the Ohio EPA, pursuant to the Clean Water Act, is a “rule”. Therefore, the Ohio EPA must abide by the procedures outlined in Ohio Revised Code (“R.C.”) Chapter 119, which provides for, among other procedures, public notice, comments, and a public hearing prior to a rule being adopted.

Justice Lanzinger explained that a TMDL is a “rule” as defined in R.C. 119.01 because it is a “standard” that has “a general and uniform operation” and creates new legal obligations. Although the TMDL was specific to the Tussing plant, the Court provided that “[t]he TMDL applies to all current and future discharges in the Big Walnut Creek watershed.” The opinion further explains that “[r]equiring Ohio EPA to undertake rulemaking procedures before applying the new standards set forth in the TMDL ensures that all stakeholders in the watershed have an opportunity to express their views on the wisdom of the proposal and to contest its legality if they so desire.” As a result, the phosphorus limit cannot be included as part of the Tussing plant’s NPDES permit because it did not undergo the R.C. Chapter 119 administrative rulemaking process. Because the phosphorus TMDL was part of impermissible rulemaking, the standard for the Tussing plant was vacated, and the case was remanded to the Ohio EPA.

In his concurring opinion, Justice Terrence O’Donnell provided that the “decision is far-reaching in that Ohio EPA has issued 1,761 TMDLs for watercourses throughout Ohio, including 132 TMDLs for phosphorus alone”, none of which have been promulgated through the R.C. 119 administrative process. “[T]hus the majority’s decision invalidates all of them, leaving the enforceability of numerous permits in question.”

b. Federal Cases

- i. *In re Murray Energy Corporation*, Case No. 14-1112 (D.C. Circuit, June 9, 2015)

The U.S. Court of Appeals for the D.C. Circuit denied petitions to review the EPA’s proposed rule to regulate carbon dioxide emissions from existing electric generating sources under section 111(d) of the Clean Air Act. Murray Energy Corporation and several states filed petitions for review of the proposed rule, arguing that EPA has based the rule on an improper interpretation of the Clean Air Act. The court, without ruling on the merits of the underlying challenge, held that it is without authority to review a “proposed” agency rule, which had not yet been issued “final.”

**TO: OMA Environment Committee**  
**FROM: Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: June 16, 2015**

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### **Overview**

U.S. EPA and its existing source and ozone standards continue to be the most pressing environmental subjects for Ohio moving through the year. The state budget was introduced and contains several Ohio EPA policy issues with differing amounts of impact.

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

#### **Senate Bill 1 – Great Lakes – Harmful Algae**

Senate Bill 1 is the Senate's number one priority bill. The bill originally transferred the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture, required applicators of fertilizer or manure to comply with specified requirements, created the Office of Harmful Algae Management and Response in the Environmental Protection Agency, established requirements governing dredged material, nutrient loading, phosphorous testing by publicly owned treatment works, and household sewage treatment systems. Before passing the bill, the Senate removed the provisions creating the Office of Harmful Algae. It was signed by the Governor on April 2.

#### **House Bill 61 – Lake Erie Fertilizer – Dredging**

House Bill 61 is the House of Representatives option to begin combating the toxic algae blooms that cover the western basin of Lake Erie. The bill generally prohibits the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, requires publicly owned treatment works either to monitor monthly total and dissolved phosphorous or to prepare optimization studies that evaluate their ability to reduce phosphorous, and prohibits a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries that resulted from harbor or navigation maintenance activities unless authorized to do so by the director of environmental protection. The bill was voted out of the House the first week of March.

#### **House Bill 64 – State Budget Bill**

Ohio EPA's budget does not include any fee increases; however, the agency is asking to extend existing fees for its air, surface water, drinking water and materials and waste management divisions, and to reallocate materials and waste management funding to support its focus on business assistance, compliance assistance and pollution prevention.

The director also made a pitch while presenting testimony for creating the Certified Water Quality Professional program that will allow a prequalified, third party private-sector evaluation and assessment of wetlands and streams for water quality certification and Isolated Wetland Permit applications.

The agency is also asking for the authority to request chemical information that may include confidential trade secret information in the event of an emergency. Ohio EPA emergency response staff responds 24/7, 365 to environmental spills and disasters and coordinates mitigation and cleanup efforts with local, state and federal partners. The proposal allows Ohio EPA to ask for information from companies during an emergency and share that information with others, such as water treatment plant operators who have an immediate public health or safety interest to protect.

The OMA continues to work with members are two amendments that were included in the bill that would exempt slag from the definition of industrial waste, and second amendment would exempt clay and shale structural products from solid waste and industrial waste statutes.

## **Regulations**

### **Asbestos Labeling**

On May 8, the OMA requested Ohio EPA clarification regarding the recent change in the Occupational Safety & Health Administration (OSHA) requirements for labeling asbestos waste containers. Sign changes are required effective June 1, 2015.

On May 21, Ohio EPA director Craig Butler responded to the OMA that the new OSHA requirements can flow through the current state administrative code. So, there will be no dual requirement in the state.

The director said he's directed his staff to create new Standard Operating Guidance on the matter to document this helpful and timely decision.

### **Ozone – U.S. EPA**

The EPA plans to tighten the National Ambient Air Quality Standards (NAAQS) for ground-level ozone from the current 75 parts per billion (ppb) to between 65 and 70 ppb, or even lower. This will have a major impact on Ohio. A new proposal was released in December.

In 2008, the U.S. EPA lowered the National Ambient Air Quality Standard for ground level ozone to 75 parts per billion (ppb). Now, the agency is proposing to lower the standard to as low as 65 ppb and taking comments to as low as 60 ppb.

An updated study by NAM and the OMA shows that at 65 ppb the entire state of Ohio would be out of attainment and it would be the most expensive regulation ever established.

The OMA and Ohio EPA submitted comments opposing such a change.

### **U.S. EPA 111(d)**

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

The rule proposes a national reduction in power plant carbon emissions of 30% by 2030, from a base year of 2012.

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

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

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

The OMA contributed study for the agency to review and incorporate in their comments. The OMA also submitted comments to U.S. EPA.

### Beneficial Use

Last year Ohio EPA released draft permits for foundry sand and alum sludge. Earlier this year U.S. EPA and the Dept. of AG released a risk assessment concluding that silica-based spent foundry sands from iron, steel and aluminum foundries, when used in certain soil-related applications, are protective of human health and the environment, and yield environmental benefits.

Ohio EPA also released an Early Stakeholder Outreach document on “co-products” and “by-products” last spring. The overall goal of these would be to eventually compliment a beneficial use system and make it clear certain products are not wastes subject to beneficial use regulation. Ohio EPA continues to allude that they want to include slag in this program. OMA will continue to look for avenues to ensure slag is not included in the final rules.

Several weeks ago Ohio EPA released the long anticipated draft beneficial use rules for public comment. The rules cover: foundry sands; material resulting from treatment of water supply for drinking or industrial purposes that are a solid waste, industrial waste, or other waste; wastes used as fuel or ingredient in a combustion unit; and dredged materials. Noticeably absent was any rule regarding slag.

### Universal Waste

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

The OMA was approached by Ohio EPA to see what sort of backing the expansion of universal waste would have among members. The OMA recently put together a working group to work with Ohio EPA on this topic. The group submitted a document to Ohio EPA last fall and submitted rule language earlier this year.

Most recently the group sent clarifying information to the agency describing the different types of wastes that are expected to be covered under the rule change.

### Water Nutrient Work Group

Ohio EPA has been working on reducing the amount of nutrients that enter Ohio's waterways. The OMA has two members on the working group Ohio EPA created to review the issue. The group is meeting monthly to determine what is the best way to implement the state's water nutrient strategy. This group remains focused on the water nutrient implementation process it was created to help implement. Ohio EPA is feeling pressure to act in light of last year's Toledo incident.

### Other Notes

#### Ohio Supreme Court Decision Invalidates TMDLs

On March 24, 2015, the Ohio Supreme Court, in a 5-2 vote, issued a decision invalidating a phosphorus limit that was imposed on a Fairfield County wastewater treatment plant. The

decision in *Fairfield Cty. Bd. Of Commrs. v. Nally*, provides that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

In his concurring opinion, Justice Terrence O'Donnell provided that the "decision is far-reaching in that Ohio EPA has issued 1,761 TMDLs\* for watercourses throughout Ohio, including 132 TMDLs for phosphorus alone," none of which have been promulgated through the R.C. 119 administrative process. "[T]hus the majority's decision invalidates all of them, leaving the enforceability of numerous permits in question."

OMA environment counsel, Frank Merrill of Bricker & Eckler LLP, writes this summary of the case.

\*The total maximum daily load (TMDL) establishes the maximum amount of a pollutant that may be discharged for certain bodies of water without causing the receiving body of water to violate water-quality standards.

#### Ohio EPA Continues to Recognize Ohio Manufacturers

Ohio EPA Director Craig Butler visited Sherwin-Williams Breen Technology Center in Cleveland to recognize the company for reaching Ohio EPA's highest standard of environmental stewardship. He presented the company with the gold-level Encouraging Environmental Excellence (E3) award.

The E3 program acknowledges Ohio businesses and other organizations for completing environmentally beneficial activities and serves as an incentive to commit to ongoing environmental stewardship. To earn the gold-level award, a business or organization must have a good environmental compliance record and complete environmental stewardship activities that show a strong corporate environmental ethic.

The company won the silver-level award in 2014 and continued to look for ways to be more efficient and reduce environmental impact resulting in the gold-level recognition.

Other OMA members like Crown Equipment, Honda, General Motors and MillerCoors have also been recognized by the agency for their sustainability programs. This is an excellent example of how manufacturers and the agency continue to work together to improve Ohio.

#### Corps Ordered to Dredge

The U.S. Army Corps of Engineers was ordered by a federal judge to complete all the dredging required of it as authorized by Congress. At issue was the dredging of the Cuyahoga River, specifically the final mile of the river channel that "connects Cleveland's ArcelorMittal steel plant to the world." The Corps refused to dredge that mile and dispose of dredge material in a confined waste facility, instead of open dumping into the lake.

Ohio EPA director Craig Butler led the charge against the Corps, and points out that Congress appropriated almost \$8 million, and that the highest bid for dredging received by the Corps is only \$4 million. The Corps has the funding to dredge the entire channel, and dispose of its dredge materials appropriately in the confined waste facility.

Another example of an out-of-control federal agency undermining the U.S. economy.



### Bottle Bill Amendment

Ohio Attorney General Mike DeWine certified a petition so that the requisite signatures could be solicited for a proposed “bottle bill” amendment to the Ohio Constitution.

The amendment, if it made it to the ballot and passed, would require the General Assembly to enact laws that require a refundable deposit of 5-to-10 cents to be made on certain glass, metal and plastic containers.

Unlike previous so-called bottle bills, where the goal was to encourage recycling and increase reusable feedstock, 80% of the refunded deposits are directed to be used to reduce health and car insurances costs of Ohio residents. There are no specific details of how this would be accomplished. There has been no recent chatter about this development and it is not expected to make the ballot in the fall.

### Ohio EPA Reorganization

One of the major initiatives taken by Director is to create a “one-stop shop” environment within Ohio EPA for customers seeking technical and financial resources to help them achieve compliance.

The first step toward this goal was taken early June 2014, when it was announced that Ohio EPA’s Recycling and Litter Prevention Program would become part of the Office of Compliance Assistance and Pollution Prevention (OCAPP). This program supports source reduction, recycling, market development and litter prevention activities statewide. There was a natural connection between the functions of each to help build more sustainable practices within businesses and communities.

The second step is a merger of the Office of Compliance Assistance and Pollution Prevention (OCAPP) and our Division of Environmental and Financial Assistance (DEFA).



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

**Director Craig W. Butler H.B. 64 Testimony  
Senate Finance General Government Subcommittee  
May 5, 2015**

Good morning, Chairman Jordan, Vice Chair Gentile and members of the Senate Finance Subcommittee on General Government. I am Craig Butler, Director of Ohio EPA, and I appreciate the opportunity to provide testimony on House Bill 64, Governor Kasich's budget proposal.

Ohio is a much different state today than it was just four years ago. We are a much different and a much *better* state.

The improvements we've seen in the past four years haven't come by accident or from sheer good luck. It's all been due to tough work by a determined governor, like-minded legislators and Ohioans who were ready to see change.

It's clear that the rest of the nation has its eyes on Ohio – as they all want to know how we're doing it. But we're not done by any means. It's understandable that some Ohioans may be ready to pull over to the rest stop to take a well-deserved break, but Governor Kasich believes we need to keep our foot on the accelerator and make an even more determined drive to grow our state.

How does Ohio EPA fit in with this?

As it has been since its creation in 1974, Ohio EPA's mission is to protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship. I take very seriously our commitments to ensure Ohio companies comply with our laws and protect public health. Where I differ from some past Directors is that I believe we can and should first use our voluntary programs and business assistance tools to assist companies to comply with our complex regulations, and, at the same time, help businesses expand and locate in Ohio and create jobs and economic prosperity in Ohio.

As examples of this commitment to economic development assistance, the Agency provides \$40 million per year in funding to local governments and organizations through grants for air pollution control, environmental education, diesel school bus retrofits, watershed restoration, and acquires land and conservation easements to protect and improve water quality. Ohio EPA also supports economic development by awarding \$375 million per year in

federal and state funded low-interest loans to local communities for wastewater and drinking water infrastructure projects.

At the end of the day, Ohio EPA is a national leader in protecting human health and the environment, and an asset to economic development professionals when assisting companies to locate and expand in Ohio. I do and will continue to strive to ensure we maintain this very important balance of using our regulatory tools and our business assistance tools together to help Ohio grow and maintain a healthy environment.

We are committed to efficiency and process improvement. We are looking for opportunities to assist businesses with technical and financial resources without needing statutory changes, and we are doing this by combining our compliance assistance and funding programs into one office to provide a “one stop shop” for communities and businesses to come for free, confidential help at Ohio EPA. This year-long effort is too long in coming, but is already paying dividends in linking businesses and job creators with our technical and financial experts to move possible projects to reality.

We also fully support LEAN Ohio and are implementing process improvements, project by project. The Agency’s first LEAN event was a value stream mapping process evaluating the issuance of wastewater discharge permits. The primary goal to improve the quality of service to our customers with a timely turnaround and a proactive approach will be accomplished by eliminating duplicative reviews, better defined roles and responsibilities and a more efficient, streamlined process.

As an overview of who we are, we have approximately 1,100 full-time and 100 seasonal employees in Columbus, Reynoldsburg, Groveport, Twinsburg, Bowling Green, Logan and Dayton. We issue permits governing installation and operation of pollution sources; provide oversight through inspections and air, water, and ground sampling; monitor and report on environmental quality; provide compliance assistance and environmental education to industry and the general public; help businesses prevent pollution; and respond to spills and other emergencies 24/7.

Our proposed budget will reduce our number of full-time equivalents by 27 through attrition. A small but significant reminder that we are watching the state’s dollars carefully and adjusting staffing as needed, not simply adding more staff when new programs come along.

Our budget proposal for fiscal year 2016 is \$183.2 million, an 8.2 percent **decrease** from fiscal year 2015. Funding for fiscal year 2017 would be \$185.9 million, a slight 1.5 percent increase from fiscal year 2016.

\$10.9 million per year of comes from the General Revenue Fund. This \$10.9 million pays for the E-Check auto emissions testing program in seven counties in Northeast Ohio because these counties are not in attainment with federal ozone requirements.

Ohio EPA's budget does not include any fee **increases**. We are asking to only extend existing fees for our air, surface water, drinking water and materials and waste management divisions, and to reallocate materials and waste management funding to support our increased focus on business assistance, compliance assistance and pollution prevention.

Ohio EPA's budget asks for one new fee, but it will support a program that I believe will make us more efficient and save money in the long run and help businesses get needed permits faster. This new program is to develop a "certified water quality professional program," which I will detail later in my testimony.

We are asking to use our drinking water protection fund as state match funding for federal grants, to continue conducting the successful Diesel Emission Reduction Grant program (DERG) and to increase spending authority to update the surface water permitting/tracking computer program. Again, these changes will help leverage federal dollars and provide more funds for drinking water upgrades, as well as supporting the DERG program that is helpful to municipalities and others to reduce harmful diesel emissions from school busses and protect our children's health.

In summary, we are doing everything we can as an agency to take Ohio to the next level and create more opportunities for Ohioans to succeed while protecting the environment. I am fully convinced we can be a key positive driver in creating new jobs and strengthening our families and our communities. As the Governor has said, and I concur, a job is the number one way to keep Ohioans out of poverty.

Let me provide you with some specifics on the Certified Water Quality Professional program I mentioned earlier. In our Division of Surface Water, we are excited to propose a Certified Water Quality Professional program. The "certified water quality professional" program will allow a prequalified, 3rd party private-sector evaluation and assessment of wetlands and streams for water quality certification and Isolated Wetland Permit applications.

This proposal will be mirrored after our successful certified professional provisions of our Voluntary Action Program (VAP) used to clean up blighted properties for reuse. This program may be the first of its kind nationally. The intent is to eliminate duplication of effort while making certain we protect our critical wetland and streams as we review applications to impact these resources. We believe that this new private certification process will streamline review efforts and reduce the time it takes to issue permits. We also fully believe we have safeguards, such as proposed training and certification of all the new water quality professionals, as well as an auditing program to ensure work is done correctly.

Rest assured, this program has appropriate safeguards to protect our critical wetlands and streams. While we are confident this new program will work to cut the time it may take to receive a permit, we anticipate having critical engagement and auditing of all new "certified water quality professionals" and their work product to ensure they follow the law. In addition, we have suggested tweaks to the program based on comments we have received from

stakeholders, including clarification that the existing permitting model is still an option. However, utilizing the Certified Water Quality Professional would prompt action by the Agency within 90 days of receipt of a complete application (our normal is 180 days).

Ohio EPA, ODNR and interested parties worked together on a provision dealing with right-to-know reporting for oil and gas producers. Since 2001 oil and gas producers have used ODNR's production reports to meet the federal Right-to-Know chemical inventory provisions. Recently that practice was challenged and it was determined that the reports needed to be updated to capture regulatory changes. Our budget language will provide a mechanism for oil and gas producers to resume use of production reports in 2016 to meet state chemical inventory disclosure requirements while ensuring those reports are statutorily up-to-date and available to emergency response professionals in case of an emergency. This will eliminate a duplication of effort because the companies will not be required to provide the same information to two government agencies.

Another proposal we have will provide Ohio EPA emergency responders with the authority to request chemical information that may include confidential trade secret information in the event of an emergency. As you likely know, Ohio EPA emergency response staff respond 24/7, 365 to environmental spills and disasters and coordinate mitigation and cleanup efforts with local, state and federal partners to ensure Ohio's environment is protected. This proposal, simply, but very importantly, will allow Ohio EPA to ask for information from companies during an emergency and share that information with others, such as water treatment plant operators who have an immediate public health or safety interest to protect.

The need for this provision came from issues that we dealt with during an oil and gas well pad incident last summer. The language would protect the confidentiality of trade secret information provided to an emergency responder, and extend that confidentiality to others, such as water plant operators, who receive the information for purposes during an emergency. This very important change will provide us the ability to protect public health in the event of an emergency, while also protecting confidential business information. While this item was removed by the House, I believe it should stay in the bill for the reasons I just outlined.

We are also proposing a provision that would create a "knowingly" and "purposely" standard for water pollution control violations. Currently, all criminal violations of Ohio's water pollution laws are misdemeanors, regardless of their severity or the intent of the violator. This is inconsistent with our authorities under other programs and is a needed change.

As evidence these changes are needed we need to look no further than the egregious illegal dumping of brine material into the Mahoning River in Youngstown that occurred throughout 2012. Without the assistance of the U.S. Department of Justice, the individuals responsible for this crime would not have been able to have been criminally charged and convicted as criminals under the Clean Water Act. While this is a positive result and sentencing has begun for individuals involved, it is important this law be updated to ensure

Ohio does not have to rely on the federal government to respond to violations that occur within our borders.

We are proposing two provisions that would help improve and protect drinking water. We have found that public drinking water systems are good at identifying new infrastructure needs to support new development projects. But once the pipes are in the ground, they are often forgotten or poorly maintained. We are proposing to ensure the long-term sustainability of public water systems by requiring them to develop and implement an asset management plan. Such a plan will drive system operators to think about how to maintain their systems, and identify and plan to address deficiencies before there are significant public health risks and non-compliance. I've brought some photos that show the problems we see when public water systems fail to properly maintain their infrastructure.

Our most recent example of this need comes from Lawrence County in the past few weeks where due to a system failure, hundreds were left without water.

In this not so unique instance, one of two pump stations flooded, causing loss of both pumps in that station. Approximately half of the water system served by that station, including two storage tanks, emptied before one of pumps could be restarted. Because of the system's inadequate pumping capacity, lack of a backup and a large amount of unaccounted-for water loss (reported to be nearly 70%), it has taken more than a week to fill the system. Because the water system's lack of a competent operator, coupled with having no staff with technical, financial or managerial capability, or complete knowledge of the infrastructure components, this was a failure waiting to happen, and it did. Ohio EPA staff, with support of the general manager of the nearby HECLA Water Association, had to take over and operate the system to restore service. Several other nearby water systems also provided support, as did the local and Ohio EMA. This is an all-too-familiar reason why this proposal is needed. Understanding and managing critical water infrastructure is critical. Millions of Ohioans depends on it.

Ohio also has many public water systems owned and operated by private entities, including mobile home parks, homeowners' associations and nursing homes. The provision of drinking water is often considered secondary to the primary business they conduct. The owners of these systems often don't understand the full costs for the operation and maintenance of their water systems. After a period of neglect, the systems break down, resulting in water outages for lengthy periods of time, public health risks and non-compliance. These photos show the problems we see at these public water systems when they break down and the owner does not have funds for repairs.

Current law requires that homeowners associations, when developing a new drinking water system or modifying an existing system, maintain some type of financial assurance to address serious problems that may arise affecting the ability to provide a safe, reliable source of drinking water. Ohio EPA is proposing a similar legislative change that would require manufactured housing communities, apartments and nursing homes that have their own public water systems to also maintain emergency funds to fix major problems. This legislation

addresses the financial gap by requiring deficient owners to establish an escrow account and systems, in general, to demonstrate financial assurance.

A recent but not unique example of this began in September 2014 at Pineview Estates Mobile Home Park in the Dayton area. The manufactured home park had been sited with a significant deficiency after an inspection identified only one of the two wells were working and the working well was leaking water. Nothing had been done to correct the wells and on December 1, 2014, the only working well failed. This caused the system to depressurize and nearly 500 people were without potable water. The owner was unresponsive and didn't want to address the wells or put money into the system. This caused an extended depressurization and boil advisory while residents had to rely on bottled and hauled water for several days.

Both of these measures were removed in the House. We are asking that they be included. I believe the examples I gave illustrate why they are necessary.

Additional changes we are proposing include a technical change in law dealing with air pollution control to fix an over-looked cross reference from earlier legislation; change the definition of lead free to be consistent with federal law; update state law regarding the Water Pollution Control Loan Fund to be consistent with federal law changes; continue the federally required E-Check program in seven northeast Ohio counties; and combine two separate, but similar, advisory councils related to solid waste and recycling. The changes to the Water Pollution Control Loan Fund and the lead-free definition were removed in the House; we are asking them to be included in the bill.

As director of Ohio EPA, I share the Governor's vision for jobs growth and new opportunities to find success in our state and at the same time make certain all Ohioans have a safe environment in which to live and work. I appreciate the opportunity to speak with you today and I hope you are as proud as I am of Ohio's progress and vision for a prosperous future. As you can see, we are committed to working with fewer staff in the next biennium and exploring creative ways to protect the environment while encouraging economic growth. I would be happy to answer any questions you have.

## Ohio Slag Product Proposal

### What is Slag?

In Ohio there are two common forms of slag:

Blast Furnace Slag is formed when iron ore or iron pellets, coke and a flux (either limestone or dolomite) are melted together in a blast furnace. When the metallurgical smelting process is complete, the lime in the flux has been chemically combined with the aluminates and silicates of the ore and coke ash to form a non-metallic product called blast furnace (BF) slag. During the period of cooling and hardening from its molten state, BF slag can be cooled in several ways to form any of several types of BF slag products.

Steel Furnace Slag is produced in a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Hot iron (in the case of a BOF) and/or scrap metal (in the case of an EAF) are the primary metals to make steel in each process. Lime is injected to act as a fluxing agent. The lime combines with the silicates, aluminum oxides, magnesium oxides, manganese oxides and ferrites to form steel furnace slag, commonly called steel slag. Slag is poured from the furnace in a molten state. After cooling from its molten state, steel slag is processed to remove all free metallics and sized into products.

### What are uses for steel and blast furnace slag?

- Asphalt aggregate
- Concrete / masonry aggregate
- Lightweight concrete
- Soil cement
- Fill
- Insulation / mineral wool
- Lightweight fill
- Roller compacted concrete
- Insulation
- Agriculture / soil amendment
- Road base
- Environmental applications
- Railroad ballast

### How does Ohio currently treat slag?

ORC 3734.01 (E) currently exempts "slag" from Ohio's solid and hazardous waste definitions: (E) "Solid wastes" means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the



combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and **slag** and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste."

However Ohio holds the right to regulate slag under ORC 6111.

### **What can Ohio do to be more competitive?**

Ohio is the second largest steel manufacturing state in the nation (behind only Indiana). Because of this, Ohio produces a large amount of slag, which is treated, stored, and sold on the open market as a viable product. Some of the nation's largest slag processors have facilities in Ohio (Stein Inc. and Tube City IMS).

Other competitor states (e.g., Nebraska and Tennessee) have streamlined their laws to make it clear that slag is an industrial product and is not a "waste" per statute. The use of slag as a roadway aggregate, building material, or fill material is not regulated or otherwise impeded in these other states. While Ohio has for some time excluded slag from the definition of "solid waste," there has been some uncertainty as to its use on the ground because of Ohio's broad water pollution control law (ORC Chapter 6111). Unencumbering slag from ORC 6111 will help strengthen markets for the sale and use of slag. This proposal would clarify that in Ohio, slag is exempt from regulation and is treated as an industrial product, thus removing regulatory uncertainty.

**Proposed Revised Statute:** ORC 6111.01 (C) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present. "Industrial waste" does not include slag regardless of whether it is placed on the ground, placed below grade, or used in products that come into contact with the ground or are placed below grade.

ORC 6111.01 (V) "Slag" means the nonmetallic product resulting from melting or smelting operations for iron or steel.

April 16, 2015

## **Ohio Shale and Clay Products Proposal**

### **What are shale and clay products?**

In Ohio brick, ceramic tile and table pottery are made of fired shale or clay (dirt). These materials are non-harmful when mined. They remain non-harmful when fired. Along the production line breakage and imperfections result in significant amounts of waste material.

### **How does Ohio currently treat shale and clay products?**

ORC 3734.01 (E) currently exempts several forms of harmless wastes resulting from different manufacturing processes such as nontoxic fly ash, bottom ash and foundry sand:

(E) "Solid wastes" means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste."

As such, it is unclear whether nontoxic and non-hazardous shale and clay products are subject to solid waste regulations. Additionally Ohio maintains the right to regulate the disposal of shale and clay products under ORC 6111.

### **What can Ohio do to be more competitive?**

Ceramic product manufacturers are subject to enormous international competitive pressures. Ohio boasts world class manufacturing of shale and clay products (e.g. bricks and tiles). Manufacturers in this sector generate significant off spec material, which can be safely land applied.

The Sub House Bill 64 language clarifies that nontoxic, non-hazardous Ohio brick and tile products are not subject to certain solid waste and water regulations that may result in disposal requirements. If the material is toxic or hazardous, then it remains subject to disposal regulations.

These regulatory amendments will enhance Ohio's manufacturing competitiveness by providing long-overdue regulatory certainty.

### **Proposed Revised Statute:**

ORC 6111.01 (C) exempts nontoxic, nonhazardous shale and clay products from "industrial waste."  
ORC 3734.01 (E) exempts nontoxic, nonhazardous shale and clay products from "solid waste"

Chairman of the Board  
**WILLIAM E. SOPKO**  
President, William Sopko & Sons Co., Inc.



President  
**ERIC L. BURKLAND**

May 8, 2015

Craig Butler  
Director  
Ohio Environmental Protection Agency  
50 West Town Street  
Suite 700  
Columbus, OH 43215

**Re: Asbestos Labeling Requirements of Various Regulatory Bodies**

Dear Director Butler:

On behalf of The Ohio Manufacturers' Association (OMA) members, we appreciate the time and effort you and your staff spend engaging the manufacturing community on environmental issues, including numerous federal regulations such as the Clean Power Plan 111(d) and attempts to ratchet down the ozone standards across the country.

As you are well aware, manufacturers are subject to numerous environmental regulations mandated by multiple regulatory agencies. Occasionally, these requirements are duplicative and confusing and can be burdensome without adding additional safety value.

In that light, it has come to the OMA's attention that effective June 1, 2015, the Occupational Safety and Health Administration (OSHA) will be enforcing new requirements for labeling for asbestos waste containers. The new rule requires the following label:

**DANGER  
CONTAINS ASBESTOS FIBERS  
MAY CAUSE CANCER  
CAUSES DAMAGE TO LUNGS  
DO NOT BREATHE DUST  
AVOID CREATING DUST**

Under current Ohio Administrative Code 3745-20-05(C)(1), Ohio requires the following:

(C) Each waste generator shall ensure that asbestos waste containers shall meet the following minimum standards:

- (1) All containers of asbestos-containing waste material and wrapped material shall be labeled, using permanent markings with letters of sufficient size and contrast so as to be readily visible and legible, as follows:

**DANGER  
CONTAINS ASBESTOS FIBERS  
AVOID CREATING DUST  
CANCER AND LUNG DISEASE HAZARD  
R.Q., ASBESTOS  
CLASS 9 NA 2212, III**

In addition to the OSHA changes, the U.S. DOT regulations require a Class 9 hazard label; however the shipping description is now:

**RQ, NA2212, Asbestos, 9, PGIII**

Many manufacturers in Ohio have the need to ship asbestos waste containers and want to ensure they are following all laws and regulations when doing so. In order to add clarity to labeling we would ask if Ohio EPA would be amenable to issuing guidance as follows: Compliance with labeling requirements under the OSHA asbestos standards and compliance with the labeling, marking, and placarding requirements under the U.S. DOT Dangerous Goods Transportation regulations are considered by Ohio EPA to be equivalent to, and in compliance with, the labeling requirements in the OAC.

With multiple, conflicting labeling requirements, the state of play is confusing, and generators are put in a position to use OSHA and DOT technical language in a manner that is not technically consistent with Ohio EPA requirements.

We appreciate you and your staff's efforts on all environmental and safety issues and would be happy to discuss the matter further. I can be contacted at (614) 629-6814 or [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com).

Sincerely,



Robert (Rob) Brundrett  
Director, Public Policy Services



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

May 21, 2015

Robert Brundrett  
Director, Public Policy Services  
The Ohio Manufacturers' Association  
33 North High Street 6<sup>th</sup> Floor  
Columbus, Ohio 43215-3005

RE: Petition to reconcile signage requirements for asbestos transport in Ohio

Dear Mr. Brundrett,

I have received your letter of May 8<sup>th</sup>, 2015 requesting clarification regarding the recent change the Occupational Safety & Health Administration's (OSHA) requirements for labeling asbestos waste containers. Sign changes are required effective June 1, 2015. I am happy to provide clarification on Ohio EPA's flexibility regarding this issue.

Ohio Administrative Code (OAC) 3745-20-05(C)(1) specifies that "each waste generator shall ensure that asbestos waste containers shall meet the following minimum standards" after which it specifies the minimum standards acceptable to Ohio EPA. Ohio EPA's rule was designed to mimic the federal asbestos rule at 40 CFR 61.150(a)(1)(iv), with further specification of the minimum requirements acceptable to us. Upon reviewing the new OSHA requirements we have determined that the new OSHA signage requirements continue to meet the minimum standards required by OAC 3745-20-05(C)(1).

I wanted to present you with this information as quickly as possible so you could communicate my decision to your members before the June 1<sup>st</sup> deadline. My staff will create a Standard Operating Guidance (SOG) to be placed on the Ohio EPA answer-place website to document our decision. If you have any further comments or questions please contact Bob Hodanbosi of my staff at 614-644-2270. Thank you for bringing this to our attention and I trust you will find our decision satisfactory.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Butler". The signature is written in a cursive, flowing style.

Craig Butler  
Director

cc: Bob Hodanbosi, Chief Division of Air Pollution Control  
Paul Koval, Supervisor Air Toxics Unit, Permitting Section  
Drew Bergman, Ohio EPA Legal  
Robert Brubaker, Porter Wright Morris & Arthur LLP



March 17, 2015

U.S. Environmental Protection Agency  
Attention: Docket ID No. EPA-HQ-OAR-2008-0699  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

**RE: Docket ID No. EPA-HQ-OAR-2008-0699:  
Comments on EPA's December 2014 Proposed Revisions to National  
Ambient Air Quality Standards for Ozone**

The Ohio Manufacturers' Association (OMA) is hereby providing comments regarding U.S. EPA's December 2014 Proposed Revisions to National Ambient Air Quality Standards for Ozone. OMA is dedicated to protecting and growing manufacturing in Ohio; it supports reasonable, necessary, and transparent environmental regulations that promote the health and well-being of Ohio citizens.

The OMA is a trade organization, created in 1910, representing more than 1,400 manufacturers throughout Ohio and we appreciate the opportunity to comment on the U.S. EPA's Proposed Revisions to National Ambient Air Quality Standards (NAAQS) for Ozone.

The OMA has a vital interest in ensuring that the U.S. EPA sets NAAQS levels that are informed by sound science, based on reasonable and supportable analysis, and functionally implementable. By submitting comment, the OMA wants regulators to understand the impacts that the proposed standards would have on Ohio manufacturers' abilities to operate and to implement projects critical to the state's, and the nation's, economic development.

EPA has proposed to retain the indicator, averaging time, and form of the current 8-hour primary standard, but to reduce the level of the standard to a level within the range of 65 to 70 ppb, and potentially to as low as 60 ppb.

The OMA opposes EPA's proposal to reduce the level of the primary and secondary NAAQS. Such a reduction in the NAAQS level will cause severe and widespread adverse economic impacts on Ohio manufacturers as well as their customers, their communities and the state.

Ground-level ozone concentrations have steadily declined over the past decade and are expected to continue to decline under the current standard. According to Ohio EPA, the highest eight-hour ozone concentration in Ohio was 112 ppb in 1981; in 2013, it was 86 ppb, a 29% reduction. While significant progress is being made in realizing lower ozone concentrations, the 2008 standard has not yet been fully implemented. Any further reduction in the level of the standard before the current standard has been fully implemented would impose a massive, additional economic burden on Ohio, and other states, before the health and environmental effects of the current standard are realized.

The reduction of the NAAQS to a level within the 65 to 70 ppb range proposed by U.S. EPA would place Ohio, one of the most critical states to the nation's economic and energy growth and development, into nonattainment, while the adoption of a standard at the even lower 60 ppb level identified by U.S. EPA would force virtually the rest of the country into nonattainment.

A study conducted by National Economic Research Associates (NERA) Economic Consulting estimated that the more stringent ozone standard proposed would be the costliest regulation ever and could reduce GDP by **\$140 billion per year on average over the period from 2017 through 2040** and by about \$1.7 trillion over that period in present value terms.

In total, the study found that revising the ozone standard from 75 ppb to 65 ppb could:

- Reduce U.S. GDP by \$140 billion per year and \$1.7 trillion from 2017 to 2040;
- Result in 1.4 million fewer job equivalents per year on average through 2040; and
- Cost the average U.S. household \$830 per year in the form of lost consumption.

In Ohio, revising the ozone standard from 75 ppb to 65 ppb could:

- Reduce state GDP by \$22 billion from 2017 to 2040;
- Result in 22,914 lost jobs or job equivalents per year;
- Cost \$840 million in compliance; and
- Cost the average Ohio household \$440 per year in the form of lost consumption.

Furthermore, OMA strongly believes that the ozone monitoring seasons should not be altered as part of the rulemaking; U.S. EPA has failed to demonstrate that it is necessary or appropriate. The proposal will inequitably and adversely impact facilities in Ohio.

As U.S. EPA acknowledges, ozone is a regional, national, and even international formation issue where nitrogen oxide can be emitted from a source and photochemically reacts hundreds or thousands miles away to cause ozone. By lengthening the season in Ohio based on ozone-monitor location, the impact would unnecessarily restrict sources in Ohio that are not necessarily causing or contributing to any elevated ozone concentrations.

In light of the information presented and the potentially devastating economic impacts a new lower standard and changed season may present to Ohio and its productive manufacturing economy, the OMA urges the U.S. EPA to reconsider its proposal and to retain the current 75 ppb standard.

**OMA contact:** Robert (Rob) Brundrett, Director, Public Policy Services, (614) 629-6814, [rbrundrett@ohiomfg.com](mailto:rbrundrett@ohiomfg.com)





March 17, 2015

Attention Docket No. EPA-HQ-OAR-2008-0699  
Environmental Protection Agency  
Mail Code 2822IT 1200 Pennsylvania Avenue, NW  
Washington, DC. 20460

**Re: Comments on U.S. EPA's "National Ambient Air Quality Standards for Ozone," 79 Fed. Reg. 75234 (December 17, 2014)**

Dear Administrator McCarthy,

Thank you for the opportunity to express my concerns about the newly proposed federal rule on primary and secondary National Ambient Air Quality Standards for ozone. U.S. EPA's proposal threatens our State's economic recovery and the job prospects of Ohio residents without sufficient justification or evaluation of the important progress currently being made in this area.

Clean Air Act Section 109 directs U.S. EPA to propose primary NAAQS "the attainment and maintenance of which" are "requisite to protect the public health," allowing for an "adequate margin of safety." A NAAQS standard is "requisite" if it is "sufficient, but no more than necessary." *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457, 473 (2001). Section 109 also requires the EPA to set a secondary standard "the attainment and maintenance of which" is "requisite to protect the public welfare."

Before Ohio can *attain*, let alone *maintain*, the 2008 set of NAAQS for ozone, U.S. EPA now proposes a significant drop for both the primary and secondary standards from .075 ppm to .070 ppm – or maybe even .065 ppm; the proposal says that U.S. EPA will land on a figure between those very stringent bounds. This proposal is not justified by existing research concerning ozone's effect on the public health and welfare. Such an unjustified change, proposed just as Ohio is beginning at very substantial cost and effort to meet statewide the last set of ozone standards, would be detrimental to Ohio's economy and to family budgets across our State.

**1. Existing research does not justify the proposed range.**

Existing research does not justify the proposed change. In this regard, the comments and concerns of Ohio EPA are well taken in observing that:

- Even were the supporting documentation cited by U.S. EPA to be accepted wholly at face value, it would not support the proposed restrictive levels.
- Not many significant epidemiological studies have been completed since the 2008 evaluation of ozone standards, and those recent studies that have been done do not support a reduction of the ozone standard. Instead, irregular results, glaring inconsistencies, and over-estimation errors only demonstrate additional scientific uncertainty.
- In particular, as Ohio EPA explains, research and discussion of matters including pulmonary inflammation, respiratory symptoms, animal toxicological studies, hospital admissions and emergency department visits, and respiratory mortality as cited by U.S. EPA do not support a lower primary standard for ozone given variable results, inconsistencies, and methodological errors.
- The proposed secondary W126 standard also suffers from several defects, including wide variations in W126 values year-to-year and other confounding factors that may impact plant growth and vegetation damage. The new standard therefore would overestimate ozone's impact on the public welfare.
- The proposal does not sufficiently account for peak background ozone concentrations beyond Ohio's control that limit the State's approaches to meeting the potential new regime.

Especially in light of these uncertainties and defects, existing research does not support lowering NAAQS levels for ozone or adopting a W126 secondary standard, and does not begin to justify the severe range that U.S. EPA now puts forth.

**2. Within an “adequate margin of safety” to protect public health, U.S. EPA must set NAAQS in accordance with contemporary policy judgments about risks.**

The courts have recognized that setting NAAQS in accordance with the Clean Air Act language requires a “policy-driven” approach to concededly “uncertain science.” *Mississippi v. EPA*, 744 F.3d 1334, 1357 (D.C. Cir. 2013); *see also Whitman*, 531 U.S. at 494-496. That is, the statutory language does not contemplate a precise “correct” standard, but rather a range of allowable standards within which the EPA should weigh uncertain science and contemporary policy considerations to measure what is and is not an acceptable risk. U.S. EPA has solicited comment on a standard ranging from .060 ppm to .075 ppm. Consideration of the contemporary policy context demonstrates that a standard at or near the current standard of .075 ppm is appropriate, and would provide an adequate margin of safety “requisite to protect the public health” (as detailed above).

The Supreme Court and the United States Court of Appeals for the D.C. Circuit have emphasized EPA's responsibility to make "contemporary" and "contextual" policy judgments about appropriate levels of risk. *Mississippi*, 744 F.3d at 1357 ("decisions about the appropriate NAAQS level must necessarily rest largely on policy judgments" where the science is uncertain) (internal citations and quotation marks omitted). *Id.* at 1343 (explaining that setting NAAQS is "policy-driven" and the "nature of policy" requires a "contextual assessment of acceptable risk"); *Whitman*, 531 U.S. at 494-495 (Breyer, J. concurring in part and concurring in the judgment) (the U.S. EPA may "take account of context when determining the acceptability of small risks in health").

In particular, the EPA has "sufficient flexibility to avoid setting [NAAQS] ruinous to industry." *Id.* at 494-95 (Breyer, J. concurring in part and concurring in the judgment); *Cf. E.P.A v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014) (applauding U.S. EPA's decision to consider both the "magnitude" of contributions and the "cost associated with eliminating them" when exercising its gap-filling discretion under the CAA); *Mississippi, supra* (relying significantly on Justice Breyer's *Whitman* concurrence).

In this regard, I urge the Administrator to again consider two decisive contextual factors from 2011. First, shifting NAAQS standards can have a devastating impact on the states and on industry, so the EPA should use its discretion to promote "predictability and reduced uncertainty" by relying on existing state programs to reduce future ozone levels rather than instituting new standards. *See* Letter from Cass Sunstein, Administrator of OIRA, to Lisa Jackson, U.S. EPA Director (Sept. 2, 2011) ("Ozone Return Letter"). Every time NAAQS standards shift, Ohio must draft, propose, adopt, and institute plans to bring nonattainment areas into compliance. The resulting regulatory uncertainty produces economic dislocation and instability. Ohio and other states have only recently been able to institute plans to bring nonattainment areas into compliance with the 2008 set of NAAQS. The uncertainty created by new NAAQS levels undermines the regulatory stability Ohio has worked hard to achieve in the past several years.

Within its discretion, U.S. EPA should also work to "[m]inimize regulatory costs and burdens, particularly in this economically challenging time," as the Administration said it did in 2011. *Ozone Return Letter, supra*. The proposed standards from .065 to .070 ppm will also push much of Ohio into nonattainment status. As Ohio EPA explains, looming nonattainment designations have a crippling impact on industry and manufacturing as expansion of existing plants is postponed, and as new economic development and job growth goes elsewhere, including overseas, due to the extra burdens and uncertainties imposed in potential nonattainment areas. Ohio EPA also notes that unintended consequences from unjustified nonattainment standards can have a starkly disproportionate economic impact on major metropolitan areas.

### **3. U.S. EPA ought to promulgate all guidelines interpreting State Implementation Plan requirements a full three years before the SIPs must be submitted.**

Finally, the Ohio Attorney General urges the Administrator to respect the principles of cooperative federalism that undergird the Clean Air Act. *See* CAA § 7401(a)(3) (“air pollution control at its source is the primary responsibility of states and local governments”); *Union Elec. Co. v. E.P.A.*, 427 U.S. 246, 269 (1976) (“Congress plainly left with the States . . . the power to determine which sources would be burdened by regulation and to what extent.”); *EME Homer City*, 134 S. Ct. 1584 (2014) (Scalia, J. dissenting). U.S. EPA is responsible for promulgating NAAQS and the states are free to determine how they will achieve those levels in their State Implementation Plans (SIPs). But insofar as U.S. EPA intends to issue additional guidelines interpreting the Clean Air Act’s requirements for SIPs, the U.S. EPA ought to issue those guidelines at the same time as the final NAAQS, giving the states a full three years to develop SIPs that meets the requirements of the Clean Air Act. “By according the States primacy in deciding how to attain the governing air-quality standards, the Clean Air Act is pregnant with an obligation for the Agency to set those standards before the States can be expected to achieve them.” *Id.* at 1610 (Scalia, J. dissenting). Setting new standards without giving the states guidance necessary to adequately implement those standards undermines the Clean Air Act and its intended operation.

#### **Conclusion**

Ohio continues to improve air quality, and seeks to do so consistent with related quality of life considerations including necessary conditions for a strong and growing economy. The new proposal by U.S. EPA, inconsistent with the intent of the Clean Air Act and without adequate scientific basis, threatens that course. I urge U.S. EPA to retract its pending proposal, evaluate the results and effects of attainment being reached with regard to the 2008 standards, and conduct necessary review of ozone standards consistent with the available scientific basis and the law. Thank you again for the opportunity to provide these comments.

Very respectfully yours,



Mike DeWine  
Ohio Attorney General



MARY TAYLOR  
LT. GOVERNOR  
STATE OF OHIO

March 17, 2015

The Honorable Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator McCarthy:

Last November, your agency issued proposed rules to change the National Ambient Air Quality Standard (NAAQS) for ground-level ozone from the current standard of 75 parts per billion (ppb) to a standard in the range of 65 to 70 ppb. I am writing to express serious concerns with the proposal and to encourage you to maintain the current NAAQS for ground-level ozone.

In Ohio, we have worked hard to establish a balanced regulatory system, led by the state's Common Sense Initiative that was created in 2011. We believe that the state and businesses should work in partnership to ensure a strong regulatory system promoting compliance, not punishment. This does not mean that we do not value the protections to health, safety, and the environment that are achieved through a strong regulatory system. In fact, the State of Ohio has seen significant improvement in the quality of the air we breathe since enactment of the federal Clean Air Act. However, we believe and have instructed our agencies to adhere to the core principle that protection of the environment and economic progress are not mutually exclusive. When evaluating proposed regulations, we require our agencies to articulate the need for the regulation, including any scientific analysis, as well as the economic impact in order to determine whether the purpose of the regulation justifies the impact. We believe that the current proposal to change the NAAQS would fail under this analysis due to both the economic impact and the lack of a scientific basis for reducing the standard below the current 75 ppb.

As mentioned above, in Ohio we demand that our agencies justify their regulatory actions with science, and we do understand that the EPA's interpretation of the Clean Air Act is that decisions are to be based on health considerations only. Even under this standard, we believe the proposal fails to meet your criteria. According to the Ohio EPA, your agency is relying on the same basic research that was used years ago, and upon which the EPA made the determination in 2010 to not tighten the standard. We do not believe there is anything in the toxicological or epidemiological analysis that justifies a standard below 75 ppb.

Moreover, the proposed changes have the potential for large economic impacts, both in Ohio and throughout the country. It is estimated that an NAAQS of 65 ppb could cause up to \$22

billion in lost gross state product between 2017 and 2040, and perhaps more than \$840 million in compliance costs. Based on current data, at least 34 out of 88 Ohio counties would be out of compliance with the proposed standard. In 2011, the federal Office of Information and Regulatory Affairs (OIRA) cited the unpredictability and uncertainty a new NAAQS would cause to the economy in urging your predecessor not to move forward with a similar proposal.

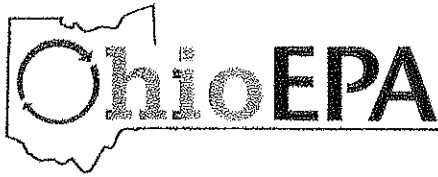
Ohio is in the process of implementing dozens of massive new regulations put in place by your agency over the past several years: regulations like the Mercury and Air Toxics Standards, the Boiler MACT, fuel economy standards for cars and trucks, regional haze rules, the Cross-State Air Pollution Rule, Tier 3 tailpipe emissions standards, and of course the Clean Power Plan. Taken together, these regulations impose billions of dollars in new costs. They will also drive major reductions in the emissions that cause ozone, making a new NAAQS even less necessary.

We are focused on creating jobs and developing a compliance friendly environment. However, the EPA continues to strain our resources by imposing a steady stream of complex and expensive new regulations that require an army of policy and technical experts and lawyers to decipher, respond to, and ultimately implement. Again, we do not believe that environmental protection and economic development are mutually exclusive. The current standard is helping improve the quality of our air, and any further reduction is unjustified. We ask you to reconsider these burdensome regulations and maintain the current standard of 75 ppb.

Sincerely,



Mary Taylor  
Lt. Governor



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

March 17, 2015

Attention Docket No. EPA-HQ-OAR-2008-0699  
Environmental Protection Agency  
Mail Code 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Comments on U.S. EPA's "National Ambient Air Quality Standards for Ozone," 79 Fed. Reg. 75234 (December 17, 2014).**

Dear Administrator McCarthy:

The Ohio Environmental Protection Agency thanks U.S. EPA for the opportunity to comment on the above-referenced proposed federal ozone standard.

Ohio has worked extremely hard to attain the 2008 0.075 ppm ozone standard throughout the entire state and has nearly accomplished that goal. Three areas were originally designated as nonattainment for the 2008 ozone standard. Based upon 2012 to 2014 air quality data, two of these areas are now attaining the standard and one is eligible for a one-year extension. Just as Ohio was "seeing the light at the end of the tunnel" with regard to attaining the 2008 standard, U.S. EPA proposes to adopt a significantly more stringent standard in the range of 0.065 to 0.070 ppm and agreed to accept comments for a standard as low as 0.060 ppm.

Ohio EPA recalls when the Administrator proposed the 0.060 to 0.070 ppm range for the 2010 ozone reconsideration. 75 Fed. Reg. 2938. The scientific evidence demonstrated in this proposal, like the past evidence in

2008 and 2010, does not justify the proposed range. Ohio EPA's analysis of available research and documentation reinforces that 0.075 ppm ozone is the lowest statistically justifiable standard and should not be lowered further. However, if U.S. EPA chooses to not use the larger body of evidence that supports maintaining the standard at 0.075 ppm and insists on further lowering the standard, Ohio EPA asserts that the studies do not support the 0.065 to 0.070 ppm range proposed by U.S. EPA. Ohio EPA also questions whether the very limited research conducted at 0.072 ppm justifies a lower standard. It certainly does not support the range proposed by U.S. EPA.

U.S. EPA is tasked with evaluating available information and recommendations as they make a discretionary policy judgment about whether to lower the standard. This decision should be designed to ensure that public health is protected sufficiently but not more than necessary, taking into account acceptable risk. As we discuss in our attached comments, Ohio EPA believes that a standard of 0.075 ppm is protective of human health and that sufficient evidence does not justify a lower standard. Ohio EPA does not believe the weight of scientific evidence supports a standard lower than 0.075 ppm.

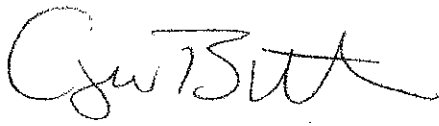
As we will discuss in our attached comments, Ohio EPA is unaware of any new study or scientific evidence that compels a change to the existing standard. When setting the 2008 standard, U.S. EPA had before it a largely similar set of studies as are before U.S. EPA now. In 2008, the U.S. EPA considered all available information, examining the potential for setting the standard as low as 0.060 ppm, but nevertheless chose 0.075 ppm. Just as in 2008, Ohio EPA does not see a clear-cut basis for arriving at the conclusion of setting a significantly lower standard.

As indicated by U.S. EPA in both the 2008 adoption of the 0.075 ppm standard, the 2010 reconsideration of the 2008 ozone standard, and the current proposal, human studies provide the most directly applicable toxicological information for determining causality with the highest level of confidence. Ohio EPA believes these studies reviewed by U.S. EPA in 2014, indicates a standard of 0.075 ppm is protective of human health consistent with the Clean Air Act and the 0.065 to 0.070 ppm range proposed by U.S. EPA is outside the range of reliable health effects evidence and does not warrant a tightening of the standard.



Ohio EPA is dedicated to making continued improvements to Ohio's air. With that in mind, we are providing the attached detailed comments regarding this proposal. Again, Ohio EPA thanks you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Butler". The signature is fluid and cursive, with the first name "Craig" being the most prominent.

Craig W. Butler  
Director

Cc: Robert Hodanbosi, Chief, Ohio EPA Division of Air Pollution Control



April 1, 2015

**RE: Enhancing Ohio EPA's Service to Businesses and Communities**

Dear Partners and Stakeholders:

As Director of Ohio EPA, I am responsible for ensuring we have strong regulatory programs to protect public health and the environment. An equally important responsibility of the Agency is providing our customers with access to technical and financial resources that will help them achieve and maintain compliance. With my own personal experience at Ohio EPA beginning in our Office of Pollution Prevention, I have seen, first hand, the environmental benefits that come through education, outreach and innovative approaches to promote stewardship.

Many of our regulated entities are familiar with the voluntary, non-regulatory programs we offer. However, many are not. Smaller businesses and communities have limited time to search for the resources and tools available to them, and can quickly get lost trying to navigate the Agency for information that is relevant to them.

One of my major initiatives over the next two years is to create a "one-stop shop" environment within Ohio EPA for customers seeking our technical and financial resources to help them achieve compliance. This approach will both enhance the way in which we serve our customers and improve our own internal operations through a more efficient, coordinated and strategic approach to administering resources. By realigning some of our key compliance assistance and funding programs here, I believe we also will be more strongly positioned to help even more regulated entities with a greater level of service.

I took the first step toward this goal early in June 2014, when I announced that Ohio EPA's Recycling and Litter Prevention Program would become part of the Office of Compliance Assistance and Pollution Prevention (OCAPP). This program supports source reduction, recycling, market development and litter prevention activities statewide, and I saw a natural connection between the functions of each to help build more sustainable practices within businesses and communities.

Today, I am pleased to announce another significant milestone, with the merger of our Office of Compliance Assistance and Pollution Prevention (OCAPP) and our Division of Environmental and Financial Assistance (DEFA). The new division will retain the name of DEFA; however, will provide a wider variety of services. Effective May 1, DEFA will house several of the Agency's core programs that have supported business and community development for many years, with emphasis on:

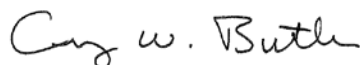
- Administering our State Revolving Fund (SRF) loan programs to help communities construct and maintain wastewater and drinking water infrastructure. Over our 25 year history, Ohio EPA's SRF programs have facilitated loans totaling more than \$7.2 billion for construction and improvements to public wastewater and drinking water infrastructure. The new division will administer both the Water Pollution Control Loan Fund (WPCLF) and Water Supply Revolving Loan Account (WSRLA) programs.
- Providing technical assistance to help small community wastewater treatment plants improve operations and efficiency.
- Helping thousands of small businesses annually comply with environmental regulations through on-site assistance, help completing forms, training events, plain-English publications and other services.
- Helping entities identify and implement pollution prevention (P2) measures that save them money, increase performance and benefit the environment.
- Providing funding for recycling, litter cleanup and scrap tire management activities, and identifying market development opportunities to support Ohio's efforts to recycle materials such as glass, plastics, rubber and construction and demolition debris.
- Recognizing the outstanding efforts of businesses, communities and other entities making a commitment to environmental stewardship through our Encouraging Environmental Excellence (E3) Program.

The new DEFA will have a more proactive approach in reaching out to Ohio's communities and businesses to share information on our services. It is important to me that our regulated entities not only understand what resources are available, but that we make ourselves available to guide them through the process of getting help, so that we can more fully meet their needs.

This reorganization effort has required a significant level of planning, and I foresee the implementation process to fully bring everything together will take some time. However, I am confident that bringing these resources together under one division will not only improve our responsiveness, but also increase the level and range of services we can provide.

The goal of this letter and initial roll-out is to make our stakeholders aware of my objectives, and to assure you that our efforts are focused on better meeting the needs of our customers. To this end, I and my staff welcome your feedback. DEFA will be hosting webinars and meetings to provide information and discuss our progress. I invite you to join us at an upcoming event, details of which will be posted on DEFA's website at <http://epa.ohio.gov/defa/>. You also can contact Laurie Stevenson, my deputy director for business relations and chief of DEFA, at 614-644-2344 with questions. We appreciate your support and look forward to working with you as we move ahead.

Sincerely,



Craig W. Butler  
Director

## Environment

### Ohio EPA's Hodanbosi to Speak at OMA Environment Committee on June 16

The OMA Environment Committee meets on [Tuesday, June 16](#) from 10:00 a.m. until 1:00 p.m. at the [OMA offices](#) and includes a yummy lunch provided by OMA.

Bob Hodanbosi, Chief of the Division of Air Pollution Control at Ohio EPA, will provide an Ohio air update, and MillerCoors, recipient of Ohio EPA's Encouraging Environmental Excellence (E3) Silver Level Award in 2014, will present on its sustainability initiatives.

Please [register here](#) for in-person or call-in attendance or call (800) 662-4463. A call-in option will be available at: 866-362-9768, 552-970-8972#. 6/11/2015

### U.S. EPA Takes Final Action Regarding Startup, Shutdown, and Malfunction Air Regulations

OMA Connections Partner, Jones Day, reports that on May 22, 2015, the U.S. Environmental Protection Agency (EPA) took a [final action](#) on a petition filed by the Sierra Club that will require revision of existing air regulations governing emissions during periods of startup, shutdown, and malfunction (SSM) in [36 states and the District of Columbia](#), including Ohio.

Those states are required to submit revisions to their state implementation plans (SIPs) that meet the requirements of a newly restated EPA SSM policy included in the final action no later than November 22, 2016.

[Read more](#) from Jones Day. 6/4/2015

### Manufacturing Dead Last in Public Perception on Sustainability

A recent poll of public perception on corporate commitment to sustainability shows manufacturing ranking dead last in its reputation for sustainability. Ahead of manufacturing are: agriculture, energy, food and beverage, health care and pharmaceuticals, consumer staples, financial and professional services, consumer durables, building and construction, transportation and leisure services.

The survey, [Sense & Sustainability](#), was conducted by Harris Poll for G&S Business

Communications. 6/4/2015

### Ohio EPA Responds Favorably, Quickly to OMA Request on Asbestos Waste

On May 8, the OMA requested Ohio EPA clarification regarding the recent change in the Occupational Safety & Health Administration (OSHA) requirements for labeling asbestos waste containers. Sign changes are required effective June 1, 2015.

On May 21, Ohio EPA director Craig Butler [responded to the OMA](#) that the new OSHA requirements can flow through the current state administrative code. So, there will be no dual requirement in the state.

The director said he's directed his staff to create new Standard Operating Guidance on the matter to document this helpful and timely decision. 5/28/2015

### OMA Asks Ohio EPA for Guidance on Asbestos Labeling

New OSHA asbestos labeling requirements conflict with current Ohio EPA requirements under the Ohio Administrative Code, causing the potential for a duplicative and confusing regulating scheme at both the state and federal level.

OMA [requested](#) that Ohio EPA Director [Craig Butler](#) issue guidance on the matter; OMA recommended that meeting the new labeling requirements under OSHA (and U.S. DOT) would be considered by Ohio EPA to be equivalent to, and in compliance with, the labeling requirements in the Ohio Administrative Code 5/14/2015

### Ohio EPA Goal is One-Stop Service

Ohio EPA has posted its Strategy to Improve Services recorded webinar and PowerPoint slides on its [website](#) under the 'Training Tab' and on [Ohio EPA's YouTube](#) web link. 5/13/2015

### Ohio EPA Seeks Comment on Regulation of Nitrogen Oxides

The Ohio Division of Air Pollution Control (DAPC) is seeking stakeholder input on Chapter 3745-110 of the Ohio Administrative Code (OAC). This establishes requirements for emissions of nitrogen oxides (NOx) from very large, large, mid-size, and small boilers,

stationary combustion turbines, or stationary internal combustion engines as defined in OAC rule 3745-110-01, or from boilers located at a facility that emits or has the potential to emit a total of more than one hundred tons per year of NOx emissions from all sources at that facility.

NOx is a precursor compound which, along with volatile organic compounds (VOCs), can form ozone. Ozone is one of the compounds of interest for which a National Ambient Air Quality Standard (NAAQS) has been established under the Clean Air Act.

Comments are due June 9, 2015. Contact [Paul Braun](#), DAPC at (614) 644-3734. Click [here](#) to access more information. 5/13/2015

### **Sound Off on Air Pollution Rules**

The Division of Air Pollution Control (DAPC) is seeking stakeholder input on the general provisions rules. These include such things as: the authority of the director of Ohio EPA to request the collection and submission of emission information, the measurement of emissions of air contaminants, the requirements for the determination of a "de minimis" source of air pollution, the requirements in the event of equipment shut down caused by malfunction or maintenance, air pollution nuisances, and other administrative rules.

Comments are due June 12, 2015, and Ohio EPA will hold a public hearing June 12, 2015. Contact [Paul Braun](#), DAPC at (614) 644-3734. Click [here](#) to access more detailed information. 5/13/2015

### **Slag and Clay / Shale Products Amendments Survive**

Two separate OMA-backed budget amendments survived the House amendment process and floor vote. They now head to the Senate for further deliberation.

One amendment would exclude slag from the statutory definition of "industrial waste." The amendment clarifies that in Ohio slag is not an "industrial waste" and is therefore treated as an industrial product, which it is. The language removes the current regulatory uncertainty around the product. OMA environmental counsel Frank Merrill put together this [memo](#) for members to use when discussing the amendment with legislators.

The second amendment exempts clay and shale products from solid waste and water regulations. The amendment clarifies that "off spec" Ohio brick and tile products are not subject to certain solid waste and water regulations that may result in costly disposal

requirements. Frank Merrill also prepared this [memo](#) for members. 4/23/2015

### **Helpful Slag Amendment in Budget**

A welcome new provision was included in the budget (HB 64) amendments this week: an amendment for which the OMA and the Ohio steel industry have advocated: to exclude slag from the statutory definition of "industrial waste."

Ohio is the second largest steel manufacturing state in the nation. Because of this, Ohio produces a large amount of slag, which is treated, stored, and sold on the open market as a useful product. Some of the largest slag processors have facilities in Ohio, such as Stein, Inc. and Tube City IMS.

The House Bill 64 language clarifies that in Ohio slag is not an "industrial waste" and is therefore treated simply as an industrial product, which it is. The language, thus, removes the current regulatory uncertainty around the product.

The OMA provided legislators with this [fact page](#). Members should be sure to thank Reps. Romanchuk (R-Mansfield) and Anielski (R-Walton Hills) for their strong support of the amendment. 4/16/2015

### **Amendment Clarifies Regs for 'Off Spec' Brick and Tile Products**

In addition to an amendment that provides regulatory certainty for slag, a second welcome environmental amendment the House added to the state budget bill this week would exempt clay and shale products from solid waste and water regulations. Ohio boasts world class manufacturing of shale and clay products.

The amendment spearheaded by Reps. Schuring (R-Canton) and Romanchuk (R-Mansfield) clarifies that 'off spec' Ohio brick and tile products are not subject to certain solid waste and water regulations that may result in costly disposal requirements.

Here is a [fact sheet](#) on the issue. 4/16/2015

### **Ohio EPA Offers Webinars on its Service Improvement Plan**

Ohio EPA is presenting a webinar so the regulated community can learn more [about the merger](#) of its Office of Compliance Assistance and Pollution Prevention (OCAPP) and Division of Environmental and Financial Assistance (DEFA). During this webinar, Ohio EPA will discuss how Director Butler is

achieving his priority initiative to create a "one-stop shop" for technical and financial resources to help constituents achieve compliance.

The webinar is offered on these two dates: Wednesday, April 15, 2015 1 p.m. – 2 p.m. (EST) and Wednesday, April 22, 2015 10 a.m. – 11 a.m. (EST). Participants can send in questions using the chat feature any time during the event. [Registration is required](#). 4/9/2015

### Ohio Supreme Court Decision Invalidates TMDLs

On March 24, 2015, the Ohio Supreme Court, in a 5-2 vote, [issued a decision](#) invalidating a phosphorus limit that was imposed on a Fairfield County wastewater treatment plant. The decision in *Fairfield Cty. Bd. Of Commrs. v. Nally*, provides that the Ohio EPA must adhere to Ohio's statutory rulemaking procedure prior to establishing pollutant limits for a body of water.

In his concurring opinion, Justice Terrence O'Donnell provided that the "decision is far-reaching in that Ohio EPA has issued 1,761 TMDLs\* for watercourses throughout Ohio, including 132 TMDLs for phosphorus alone," none of which have been promulgated through the R.C. 119 administrative process. "[T]hus the majority's decision invalidates all of them, leaving the enforceability of numerous permits in question."

OMA environment counsel, Frank Merrill of Bricker & Eckler LLP, writes [this summary](#) of the case. 3/27/2015

\*The total maximum daily load (TMDL) establishes the maximum amount of a pollutant that may be discharged for certain bodies of water without causing the receiving body of water to violate water-quality standards.

### Corps Should be Ashamed

"The U.S. Army Corps of Engineers should be ashamed of its flagrant abuse of the Clean Water Act, its violation of Ohio administrative codes and its contempt for the public." So, says the editorial board of the Cleveland Plain Dealer in an unusual [full page editorial](#) this week.

At issue, still, is the dredging of the Cuyahoga River, specifically the final mile of the river channel that "connects Cleveland's ArcelorMittal steel plant to the world." The Corps refuses to dredge that mile and dispose of dredge material in a confined waste facility, instead of open dumping into the lake.

Ohio EPA director Craig Butler has led the charge against the Corps, and points out that Congress appropriated almost \$8 million, and that the highest bid for dredging received by the Corps is only \$4 million. The Corps has the funding to dredge the entire channel, and dispose of its dredge materials appropriately in the confined waste facility.

Another example of an out-of-control federal agency undermining the U.S. economy. 4/2/2015

### Ohio EPA Announces Reorganization for Better Service

This week Ohio EPA director, Craig Butler, issued a letter in which he describes agency goals and a reorganization:

"One of my major initiatives over the next two years is to create a "one-stop shop" environment within Ohio EPA for customers seeking our technical and financial resources to help them achieve compliance. This approach will both enhance the way in which we serve our customers and improve our own internal operations through a more efficient, coordinated and strategic approach to administering resources.

By realigning some of our key compliance assistance and funding programs here, I believe we also will be more strongly positioned to help even more regulated entities with a greater level of service.

I took the first step toward this goal early in June 2014, when I announced that Ohio EPA's Recycling and Litter Prevention Program would become part of the Office of Compliance Assistance and Pollution Prevention (OCAPP).

Today, I am pleased to announce another significant milestone, with the merger of our Office of Compliance Assistance and Pollution Prevention (OCAPP) and our [Division of Environmental and Financial Assistance](#) (DEFA). The new division will retain the name of DEFA; however, will provide a wider variety of services. Effective May 1, DEFA will house several of the Agency's core programs that have supported business and community development for many years ..."

[Read more here](#). 4/1/2015

### OMA Files Comments with U.S. EPA on Flawed Ozone Proposal

U.S. EPA closed its public comment period this week on its proposal to tighten the ground-level ozone air quality standards from the current 75 ppb (parts per billion) to within a range of 65 to 70 ppb.

A study conducted by National Economic Research Associates (NERA) Economic Consulting estimated that the more stringent ozone standard proposed would be the costliest regulation ever. In Ohio alone, the study found that revising the ozone standard from 75 ppb to 65 ppb could: Reduce state GDP by \$22 billion from 2017 to 2040; result in 22,914 lost jobs or job equivalents per year; cost \$840 million in compliance; and cost the average Ohio household \$440 per year in the form of lost consumption.

In [comments](#) filed with EPA, OMA said: "According to Ohio EPA, the highest eight-hour ozone concentration in Ohio was 112 ppb in 1981; in 2013, it was 86 ppb, a 29% reduction. While significant progress is being made in realizing lower ozone concentrations, the 2008 standard has not yet been fully implemented. Any further reduction in the level of the standard before the current standard has been fully implemented would impose a massive, additional economic burden on Ohio, and other states, before the health and environmental effects of the current standard are realized." 3/19/2015

## State Officials Oppose U.S. EPA Ozone Proposal

This week both [Attorney General Mike DeWine](#) and [Lt. Governor Mary Taylor](#) weighed in with U.S. EPA on its proposal to lower the ozone standard from the current 75 ppb (parts per billion) to between 65 to 70 ppb.

In his [letter](#) to U.S. EPA Administrator Gina McCarthy, Attorney General DeWine said that the proposed rule is "...inconsistent with the intent of the Clean Air Act and without adequate scientific basis..." He also co-signed a [letter](#) to Administrator McCarthy with several fellow attorneys general, in which they state that the proposal is "...unlawful and unachievable..."

Lt. Governor Taylor asked Administrator McCarthy to "...reconsider these burdensome regulations and maintain the current standard of 75 ppb" in her [letter](#).

The OMA appreciates Lt. Governor Taylor and Attorney General DeWine weighing in on this issue.

Final rules are expected this October. 3/19/2015

**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on June 12, 2015

- HB61**      **LAKE ERIE FERTILIZER-DREDGING** (BUCHY J, HALL D) To generally prohibit the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, and to prohibit a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries.  
*Current Status:* 3/17/2015 - Referred to Committee Senate Agriculture  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-61>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/12/2015 - Senate Finance, (Eighth Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB101**     **HAB MITIGATION** (HALL D) To establish requirements governing the training of employees of publicly owned treatment works and public water systems to monitor and test for harmful algae, the development of emergency plans by certain public water systems to respond to harmful algal blooms, and the development of an early warning system for harmful algal blooms.  
*Current Status:* 3/24/2015 - House Agriculture and Rural Development, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-101>
- HB214**     **PUBLIC IMPROVEMENT-PIPING MATERIAL** (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.  
*Current Status:* 6/9/2015 - House Energy and Natural Resources, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HCR11**     **GOVERNOR-WATER QUALITY EFFORTS** (HALL D) To commend Governor John Kasich on his efforts to improve the water quality of Lake Erie and to affirm the Governor's ability to form an interstate compact with other states in furtherance of this objective.  
*Current Status:* 5/12/2015 - **REPORTED OUT**, House Agriculture and Rural Development, (Second Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-11>
- SB1**        **GREAT LAKES-HARMFUL ALGAE** (GARDNER R, PETERSON B) To transfer the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.  
*Current Status:* 4/2/2015 - **SIGNED BY GOVERNOR**; eff. 7/3/2015  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-1>
- SB16**      **WATERSHEDS-FERTILIZER APPLICATION** (BROWN E) To require applicators of



fertilizer or manure to comply with specified requirements and to authorize the Director of Environmental Protection to study and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.

**Current Status:** 2/10/2015 - Senate Agriculture, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-16>

**SB46 LAKE ERIE DRILLING BAN (SKINDELL M)** To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.

**Current Status:** 2/18/2015 - Referred to Committee Senate Energy and Natural Resources

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>

**SB47 DEEP WELL BRINE INJECTION PROHIBITION (SKINDELL M)** To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.

**Current Status:** 2/18/2015 - Referred to Committee Senate Energy and Natural Resources

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>

**SB114 MICROCYSTIN LEVELS-PUBLIC WATER (SKINDELL M)** To establish requirements and procedures pertaining to levels of microcystin in public water systems.

**Current Status:** 3/10/2015 - Referred to Committee Senate Health and Human Services

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-114>

**SB150 MOTOR FUEL DISPOSAL (HITE C)** To create a qualified immunity for the dispensing of incompatible motor fuel.

**Current Status:** 6/10/2015 - Senate Civil Justice, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-150>