10 a.m. (EST)
Via Zoom

Environment Committee

February 10, 2021

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2021 Environment Committee Calendar
Meetings begin at 10 a.m.

Wednesday, February 10
Wednesday, May 19
Wednesday, September 29

Our Meeting Sponsor:

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Environment Committee Agenda

February 10, 2021

Welcome & Roll Call	Chairman Julianne Kurdila, Cleveland-Cliffs Inc.
COVID-19 Update	Rob Brundrett, OMA Staff
Ohio EPA Presentation	Ernie Stall, Ohio EPA April Stevens, Ohio EPA
Discussion Issues • **Ohio Water** • **Ozone Nonattainment**	Member Discussion
Guest Speaker	Laura Berkey-Ames, Director, Energy and Resources, National Association of Manufacturers
Storm Water Presentation	Tim Ling, Corporate Environmental Director, Plaskolite LLC
Public Policy Report	Rob Brundrett, OMA Staff
OMA Counsel's Report	Christy Schirra, Bricker & Eckler LLP

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Laura Berkey-Ames
Director, Energy and Resources Policy
National Association of Manufacturers

For fifteen years, Ms. Berkey-Ames has represented the interests of various trade associations before Congress and the administration. In her role as Director, Energy and Resources Policy at the National Association of Manufacturers (NAM), Ms. Berkey-Ames works closely with Congress and the administration advocating on behalf of manufacturers' interests in facility security, chemicals risk management and emerging contaminants, clean air issues, energy efficiency, circular economy, sustainability, recycling and environmental justice.

Prior to coming to the NAM, Ms. Berkey-Ames represented the American Fuel & Petrochemical Manufacturers where she focused on legislation impacting facility security, chemicals in commerce, cybersecurity, drones, and various modes of transportation and critical infrastructure. Ms. Berkey-Ames has also advocated on behalf of the American Public Works Association and the Air-Conditioning, Heating, and Refrigeration Institute in the areas of homeland security, emergency management and energy efficiency.

Ms. Berkey-Ames holds a BA in Political Science and a MA in Applied Politics from The American University in Washington, D.C.

Working with Ohio EPA During the COVID-19 Pandemic

Working with Ohio EPA during the COVID-19 pandemic.

How to Contact Us

As a precautionary response to COVID-19, Ohio EPA is currently operating with most staff working remotely. If you are working with our staff on a current project and you know the name of the employee you are working with, email them at firstname.lastname@epa.ohio.gov or call them directly.

The Agency website has contact information for every district, division, and office.

To report a **spill or environmental emergency**, contact the spill hotline (800) 282-9378 or (614) 224-0946. This number should only be used for emergencies. For all other calls, please contact Ohio EPA's main phone line at (614) 644-3020 or the main line for the division or office you are trying to reach.
As our district offices and Central Office are temporarily closed, there is limited ability to receive deliveries, plans, etc. All entities are encouraged to submit plans, permit applications, etc., electronically where there are existing avenues to do so, such as the eBusiness Center (eBiz). Please refer to the list of available services on the main eBiz webpage. We encourage you to make use of all that apply, even if you have not used eBiz in the past.
Plans under 25 MB can be emailed. For large plans over 25 MB, entities should work with the reviewer/division to upload via LiquidFiles. Directions for submitting docs via LiquidFiles is available on YouTube.
We apologize for the inconvenience and thank you in advance for your understanding. If you wish to send hard copies of documents to any of Ohio EPA's district offices, the best method to ensure we receive these documents is to send them via U.S. Mail. Since all offices are closed, deliveries outside of U.S. Mail (FedEx, UPS) will likely be returned because the offices are closed and deliveries cannot be made.

Non-Emergency Calls, General Questions, Concerns/Complaints

Ohio EPA is currently operating with most staff working remotely. If you are working with our staff on a current project and you know the name of the employee you are working with, email them at firstname.lastname@epa.ohio.gov or call them directly.

Ohio EPA's spill hotline should **only be used to report emergencies involving the release of any material that impacts public health or the environment**, including chemicals, petroleum, manure, fires/explosions, or to make an emergency notification to Ohio EPA as required by law or by permit. The regulated community should use the main division number for routine business.
For all other calls, including complaints, questions, or concerns about environmental issues, please use the toll-free numbers listed below for the nearest district office or contact the public involvement coordinator for your region.
If you receive voice mail when contacting us, please leave a message including a call back phone number and someone will return your call the next business day. To reach a specific individual, please use our phone directory. We also encourage you to email your question or concern when possible.

- Ohio EPA's main phone line - (614) 644-3020
- Division/Office phone numbers
- E-Check 1-800-CAR-TEST (1-800-227-8378)
- Contacts by County
- Central District Office 1-800-686-2330
- Northeast District Office 1-800-686-6330
- Northwest District Office 1-800-686-6930
- Southeast District Office 1-800-686-7330
- Southwest District Office 1-800-686-8930
- State of Ohio phone search (type environmental into the Agency field to see all Ohio EPA employees)

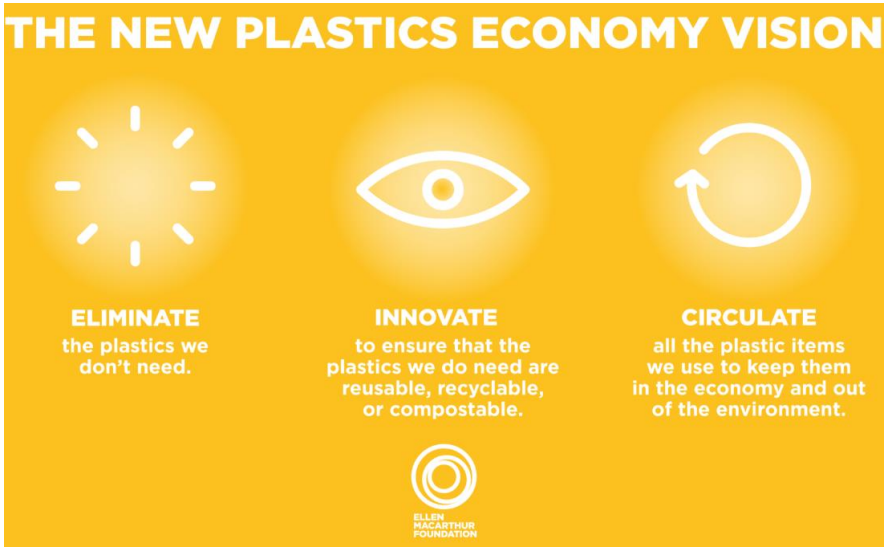
U.S. Plastics Pact Overview & Government Activator Roles

Nov. 12, 2020

What is the Plastics Pact?

- A network of national/regional collaboration initiatives
- Implemented locally
- Based on New Plastics Economy Vision

PLASTICS PACT



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U.S. Plastics Pact

- Launched Aug. 25
- Challenge too big to address alone
  - Set national strategy
  - Develop roadmap
  - Measure progress
  - Empower action
  - Catalyze policies

Unites business, govt. & nonprofits

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Four Targets/Action Items

1. Define a list of packaging that is to be designated as problematic or unnecessary by 2021 and take measures to eliminate them by 2025.
2. By 2025, all plastic packaging is 100% reusable, recyclable, or compostable.
3. Undertake ambitious actions to effectively recycle or compost 50% of plastic packaging by 2025.
4. By 2025, the average recycled content or responsibly sourced bio-based content in plastic packaging will be 30%.

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U.S. Plastic Pact Roles

- Business
  - Lead by example, support the Pact
- Non-profit
  - Lead actions, unite efforts & guide process
- Federal Government
  - Provide counsel, unite efforts, multi-stakeholder engagement
- State Government
  - Legislative expertise, project support and research
- Local Government
  - Conduct pilot projects, amplify best practices & engage citizens

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U.S. Plastic Pact Roles

- Members are called ‘Activators’
  - For-Profit Activators
  - Not-for-Profit Activators
    - Responsibilities
      - Actively support collective progress
      - Active participation
      - No fees
      - Report annually

NOT-FOR-PROFIT ACTIVATORS	Annual Pact Fee
Government	$0 (commitment to action)
NGOs, Universities	$0 (commitment to action)

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Who has joined the Pact?

- 60+ committed Activators
  - Solid Waste Association of North America (SWANA)
  - National Waste & Recycling Association
  - Target
  - Terracycle, Inc.
  - The Clorox Company
  - The Coca-Cola Company
  - Institute of Scrap Recycling Industries, Inc.
  - Walmart
  - Many more…

Government Activators

ADEQ Arizona Department of Environmental Quality

King County

Seattle Public Utilities

Reimagine Phoenix
Transforming Trash Into Resources

DEPARTMENT OF ECOLOGY
State of Washington

AUSTIN RESOURCE RECOVERY
A CITY OF AUSTIN SERVICE

SWALCO
SOLID WASTE AGENCY OF LAKE COUNTY, IL

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What's the Benefit?

- What does Ohio EPA & Ohio get out of it?
  - Identifying problematic packaging and eliminating them
    - Helps local recycling with plastic packaging contamination
    - Helps simplify messaging and outreach
    - Helps MRFs collect more plastics to send to end markets
    - Opportunity to divert more plastics from landfill
  - All packaging reusable, recyclable or compostable
    - State Plan/Solid Waste Goals
    - Circular Economy Goals

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What's the Benefit (cont.)?

- Effectively Recycle
  - Better curbside/drop-off recycling
  - Increase state-wide landfill diversion
- Increasing average recycled content
  - Will increase demand for recycled plastics
  - Help Ohio Markets and end users
- Ohio EPA's involvement provides regional legitimacy

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What's the Benefit (cont.)?

- Pact's Action Items align with
  - 2020 State Plan includes Plastic Market Development
    - IDs post-consumer, single use plastics
    - ID barriers to greater recovery and industry needs
    - Inventory of plastic sources
    - Diversify funding and support processing infrastructure
    - Partner with others to find solutions
  - DEFA's Sustainability Unit
  - U.S. EPA's Draft National Recycling Strategy
    - Reduce Contamination
    - Increase Processing Efficiency
    - Improve Markets

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Ohio EPA's Role

- What are our responsibilities?
  - Not-for-Profit Activator Signatory Document
  - Legislative or regulatory input and expertise
  - Main interface with local govt. and citizens
  - Education and connecting stakeholders
- Time commitments?
  - Activator Network quarterly calls (1 hr.)
  - Developing roadmap & workstreams (5 hrs./month)
  - On-the-ground actions/workstreams launched in 2021+
    - Potential grant funding and pilots
    - Hosting case study/education webinars

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The U.S. Plastics Pact
Frequently Asked Questions

June 2020

Section 1: About the U.S. Plastics Pact

What is the U.S. Plastics Pact and how is it being organized?
The U.S. Plastics Pact ("U.S. Pact") will bring together companies, government entities, nongovernmental organizations (NGOs), researchers, and other stakeholders who will work collectively toward a common vision of a circular economy for plastics, as outlined by the Ellen MacArthur Foundation's New Plastics Economy. This vision aims to ensure that plastics never become waste by eliminating the plastics we do not need, innovating to ensure that the plastics we do need are reusable, recyclable, or compostable, and circulating all the plastic items we use to keep them in the economy and out of the environment. It is a massive undertaking and requires the collective action of all stakeholders throughout the supply and value chains toward measurable progress in just five short years.

By bringing together all stakeholders and driving collaborative action, the U.S. Pact will deliver a step change toward a circular economy, enabling companies and governments in the U.S. to collectively meet impactful goals by 2025 that they could not meet on their own.

The U.S. Pact is a collaboration among the Ellen MacArthur Foundation, World Wildlife Fund ("WWF"), and The Recycling Partnership. The Recycling Partnership is the lead coordinating entity and has formed U.S. Plastics Pact LLC ("LLC"), a subsidiary of The Recycling Partnership, to manage the U.S. Pact. The LLC is working in partnership with WWF and the Ellen MacArthur Foundation to administer the daily workings of the U.S. Pact.

Over the next few months, we will be working together to fully capture the great work already happening in the U.S. toward plastics circularity as well as identify additional needs for our unique geography. For more information specifically on this please see question below: "What role will the U.S. Pact play in relation to other, existing initiatives?"

Are there other plastics pacts and how are they managed?
The U.S. Pact will join a network of Plastics Pacts around the world as part of the Ellen MacArthur Foundation's New Plastics Economy initiative that all share one common vision: aiming to change the way plastics are designed, used, and reused to transition to a circular economy where plastics never become waste. The Plastics Pact network builds a unique platform to exchange learnings and best practices across regions to accelerate the transition to a circular economy for plastics. Success stories from the U.S. Pact can also be amplified around the world for others to learn from.

What will the actual work look like?
The work will focus on four main target areas in line with the Ellen MacArthur Foundation's New Plastics Economy vision and Global Commitment but will be customized to fit the unique needs and challenges of the U.S. system (see Section 2). This will be accomplished through coordinated initiatives which may include actions to advance recyclability of packaging, increase recycling of materials, support an increased shift to reuse business models, and more. The key to success will be scalability of solutions across the far-reaching geography of the U.S.

One of the first tasks will be to establish a "roadmap" to identify key milestones toward achieving the U.S. targets. This will be done in collaboration, via targeted workstreams, and the goal is to finalize this roadmap by the end of 2020.

What role will the U.S. Pact play in relation to other, existing initiatives?
While new, the U.S. Pact is not intended to duplicate existing efforts underway to address the problem of waste management and plastic waste in the U.S. Instead, it is a collaborative alliance designed to thread together organizations and initiatives that have the potential to move the needle on plastics in the U.S. This effort is critical in creating efficiencies for key stakeholders that are involved in multiple initiatives across the industry landscape and will foster shared learnings and fuel faster progress toward stated goals. For example, we will seek to incorporate representatives from existing initiatives within the U.S. Pact working groups where relevant to leverage their extensive experience for the benefit of all. The U.S. Pact will advance the great work already being done and identify the opportunities needed to bring the 2025 targets to fruition.

Meanwhile, the U.S. Pact's approach to creating a convening mechanism that drives industry-wide collaboration and alignment on sustainability targets will be a model suitable for adoption across all material types. This collaborative can serve as a model for a circular economy future in our country where all materials are carefully thought of as resources that deserve just as much investment as plastics. We cannot do this without a unified voice of governments, companies, suppliers, reprocessors, haulers, MRFs, NGOs, academia, and consumers.

What sort of problems are we trying to solve with the U.S. Pact? What types of things are not working in our current waste management system for plastics?

- Americans lack basic infrastructure for curbside recycling and composting, and access to affordable reuse schemes are unavailable or do not yet exist at scale. Communities that offer recycling or composting services often cannot maintain sustainable programs as funding is in constant competition with other municipal services like schools and roads.

- End of life considerations for plastics are often not taken into account in the product design phase, which limits their potential for reuse and recycling and makes it likely that they will become waste.
- Consumers are confused about how to properly recycle packaging at home, work, school, or during travel because there are many types of plastics. Labeling and education is inconsistent across the country due to a lack of unified labeling guidelines.
- The recycling system in the U.S. is operating with a system built for outdated products. Packaging design and sorting technology have outpaced the ability and costs required by MRFs to keep up.
- Uniform policy at the national and state levels is lacking and yet needed to bring one voice to packaging guidelines, education, labeling, access, and infrastructure. Multiple attempts have been unsuccessful in the past because these issues are often portrayed with partisanship or are viewed as protective of corporate interests. If we continue in this direction, a circular economy will never be realized in the U.S.

A lot is happening already, so why do we need the U.S. Pact?
Our individual actions and piecemeal activities alone will not get us any closer to a circular economy for plastics. A very large number of companies with U.S. operations have signed on to the Ellen MacArthur Foundation's New Plastics Economy Global Commitment. The intent of the U.S. Pact, along with other Pacts, is to identify ways to support the achievement of these goals taking into account specific national contexts.

The U.S. Pact will create a unified national framework for a circular economy for plastics, creating structure, coherence, aligned targets, and associated reporting.

The intent of the U.S. Pact is not to duplicate efforts but to streamline them to ensure existing investments work better and deliver more. The U.S. Pact can help to fill gaps that are currently open and identify gaps in the landscape for pilots. The U.S. Pact can also help to pool funding to support areas that are recognized as needing significant collective attention to help achieve the targets. In addition, the U.S. Pact provides an opportunity to begin engaging companies that are not yet supporting efforts to change the status quo.

Based on experience from other countries, the U.S. Pact has the potential to act as a strong investment signal for plastics recycling infrastructure.

Lastly, the U.S. Pact also has the potential to reduce confusion for elected officials, companies, and consumers and bring forward a unified voice around plastics.

Section 2: The targets

What targets have been agreed upon for the U.S. Pact?
By joining the U.S. Pact, Activators (defined in Section 3) agree to collectively deliver toward these four action items:

TARGET 1: Define a list of packaging that is to be designated as problematic or unnecessary by 2021 and take measures to eliminate them by 2025.

TARGET 2: By 2025, all plastic packaging is 100% reusable, recyclable, or compostable.

TARGET 3: Undertake ambitious actions to effectively recycle or compost 50% of plastic packaging by 2025.

TARGET 4: By 2025, the average recycled content or responsibly sourced bio-based content in plastic packaging will be 30%.

How did we arrive at the targets?
The targets, which are required as a framework in order to launch the U.S. Pact, were derived from the overarching targets in the Ellen MacArthur Foundation's New Plastics Economy Global Commitment and were created in discussion and collaboration with a number of Global Commitment signatories, key stakeholders and other interested participants over several months between November 2019 and April 2020.

Why are the targets so ambitious?
The targets are ambitious. But we must aim high with clear, concrete definitions and an understanding of what the real, achievable steps are along the way to 2025. We recognize the timeframe to accomplish these targets is short and the workload is immense, but we also realize that if we choose to do nothing, the vision of a circular economy across the U.S. will give way to the status quo.

Target 3 (effectively recycled) is very ambitious. Is it really achievable?
A high ambition for this target is necessary in order to meet two of the other targets: there will be a threshold for average effective recycling in order for packaging to be considered "recyclable" as part of target 2, and we also need to consider the supply of recycled content that will be available to meet target 4.

Target 3 is not achievable without radical change – it is deliberately a "moonshot" goal. The U.S. Pact is intended to make a collective step change, not just incremental progress.
We are following ambitious precedents set by other Pacts around the world, and the response from those countries has been fantastic. We believe the U.S. will step up.

What is the relationship between the U.S. Pact targets and the Global Commitment (that includes a number of other goals)?
The Plastics Pact network and the New Plastics Economy Global Commitment are working toward the common vision of a circular economy for plastic. Achieving this vision will require unprecedented levels of collaboration and innovation, both globally, but also at national and regional level, with solutions tailored to local contexts.

At the global level, over 450 organizations have signed up to the New Plastics Economy Global Commitment. Signatories include companies representing 20% of all plastic packaging produced globally, as well as governments, NGOs, universities, industry associations, investors, and other organizations. Business members have set ambitious, timebound, individual commitments to 2025 for their organization, at a global level, committing to:

1) Take action to eliminate problematic or unnecessary plastic packaging by 2025.
2) Take action to move from single-use toward reuse models where relevant by 2025.
3) 100% of plastic packaging to be reusable, recyclable, or compostable by 2025.
4) Set an ambitious 2025 recycled content target across all plastic packaging used.

The Plastics Pacts in the Ellen MacArthur Foundation's global Plastics Pact network are committed to the same vision of a world without plastic waste or pollution and a set of concrete, ambitious group targets to 2025, aligned with those of the New Plastics Economy Global Commitment. The target percentages are adapted to the local market, taking into account the country/regional baseline, but the focus areas remain consistent to drive progress toward a circular economy for plastic in the local market.

Consistency in both the vision and the target areas across different Plastics Pacts and the targets set by businesses globally offers a common framework to drive concerted action toward a circular economy for plastic.

How can individual companies or organizations work collectively to achieve the targets?
Where possible, it is desirable that individual organizational targets are aligned, but not all of the targets are intended to be achieved by individual organizations alone. Therefore, in practice this means:

- Incorporating targets into organizational goals where possible;
- Actively collaborating with other stakeholders from across the value chain in relevant U.S. workstreams and activities;
- Actively reviewing internal packaging and product portfolios to identify opportunities to improve recyclability, recycled content, and consumer messaging in accordance with U.S. Pact targets;
- Contributing knowledge and insights to cross-value chain research and analysis;

- Working with suppliers to obtain accurate data for tracking and reporting progress;
- Developing clear accountability internally; providing objectives and training to internal teams to help meet U.S. Pact targets;
- Engaging with citizens through education campaigns, as applicable to organizational reach;
- Investing in changes and technologies to support the achievement of U.S. Pact targets; and,
- Reporting annually in alignment with global reporting through WWF's ReSource: Plastic Footprint Tracker. Reporting scope will include the volume, weight, polymer type/form/source of the products companies sell in the U.S. This data will contribute to the aggregated reporting for the U.S. Pact. More information on the Footprint Tracker can be found in Section 6.

Should we be viewing this as a 5-year commitment? Do you envision new targets being defined for 2025 onwards?
The work of all Plastics Pacts toward the ambitious targets are on a 5-year timeline aligned with the Ellen MacArthur Foundation's New Plastics Economy Global Commitment. Read more about the progress of the Pact network. For the U.S. Pact, the ReSource: Plastic Footprint Tracker will allow us to review our progress with trends year-over-year, at which point the Advisory Council may recommend to the Steering Committee that the U.S. Pact pivot and refocus.

How do the targets differ from other countries' goals and positions, and why?
The targets differ from other countries' goals in that they reflect U.S. national priorities and realities while still pushing us into a position where the U.S. can seek to be on par with the achievements of other developed nations in its management of plastic waste.

Here is an overview of the targets of other Pacts in comparison with the targets of the U.S. Pact:

Global Commitment Focus Area	**UK PACT**	**DUTCH PACT**	**CHILEAN PACT**	**SOUTH AFRICAN PACT**	**U.S. PACT**
1. Eliminate problematic or unnecessary plastic packaging	By 2021 Define a list of problematic/ unnecessary plastic packaging and items and agree to measures to address.	Eliminate problematic or unnecessary single-use packaging.	Defining a list of problematic or unnecessary packaging & which measures should be taken to have them eliminated by 2025.	Unnecessary & problematic plastic materials are avoided through reduced use, more reuse &/or use of alternative, more sustainable materials.	Define a list of packaging that is problematic or unnecessary by 2021 and take measures to eliminate them.
2. All plastic packaging is 100% reusable, recyclable, or compostable	100%	100%	100%	100%	100%
3. Percentage of plastics packaging effectively recycled or composted	70%	70%	30%	70%	50%
4. Percentage of recycled content across all plastics packaging used	30%	35%	25%	30%	30%

Section 3: Participating in the U.S. Pact

How do I contact the U.S. Pact team to find out more?
Visit our website: usplasticspact.org
Email us: takeaction@usplasticspact.org

When will U.S. Pact start its activities?
The time to confirm your interest to shape this critical initiative is now! We will start work as soon as we meet our minimum fundraising and value chain representation thresholds. Pending these thresholds, the U.S. Pact intends to launch in summer 2020, with roadmap and workstream building expected to begin at the same time. The aim is to publish the Roadmap outlining how we plan to achieve the targets by Q1 2021.

What are the benefits to my organization of joining the U.S. Pact?
Being a part of the U.S. Pact is a way to:

- Make progress toward the New Plastics Economy Global Commitment
- Benefit from the knowledge of other organizations
- Influence national goals and outcomes
- Better coordinate for change
- Be recognized for organizational contributions to U.S. Pact goals

How do I become a member? Is there a fee?
Members, or as we are calling them, “Activators”, of the U.S. Pact will fall into two different categories: For-Profit Activators and Not-for-Profit Activators.

1. For-Profit Activators

Businesses of all sizes play a critical role in stimulating the circular economy and as such will be core activators of the U.S. Pact. Fees are outlined in Section 4.

Benefits:

- Opportunity to demonstrate dynamic industry leadership
- Create new cross-value partnerships with businesses, NGOs and governments to catalyze progress toward national targets and the New Plastics Economy Global Commitment
- Align actions with current business goals and investments
- Help shape the U.S. Pact’s national strategy and workstreams
- Recognition as an Activator in U.S. Pact publications and news releases and events
- Early access to research and innovation
- Access to expert advice on sustainable (plastics) strategy

Responsibilities:

- Actively support progress toward the U.S. targets and the vision of the New Plastics Economy
- Be an active member participating in regular meetings and workstreams
- Pay annual membership fees
- Report annually

Future fee structures are to be determined but will seek to take account of the cost to deliver specific workstreams, as well as Activator financial participation in action-oriented initiatives.

2. Not-for-Profit Activators

Governments and not-for-profits of all sizes are enablers of circularity and will be critical stakeholders of the U.S. Pact. There is no annual fee for Not-for-Profit Activators.

Benefits:

- Opportunity to demonstrate dynamic leadership
- Create new cross-value partnerships with businesses, NGOs and governments to catalyze progress toward national targets and the New Plastics Economy Global Commitment
- Help shape the U.S. Pact's national strategy and workstreams
- Recognition as an Activator in U.S. Pact publications and news releases and events
- Early access to research and innovation

Responsibilities:

- Actively support collective progress toward the U.S. targets and the vision of the New Plastics Economy
- Be an active member participating in meetings and workstreams
- No fees
- Report annually

What does it mean to be an Activator of the U.S. Pact?

Being an Activator in the U.S. Pact signals to other companies, the federal government, voters, and consumers that our country cannot wait any longer to take real action on climate change, prevention of marine debris, and waste management. The power of the U.S. Pact is the strength of collective action on the ground in communities and retail and through purposefully designed legislation.

Why is government participation essential to the success of the U.S. Pact? How can my agency or municipality get involved?
State and local governments will be a critical link to support progress toward achieving the national targets. By actively collaborating with other stakeholders from across the value chain in relevant U.S. workstreams and activities, governments will have the opportunity to participate in grant-funded pilot project implementation in coordination with other government agencies, NGOs, and private entities to support actions, such as infrastructure improvements and education and outreach. Unlike other Activators, governments can share important legislative or regulatory input and expertise with the U.S. Pact stakeholder network. Additionally, local governments are often the main interface with citizens, and education is an important aspect of achieving the targets. More information can be found in the Not-for-Profit Signatory Document.

How are you bringing more companies and stakeholders to the table rather than engaging the same leaders in this space?
We are actively in conversations with stakeholders throughout the value chain, and we are happy to take recommendations on additional value chain members who should be contacted or made aware of the U.S. Pact. As we complete the landscape analysis in 2020, we expect to have a better understanding of new stakeholders who could be engaged.

How will the U.S. Pact relate to existing initiatives already underway that my organization is funding/contributing?
Numerous organizations and initiatives have been developed over many years, solving for a range of different challenges. Some are plastic-specific, while others address a range of materials and means to reduce waste. One of the goals of the U.S. Pact will be to identify action-focused initiatives that can become part of the Pact network. Another will be to identify gaps, and ultimately fundraise to support the launch of new initiatives and pilots that will be essential to achieving the agreed targets; scalability of actions across recycling, reuse, and composting will be the key to success.

If we are unable to formally participate as an Activator, what other opportunities will there be to monitor progress with the U.S. Pact?
The U.S. Pact will provide resources on its website and assuming funding allows, maintain a mailing list of interested parties.

Section 4: Fees and Fundraising

What are the fees for For-Profit Activators?
For-Profit Activators are required to pay a 2020 fee to the LLC based on U.S. sales revenue for the most recently ended fiscal year:

Business Size (U.S. Sales Revenue)	
Large ($1B+)	$50,000
Mid-size ($10M - $1B)	$25,000
Small (<$10M)	$10,000
Start-Up ($1M and <2 years old)	$2,000

Will these fees vary year over year?
We do not anticipate significant variations in fees for subsequent years.

Do Global Commitment signatories involved in other pacts have to pay U.S. fees?
To date, New Plastics Economy Global Commitment signatories have paid a membership fee to the lead organization of the Plastics Pact to which they belong. The U.S. Pact fees are for the local lead organization to run the local Plastics Pact to tackle the local challenges. The participation of the U.S. Pact in the Ellen MacArthur Foundation's global Plastics Pact network and the associated benefits are provided without fees.

If I sign up to the U.S. Pact right away, what will my money be used for?
Fees will be distributed to the U.S. lead organizations to fund activities in the U.S. for the benefit of U.S. stakeholders. Until now, all of the work done to establish the U.S. Pact has been funded from the existing resources of The Recycling Partnership and WWF. Annual Activator fees will fund the daily workings, research, and actions of the U.S. Pact, including tasks like acting as the main point of contact for Activators; leading and implementing the U.S. Pact with strategic input from the Advisory Council; identifying, formulating, and managing the workstreams and activities of the U.S. Pact; acting as the main point of contact for interaction with the Ellen MacArthur Foundation's Plastics Pact network; and managing Pact network requirements, including annual reporting and the budget.

Are all funding partners of The Recycling Partnership and sponsors of WWF's ReSource Plastic platform automatically Activators of the U.S. Pact?
Current funding partners of The Recycling Partnership and WWF's ReSource Plastic platform are not automatically Activators of the U.S. Pact. They are asked to contribute to the U.S. Pact separately from their involvement with other initiatives of those organizations.

Section 5: Governance

What is the intended composition of the Advisory Council?
Inaugural Advisory Council (2020) members will be appointed by the Steering Committee from founding signatories for the duration of the roadmap development (assumed to be one year). Candidates for subsequent one-year terms, submitted by the Steering Committee, will be voted on annually by Activators in good standing. Advisory Council representation is intended to cover the value chain and consist of 10-15 representatives to provide advice and counsel to the Steering Committee. Composition will be various-sized for-profits, not-for-profits, and government organizations.

Are decisions/statements of the U.S. Pact attributed to the joining entities (i.e., are there any documents that will say or suggest that all entities that have joined subscribe to a decision/statement)?
All decision-making will be in support of the common vision and the achievement of the U.S. Pact targets. Efforts will be made to reach consensus among relevant parties in consultation with the Steering Committee. While we are seeking and anticipate strong alignment before proceeding, there is no expectation that all U.S. Pact signatories will endorse every position, decision, or statement.

Please clarify the workstreams and how they will be developed.
An initial draft of potential workstreams has been developed. Based on the required input for the Roadmap development in the post-launch period, that draft will be evolved as needed, and further operational details and parameters, including number of participants, rules of engagement, size of groups etc., will be presented to the Advisory Council for review and input before finalizing.

What is the intent with respect to lobbying on a national or state level by the U.S. Pact?
The current intent is the U.S. Pact will not engage in direct or grassroots lobbying because the U.S. Pact recognizes the importance of policy making in achieving our goals. As such, the U.S. Pact will be a central learning-and-sharing resource for all members of the value chain, including state, local, and federal government entities. This Policy Workstream will focus on finding innovative ways to remove barriers to the goals of the U.S. Pact and work to create comprehensive policy proposals that incorporate feedback from all members.

Section 6: Reporting

Will I be responsible for reporting to the U.S. Pact and how frequently?
Results of measurable change in each of the target areas, and transparent reporting on these, are a key outcome of the U.S. Pact. The U.S. Pact will publish a public annual progress report every year of the progress made toward the group targets. Your company or organization will be responsible for reporting results annually in alignment with global reporting through WWF's ReSource: Plastic Footprint Tracker ("Footprint Tracker"). All For-profit Activators will be asked to report using the quantitative component of the Footprint Tracker. The results will be combined into a transparent report that will be made available annually and also shared with the Ellen MacArthur Foundation's annual Plastics Pact Network progress reporting team.

It is important to note that individual results will not be singled out in reporting for failing to meet targets or commitments; instead, progress will be publicly reported collectively for the U.S. Pact. *Confidential and/or individual company data will not be shared publicly.*

In reviewing the landscape of circular economy actions already happening across the country, it is vital that we understand how non-business stakeholders are managing their impacts. To this end, we ask that public and NGO Pact Activators report annually through the Beyond Supply Chain ("BCS") survey, which is the qualitative component of the Footprint Tracker, led by WWF.

The BSC survey questions intend to establish a consistent way to measure how organizations are working beyond their own supply chains to reduce plastic waste, including things like system-level investments, education and outreach, funding cleanups, influencing suppliers, etc.

As the thinking and science around accounting for system-level action advances, this survey is a great starting point to get a better picture of the impactful work happening, which is why your early involvement with the U.S. Pact will be critical in shaping this conversation with the Steering Committee, Advisory Council, and other stakeholders throughout the value chain.

Will it be necessary to use the Footprint Tracker for reporting or is it permissible to use our own tools?
We ask all Activators complete the Footprint Tracker to ensure we are aligned on definitions, methodology, and measurement components. Because all Activators will be using the Footprint Tracker, it allows the tracking of aggregate progress being made toward the U.S. Pact targets.

If a government is already a signatory to the New Plastics Economy, will the reporting for that initiative and the U.S. Pact be the same?
The Footprint Tracker will aid U.S. Pact organizations in their efforts to measure their country-level plastic waste footprint. Currently, the Footprint Tracker's technical capabilities do not automatically provide this information to the Ellen MacArthur Foundation or other reporting platforms, but organizations can use the Footprint Tracker results to complete their reporting requirements. WWF is working toward the development of a webtool and other technical solutions that streamline this further.

If our organization is a global signatory, do we have access to the Footprint Tracker?
Activators are not required to be a member of WWF's ReSource: Plastic Initiative to use the Footprint Tracker because access to the Footprint Tracker is included in annual Activator fees. If, however, your company or organization chooses not to become an Activator, you will need to join WWF's ReSource: Plastic Initiative to access the Footprint Tracker.

How resource intensive is the Footprint Tracker as far as inputting data/requirements, as well as ensuring it is updated?
This typically varies based on the size and global presence of an organization but can take a few weeks to compile and enter the data. WWF is in the process of developing a Footprint Tracker web tool to automate and expedite this process.

Will the Footprint Tracker measure a company's global plastic footprint or their U.S. presence?
For purposes of the U.S. Pact, results will be defined by an organization's U.S. footprint.

How will definitions be determined?
U.S. Pact definitions will be aligned with those from the Ellen MacArthur Foundation, taking onboard important nuances for the U.S. where relevant.

Background

The Soil & Water Outcomes Fund ("the Fund") partners with public and private entities to cost-effectively achieve conservation and sustainability outcomes like water quality improvement and carbon sequestration. The Fund generates these outcomes by providing financial incentives to farmers in targeted areas to implement on-farm conservation practices, creating new on-farm revenue opportunities and verifiable environmental benefits.

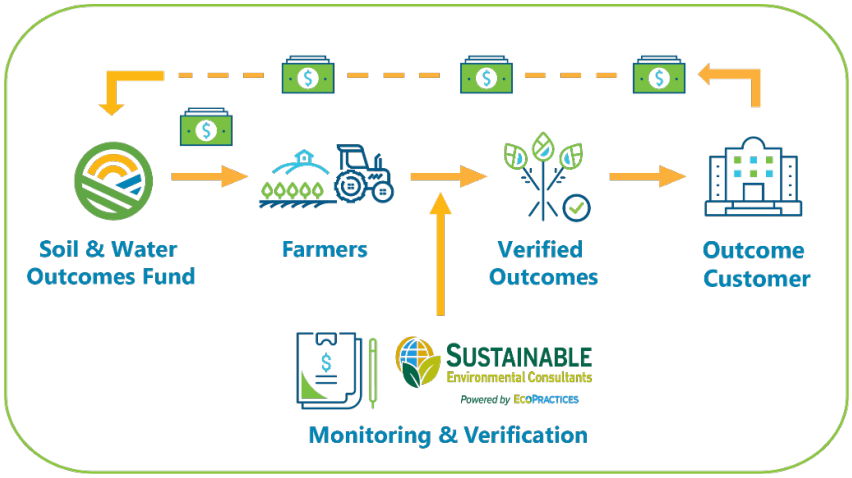
The Fund is jointly managed by ReHarvest Partners (a subsidiary of Quantified Ventures) and AgOutcomes (a subsidiary of the Iowa Soybean Association).

The Fund enables its customers to pay for environmental outcomes *after* they have been produced and verified, a demonstrably more cost-effective means of achieving environmental improvements than existing "pay for practice" approaches. By stacking multiple environmental benefits and aligning multiple customers in a single transaction, the Fund is a cost competitive solution for public and private customers looking to achieve environmental outcomes for voluntary or regulatory purposes.

In 2020, the Fund is operating across 9,500 acres of cropland in Iowa. In 2021, we are scaling up to 100,000 acres and expanding from Iowa into Ohio and Illinois.

How it Works

1. The Fund secures commitments from mission aligned investors.
2. The Fund identifies and engages with farmers in priority locations.
3. Farmers are paid to implement conservation practices that improve water quality and sequester carbon. Farmer payment is tied to the volume of outcomes produced.
4. The resulting environmental outcomes are independently quantified, monitored and verified.
5. The environmental credits are sold to customers after they have been verified



Maumee River Watershed

The Maumee River watershed is located in northwestern Ohio. It drains a total of 5,024 square miles in Ohio and flows through all or part of 18 counties. Major municipalities partially or fully in the watershed include Toledo, Defiance, Findlay, Lima, Van Wert, Napoleon and Perrysburg. The watershed is predominantly comprised of cultivated crops with some urban development, hay and pasture lands, and forest.

The Maumee River is a major tributary to the western Lake Erie basin. Please see the Lake Erie program page for more information.

For information on the Maumee Watershed Nutrient TMDL project that addresses Lake Erie western basin impairments, see the tab below.

Maumee Watershed Nutrient TMDL

The western basin of Lake Erie has impaired public drinking water supply and recreation uses due to harmful algae. To address these impairments, Ohio EPA is developing a Maumee Watershed Nutrient TMDL. Springtime phosphorus loads from the Maumee River watershed have been identified as the most critical to reduce the occurrence of harmful algal blooms in the western basin of Lake Erie. Ohio EPA is committed to address these impairments within Lake Erie with a TMDL and has developed far-field nutrient targets aimed at getting to Annex 4's phosphorus goal.

The Maumee River watershed is located in northwestern Ohio. It drains a total of 5,024 square miles in Ohio and flows through all or part of 18 counties. Major municipalities partially or fully in the watershed include Toledo, Defiance, Findlay, Lima, Van Wert, Napoleon, and Perrysburg. The watershed is predominantly comprised of cultivated crops with some urban development, hay and pasture lands, and forest. The Maumee River is a major tributary to the western Lake Erie basin. A total of 194 HUC12 subwatersheds compose Ohio's portion of the watershed.

Lake Erie Impairments Included in Project

TMDL Project and Schedule

The Maumee Watershed Nutrient TMDL represents a culmination of efforts from previous workgroups consisting of federal and state agencies, universities, interested stakeholders, and other local partners, research, and ongoing water quality monitoring. Ohio EPA is now connecting the dots into this TMDL project. The Maumee Watershed Nutrient TMDL project builds on these existing pieces that serve as the beginning steps in the TMDL development (see the 2018 and 2020 Integrated Water Quality Monitoring and Assessment Reports). The Maumee Watershed Nutrient TMDL is now at the third step in the TMDL development process. This is the first step in the development process where it is explained what pollutants and where the TMDL is addressing.

Study Plan/Quality Assurance Project Plan (QAPP)

- Heidelberg University's National Center for Water Quality Research 2017 Project Study Plan and Quality Assurance Plan
- Ohio EPA Division of Drinking and Ground Waters' Harmful Algal Bloom Rules OAC Chapter 3745-90
- Ohio's Harmful Algae Information for Public Water Systems
- Great Lakes Water Quality Agreement Annex 4 Objectives and Targets Task Team Recommended Phosphorus Loading Targets for Lake Erie
- NOAA Lake Erie HAB Forecast
- Science meets policy: A framework for determining impairment designation criteria for large waterbodies affected by cyanobacterial harmful algal blooms

- USGS National Field Manual for the Collection of Water Quality Data
  Note: Data is available for download here
- Ohio EPA Nutrient Mass Balance Study for Ohio's Major Rivers
- Ohio's 2020 DAP - Promoting Clean and Safe Water in Lake Erie: Ohio's Domestic Action Plan 2020 to Address Nutrients
- Ohio EPA Near-Field Total Maximum Daily Load Reports for waters in the Maumee River watershed
- Ohio EPA Integrated Water Quality Monitoring and Assessment Reports: 2016
- U.S. EPA Methodology for Connecting Annex 4 Water Quality Targets with TMDLs in the Maumee River Basin
- Ohio's Nutrient Reduction Strategy
- Ohio Lake Erie Phosphorus Task Force Phase I (2010)
- Ohio Lake Erie Phosphorus Task Force Phase II (2013)
- State of Ohio Directors' Agricultural Nutrients and Water Quality Working Group (2011)
- Point Source and Urban Runoff Nutrient Workgroup Final Report and Recommendations (2012)
- Ohio's Algae Information for Recreation Waters
- Additional documents forthcoming

TMDL DEVELOPMENT | ●●○○○	Biological & Water Quality Report or Equivalent	2018 IR, 2020 IR
TMDL DEVELOPMENT | ●●●○○	Loading Analysis Plan	Outreach started in October 2020, with webinars to follow in the coming months.
TMDL DEVELOPMENT | ●●●●○	Preliminary Modeling Results	
TMDL DEVELOPMENT | ●●●●●	Draft TMDL report	

For more information about TMDLs and the development process, see the TMDL Program page.

Ohio's 2020 DAP - Promoting Clean and Safe Water in Lake Erie: Ohio's Domestic Action Plan 2020 to Address Nutrients
Implementation
Stay Informed

Ohio EPA
Division of Air Pollution Control

Ozone Update

PAG Meeting
January 20, 2021

Jennifer Van Vlerah, DAPC

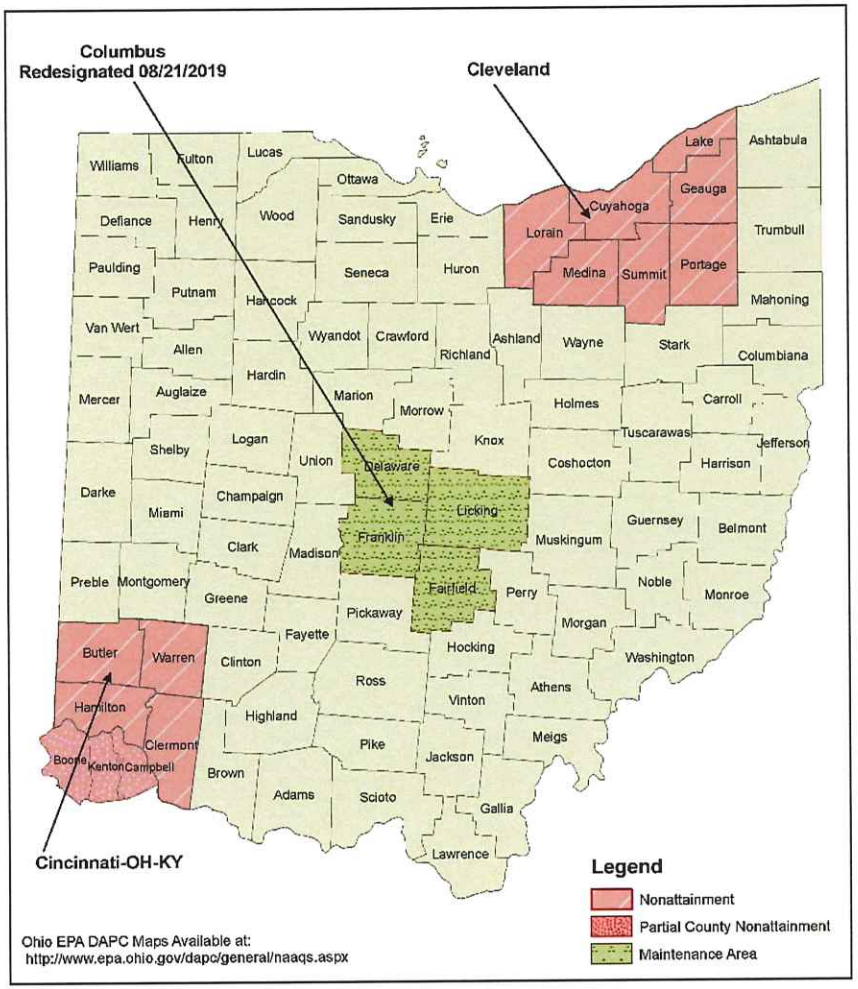
Ohio Environmental Protection Agency

Background

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

Ohio Environmental Protection Agency

Background



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

- Columbus was redesignated to attainment on 8/21/19
- Cincinnati nonattainment area also includes 3 partial counties in KY

Ohio Environmental Protection Agency

Background

- Marginal areas required to meet standard by August 3, 2021 (called "attainment date")
  - 2020 is last full ozone season before attainment date
- Current 3-year DV (2018-2020) shows Cincinnati and Cleveland areas still in nonattainment
- Met with stakeholders in February and September of 2020
- Next Steps
  - Qualify for extension?
  - Bump-up from *marginal* to *moderate* classification?

Ohio Environmental Protection Agency

2015 Ozone Standard
Next Steps for Cleveland & Cincinnati

- Monitors that don't attain based on current 2018-2020 design value

  Cleveland
  - District 6 (Cuyahoga County) – 71 ppb
  - Mayfield (Cuyahoga County) – 71 ppb
  - Eastlake (Lake County) – 74 ppb

  Cincinnati
  - Middletown Airport (Butler County) – 71 ppb
  - Sycamore (Hamilton County) – 74 ppb
  - Lebanon (Warren County) – 72 ppb

- Qualify for One-Year Extension? - *No*
  - All monitors in area need 2020 4th high meeting standard (70 ppb or below)
  - Cleveland: District 6 and Eastlake do not meet criteria
  - Cincinnati: Lebanon monitor does not meet criteria

- Bump-up from marginal to moderate forthcoming.

Ohio Environmental Protection Agency

Cincinnati Ozone Outlook

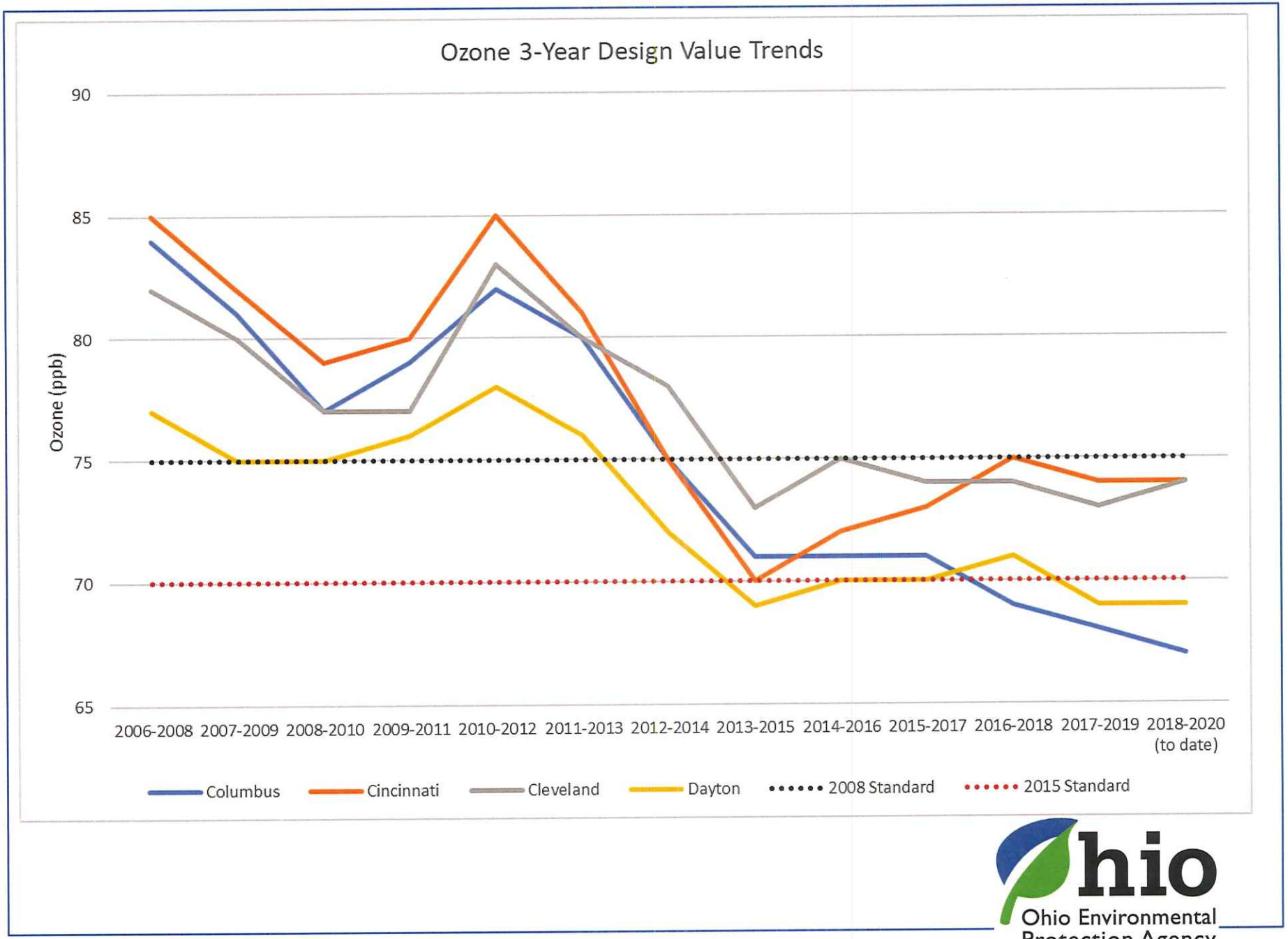
Site Name	Site Id	County	2014 4th High	2015 4th High	2016 4th High	2017 4th High	2018 4th High	2019 4th high	2020 4th high needed to violate 2015 standard	Current 2020 4th high	Current 2018-2020 Design Value
Middletown Airport	39-017-0018	Butler	69	70	73	70	76	67	70	70	71
Crawford Woods	39-017-0023	Butler				72	73	67	73	67	69
Miami University, Oxford	39-017-9991	Butler	69	68	71	69	70	65	78	64	66
Batavia	39-025-0022	Clermont	68	70	73	68	69	71	73	64	68
Sycamore	39-061-0006	Hamilton	71	72	75	72	80	72	61	70	74
Colerain	39-061-0010	Hamilton	73	70	73	68	75	67	71	70	70
Taft NCore	39-061-0040	Hamilton	69	71	73	71	72	71	70	68	70
Lebanon	39-165-0007	Warren	71	71	74	68	75	70	68	71	72

Ohio Environmental Protection Agency

Cleveland Ozone Outlook

Site Name	Site Id	County	2014 4th High	2015 4th High	2016 4th High	2017 4th High	2018 4th High	2019 4th high	2020 4th high needed to violate 2015 standard	Current 2020 4th high	Current 2018-2020 Design Value
District 6	39-035-0034	Cuyahoga	71	68	69	69	72	68	73	74	71
GT Craig NCore	39-035-0060	Cuyahoga	66	63	63	61	63	66	84	66	65
Berea BOE	39-035-0064	Cuyahoga	59	66	68	64	66	63	84	66	65
Mayfield	39-035-5002	Cuyahoga	61	72	70	68	75	70	68	68	71
Notre Dame	39-055-0004	Geauga	65	73	74	71	73	68	72	65	68
Eastlake	39-085-0003	Lake	75	74	74	73	76	71	66	75	74
Painesville	39-085-0007	Lake	62	70	69	72	69	69	75	68	68
Sheffield	39-093-0018	Lorain	67	62	68	65	69	58	86	59	62
Chippewa	39-103-0004	Medina	64	63	66	64	66	54	93	64	61
Lake Rockwell	39-133-1001	Portage	61	64	59	65	66	58	89	63	62
Patterson Park	39-153-0020	Summit	58	65	61	66	69	66	78	62	65

Protection Agency



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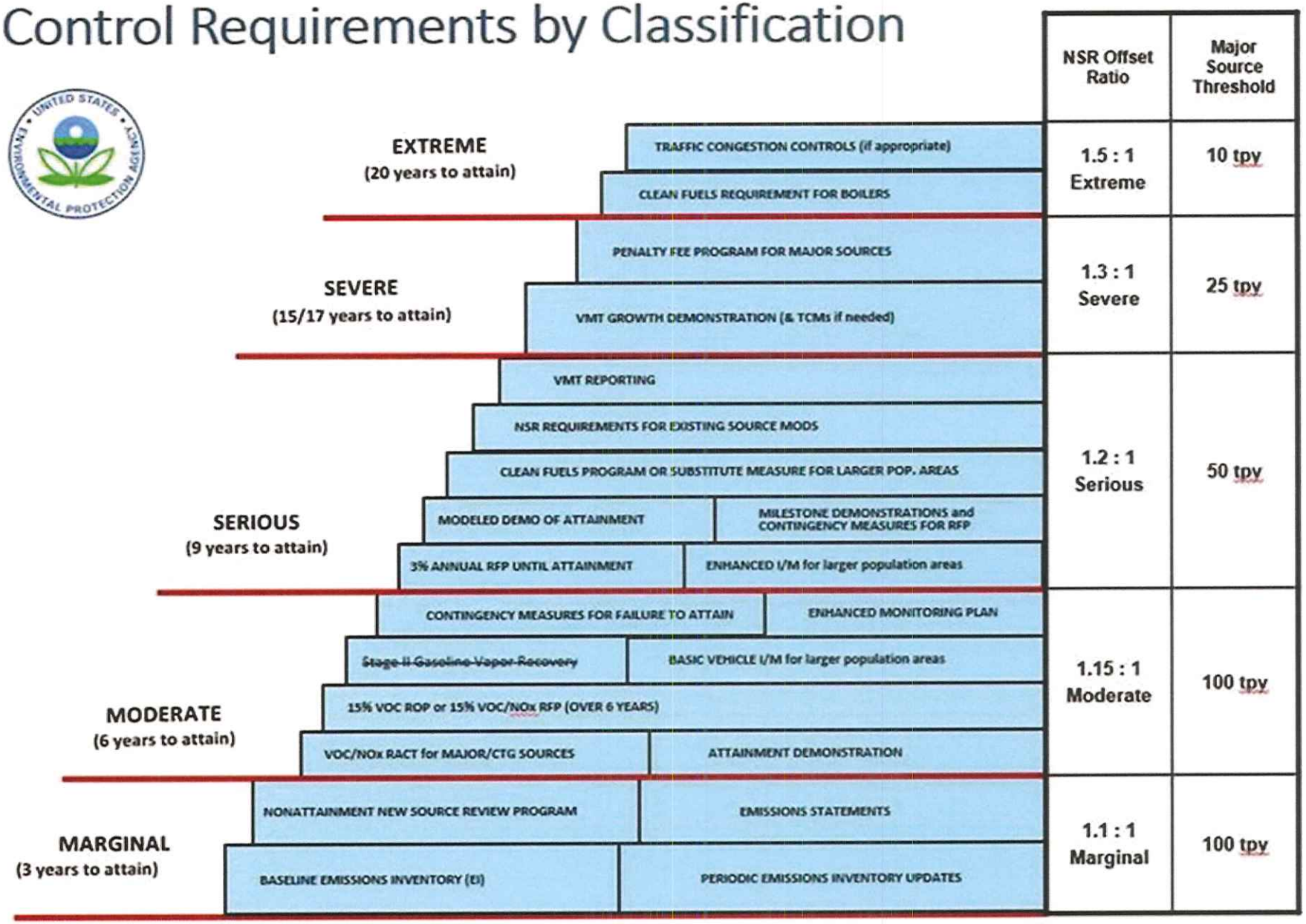
Overview of CAA Ozone Nonattainment Area Planning & Control Requirements by Classification



NOTE: Transportation and General Conformity apply in all ozone nonattainment areas.

Mandatory Requirements for Moderate Ozone Nonattainment Areas

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

- NOx Reasonably Available Control Technology (RACT)
  - Affects many industrial sources
  - Major stationary sources (> 100 tons per year (TPY) potential to emit (PTE))
  - Expand RACT in place in Cleveland area (OAC Chapter 3745-110) to Cincinnati area
    - Need to reassess to ensure previously established RACT is still appropriate

Ohio Environmental Protection Agency

Mandatory Requirements for Moderate Ozone Nonattainment Areas

- VOC RACT
  - Control Technique Guidelines (CTGs)
    - Need to adopt 2016 Oil and Gas CTG in Cleveland, several others in Cincinnati
  - Non-CTG VOC RACT
    - Major stationary sources (> 100 TPY PTE)
    - RACT for some sources already in place under older standards (OAC Chapter 3745-21), but need to reassess to ensure still appropriate, and add any sources not already covered

Ohio Environmental Protection Agency

Mandatory Requirements for Moderate Ozone Nonattainment Areas

- Emissions inspection and maintenance (I/M) Program (i.e. E-check)
  - But not the E-check you may remember!
    - On-board diagnostics only; no longer tail-pipe tests
  - Expand I/M in place in Cleveland (OAC Chapter 3745-26) to Cincinnati area
- Additional challenges permitting new and modified sources
  - NSR offset ratio 1.15:1
  - Baseline year reset

Ohio Environmental Protection Agency

"Bump-up" Anticipated Timeline

- 8/3/21: Attainment date (marginal)
- ~2/3/22: Bump-up to moderate
  - Required 6 months after attainment date (i.e. 2/3/22)
  - In recent actions for the 2008 standard (going from moderate to serious), U.S. EPA took ~ 1 year to finalize the bump-up
- ~2/3/23: Attainment demonstration due
  - Already past due at time of bump-up (original deadline 8/3/21)
  - U.S. EPA can adjust some deadlines as part of bump-up
    - In recent action extended some SIP deadlines to ~ 1 year after bump-up
- 8/3/24: New (moderate) attainment date (cannot be extended)
  - 2023 is last ozone season before new attainment date

Ohio Environmental Protection Agency

Anticipated Rulemaking Timeline

- RACT revisions (OAC Chapters 3745-110 and 3745-21)
  - Anticipate implementation required by 3/1/23 (beginning of last ozone season before moderate attainment date)
  - ~1 year for rulemaking process
  - Try to provide at least 18 months implementation period
  - Early Stakeholder Outreach initiated 12/11/20 and comments were due 1/11/21.
- I/M revisions (OAC Chapter 3745-26)
  - Anticipate implementation required by 2026 (4 years after bump-up)
    - EPA may establish alternate deadline as part of bump-up
  - Expand to include Cincinnati counties with future implementation date
    - Will include provision that will not be implemented if attain prior to implementation date

Ohio Environmental Protection Agency

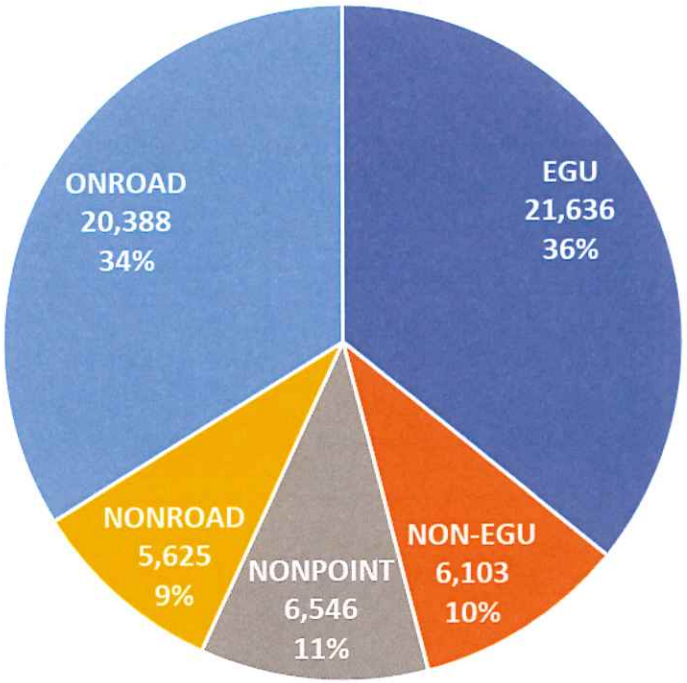
Evaluating Other Possible Control Options

- In the past, primarily relied on federal control measures to meet standards
  - No new federal control measures are planned
  - Need to evaluate additional emissions reductions (beyond mandatory RACT and I/M) to meet standard and avoid another bump-up to Serious nonattainment

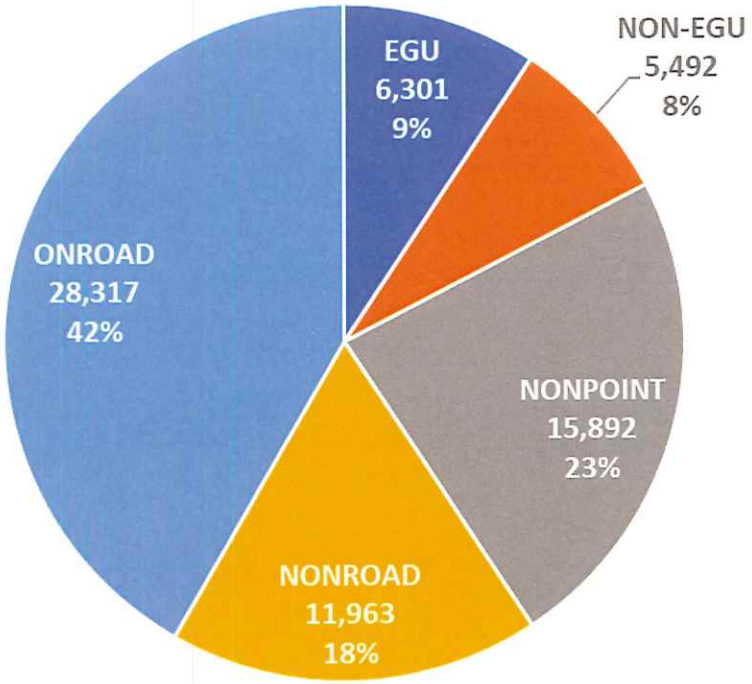
Ohio Environmental Protection Agency

NOx Inventory
Comparison to Cleveland

Cincinnati Area (OH portion)
2014 Annual NOx Emissions (TPY)



Cleveland Area
2014 Annual NOx Emissions (TPY)



NOx Point Source Inventory

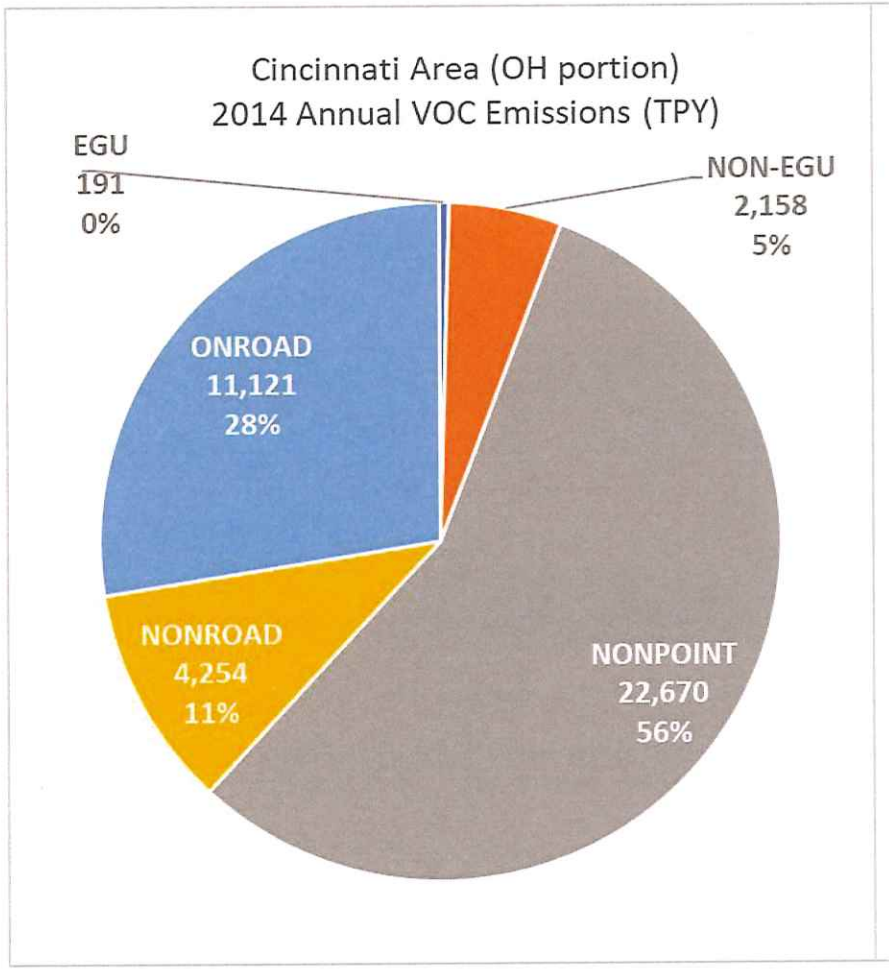
2018 Update and Comparison to Cleveland

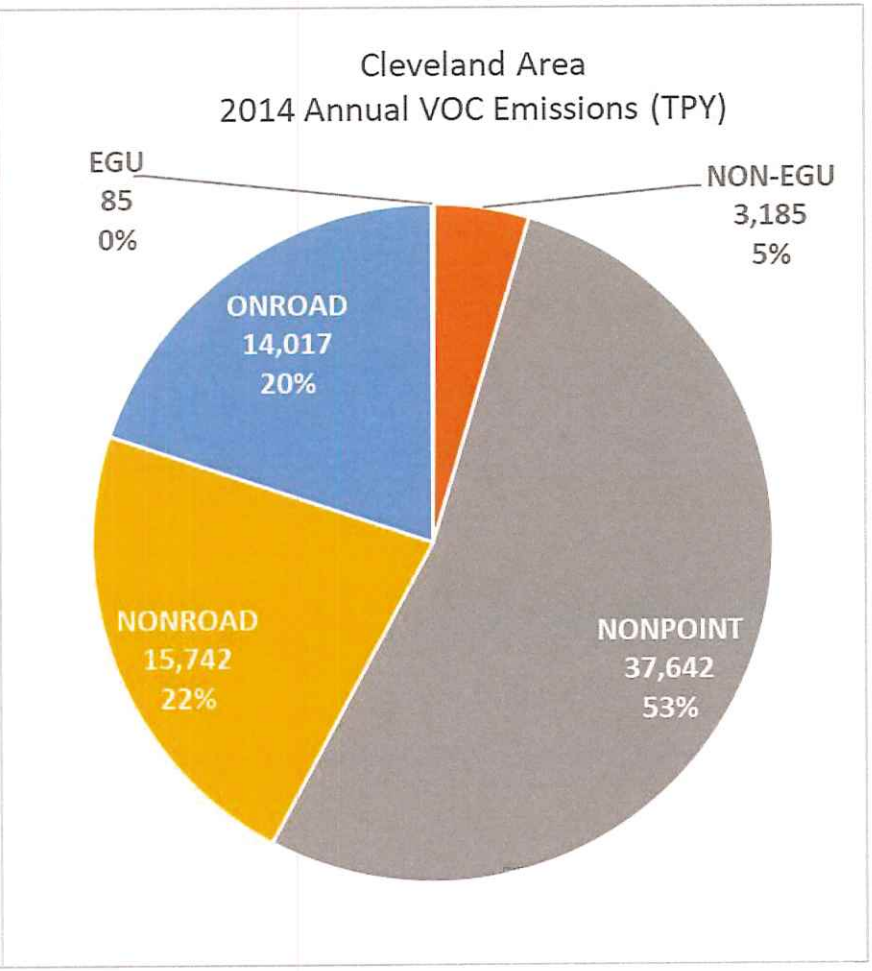
- 2014 is the most recent available inventory that includes all types of emission sources (including mobile, nonpoint, etc.)
  - However, we do have more recent for point sources (2018)
- Compare to Cleveland for perspective

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

Ohio Environmental Protection Agency

VOC Inventory
Comparison to Cleveland





LADCO Projects

- Ongoing projects with Lake Michigan Air Directors Consortium (LADCO) – *for information sharing among states*
  - Ozone control options analysis
    - Regional, state and nonattainment area analysis of potential control options, including potential emissions reductions and cost effectiveness
    - Expected ~early 2021
  - NOx/VOC sensitivity analysis
    - Photochemical modeling evaluating sensitivity of ozone to reductions in NOx and/or VOC emissions
    - Expected ~early 2021
  - NOx RACT workgroup implemented late 2020

Ohio Environmental Protection Agency

Summary

- Cincinnati & Cleveland will not meet standard by end of 2020, and is not eligible for 1-year extension
  - "Bump up" to moderate is forthcoming
- RACT evaluation and rulemaking began December 2020
- Also looking at other sectors for potential controls, based on information from LADCO projects
- Attainment and avoiding another bump-up is primary goal

Ohio Environmental Protection Agency

Ozone Exceedances by Year (through October 2019)

Year	0.125 ppm 1-Hour	0.084 ppm 8-Hour	0.075 ppm 8-Hour	0.070 ppm 8-Hour
2005	5	192	688	1193
2006	None	39	236	505
2007	None	110	541	1037
2008	None	32	171	419
2009	None	4	31	138
2010	None	20	162	387
2011	None	38	215	434
2012	None	96	329	701
2013	None	2	14	65
2014	None	None	11	69
2015	None	1	16	91
2016	None	None	42	168
2017	None	None	19	61
2018	None	2	51	130
2019	None	None	5	38
2020	None	None	18	63

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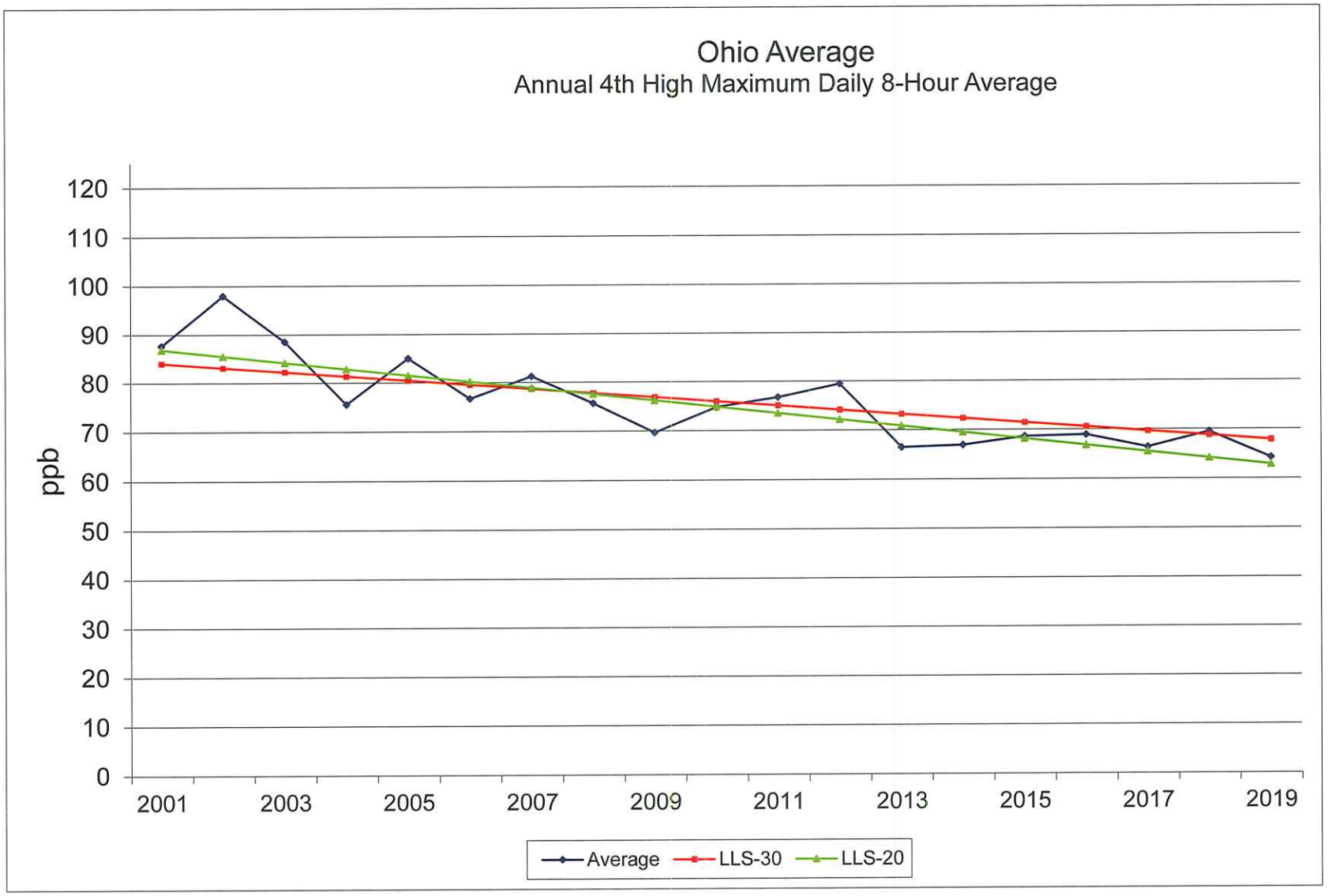


Ohio Environmental Protection Agency

Into the Storm…Again

Ohio Storm Water Permitting In Light Of The 2021 Renewal of USEPA's Storm Water NPDES Multi-Sector General Permit

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

Ohio Storm Water Permits

- **Construction: 4/23/18 – 4/22/23**
- **Oil & Gas Lines: 9/17/18 – 9/16/23**
- **Industrial: 6/1/17 - 5/31/22**
  - **Renewal to start Fall 2021**
  - **Affected by 1/15/21 USEPA MSGP (https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp)**

2021 USEPA MSGP

- 3/1/2021 – 2/28/2026, but under review

- Driven by:
  - Waterkeeper Alliance v. United States EPA (2016)
  - "Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges" (http://nap.edu/25355)

Coal Tar Sealcoat

- "[P]aved surfaces …sealed or re-sealed with coal-tar sealcoat where industrial activities are located"
- Polycyclic Aromatic Hydrocarbons (PAHs) semi-annual sampling in Years 1 & 4
- ***NO** sampling if use asphaltic emulsion & acrylic sealants*

Public Posting of Permit

- "[S]ign of permit coverage at a safe, publicly accessible location in close proximity to the facility"

- "[B]asic information about the facility…informs the public…to request the facility's SWPPP… and how to contact the facility and EPA if stormwater pollution is observed…"

Public Posting of Permit

- **"This requirement will make… requesting a SWPPP easily understandable by the public and improve transparency…to report possible violations"**

- ***If posting storm water permit, then what about air permits, etc.?***

Universal Benchmarks

- **NO** universal benchmarks for pH, TSS & COD, **BUT**…
- Quarterly "report-only" indicator monitoring for pH, TSS & COD for MSGP duration
- Subsectors in MSGP Part 8 that don't have benchmark monitoring

Universal Benchmarks

- **"[F]ailure to conduct indicator monitoring [PAHs, pH, TSS, COD] is a permit violation"**

- **Every permittee has to monitor for:**
  - **Benchmark (Years 1 & 4), or**
  - **pH/TSS/COD indicator (Quarterly)**

- ***Push back, limit to pH only, or minimized to 4 samples only***

Inspection-Only Option for "Low-Risk" Facilities

- In lieu of benchmark monitoring
- USEPA **DID NOT** adopt, as it "does not have sufficient information…to identify…"low-risk"…future consideration of an inspection-only option for low-risk facilities."
- ***Suggest workable "inspection-only" option for low-risk Ohio facilities?***

Site-Specific Benchmark

- Site-specific Cu & Al benchmark, but
- "Research project" to take this "off-ramp" from permit benchmarks, subject to approval
- *Defend Ohio's workable provisions*
  - *Neighbor run-on*
  - *Alternate benchmarks*
  - *"Non-industrial" sources*

Additional Implementation Measures (AIM)

- Exceed benchmark on annual average basis or 4x in any sample
  - Levels 1 & 2 – can be non-structural SCM (14-45d)
  - Level 3 - Structural SCM (60-90d)

- Back to baseline if AIMs implemented within deadlines, and annual average meets benchmark

AIM Exemptions

- Applies to all 3 AIM levels:
  - Natural background sources
  - Run-on from neighbor
  - One-time abnormal event
  - Cu & Al don't exceed site-specific benchmark
  - No benchmark exceedance of an applicable water quality standard

AIM Exemptions

- **Report a neighbor to USEPA who contributes to the run-on and who "fails to take action to address their discharges or sources of pollutants"**

- ***Defend Ohio's workable provisions***
  - ***Neighbor run-on***
  - ***Alternate benchmarks***
  - ***"Non-industrial" sources***

Appendix Q – Stormwater Control Measures (SCM)

- 672 of 1048-page MSGP!
- Not in final MSGP - "Instead, EPA maintains the existing industrial stormwater fact sheet series as guidance"

Stormwater Control Measures: Sector C – Chemical and Allied Products Manufacturing and Refining

SCMs	Reason Why Inappropriate / Not Done
Pollutant Source 1: Manufacturing Process Components Pollutant source present? ☐ YES ☐ NO (if NO, skip to next section)	
☐ Use curbing, dikes, and gutters to contain and collect spills.	
☐ Keep spill cleanup materials readily available.	
☐ Clean up spills and leaks immediately.	
☐ Use dry cleanup methods where appropriate. Sweep up absorbents as soon as spilled substances have been absorbed.	
☐ Develop and implement spill prevention, control, and countermeasure (SPCC) plans.	
☐ Train personnel who perform manufacturing tasks on appropriate SCMs within first week of employment followed by refresher training annually and as needed.	

Stormwater Control Measures: Sector C – Chemical and Allied Products Manufacturing and Refining

SCMs	Reason Why Inappropriate / Not Done
☐ Divert stormwater around storage areas using vegetated swales and/or berms.	
Storage Areas – Liquid Fuel	
☐ If area is uncovered, connect sump outlet to sanitary sewer (if possible) or to appropriate treatment such as an American Petroleum Institute (API) or Coalescing Plate (CP) oil/water separator, catch basin filter, or other appropriate system.	
☐ If connecting to a sanitary sewer, check with the system operator to ensure that the discharge is acceptable.	
☐ If implementing separator or filter technologies, ensure that regular inspections and maintenance procedures are in place.	
Permanent Tanks	
☐ Store permanent tanks on an impervious surface surrounded by dikes with a height sufficient to contain a spill (the greater of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank).	
☐ Clearly label all permanent tanks.	

Other MSGP Issues

- Updated Al, Cu, Se & Cd benchmarks
- Removed Mg and Fe benchmarks
- NO new benchmarks for Sectors I (Oil/Gas), P (Transport/Warehouse), and R (Ship/Boat Building)
- Impaired waters annual monitoring (Years 1 & 4) where no TMDL yet

The Future…

- "Make America California Again"
  - Universal monitoring
  - AIM
- Repeat of "Sue-and-Settle"?
  - On 2021 USEPA MSGP
  - Another storm water study?
  - NELs?

The Future…

- 2026 MSGP issues to watch for
  - Escalation of PAHs issue
  - Universal benchmarks
  - Expansion of benchmarks (PFAS)
  - Benchmarks today, NELs tomorrow
  - Storm water TMDLs

Final Thoughts

- Plan for OHR000007 in 2022
  - Want as little change in 2022 Ohio EPA SWGP renewal
  - Tough Ohio EPA regulator
- Keep California OUT of Ohio!

Burning Questions

Analysis of 2021 USEPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (Docket ID EPA-HQ-OW-2019-0372) (by Timothy W. Ling, P.E.; Plaskolite, LLC.)

Proposed: March 2, 2020 (85 Fed. Reg. 12288, Federal Register No. 2020-04254)
Final: January 19, 2021
Link: https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp

Preliminaries

- When Ohio EPA begins the renewal process for its NPDES Storm Water General Permit (SWGP), expiring May 31, 2022, it will look to this 2021 USEPA NPDES Multi-Sector General Permit (MSGP) as a template. Therefore, the significant changes to this USEPA MSGP has real potential to make it into the Ohio EPA SWGP; therefore, the following analysis is focused on the potential impacts on Ohio EPA's next SWGP.

- The USEPA followed much of the recommendations of National Academy of Sciences' (NAS) National Research Council (NRC) industrial storm water study in 2019. This may become a trend for USEPA to "hide" behind a study committee made up of predominantly East Coast and West Coast academics, resulting in an MSGP that mirrors the stricter permits in these regions, especially California. If USEPA erects another study committee in the future, it is important to have more balance in the composition of these committees, including representatives from the Midwest and South. Along these lines, it is also important to monitor for another "sue-and-settle" process between USEPA and environmental groups on this 2021 MSGP in order to drive significant changes to the 2026 MSGP – a tactic used back in 2016.

- Several states, such as Massachusetts, had commented on adding PFAS benchmark monitoring to the MSGP. Although the final MSGP does not address PFAS benchmarks, there is a high probability that PFAS will be included in future MSGPs.

- The following analysis presents the Ohio Manufacturers Association's (OMA) comments on the proposed MSGP (submitted to USEPA on June 1, 2020), and discusses their outcome in the final MSGP. It also anticipates the impact of these outcomes in the final MSGP on Ohio EPA's upcoming SWGP renewal.

1. Coal-Tar Sealcoat Prohibition

OMA: There appears to be some confusion that all sealcoat products are "coal-tar sealcoats", although this is not the case. In fact, USEPA has indicated in its MSGP fact sheet that there are viable alternatives that include "asphalt emulsion sealants and acrylic sealants". Therefore, we suggest that a sentence be added to Section 1.1.8 to indicate alternatives that can be used instead of coal-tar sealcoats, such as "Substitutes for coal-tar sealcoats are available, such as asphalt emulsion sealants and acrylic sealants." Additionally, there may be regulated facilities who use coal-tar sealcoats in only limited areas of their facilities. If the agency keeps Section 1.1.8, it should include a de minimis exception based on the ratio of the area with coal-tar sealcoats to the overall drainage area of the permitted facility.

Analysis: Unfortunately, the USEPA inserted a "poison pill" provision that would effectively eliminate the use of coal-tar sealcoat – by requiring storm water sampling for polycyclic aromatic hydrocarbons (PAHs) twice per year during the 1st and 4th years of permit coverage for "*operators in all sectors with stormwater discharges from paved surfaces that will be sealed or re-sealed with coal-tar sealcoat where industrial activities are located during coverage under this permit*".

Although the PAHs sampling is a "report-only" indicator parameter, without any benchmark, it is only a matter of time before a PAHs benchmark appears in a subsequent MSGP, based on the PAHs data collected under this MSGP. USEPA also included the following statement about this indicator monitoring - "*failure to conduct indicator monitoring is a permit violation.*" Most industries will probably eliminate coal-tar sealcoating of their pavements, so that they won't have to do the PAHs sampling. Future MSGP may extend this PAHs sampling and benchmark to activities other than coal-tar sealcoating.

Potential Impact on Ohio EPA SWGP: Strong likelihood that this requirement will be mirrored in the proposed Ohio EPA SWGP, so need to ensure that this PAHs sampling is confined to coal-tar sealcoating activities (say, to acrylic or asphaltic sealcoating). Also, the PAHs sampling frequency should be minimized, say, to the current 4 quarterly samples over the duration of the SWGP.

2. 60-day Discharge Authorization Wait Period

OMA: We oppose this new 60-day wait period for discharge authorization. It is a needless expansion of the NOI processing times, and would allow USEPA to relax on permit processing efficiency by extending the permit backlog processing times with impunity. The regulated community needs efficient permit processing, which includes timely feedback on their permit applications, including application deficiencies. There is an existing category in Table 1-2 of the MSGP for "[e]xisting facility without permit coverage" that specifies discharge authorization in "30 calendar days after EPA notifies you that it has received a complete NOI, unless EPA notifies you that your authorization has been denied or delayed." Therefore, USEPA already has the ability to deny or delay authorization for unpermitted sites with pending stormwater enforcement action without the need of the proposed new category. USEPA just needs to continue to improve their permit processing efficiency to make these denial or delay determinations in a timely manner under the current category, without the need for this proposed category.

Analysis: Successfully prevailed upon USEPA to not finalize the proposed 60-day extended review period for new NOIs for facilities that have a pending enforcement action.

Potential Impact on Ohio EPA SWGP: Should not be an issue in the SWGP.

3. Public Posting of Permit Coverage

OMA: We oppose this new proposal for public posting of permit coverage. It is another capricious expansion of the existing MSGP "process" without any stormwater benefit. There are already USEPA and state EPA websites that list stormwater permittees. The enforcement risk for "non-compliance of process" is real, such as inadvertent non-posting, or not posting in the "right" location. This requirement would also add the burden of maintenance of the sign, often in natural bank environment that would disturb surrounding vegetation and create a visual obstruction to the natural water system. This proposal also raises precedential concerns on public postings of other non-stormwater operating permit programs.

Analysis: Unfortunately, USEPA is requiring the posting of "*a sign of permit coverage at a safe, publicly accessible location in close proximity to the facility. This notice must include basic information about the facility (e.g., the NPDES ID number), information that informs the public on how to request the facility's Stormwater Pollution Prevention Plan (SWPPP), and how to contact the facility and EPA if stormwater pollution is observed in the discharge. This requirement will make the procedure for requesting a SWPPP easily understandable by the public and improve transparency of the process to report possible violations.*" This will make it easier for citizen plaintiff groups to target businesses for enforcement and citizen lawsuits.

Potential Impact on Ohio EPA SWGP: Strong likelihood that this requirement will be mirrored in the proposed Ohio EPA SWGP, so the regulated community will have to push back on this matter, such as on precedential grounds (e.g., not a requirement in other Ohio EPA permit programs).

4. No Exposure Certification Acronym from "NOE" to "NEC"

OMA: We agree with this proposal to change the acronym for No Exposure Certification from "NOE" to "NEC" to more accurately represent what the acronym stands for.

Analysis: NEC is reflected in the MSGP, but this is a trivial matter.

Potential Impact on Ohio EPA SWGP: Should not be an issue in the SWGP

5. Enhanced Stormwater Controls for Major Storms

OMA: We oppose the proposed Section 2.1.1.8 for prescriptive enhanced flood controls, because the MSGP is an environmental permit, not a one-size-fits-all nationwide stormwater design manual. Flood controls have been, and continue to be, addressed in federal, state and local flood control laws, rules and ordinances as well as in local stormwater design codes and manuals. We are also concern that these proposed requirements appear to be regulating stormwater flowrate and volume as a "stormwater pollutant", which is outside of the CWA's permitting authority and which has been rejected by the courts. If implemented, USEPA would become a flood management agency, sharing the responsibility and liability for failures of any flood controls implemented under this section.

Analysis: Successfully prevailed upon USEPA to make this section (Section 2.1.1.8) voluntary, rather than a mandate – "*Part 2.1.1 requires that you must consider Parts 2.1.1.1 through 2.1.1.8 when selecting and designing control measures to minimize pollutant discharges via stormwater. Part 2.1.1 does not require*

nor prescribe specific control measure to be implemented; however, you must document in your SWPPP per Part 6.2.4 the considerations made to select and design control measures at your facility to minimize pollutants discharged via stormwater".

Potential Impact on Ohio EPA SWGP: Strong likelihood that this Section 2.1.1.8 requirement will be mirrored in the proposed Ohio EPA SWGP, so need to push-back on its introduction, as well as to keep it voluntary rather than as a mandate.

6. Alternatives to Benchmark Monitoring

OMA: There has been over 20 years of stormwater sampling, with the data submitted to USEPA and/or the state EPAs. This existing stormwater dataset should be sufficient for USEPA to make characterizations about industrial sites' stormwater discharges in order to provide some stormwater sampling relief. Unfortunately, it appears that USEPA is moving in the opposite direction, towards greater stormwater sampling to meet expanded, lowered benchmarks, coupled with more onerous, prescriptive corrective actions. This trend raises the enforcement liability for "non-compliance of process" on the regulated community, apart from any real stormwater quality benefit, and is characteristic of a top-down, command-and-control regulatory regime. For these reasons, USEPA should develop alternatives to benchmark monitoring. In particular, the MSGP should provide improved off-ramps for facilities to rely on visual inspections, without analytical sampling, once they have developed record of meeting benchmarks. This is particularly true for the new Universal Benchmark monitoring requirements (see comment 7). Additionally, the benchmarks should align more closely with water quality standards, because in many cases the benchmarks are far more stringent than the applicable in-stream standard. Adjusting the benchmarks will relieve unnecessary burden by making the off-ramps more available and minimizing the risk of perpetual BMP escalation.

Analysis: Unfortunately, the final MSGP did not provide relief or alternatives to benchmark monitoring. Instead, USEPA expanded storm water monitoring requirements for PAHs (semi-annually, Years 1 and 4), and pH/TSS/COD (quarterly, entire term). They also increased the frequency of quarterly benchmark monitoring and monitoring of discharges into impaired waters "*without an EPA-approved or -established total maximum daily load (TMDL)*" from one year (Year 1) to two years (Years 1 and 4). USEPA also added new "Additional Implementation Measures (AIM)" that give the benchmarks more of a "bite" – by making the corrective actions for exceeding the benchmarks more prescriptive and onerous.

Potential Impact on Ohio EPA SWGP: Benchmarks will remain a part of the SWGP, with the real possibility of expansion and transformation into universal benchmarks and Numeric Effluent Limits (NEL) in future SWGPs. Probably can slow this trend, but not possible to stop this progression.

7. Universal Benchmark Monitoring

*OMA: We strongly oppose the introduction of stormwater benchmark requirements to **all permittees** with the addition of universal benchmarks. The intent of this new requirement has been addressed by the BMP approach in the MSGP, a successful cornerstone of stormwater management from a wide variety of sites. Universal benchmark monitoring, at this point in time in the stormwater permitting program, would be more compliance "busy work" for no purpose other than to provide for more enforcement or citizen lawsuit opportunities for "non-compliance of process" in the implementation of these universal benchmark monitoring. Stormwater sampling is arduous, costly, and should be reserved for cases of known, significant stormwater pollutants (e.g., SARA Title III, Section 313 water priority chemicals), in order to mitigate real, actual pollution concerns. Rather than mandating quarterly universal benchmark monitoring, USEPA should make this type of stormwater sampling an alternative to existing BMP approaches. Also, rather than mandating the three (3) parameters (i.e., pH, TSS, COD) for all permitted sites, each site should be able to determine which parameters should be monitored, if at all, if these parameters are significant stormwater pollutants from the site's industrial activities. Another suggestion, if USEPA persists with this universal benchmark monitoring, is to mandate only pH monitoring, which is a cost-effective field test, and leaving benchmark monitoring of other parameters as optional. Additionally, if the universal benchmark is included, the proposed language should be revised to clarify that annual averaging is allowed and to add efficient and permanent off-ramps for those facilities that meet the benchmarks in the first year. Quarterly sampling for the entire permit period (and for subsequent permits) is unreasonable and of no substantive value. Finally, once this universal benchmark monitoring is inserted into the MSGP, there is real concern that what starts out as three (3) parameters (i.e., pH, TSS, COD) will expand to a host of other parameters in future MSGPs.*

Analysis: Slight success as USEPA did not finalize the proposed universal benchmarks (pH, TSS and COD) for all permittees, but the MSGP requires quarterly monitoring for pH, TSS and COD for the duration of the MSGP for those subsectors in Part 8 of the MSGP that do not currently have any benchmark monitoring requirements.

This means that every permittee will need to do storm water sampling - either for an existing benchmark parameter(s) or pH/TSS/COD. Similar to the new PAHs sampling for coal-tar sealcoating, the pH, TSS and COD indicator monitoring is "report-only" and do not have associated benchmarks in the current MSGP, but the probability is high that subsequent MSGPs will have "universal benchmarks" for at least these 3

parameters, based on the data gathered during this MSGP. This is a HUGE escalation of storm water compliance and liability. USEPA also noted the following about this pH/TSS/COD and PAHs indicator monitoring - "*failure to conduct indicator monitoring is a permit violation.*"

Potential Impact on Ohio EPA SWGP: Strong likelihood that this requirement will be mirrored in the proposed Ohio EPA SWGP, so need to push back on it rigorously, and/or to reduce it to pH only which can be performed in the field without incurring lab costs. Also, the sampling frequency should be minimized, say, to the current 4 quarterly samples over the duration of the permit.

8. Inspection-only Option for "Low-Risk" Facilities

OMA: We support an "inspection-only" option, but are concerned about the potential for additional, onerous requirements to utilize this option. For this option to work, it should not end up involving more resources on the regulated community than what is required for benchmark monitoring. We would recommend that the quarterly facility inspections (Part 3.1 of the draft MSGP) be the basis for this inspection-only option, perhaps at increased frequency (e.g., monthly). Also, the "Qualified Personnel" defined in Appendix A of the draft MSGP should be the person(s) able to perform the inspections under this option, and the qualification requirements should not be made more restrictive (e.g., no specialized licensures). Many environmental laws allows facility personnel/authorized representatives to certify environmental results, and this precedent should apply to the inspection-only protocols under the MSGP, where facility personnel knowledgeable about the site conditions is qualified to certify under the MSGP. Additionally, the "inspection-only" option should be available to facilities that have historically met benchmarks, with the inspection protocol providing the basis for continued compliance.

Analysis: USEPA did not finalize this inspection-only option in the final MSGP as "*the Agency does not currently have sufficient information or a fully-vetted approach to identify which facilities should be considered "low-risk." EPA will continue to collect information, including the indicator monitoring data required in the 2021 MSGP, to support future consideration of an inspection-only option for low-risk facilities.*" This outcome is probably for the best, since the "inspection-only" proposal was administratively burdensome to the point of making it practically unworkable. Hopefully, this issue will arise again in future MSGPs, but be a more workable process.

Potential Impact on Ohio EPA SWGP: Should not be an issue in the SWGP; however, it might be worth suggesting a more workable "inspection-only" option for low-risk facilities in Ohio, perhaps as a model for USEPA.

9. Site-specific Benchmark Basis

OMA: We support this proposal for this "off-ramp" from the copper national benchmarks, on a site-specific basis, and suggest that this site-specific risk assessment "off-ramp" option be made available for all of the other benchmark parameters.

Analysis: Partial success in that USEPA is allowing for the development of a site-specific benchmark for copper and aluminum; however, they then inserted "poison pill" provisions to make the ability to take this "off-ramp" from the national benchmarks administratively burdensome, and subject to USEPA approval.

Potential Impact on Ohio EPA SWGP: The current SWGP allows alternate benchmarks, based on existing water quality standards, and this workable provision needs to be maintained. Need to push back on the USEPA MSGP's administrative burdens for site-specific benchmarks, along with an approval process, from getting into the Ohio EPA SWGP.

10. General Comments on Additional Implementation Measures (AIM)

OMA: We strongly oppose the introduction of the Additional Implementation Measures (AIM) to the MSGP. We note that this requirements has been added solely as a result of a 2016 USEPA "sue-and-settle" case, (now contrary to federal policy) in which the regulated community was not given adequate opportunity to provide input or to object. The AIM attempts to impose a definitive SCM requirement on all facilities, irrespective of relevance or benefit, and without any link at all to in-stream water quality. This proposal simply goes far beyond the reach of the CWA. If USEPA intends to finalize the AIM provisions, over our objections, then the potential exists for many sites to be in "perpetual" "non-compliance of process". To mitigate this untenable situation, all of the proposed exceptions provided for each of the three (3) AIM tiers should be made available to every tier: (a) background or run-on, (b) "aberrant event", and (c) demonstration that the stormwater discharges do not result "…in any exceedance of water quality standards…" Additionally, if AIM is included, USEPA must update all benchmarks to link them to actual water quality standards, as a minimum benchmark, not urban run-off studies from the 1970s and early 1980s. In addition, we propose a fourth AIM exception, which is a non-industrial pollutant source demonstration, where the benchmark chemical(s), such as Zinc, is not from the industrial activities of the site (e.g., not in raw materials), but from ubiquitous items (e.g., building envelope, fencing) found in every industrial, non-industrial and residential sites. Regarding the AIM compliance schedules, subject to our objections to the unreasonable, rigid nature of the new Appendix Q requirements, we further object to the time frames for compliance with AIM triggers. If included in the final MSGP, these

time frames must include more flexibility for facility management to review, develop and secure funding for the new SCMs, which in some cases will involve ordering new equipment, modifying site layout, constructing new control features, and retaining experts to assist in planning. The "hammers" of 30 and 45 days reflect the top-down, command and control regulatory approach that unnecessarily burdens businesses. A simple narrative time frame will achieve the same water quality goals without creating "noncompliance of process" issues. Also, in order to not overwhelm all USEPA offices with applications for approvals of AIM exceptions, sites that are able to make AIM exception claims should be required to document these exceptions in their SWPPP, subject to disclosures already provided for in the MSGP, but not needing USEPA approval.

Analysis: USEPA finalized the "California-style" AIM provisions, which is very unfortunate. These provisions make the benchmarks *de facto* numerical effluent limits, are administratively burdensome, raise the level of "perpetual non-compliance" for permittees, and increase the liabilities for Clean Water Act lawsuits from citizen plaintiff groups. Fortunately, unlike the state of California, USEPA is making it easier for a facility that has progressed up the 3 levels of AIM to return to the baseline condition.

On the positive side, the MSGP extended the following AIM exemptions to all 3 AIM levels: "*1) natural background sources, 2) run-on, 3) a one-time abnormal event, 4) a demonstration that discharges of copper and aluminum do not result in an exceedance of facility-specific criteria using the national recommended water quality criteria in-lieu of the applicable MSGP benchmark threshold, and 5) a demonstration that the benchmark exceedance does not result in any exceedance of an applicable water quality standard.*" This 5th exemption is going to be particularly helpful to the regulated community. However, USEPA is requiring that the 4th and 5th exemptions be demonstrated to them, meaning another a burdensome administrative approval process. Unfortunately, USEPA did not adopt the OMA-proposed "non-industrial pollutant source demonstration" as another AIM exemption.

Potential Impact on Ohio EPA SWGP: Strong likelihood that the AIM requirements will be mirrored in the proposed Ohio EPA SWGP, so this is a **KEY** concern to the regulated community that needs to be pushed back rigorously. If unavoidable, then need to make the exemption process more workable, and the ability to return to baseline status less onerous. Need to preserve the current SWGP options for addressing benchmark exceedances, such as alternate benchmarks based on existing water quality standards, and non-industrial pollutant source demonstration.

11. Additional AIM Tier 1 Trigger for Facility Changes

OMA: We oppose this additional AIM Tier 1 trigger based on facility changes, as it is qualitative in nature, and risks subjective interpretation. The AIMs, as proposed, are onerous requirements, unlike a SWPPP review and revision (per Part 4.2 of the 2015 MSGP), so any AIM trigger needs to be quantitative in nature to address actual stormwater pollution.

Analysis: Successfully prevailed upon USEPA to not finalize the additional AIM Tier 1 trigger based on facility changes.

Potential Impact on Ohio EPA SWGP: Should not be an issue in the SWGP.

12. "Aberrant Event" AIM Exception

OMA: With reference to our previous AIM general comments, we are in support of extending this "aberrant event" exception from AIM to all three (3) tiers. In addition, we had suggested another exception to the AIM provisions, which is a non-industrial pollutant source demonstration, where the benchmark chemical(s), such as Zinc, is not from the industrial activities of the site (e.g., not in raw materials), but from ubiquitous items (e.g., building envelope, fencing) found in industrial, non-industrial and residential sites. Also, in order to not overwhelm all USEPA offices with applications for approvals of AIM exceptions, sites that are able to make AIM exception claims should be required to document these exceptions in their SWPPP, subject to disclosures already provided for in the MSGP, but not needing USEPA approval.

Analysis: Please refer to analysis in (10) - General Comments on AIM

Potential Impact on Ohio EPA SWGP: Please refer to analysis in (10) - General Comments on AIM

13. "Discharges Not Resulting in any Exceedance of Water Quality Standards" AIM Exception

OMA: With reference to our previous AIM general comments, we are in support of extending this AIM exception for "discharges not resulting in any exceedance of water quality standards" to all three (3) tiers. Again, in order to not overwhelm all USEPA offices with applications for approvals of AIM exceptions, sites that are able to make AIM exception claims should be required to document these exceptions in their SWPPP, subject to disclosures already provided for in the MSGP, but not needing USEPA approval.

Analysis: Please refer to analysis in (10) - General Comments on AIM

Potential Impact on Ohio EPA SWGP: Please refer to analysis in (10) - General Comments on AIM

14. Natural Background AIM Exception

OMA: With reference to our previous AIM general comments, we are in support of extending this natural background exception from AIM to all three (3) tiers. However, it is our observation that the definition of "natural background" is too strict to be practically useful. By this, we mean that it is commonly interpreted that "natural background" means pre-Industrial Revolution, undisturbed soils - a situation which does not exist outside of the most pristine of the National Parks. The reality is that what constitutes natural background is highly location-specific, and as varied as the topography and land use of this country. A greater acceptance of this variability in "natural backgrounds" is needed, as has been the case in other USEPA programs. A good definition of what is "natural" is warranted (e.g., undeveloped, rural, agricultural), but may be a challenge in the current political climate. We believe that the National Stormwater Quality Database (NSQD) is a good resource to define the "natural backgrounds" from developed, urban areas. If agricultural lands are assumed to constitute the "natural background" of soils, then data from USDA and/or Soil and Water Conservation Districts could also be good resources. Another suggestion is for USEPA to allow for the methods prescribed in other USEPA programs (e.g., Superfund) for determining natural background for stormwater compliance. We also agree that the exception for natural and run-on background contributions must allow for a demonstration that but for the background contribution, the facility's discharge would meet benchmarks. In practice, many jurisdictions already acknowledge this important component of a background exception and it would simply reflect the actual facility discharge. Finally, the run-on exception in Section 5.2.4.2 should be revised to remove the conditions related to notifying the upstream party and USEPA. This poses an onerous burden on the innocent party to play "police". While in some cases the regulated parties will in fact notify the neighboring contributor as a matter of its normal business relationships, in other cases such an approach could result in business interruptions.

Analysis: Unfortunately, the MSGP retained the natural background definition, but left open the possibility that USEPA might allow the permittee to "*discontinue annual monitoring for pollutants that occur solely from these sources [i.e., legacy pollutants from earlier activity on your site, or pollutants in run-on from neighboring sources that are not naturally occurring] and should consult the applicable EPA Regional Office for related guidance.*" Also, the MSGP retained the run-on AIM exemption requirement to notify USEPA of a neighbor who contributes to the run-on and who "*fails to take action to address their discharges or sources of pollutants*".

Potential Impact on Ohio EPA SWGP: The current SWGP has pretty good provisions for dealing with benchmark exceedances, such as alternate benchmarks based on existing water quality standards, and non-industrial pollutant source demonstration. These provisions need to be maintained in their current state in the SWGP, rather than adopting the USEPA MSGP's AIM levels.

15. Appendix Q – Stormwater Control Measures (SCM)

*OMA: We are strongly opposed to the inclusion of the new Appendix Q of SCMs in the MSGP. Instead, this extensive list of SCMs should be made a separate USEPA guidance document, and not be a part of the MSGP or otherwise imposed as a requirement in any way. At a time when our leaders are talking about regulatory reform and making regulatory programs more efficient, it is disappointing that USEPA is "ballooning" the MSGP with the proposed **672-page** Appendix Q of SCMs, forming the majority of this **1000+ page MSGP**! USEPA may have intended to provide more guidance to the regulated community with this appendix, but its inclusion has the unfortunate consequence of imposing greater legal jeopardy on the regulated community. The inclusion of this Appendix Q in the MSGP requires permittees to wade through its 672-pages to ensure compliance with all applicable SCMs, with the real potential of legal liability of missing SCM items, even if due to inadvertent human error. In addition, each SCM in Appendix Q is followed by the requirement for the permittee to state the "Reason Why Inappropriate/Not Done". Again, this raises concerns about "non-compliance of process" for not answering the SCM question to the satisfaction of USEPA and in fact flips the idea of facility-selected BMPs entirely on its head: under the new proposal, USEPA has selected the BMPs as the starting point for facility management. Another concern with this Appendix Q is that what is now a 672-page appendix will "balloon" out even more with each future MSGP renewal. Therefore, we again strongly oppose the inclusion of this Appendix Q of SCMs in the MSGP, and suggest that it be made a separate USEPA guidance document.*

Analysis: Successfully prevailed upon USEPA to not include Appendix Q in the MSGP - "*Instead, EPA maintains the existing industrial stormwater fact sheet series as guidance.*" Believe that OMA's comments on this matter may have been a major factor for this good result. However, need to be vigilant for future efforts to include it back into the MSGP either directly or by reference.

Potential Impact on Ohio EPA SWGP: Low likelihood that this will be a part of the SWGP, but also need to be vigilant for efforts to include it in some manner. A strong argument for its exclusion is that it's only guidance.

TO: **OMA Environment Committee**
FROM: **Rob Brundrett**
RE: **Environment Public Policy Report**
DATE: **February 10, 2021**

Overview

January saw the beginning of the new 134th Ohio General Assembly. The legislature is looking to move away from the scandals of the previous two-years. Unfortunately, the clouds of House Bill 6 and former Speaker Larry Householder's reign continue to hang over head.

Senator Matt Huffman takes over as the Speaker of the Ohio Senate and Representative Bob Cupp was reelected by his peers to retain the Speaker's gavel for another two-year term. Speaker Cupp took over last summer after Larry Householder was removed from his Speaker position.

In the House Rep. Kyle Koehler sits in the Agriculture and Conservation Committee Chair seat, while Rep. Jason Stephens will Chair the Energy and Natural Resources Committee.

In the Senate, Senator Tim Schaffer will Chair the Agriculture and Natural Resources Committee, and former President Pro Tem Bob Peterson Chairs the Energy and Public Utilities Committee.

H2Ohio remains the number one environmental priority for the DeWine Administration. It was announced prior to the recent budget unveiling that the administration was going to once again fully fund the program for another two years.

Ohio EPA and the legislature have been quiet for the past several years regarding major environmental legislation. The regulatory side continues to be where the biggest impact is made for Ohio environmental policy.

2021 is expected to be a big year for the state. Both Cleveland and Cincinnati will be in nonattainment for the 2015 ozone standard and will be dealing with the escalated restrictions that come with the designation and Ohio will be working on the Lake Erie TMDL.

Regulatory reform will continue to be a major issue. Ohio EPA will be subject to much more scrutiny regarding its rule written if the legislature has its way.

General Assembly News and Legislation

State Operating Budget

The centerpiece of the legislative session will be the state operating budget. The bill has yet to be introduced formally, but the DeWine Administration outlined their goals in a press conference last week.

H2Ohio remains a major policy goal for the administration. Ohio EPA has spent over $17 million towards the goal of reducing nutrients in Ohio's lakes and waterways. Ohio EPA has remained focused on updating municipal water systems. The Governor has stated that H2Ohio water quality initiative would receive $240 million over the next budget. That is a significant increase from the $180 million that was allocated to the initiative over the past two years.

One of the goals outlined in the Ohio EPA budget recommendation is to continue its PFAS initiative. Last year the agency finished testing 1,500 public water drinking systems. The administration remains focused on the issue.

Regulations

U.S. EPA Rule Change Will Help Shed Light on Costs, Benefits of Clean Air Regulations

On Dec. 9, the Trump administration finalized a rule changing how incoming administrations evaluate their air regulations by improving how the U.S. EPA conducts its cost-benefit analysis. According to reports from D.C. media, the rule will apply to new regulations proposed under the Clean Air Act, which President-elect Joe Biden is expected to utilize frequently to meet his climate change goals.

The National Association of Manufacturers (NAM) applauded the rule, saying it "will have an immediate positive impact on our country." NAM has previously stated that "reforming the way the EPA performs cost-benefit analysis is likely to have a greater positive impact on the future of manufacturing than any single EPA regulatory action."

EPA Administrator Andrew Wheeler, an Ohio native, announced the rule by saying the public "deserves to know the benefits and costs of federal regulations." (It's estimated that EPA regulations make up almost 70% of the costs of federal rules, with the Clean Air Act being the costliest.)

Cincinnati and Cleveland in Non- Attainment for Ozone and Ohio EPA Looks to Make Changes to Nitrogen Oxide Emission Rules as a Result

As expected, the Cincinnati and Cleveland non-attainment areas did not meet the ozone standard by the end of the 2020 ozone season. In addition, neither area qualified for the one-year extension. In anticipation of a "bump-up" to moderate non-attainment, Ohio EPA has issued an "Early Stakeholder Outreach" regarding emissions of nitrogen oxides.

The Cleveland and Cincinnati areas are currently classified as marginal non-attainment areas under the 2015 ozone standard. The areas are required to meet the ozone standard by Aug. 3, 2021 based on monitoring data collected during the 2018-2020 ozone monitoring seasons, which extend from March 1 to Oct. 31 each year. Based on ozone monitoring data through Oct. 31, 2020, Ohio EPA anticipates that the Cleveland and Cincinnati areas will fail to meet the ozone standard by Aug. 3, 2021, as required.

Nuisance Rule Removed From Ohio SIP, Signaling Big Win for Manufacturers

In good news for Ohio manufacturers, the Federal Register this week published a final rule that removes an air pollution nuisance rule from Ohio's Clean Air Act State Implementation Plan (SIP). The OMA and its business allies — who had unsuccessfully tried to remove this provision in the past — provided comments and follow-up comments on the proposal when it was first introduced earlier this year.

The OMA agreed with U.S. EPA that Ohio has never relied on — and never intended to rely on — the nuisance rule to demonstrate attainment or maintenance of any National Ambient Air Quality Standards (NAAQS). The removal of the nuisance rule from Ohio's SIP is a significant win for manufacturers since its inclusion previously led to unintended consequences, permitting challenges and lawsuits.

Ohio attorney David Altman and the Sierra Club filed an appeal. The OMA will be looking to engage to ensure the changes remain.

OMA Submits Comments Opposing Portions of Ohio EPA's Credible Data Rule
The OMA this week submitted comments opposing portions of Ohio EPA's Proposed Credible Data Program. The OMA specifically opposed the addition of "state universities" to the definition of "state environmental agency" found within the Ohio Administrative Code 3745-4-02(Q). See more in OMA counsel's report.

Ohio EPA / U.S. EPA Agency News

Biden to Pick North Carolina Environment Official as EPA Chief
With promises of an ambitious climate agenda, President-elect Joe Biden selected North Carolina's top environment official Michael Regan to lead the EPA. Regan served as secretary of North Carolina's Department of Environmental Quality for four years. Previously, he worked at the Environmental Defense Fund. Regan had his confirmation hearing last week and is expected to be easily confirmed.

Biden also confirmed he will nominate former Michigan Gov. Jennifer Granholm for Energy secretary; Brenda Mallory for chair of the Council on Environmental Quality; former EPA chief Gina McCarthy as national climate adviser; and Ali Zaidi, as deputy national climate adviser. According to Politico, "the roster has environmentalists and climate change activists feeling optimistic," with one environmental leader calling it "the climate and overall environmental dream team."

Ohio EPA Completes PFAS Testing and New Federal Actions
At the end of last year Ohio EPA announced it had received the final test results for the presence of certain per- and polyfluoroalkyl substances (PFAS) in drinking water from public water systems, bringing to a close the agency's statewide sampling initiative under Ohio's PFAS Action Plan.

Ohio EPA Director Laurie Stevenson noted that roughly 94% of the nearly 1,550 public drinking water systems tested "revealed no detection of PFAS compounds," while "low levels of PFAS compounds, well below the health advisory level, were detected in 6% of systems." The testing found only two public water systems exceeding the state's action level; those systems are being remedied by Ohio EPA.

At the federal level the outgoing Trump administration announced new steps to address per- and polyfluoroalkyl substances (PFAS). The agency released a final regulatory determination finding that the two best-studied chemicals in the family, PFOA and PFOS, should be regulated in drinking water, launching the years-long process of developing a Safe Drinking Water Act limit.

The EPA also proposed requiring drinking water utilities to test for 29 types of PFAS as part of the next round of mandatory, nationwide sampling that will occur between 2023 and 2025.

The U.S. EPA also recommended requiring many manufacturing sites, wastewater plants, and other facilities to monitor wastewater for PFAS, used by various industrial sectors to manufacture numerous products.

The OMA has created a working group to address PFAS-related issues and possible impacts to manufacturers. If you would like to learn more or participate, contact the OMA's Rob Brundrett.

Environmental Protection Agency

Role and Overview

The Ohio Environmental Protection Agency (EPA) protects human health and the environment by restoring contaminated land and water resources, and implements standards for air quality, drinking and stream water quality, wastewater treatment, and solid, infectious, and hazardous waste treatment and disposal. The EPA issues permits governing installation and operation of pollution sources; provides oversight through inspections and air, water, and ground sampling; provides compliance assistance and environmental education to industry and the general public; takes enforcement actions against violators; and responds to spills and other emergencies. The agency provides 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. The EPA also supports economic development by providing low-interest loans to local communities for wastewater and drinking water infrastructure projects. The EPA has close to 1,000 full-time employees.

More information regarding the Environmental Protection Agency is available at https://epa.ohio.gov.

Agency Budget Highlights

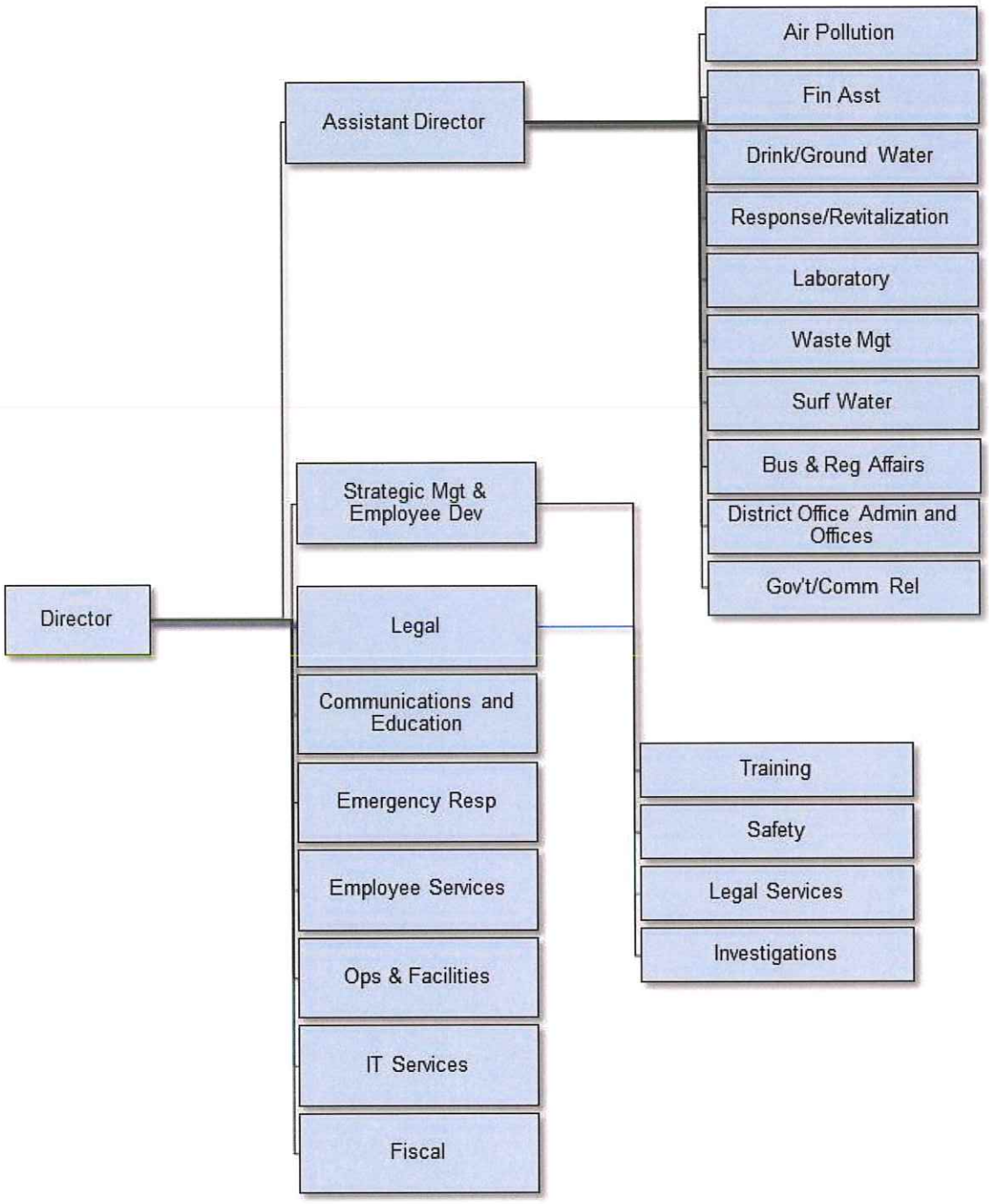
- The EPA oversees Ohio's 4,491 public water systems, inspects 1,160 water systems, and reviews and determines compliance for 200,000 water quality samples. The agency will manage the Operator Certification Program for over 10,400 professionals.
- The agency will provide $50 million to combat harmful algal blooms (HAB) and other threats to clean water, as well as $1 million to public and community water systems for asset management and emergency generators.
- Within the H2Ohio program, the EPA continues to improve water infrastructure, replace home sewage treatment systems, improve stream monitoring, and replace lead service lines and fixtures. The agency has already spent over $17 million toward these efforts.
- The EPA will regulate approximately 16,000 air facilities, which represent 76,000 sources of air pollution. The agency issues 900 installation permits, 550 renewed permits, and 600 permit-by-rule authorizations annually, and operates a comprehensive air quality monitoring network.
- The EPA will also administer licensing and certification programs for over 5,000 asbestos workers and contractors and approve training programs for asbestos training providers.
- The EPA ensures proper management of over 31 million tons of solid waste generated each year, of which more than 13 million tons are recycled or reused.
- Through beneficial use, recycling, and energy recovery efforts, over 70 percent of the 15 million scrap tires generated annually will be recycled or beneficially used.

Funding Recommendation for 2022 and 2023

- GRF: Funding for fiscal year 2022 is $9.1 million (or a 21.6% decrease from fiscal year 2021). Funding for fiscal year 2023 is $9.1 million (or a 0.0% increase from fiscal year 2022).
- All Funds: Funding for fiscal year 2022 is $265.9 million (or a 24.6% increase from fiscal year 2021). Funding for fiscal year 2023 is $257.0 million (or a 3.3% decrease from fiscal year 2022).

Environmental Protection Agency

Table of Organization



Environmental Protection Agency

Agency Goals and Objectives

The EPA will improve the water quality for Ohioans.

- The EPA will coordinate with the Ohio Departments of Agriculture and Natural Resources, and the Lake Erie Commission, to implement strategies for reducing phosphorus runoff in the Western Lake Erie Basin (WLEB).
- The EPA will provide financial assistance, including funding from the H2Ohio Program, to improve drinking water and wastewater infrastructure within Ohio's communities, particularly focusing on economically disadvantaged communities.
- The EPA will ensure safe drinking water for Ohioans through proper operation, construction, and maintenance of 4,500 public drinking water systems and the protection of vital source waters. The agency will develop a strategic response to emerging contaminants and implement Ohio's PFAS Action Plan for Drinking Water, including PFAS testing of over 1,500 public water systems.
- Risks will be reduced for lead exposure in drinking water associated with lead service lines and fixtures. This will reduce exposure and improve minority health, both initiatives established by the Governor.

The EPA will ensure air quality for Ohioans.

- The EPA will analyze ozone air quality trends in Ohio's two remaining nonattainment areas. Options will be evaluated for potential emission reductions in preparation for the United States Environmental Protection Agency (USEPA) to increase the nonattainment classification for those areas. The agency will prepare a re-designation request for the one remaining sulfur dioxide nonattainment area for submission to the USEPA.
- The USEPA's Affordable Clean Energy Rules will be implemented, which establish emission guidelines when states develop plans to limit carbon dioxide at coal-fired electric generating units. The agency will review the heat rate efficiency studies, which will be submitted by electric utilities by spring of 2021, and develop carbon dioxide standards of performance for those units.
- The EPA will provide $10 million in grants from the Volkswagen (VW) Mitigation Trust for local projects to help eliminate 350 tons of nitrogen oxides and other air pollutants annually. Over $8 million in VW grants will be awarded to replace diesel trucks, school and transit buses, and other eligible equipment with clean-fueled alternatives. Another $2 million in VW grants will be awarded for electric vehicle (EV) charging stations to support EV infrastructure readiness efforts.

The agency will protect the environment and public health by ensuring safe management of construction/demolition debris, solid, infectious, and hazardous wastes, and remediation of contaminated sites.

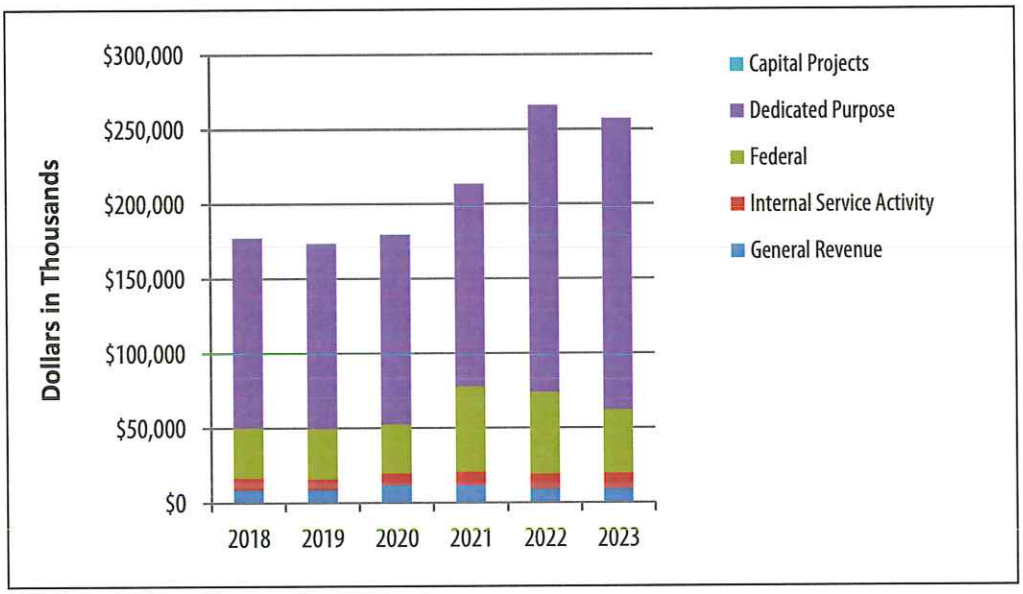
- The agency will finalize and implement Construction and Demolition Debris (C&DD) Processing Facility rules, including establishing operational standards for C&DD processing facilities. Financial assurance standards will be established, along with a focus on outreach efforts with regulated customers to ensure that existing operations smoothly transition to the new standards.
- The EPA will oversee and fund contaminated site cleanups, including sites posing a health threat, along with managing the restoration of properties in economically distressed areas so as to make viable use possible. Targeted brownfield resources to 35 projects will be administered. The agency will partner with federal, education, and local groups to host at least two workshops each year and improve outreach to communities with distressed brownfield properties.

Environmental Protection Agency

Funding Sources

The largest funding source for the EPA is Dedicated Purpose Funds, which comprised 70.8 percent of the fiscal year 2020 budget. These funds come primarily from user fees on waste management and pollution control. The second largest funding source is federal, which comprised 18.3 percent of the fiscal year 2020 budget. Federal funding pays for water quality protection, federally supported cleanup, and air pollution control, among others.

Expense by Budget Fund Group



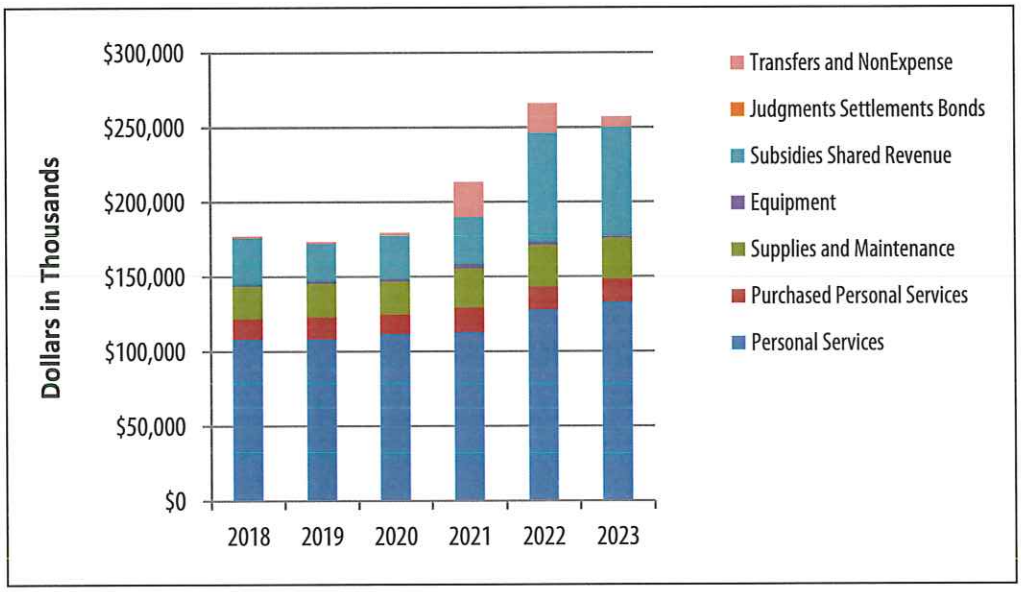
- The increase in Dedicated Purpose funding is due to increased efforts in the H2Ohio Program.
- Federal funding increased in fiscal year 2021 due to the Volkswagen Clean Air Act Settlement and increased cleanup efforts within the Resource Conservation and Recovery Act.

(in Thousands)	Actual			Est.	% Change	Recommended			
Budget Fund Group	FY 2018	FY 2019	FY 2020	FY 2021	FY 20-21	FY 2022	% Change	FY 2023	% Change
General Revenue	8,957	8,920	11,704	11,640	-0.6%	9,125	-21.6%	9,125	0.0%
Internal Service Activity	7,674	6,984	7,931	9,038	13.9%	10,026	10.9%	10,651	6.2%
Federal	33,605	33,588	32,817	57,122	74.1%	54,914	-3.9%	42,167	-23.2%
Dedicated Purpose	126,892	123,891	127,070	135,556	6.7%	191,858	41.5%	195,075	1.7%
Capital Projects	144	57	0	0	-100.0%	0	0.0%	0	0.0%
Total	**177,272**	**173,440**	**179,523**	**213,355**	**18.8%**	**265,924**	**24.6%**	**257,019**	**-3.3%**

Agency's Budget by Expense Type

The largest expense for the EPA in fiscal year 2020 was personnel (62.5% of expense). The second largest expense for the EPA was subsidies and shared revenue (16.4% of expense). Subsidies provide funding across multiple EPA program areas: drinking and surface water quality; air pollution; materials and waste management; and emergency planning and response.

Expenses by Account Category



- The increase in Personal Services is due to planned staffing increases across all areas.
- Transfers and Nonexpense and Subsidies Shared Revenue increased in fiscal year 2021 and forward due to the H2Ohio Program and the Volkswagen Clean Air Act Settlement.

(in Thousands)	Actual			Est.	% Change	Recommended			
Expense Account Category	FY 2018	FY 2019	FY 2020	FY 2021	FY 20-21	FY 2022	% Change	FY 2023	% Change
Personal Services	108,504	108,539	112,136	113,280	1.0%	128,044	13.0%	133,326	4.1%
Purchased Personal Services	13,336	14,489	12,666	16,280	28.5%	15,291	-6.1%	14,908	-2.5%
Supplies and Maintenance	21,888	22,509	22,168	26,019	17.4%	27,885	7.2%	27,665	-0.8%
Equipment	806	1,664	1,465	2,843	94.1%	1,913	-32.7%	1,836	-4.0%
Subsidies Shared Revenue	31,548	25,110	29,381	31,471	7.1%	72,953	131.8%	72,353	-0.8%
Judgments, Settlements & Bonds	450	0	8	0	-100.0%	0	0.0%	0	0.0%
Transfers and Non-Expense	741	1,129	1,699	23,461	1,280.8%	19,838	-15.4%	6,931	-65.1%
Total	**177,272**	**173,440**	**179,523**	**213,355**	**18.8%**	**265,924**	**24.6%**	**257,019**	**-3.3%**

Environmental Protection Agency

ALI Analysis

5CV1 715600 Coronavirus Relief EPA

The $2 million in fiscal year 2021 was for wastewater testing in support of coronavirus relief efforts.

3HE0 715697 Volkswagen Clean Air Act Settlement

Decreasing appropriations in the Volkswagen Clean Air Act Settlement line item in fiscal year 2023 reflects program maturity in that most of the grant dollars from the VW Mitigation Trust have been awarded. The grants are used to reduce emissions by replacing diesel engines and vehicles with clean diesel, alternative fuel, or electric engines.

5BY0 715681 Auto Emissions Test

Appropriations in the Auto Emissions Test dedicated purpose fund are to support the E-Check program. Funding will be via a transfer from the Scrap Tire Management Fund (4R50).

6H20 715695 H2Ohio

The increase in appropriation is for an expansion of the EPA's efforts within the H2Ohio water quality program. The EPA will continue protecting public health, improving water and wastewater infrastructure, and reducing lead exposure in daycare centers.

Executive Recommendations by Line Item

			Actual			Estimated	Recommended			
Fund	ALI	ALI Name	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	% Change	FY 2023	% Change
GRF	715502	Auto Emissions E-Check Program	8,957,192	8,920,225	10,079,452	10,439,525	9,125,482	-12.6%	9,125,482	0.0%
GRF	715506	George Barley Water Prize	0	0	125,000	0	0	0.0%	0	0.0%
GRF	715507	Water and Sewer System Grants	0	0	1,500,000	1,200,000	0	-100.0%	0	0.0%
Total General Revenue			**8,957,192**	**8,920,225**	**11,704,452**	**11,639,525**	**9,125,482**	**-21.6%**	**9,125,482**	**0.0%**
1990	715602	Laboratory Services	451,900	333,366	312,942	458,000	533,000	16.4%	533,000	0.0%
2190	715604	Central Support Indirect	6,274,810	5,507,074	6,834,096	7,510,500	8,075,000	7.5%	8,675,000	7.4%
4A10	715640	Operating Expenses	946,815	1,143,731	784,365	1,069,000	1,418,000	32.6%	1,443,000	1.8%
Total Internal Service Activity			**7,673,525**	**6,984,171**	**7,931,403**	**9,037,500**	**10,026,000**	**10.9%**	**10,651,000**	**6.2%**
3530	715612	Public Water Supply	2,113,020	2,142,020	2,010,800	2,015,000	2,150,000	6.7%	2,150,000	0.0%
3570	715619	Air Pollution Control - Federal	5,332,346	5,455,383	5,598,554	6,115,000	6,115,000	0.0%	6,115,000	0.0%
3620	715605	Underground Injection Control - Federal	132,859	120,498	94,133	133,000	133,000	0.0%	133,000	0.0%
3BU0	715684	Water Quality Protection	13,222,037	11,213,998	11,587,733	14,517,550	15,570,000	7.2%	15,625,000	0.4%
3CS0	715688	Federal NRD Settlements	876,918	1,104,847	118,966	698,000	201,000	-71.2%	201,000	0.0%
3F20	715630	Revolving Loan Fund - Operating	2,537,198	2,409,564	0	0	0	0.0%	0	0.0%
3F30	715632	Federally Supported Cleanup and Response	6,800,748	7,167,028	6,797,170	7,143,300	8,137,195	13.9%	8,218,775	1.0%
3HE0	715697	Volkswagen Clean Air Act Settlement	0	540,983	3,857,213	22,845,000	18,766,500	-17.9%	5,876,500	-68.7%
3T30	715669	Drinking Water State Revolving Fund	2,481,953	2,618,945	2,733,819	2,955,000	3,141,500	6.3%	3,148,130	0.2%
3V70	715606	Agencywide Grants	107,881	814,399	18,330	700,000	700,000	0.0%	700,000	0.0%
Total Federal			**33,604,960**	**33,587,665**	**32,816,718**	**57,121,850**	**54,914,195**	**-3.9%**	**42,167,405**	**-23.2%**
4D50	715618	Recycled State Materials	26,425	32,124	1,556	25,000	50,000	100.0%	50,000	0.0%
4J00	715638	Underground Injection Control	340,834	413,488	356,420	429,000	456,891	6.5%	464,794	1.7%
4K20	715648	Clean Air - Non Title V	3,796,216	6,417,038	6,657,556	4,767,344	5,317,000	11.5%	5,317,000	0.0%
4K30	715649	Solid Waste	13,353,267	13,064,163	13,718,527	14,190,934	15,604,074	10.0%	16,603,928	6.4%
4K40	715650	Surface Water Protection	7,920,802	9,497,670	7,467,195	8,653,830	11,375,000	31.4%	11,565,000	1.7%
4K40	715686	Environmental Laboratory Services	9,075	0	0	0	0	0.0%	0	0.0%
4K50	715651	Drinking Water Protection	6,883,852	6,484,799	6,989,985	7,520,000	7,751,598	3.1%	8,429,640	8.7%
4P50	715654	Cozart Landfill	3,843	77,305	4,479	10,000	10,000	0.0%	10,000	0.0%
4R50	715656	Scrap Tire Management	2,022,902	2,705,972	2,324,899	3,133,913	3,410,366	8.8%	3,570,259	4.7%
4R90	715658	Voluntary Action Program	891,518	916,411	738,007	1,094,800	1,074,027	-1.9%	1,089,245	1.4%
4T30	715659	Clean Air - Title V Permit Program	9,868,820	9,745,121	9,857,487	9,694,000	10,274,000	6.0%	10,284,000	0.1%
5000	715608	Immediate Removal Special Account	694,056	645,999	733,930	722,000	722,000	0.0%	722,000	0.0%
5030	715621	Hazardous Waste Facility Management	4,099,053	3,734,359	4,146,206	3,839,700	4,755,552	23.9%	5,125,120	7.8%
5050	715623	Hazardous Waste Cleanup	9,833,225	9,535,150	9,050,839	8,414,700	10,557,535	25.5%	11,017,788	4.4%
5050	715698	Response and Investigations	3,056,326	3,112,002	3,120,636	3,264,000	3,380,000	3.6%	3,450,000	2.1%
5320	715646	Recycling and Litter Control	5,781,197	2,410,788	4,302,074	4,598,000	4,598,000	0.0%	4,598,000	0.0%
5410	715670	Site Specific Cleanup	6,141,408	1,928,358	222,931	779,400	771,192	-1.1%	771,192	0.0%
5420	715671	Risk Management Reporting	187,042	201,503	186,072	208,000	210,000	1.0%	210,000	0.0%
5860	715637	Scrap Tire Market Development	1,327,759	263,198	488,668	1,000,000	1,000,000	0.0%	1,000,000	0.0%
5BC0	715622	Local Air Pollution Control	1,999,172	1,999,172	1,999,999	2,000,000	2,100,000	5.0%	2,100,000	0.0%
5BC0	715624	Surface Water	5,735,712	5,997,795	6,421,397	6,292,000	6,606,600	5.0%	6,606,600	0.0%
5BC0	715672	Air Pollution Control	7,776,876	8,060,683	8,229,830	8,236,000	8,647,800	5.0%	8,647,800	0.0%
5BC0	715673	Drinking and Ground Water	3,613,066	3,661,842	3,041,292	3,840,300	3,769,815	-1.8%	3,769,815	0.0%
5BC0	715676	Assistance and Prevention	1,799,082	1,821,021	1,634,229	1,833,000	1,968,750	7.4%	1,968,750	0.0%

Environmental Protection Agency

			Actual			Estimated	Recommended			
Fund	ALI	ALI Name	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	% Change	FY 2023	% Change
5BC0	715677	Laboratory	3,013,675	3,023,894	3,183,720	3,329,000	3,495,450	5.0%	3,495,450	0.0%
5BC0	715678	Corrective Actions	1,315,080	1,364,362	1,072,849	1,120,000	1,176,000	5.0%	1,176,000	0.0%
5BC0	715687	Areawide Planning Agencies	395,584	492,484	410,304	450,000	450,000	0.0%	450,000	0.0%
5BC0	715692	Administration	11,869,158	13,103,191	14,848,225	15,165,000	16,213,250	6.9%	15,923,250	-1.8%
5BC0	715694	Environmental Resource Coordination	99,941	62,781	67,119	115,000	788,000	585.2%	793,000	0.6%
5BT0	715679	C&DD Groundwater Monitoring	92,817	46,492	61,865	225,000	225,000	0.0%	225,000	0.0%
5BY0	715681	Auto Emissions Test	1,833,165	1,812,190	76,437	0	1,470,826	NA	1,494,826	1.6%
5CV1	715600	Coronavirus Relief EPA	0	0	0	2,000,000	0	-100.0%	0	0.0%
5H40	715664	Groundwater Support	306,219	322,703	244,085	332,000	332,000	0.0%	332,000	0.0%
5PZ0	715696	Drinking Water Loan Fee	1,027,758	1,051,314	1,402,020	3,157,250	2,081,245	-34.1%	2,088,650	0.4%
5VA0	715601	Marsh Restoration	0	22,834	2,415	1,000,000	750,000	-25.0%	750,000	0.0%
5Y30	715685	Surface Water Improvement	593,430	254,343	333,179	500,000	500,000	0.0%	500,000	0.0%
6440	715631	Emergency Response Radiological Safety	125,229	282,836	215,461	278,500	325,370	16.8%	332,287	2.1%
6760	715642	Water Pollution Control Loan Administration	1,222,544	1,552,371	3,993,624	4,200,000	5,055,000	20.4%	5,455,000	7.9%
6760	715699	Water Quality Administration	2,714,282	2,766,423	3,826,738	3,975,000	4,100,000	3.1%	4,223,000	3.0%
6780	715635	Air Toxic Release	92,392	64,613	45,907	35,000	20,000	-42.9%	0	-100.0%
6790	715636	Emergency Planning	2,650,924	2,810,144	2,742,809	2,858,000	2,864,000	0.2%	2,864,000	0.0%
6960	715643	Air Pollution Control Administration	565,730	869,606	923,514	972,000	1,002,000	3.1%	1,002,000	0.0%
6990	715644	Water Pollution Control Administration	651,820	326,077	391,727	300,000	300,000	0.0%	300,000	0.0%
6A10	715645	Environmental Education	1,160,995	936,394	1,219,033	998,000	300,000	-69.9%	300,000	0.0%
6H20	715695	H2Ohio	0	0	314,925	0	46,000,000	NA	46,000,000	0.0%
Total Dedicated Purpose			**126,892,271**	**123,891,013**	**127,070,170**	**135,555,671**	**191,858,341**	**41.5%**	**195,075,394**	**1.7%**
5S10	715607	Clean Ohio Revitalization Operating	144,046	57,416	140	0	0	0.0%	0	0.0%
Total Capital Projects			**144,046**	**57,416**	**140**	**0**	**0**	**0.0%**	**0**	**0.0%**
Grand Total Environmental Protection Agency			**177,271,994**	**173,440,490**	**179,522,883**	**213,354,546**	**265,924,018**	**24.6%**	**257,019,281**	**-3.3%**

Environmental Review Appeals Commission

Role and Overview

The Environmental Review Appeals Commission (ERAC) hears and resolves appeals resulting from various technical and legal final actions taken by the Ohio Environmental Protection Agency (EPA), the Ohio Department of Agriculture (ODA), county and local boards of health, the State Fire Marshal's Office, and the State Emergency Response Commission. The ERAC functions as a quasi-judicial appellate review board and was created specifically to resolve environmental disputes involving the aforementioned agencies. The ERAC has statewide jurisdiction and is the highest level of administrative appeal from the final actions of these agencies. Decisions of the Commission may be appealed to the Franklin County Court of Appeals or if the appeal arises from an alleged violation of a law or regulation to the court of appeals for the district in which the violation allegedly occurred. The ERAC consists of five full-time employees. The three commission members are appointed by the Governor for staggered six-year terms, and each must have extensive experience in pollution control and abatement technology, ecology, public health, environmental law, and economics of natural resource development or related fields. The remaining two employees are an executive director, who performs the day-to-day functions of the ERAC, and a program administrator/staff attorney to assist the commissioners.

More information regarding the Environmental Review Appeals Commission is available at http://www.erac.ohio.gov.

Agency Budget Highlights

- The Commission provides a quasi-judicial appellate review of final actions, mostly from the Ohio EPA. The Commission offers parties who come before it with the ability to e-file their documents and view on-line case files of pending matters as well as final decisions issued by the Commission.
- Use of e-filing and online case files has proven to be extremely valuable especially during the current pandemic. These technological solutions have allowed the Commission to seamlessly transition to remote work without any effect on the ability to serve the citizens of Ohio as well as the regulated community.
- Between March and October 2020, the Commission received approximately 212 filings, 100 percent of which have occurred online. Recommended funding levels will allow the Commission to continue to provide similar levels of service in the upcoming biennium.

Funding Recommendation for 2022 and 2023

- GRF: Funding for fiscal year 2022 is $651.0 thousand (or a 0.0% increase from fiscal year 2021). Funding for fiscal year 2023 is $651.0 thousand (or a 0.0% increase from fiscal year 2022).
- All Funds: Funding for fiscal year 2022 is $651.0 thousand (or a 0.0% increase from fiscal year 2021). Funding for fiscal year 2023 is $651.0 thousand (or a 0.0% increase from fiscal year 2022).

Table of Organization

Environmental Review Appeals Commission

Agency Goals and Objectives

The ERAC will maintain consistency in the law.

- The ERAC will continue to provide a consistent body of environmental case law in Ohio.

The ERAC will provide impartial review of cases brought before it.

- The ERAC will provide impartial, professional oversight of certain final actions made by the regulatory agencies over which the Commission has jurisdiction and continue to reduce the number of pending cases before the commission through increases in efficiency and diligent work.

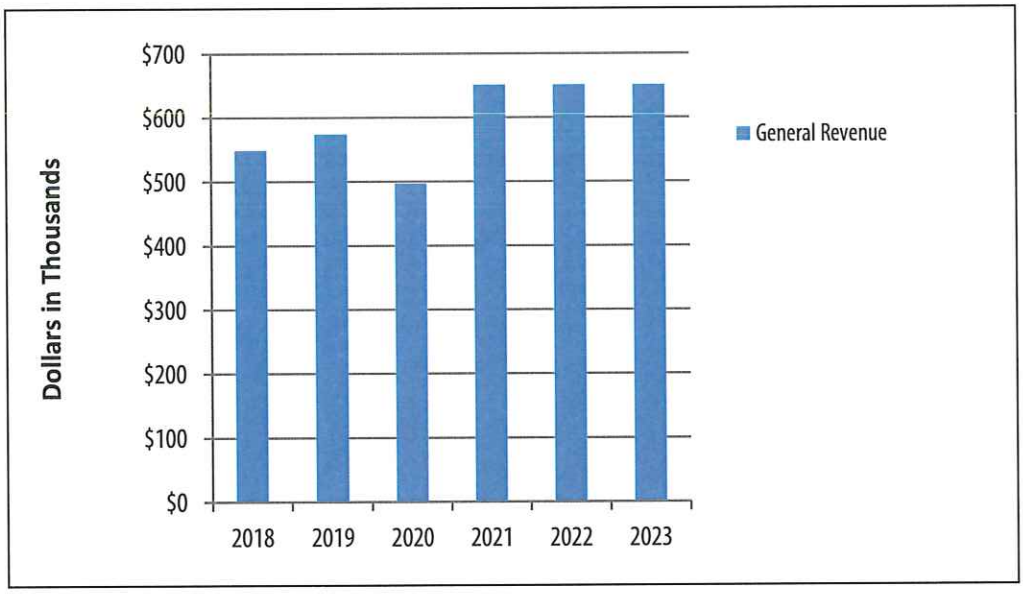
The ERAC will develop and maintain technological solutions and 21st century operations.

- The ERAC will maintain and encourage the use of online case filing and ensure the accuracy and completeness of online dockets of pending matters as well as final decisions issued by the Commission.

Funding Sources

The Environmental Review Appeals Commission received all $497,136 (100%) of its funding from the General Revenue Fund. This funding supports all agency operations including payroll for the agency's two staff and three commissioners, rent and supplies.

Expense by Budget Fund Group



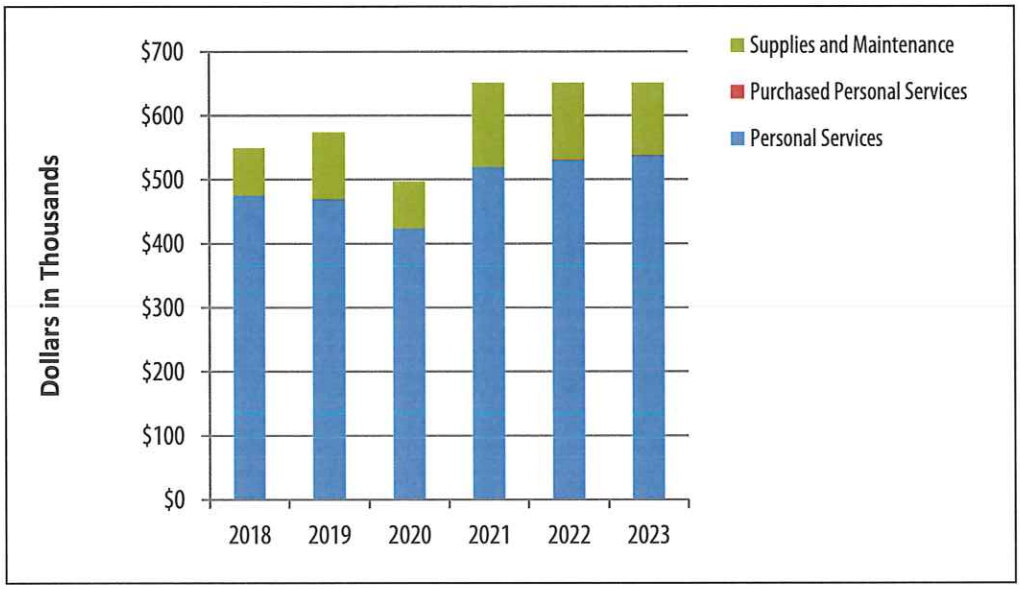
(in Thousands)	Actual			Est.	% Change	Recommended			
Budget Fund Group	FY 2018	FY 2019	FY 2020	FY 2021	FY 20-21	FY 2022	% Change	FY 2023	% Change
General Revenue	549	574	497	651	31.0%	651	0.0%	651	0.0%
Total	**549**	**574**	**497**	**651**	**31.0%**	**651**	**0.0%**	**651**	**0.0%**

Environmental Review Appeals Commission

Agency's Budget by Expense Type

The vast majority of the ERAC's expenses in fiscal year 2020 were for payroll (85.2%). The remaining expenses (14.8%) were for rent payments and supply costs.

Expenses by Account Category



(in Thousands)	Actual			Est.	% Change	Recommended			
Expense Account Category	FY 2018	FY 2019	FY 2020	FY 2021	FY 20-21	FY 2022	% Change	FY 2023	% Change
Personal Services	475	469	424	520	22.7%	530	1.9%	537	1.3%
Purchased Personal Services	0	1	0	0	0.0%	1	0.0%	1	0.0%
Supplies and Maintenance	74	104	73	131	78.7%	120	-8.5%	113	-5.8%
Total	**549**	**574**	**497**	**651**	**31.0%**	**651**	**0.0%**	**651**	**0.0%**

Executive Recommendations by Line Item

			Actual			Estimated	Recommended			
Fund	ALI	ALI Name	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	% Change	FY 2023	% Change
GRF	172321	Operating Expenses	549,365	574,179	497,136	651,000	651,000	0.0%	651,000	0.0%
Total General Revenue			**549,365**	**574,179**	**497,136**	**651,000**	**651,000**	**0.0%**	**651,000**	**0.0%**
Grand Total Environmental Review Appeals Commission			**549,365**	**574,179**	**497,136**	**651,000**	**651,000**	**0.0%**	**651,000**	**0.0%**

12/22/20
PUBLIC INTEREST CENTER, (614) 644-2160
MEDIA CONTACT: Heidi Griesmer

Ohio EPA Announces First-Year H2Ohio Accomplishments to Improve Water Quality in Ohio

This week, Ohio EPA Director Laurie A. Stevenson outlined the progress the Agency has made in the first year of Governor Mike DeWine's H2Ohio initiative, which has a goal to provide safe and clean water for Ohioans while ensuring the long-term health of our lakes and waterways.

Ohio EPA's H2Ohio approach has been to concentrate on five focus areas which will improve water quality, protect public health, and provide positive change to the lives of Ohioans. These five focus areas are: improving Ohio's water and wastewater infrastructure, replacing failed home sewage treatment systems, reducing lead exposure in daycare centers, building a stronger stream monitoring network, and researching promising technologies for water quality improvements.

"Governor DeWine's H2Ohio plan enabled Ohio EPA to extend available funding to help communities across the state address their water and wastewater needs, home sewage treatment systems, and lead service lines," said Ohio EPA Director Laurie A. Stevenson. "We have used H2Ohio funding to make a difference in the lives of Ohioans."

To help with infrastructure, Ohio EPA awarded a total of $2 million in funding for drinking water infrastructure projects in Pike County, Coshocton, and New Waterford. An additional $1.5 million in H2Ohio funding was awarded for wastewater projects in Pomeroy, West Milton, and Williams County. More than $1.7 million was awarded to health departments in seven Northwest Ohio counties to address failing household sewage systems.

A total of $1.225 million in H2Ohio funds are addressing removing and replacing lead service lines and lead-containing fixtures at childcare facilities in Cincinnati. Federal grant funds are used to conduct the testing, and H2Ohio funds are used to replace lead service lines and fixtures at childcare facilities.

Ohio EPA used its H2Ohio funds to leverage more than $20 million in federal, state, and local funds.

In addition, Ohio EPA issued a request for technologies for the H2Ohio Technology Assessment Program (TAP) to identify technologies that may help address harmful algal blooms (HABs) in Lake Erie. Proposals will be accepted until Jan. 15, 2021.

In the future, Ohio EPA plans to continue to focus on improving Ohio's water and wastewater infrastructure, replacing failed home sewage treatment systems, reducing lead exposure, and building a stronger stream monitoring network.

H2Ohio is a collaborative water quality effort to provide clean and safe water to Ohio. The Ohio Department of Natural Resources, Ohio Department of Agriculture, Ohio Environmental Protection Agency, and Ohio Lake Erie Commission each have a significant role in H2Ohio through the natural infrastructure of wetlands, the reduction in nutrient runoff, and increasing access to clean drinking water and quality sewer systems. To learn more, go to h2.ohio.gov.
The H2Ohio Year One Annual Report is available online at: http://h2.ohio.gov/h2ohio-annual-report/.
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U.S. EPA removes Ohio's air pollution nuisance rule from Ohio's SIP

November 19, 2020

UPDATE (January 22, 2021): On January 19, 2021, the Sierra Club, the Ohio Environmental Council, and two individuals filed a petition with the Sixth Circuit Court of Appeals requesting review of US EPA's November 19, 2020, final rule removing Ohio's air pollution nuisance rule from Ohio's SIP, which became effective on December 21, 2020. Bricker will continue to closely monitor this rulemaking and the Sixth Circuit petition as the case progresses.

In accordance with the rule, Ohio EPA has indicated that as of January 19, 2021, Section A. of the Standard Terms and Conditions for Ohio EPA's Division of Air Pollution Control Permits-to-Install and Title V Operating Permits will no longer refer to the nuisance rule as being federally enforceable.

On November 19, 2020, U.S. EPA published its decision to remove Ohio's air pollution nuisance rule from Ohio's SIP in the Federal Register. The removal came at the request of Ohio EPA because the nuisance rule does not have a reasonable connection to the attainment of the NAAQS in Ohio, and U.S. EPA erred in approving it as part of Ohio's SIP. Like in other states where a nuisance rule has been removed from the SIP, U.S. EPA agreed that the rule has not been relied upon to demonstrate

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implementation, maintenance or enforcement of any NAAQS. Ohio's nuisance rule is codified in Ohio Administrative Code Rule 3745-15-07, which provides as follows: "[t]he emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance."

This rule is still in effect and is not impacted by U.S. EPA's removal of the air nuisance rule from Ohio's SIP. The practical effect of U.S. EPA's action, however, is that claims for violations of Ohio's air nuisance rule will need to be filed in the state court system in Ohio, and not subject to citizen suits under the Clean Air Act in federal court.

October 7, 2020

VIA Electronic Mail (dsw_rulecomments@epa.ohio.gov)

Ohio EPA Division of Surface Water
Attn: Jennie Pugliese
P.O. Box 1049
Columbus, OH 43216-1049

Re: **Comments on Ohio EPA's Proposed Credible Data Program, Wave 2 (OAC 3745-4) Rulemaking**

Dear Ms. Pugliese:

Pursuant to Ohio EPA's Public Notice of Proposed Rulemaking Governing Credible Data Program, the Ohio Manufacturers' Association (OMA) is hereby providing Ohio EPA with written comments to Ohio EPA's proposed rulemaking pertaining to Ohio Administrative Code ("OAC") Chapter 3745-4.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,300 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. The OMA appreciates the opportunity to comment on Ohio EPA's proposed rulemaking pertaining to OAC Chapter 3745-4, the Credible Data program.

The OMA is opposed to Ohio EPA's proposed addition as currently drafted of "state universities" to the definition of "state environmental agency" found within OAC 3745-4-02(Q). The other state environmental agencies listed within OAC 3745-4-02(Q) appear to be consistent with the definition of "state environmental agency," having the primary function of "protection, management, study, or assessment of the environment, natural resources or ecological systems." OAC 3745-4-02(Q). State universities, on the other hand, have a much broader focus, and do not fit within this definition. The proposed addition of "state universities" to OAC 3745-4-02(Q) does not limit the term in any way, nor does the incorporated definition of "state universities" within R.C. 3345.011. The rule as drafted appears to allow for any state university employee to submit data and have it be deemed credible pursuant to the rule, regardless of that employee's area of discipline, training, and experience.

Notably, the rule as drafted provides that data submitted by state universities shall be *automatically* deemed credible pursuant to OAC 3745-4-01(D)(1). And unlike OAC 3745-4-01(D)(2), subsection (D)(1) does not contain a provision authorizing the Director to exercise discretion in identifying reasons why the data submitted are not credible.

The OMA respectfully requests that Ohio EPA please remove this provision or at least provide further clarity in regards to this proposed addition to OAC 3745-4-02(Q).

The OMA would like to thank Ohio EPA for the opportunity to comment and to participate in this rulemaking process.

Sincerely,

Rob Brundrett
Director, Public Policy Services

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

12/29/20
PUBLIC INTEREST CENTER, (614) 644-2160
MEDIA CONTACT: Heidi Griesmer

Ohio EPA Completes Testing Drinking Water Under Ohio PFAS Action Plan

Today, Ohio EPA announced that it has received the final testing results for the presence of certain per- and polyfluoroalkyl substances (PFAS) in drinking water from Ohio's public water systems, bringing to a close the Agency's statewide sampling initiative of almost 1,550 public water systems under Ohio's PFAS Action Plan.

Although there are currently no national drinking water standards for PFAS nor mandates for its testing, Governor Mike DeWine called for the development of the PFAS Action Plan last year to identify the extent of PFAS chemicals in Ohio's public drinking water systems. The testing found only two public water systems in the state with PFAS levels above the state's action level.
"There is still a lot that experts don't yet know about the dangers of PFAS compounds in drinking water, but as a result of this work, we can say with certainty that these chemicals are not widely contaminating Ohio's public water systems," said Governor DeWine. "We want Ohioans to feel confident that their water is safe, and I'm pleased that these testing results can provide some peace of mind."

"We greatly appreciate Governor DeWine's leadership in this area," said Ohio EPA Director Laurie Stevenson. "Ohio now joins the ranks of only a handful of other states that have taken on such a comprehensive sampling initiative. We now have very important data that can help us as we work with our public water systems to ensure they can continue to provide safe drinking water to their customers."
The water sampling began in February 2020 with the goal to test Ohio's public water systems serving communities, schools, child care facilities, and mobile home parks by the end of the year. Through this initiative, nearly 94 percent of the nearly 1,550 public drinking water systems tested revealed no detection of PFAS compounds. Low levels of PFAS compounds, well below the health advisory level, were detected in six percent of systems.

In the two water systems found with elevated PFAS levels, immediate steps were taken to identify alternatives to ensure safe drinking water. Ohio EPA will continue to work with these systems on regular testing to monitor PFAS levels and to identify options to address any potential public health risks. Ohio EPA is also continuing to monitor the water systems with low PFAS levels to ensure levels don't begin to rise.

PFAS are manmade chemicals used in products such as carpeting, upholstery, cookware, food packaging, and firefighting foam. PFAS can be transported through rainwater run-off or migrate through soil, posing potential contamination threats to surface and ground waters. Ohio EPA provided the test results to each public water system and published the data publicly on Ohio's interactive PFAS website, pfas.ohio.gov. For more information on PFAS and Ohio's PFAS Action Plan, visit pfas.ohio.gov.

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COUNSEL'S REPORT

Frank Merrill & Christine Rideout Schirra, Bricker & Eckler LLP
Counsel to the OMA
February 10, 2021

A. Ohio EPA Activities of Note

1. 401 Water Quality Certification for Nationwide Permits

On January 15, 2021, Ohio EPA announced its re-issuance of the draft 401 Water Quality Certification (WQC), in response to the U.S. Army Corps of Engineers' (Army Corps) January 13, 2021 final rule issuing 16 NWPs. Ohio EPA had initially released its draft 401 WQC for the proposed NWPs on December 16, 2020, in response to the Army Corp's September 15, 2020 announcement of its early renewal of the 2017 NWPs. Following the Army Corp's January 13, 2021 issuance of its final rule, in which it only issued 16 NWPs instead of the originally proposed 56, Ohio EPA revised its draft 401 WQC to show which language was removed from the draft 401 WQC previously released in December 2020, to match the Army Corp's final rule.

Ohio EPA held a public hearing on its draft 401 WQC on February 4, 2021. Due to the significant number of questions raised during that public meeting, Ohio EPA has announced that it will hold an additional public meeting on February 17, 2021 at 3:30 pm, to include a presentation tailored to questions and concerns raised during the public hearing and a Q&A session. Ohio EPA has also extended the public comment period on the draft 401 WQC until February 24, 2021.

2. Credible Data Program Wave 2 Rules

Ohio EPA refiled its Credible Data Wave 2 rules with the Joint Committee on Agency Rule Review (JCARR) on January 6, 2021. The credible data program is a surface water monitoring program designed to encourage and oversee the collection, analysis and use of data collected by volunteer individuals and organizations, which may then be considered by Ohio EPA in implementing its surface water programs. Previously, upon issuance of its draft rules, Ohio EPA proposed to add "state universities" to the definition of "state environmental agency" found within OAC 3745-4-02, the impact of which would be to make data submitted by "state environmental agencies" deemed credible by rule pursuant to OAC 3745-4-01, without the submitter first having to go through the process of becoming a qualified data collector.

Consistent with the OMA's comments previously submitted to Ohio EPA on the draft Credible Data Wave 2 rules, Ohio EPA removed "state universities" from the definition for "state environmental agency."

3. Early Stakeholder Outreach – Nitrogen Oxides and VOCs RACT

On December 11, 2020, Ohio EPA initiated its early stakeholder outreach process pertaining to Ohio Administrative Code Chapters 3745-21 (volatile organic compounds (VOCs)) and 3745-110 (nitrogen oxides (NOx)). These rules establish requirements for the control of

emissions of VOCs and NOx (the precursor compounds for ozone) from stationary emission sources.

Ohio EPA has indicated that it anticipates the Cleveland and Cincinnati areas will fail to meet the ozone standard by August 3, 2021, as required by the Clean Air Act in order to remain classified as marginal nonattainment for the 2015 ozone standard, and as a result these areas will be reclassified as moderate nonattainment by U.S. EPA. Reclassification to moderate nonattainment triggers additional Clean Air Act requirements, including NOx and VOC Reasonably Available Control Technology (RACT) requirements.

4. PFAS Testing Update

On December 29, 2020, Ohio EPA announced that it had completed testing of Ohio's drinking water systems for the presence of certain per- and polyfluoroalkyl substances (PFAS) in drinking water from Ohio's public water systems. Pursuant to Ohio's PFAS Action Plan, the statewide sampling initiative of almost 1,550 public water systems is complete. Ohio EPA's testing found no public water systems in the state with PFAS levels above the state's action level. Low levels of PFAS (below the health advisory level) were found in 6% of systems tested.

There are currently no national drinking water standards for PFAS, nor is there a national mandate for its testing. However, U.S. EPA has recommended requiring many manufacturing sites, wastewater plants, and other facilities to monitor wastewater for PFAS. The U.S. EPA under the Biden Administration is expected to quickly move to establish PFAS regulations.

5. 2019 Annual Air Monitoring Report

On January 27, 2021, Ohio EPA published its Annual Air Monitoring Report for 2019. Ohio EPA's Annual Air Monitoring Report includes summaries from Ohio EPA's extensive air monitoring network, including measurements of the National Ambient Air Quality Standards (NAAQS) and toxic air pollutants, taken during the calendar year.

B. U.S. EPA Activities of Note

1. Final Nationwide Permits Reissuance

On January 13, 2021, the U.S. Army Corps of Engineers (Army Corps) finalized an early renewal of the 2017 Nationwide Permits (NWPs) in the Federal Register (86 FR 2744). NWPs authorize activities that are similar in nature and cause only minimal adverse environmental impacts to aquatic resources separately or on a cumulative basis. Notably, the Army Corp's final version of the rule only includes 16 NWPs, instead of 56 as initially proposed. The remaining 40 NWPs from 2017 remain in effect through their scheduled March 18, 2022 expiration date.

Among the 16 NWPs issued final, the Army Corps modified and reissued 12 existing NWPs, and issued four entirely new NWPs. Some of the more impactful changes are to NWP 12, one of the more commonly utilized NWPs. NWP 12 is now split into three parts: NWP 12 will continue to authorize oil and gas pipeline activities; new NWP 57 will authorize electric utility

line and telecommunications; and NWP 58 will serve utility line activities for water and other substances. The Army Corps also modified NWP 12 by changing some of the pre-construction notification requirements.

The final rule further sets forth how the Corps satisfies its duties under the Endangered Species Act when issuing the new NWPs and specifically those related to pipeline construction. It includes the Corps' new biological assessment, which concludes that the new NWPs have no effect on listed species and designated critical habitat – thereby attempting to address the deficiencies identified by a federal district court when it enjoined the use of NWP 12 for authorization of the Keystone pipeline.

The permits are set to become effective on March 15, 2021, absent intervention from the Biden Administration.

2. Final Amendment to Ohio's SIP

On November 19, 2020, U.S. EPA published its final rule removing the air pollution nuisance rule from Ohio's State Implementation Plan (SIP) (85 F.R. 73,636). U.S. EPA determined that Ohio did not rely upon the rule to demonstrate attainment or maintenance of any National Ambient Air Quality Standards (NAAQS).

In practice, the inclusion of the nuisance provision within these air permits allows for the filing of a citizen suit alleging that a facility is in violation of the nuisance provision, even if Ohio EPA says the facility does not operate as a nuisance. The removal of the air pollution nuisance rule from Ohio's SIP allows Ohio EPA to discontinue its practice of including a nuisance provision as a standard term and condition within each air permit that it issues. Accordingly, Ohio EPA has announced that as of January 19, 2021, the standard boilerplate terms and conditions of its air permits have been amended to reflect this change.

On January 19, 2021, Sierra Club, Ohio Environmental Council, and two individual citizens filed a petition for review of U.S. EPA's action with the Sixth Circuit Court of Appeals.

3. Biden Administration: Energy and Environmental Nominees

The Biden administration has set forth its slate of nominees for several key energy and environmental positions, including U.S. EPA Administrator. The nominees include veteran regulators, former elected officials and statesmen, among others:

- **Michael Regan**: Michael Regan, Biden's pick to lead the U.S. Environmental Protection Agency (EPA) as Administrator, has served as secretary of the North Carolina Department of Environmental Quality (NCDEQ) for Governor Roy Cooper (D-NC). He played an important leadership role on the North Carolina Clean Energy Plan, which is designed to slash greenhouse gas pollution from the electricity sector to 70 percent below 2005 levels by 2030, foster energy affordability and accelerate clean energy innovation.
- **Jennifer Granholm**: Former Michigan Governor Jennifer Granholm is the Biden administration's nominee for energy secretary of the U.S. Department of Energy. Granholm's experience with the Michigan-based U.S. auto industry is likely a nod to

Biden's agenda toward 100 percent zero-emission vehicles. She was also at the head of state leadership during the last economic crisis and worked with a split Michigan legislature to establish Michigan's renewable portfolio standard and energy efficiency resource standard, net metering program and clean energy tax incentives during her time as governor.

- **Richard Glick**: Richard Glick has been nominated to chair the Federal Energy Regulatory Commission, giving leadership and agenda-setting authority to the agency's longest-running Democratic member. Glick is a former government affairs director for Avangrid Renewables and Iberdrola, and general counsel for the Democrats on the Senate Energy and Natural Resources Committee.
- **Gina McCarthy**: Veteran EPA regulator Gina McCarthy has been tapped as the head of the new White House Office of Domestic Climate Policy as National Climate Advisor. Before leading the EPA during the Obama administration, she served as a state environmental regulator in Massachusetts and Connecticut for both Democratic and Republican governors.
- **Brenda Mallory**: Brenda Mallory is the nominee to chair the White House Council on Environmental Quality. Since serving at CEQ under the Obama administration, Mallory has worked for the Southern Environmental Law Center. Under her leadership, CEQ could play a crucial role engaging with state and local governments, tribal nations and communities around implementation of initiatives on climate and environmental justice.
- **John Kerry**: John Kerry has been named Special Presidential Envoy for Climate, creating a new cabinet-level position. The appointment of Kerry, not only as an additional diplomat but also as a sitting member of Biden's National Security Council, elevates the issue of climate change to the highest echelons of government and indicates that the incoming administration intends to treat the climate crisis in a new and different manner than its predecessor.

4. Biden Administration: Executive Order on Climate

In his January 27, 2021 Executive Order (EO) on Tackling the Climate Crisis at Home and Abroad, President Biden announced far-reaching reforms intended to impact every sector of the federal government and economy. More specifically, the EO focuses on addressing climate change through energy, infrastructure, national security, foreign affairs, and social justice policies, to be implemented across the federal government. The EO requires an emphasis on promoting renewable energy development, as well as the creation of jobs and opportunities in the clean energy economy. It further prioritizes environmental justice and the enforcement of environmental violations with disproportionate impact on underserved communities.

C. Judicial

D.C. Circuit Vacates ACE Rule

On January 19, 2021, the D.C. Circuit Court in a 2-1 decision vacated the Trump administration's 2019 Affordable Clean Energy (ACE) Rule and remanded it to U.S. EPA. U.S. EPA had promulgated the ACE Rule in 2019, replacing the Obama administration's 2015 Clean Power Plan (CPP). The U.S. Supreme Court stayed the implementation of the CPP in February

2016, pending litigation in the D.C. Circuit. Both rules were promulgated under the authority of Clean Air Act Section 111(d), and were each subject to extensive litigation by industry, states, and other organizations.

In the D.C. Circuit challenge to the ACE Rule, several states argued that the ACE Rule was too limiting, whereas U.S. EPA argued that the Clean Air Act limited U.S. EPA's authority to taking "inside the fence line" measures. In the majority opinion, the Court concluded that there was no basis for U.S. EPA's assertion that its authority was limited to at the source controls. The Court's decision clears the way for the Biden administration to now determine how best to regulate greenhouse gas emissions from the power sector.

Environment

DeWine Seeks to Increase H2Ohio Funding
February 5, 2021

H2Ohio, which is Gov. Mike DeWine's water quality initiative, would be allocated $240 million over the next two years under the administration's new budget. That is a sizeable increase from the $180 million transferred to the H2Ohio program in fiscal years 20-21. The Ohio EPA would receive the bulk of the new H2Ohio funding. *2/1/2021*

Webinar Will Address Storm Water Prevention Plans
February 5, 2021

Does your business need to develop a Storm Water Pollution Prevention Plan (SWPPP) to comply with a National Pollutant Discharge Elimination System industrial storm water permit? On Feb. 11, Ohio EPA will host a **free webinar** so you can learn the elements of a SWPPP along with the mistakes to avoid. Continuing Education Units will be available. *2/1/2021*

Report: National 'Green Bank' May Be in Next COVID-19 Package
February 5, 2021

Politico.com **reported** earlier this week that Democrats on Capitol Hill "are pushing to include a $100 billion national green bank as part of an upcoming COVID-19 recovery and infrastructure bill." According to the publication, the money would be used to spur $500 billion in private investments and create 4 million jobs over four years related to clean energy and GHG emission reduction. *2/3/2021*

OMA Environment Committee Meeting Will Examine Priorities of Biden Administration
February 5, 2021

There's still time to register for the Wednesday, Feb. 10 meeting of the OMA Environment Committee, which will be held virtually.

Among the presenters at this event will be Rachel Jones, vice president of energy and resources policy for the National Association of Manufacturers. Jones will discuss developments on the environmental front under the Biden administration. Ohio EPA Assistant Director Laura Factor will detail Ohio EPA's state budget request. **Register now.** *2/4/2021*

Upcoming Hearing on Ohio EPA Water Quality Permits
January 29, 2021

Last September, the U.S. Army Corps of Engineers **proposed** an early renewal of the 2017 Nationwide Permits (NWPs). The Corps also published a **public notice** regarding the proposed regional conditions for the Ohio NWPs. In December, Ohio EPA released a **public notice** of the Draft Section 401 Water Quality Certification (WQC) for the proposed NWPs.
Information on the draft 401 WQC and the proposed nationwide and regional conditions is **available here**. The Corps published the **final version** of the NWPs on Jan. 13; the revised NWPs will take effect March 15.

A virtual public hearing on the draft 401 WQC is scheduled for Feb. 4 at 3:30 p.m. (Read **Ohio EPA's press release**.) Interested parties **must register** for the hearing. Comments on the draft should be **submitted by email** no later than 5 p.m. Feb. 11. Contact **Rob Brundrett** at the OMA with questions. *1/28/2021*

Court Gives U.S. EPA More Authority on Carbon Emissions
January 22, 2021

According to **Politico**, the U.S. EPA, under the Biden administration, "could have significant legal authority to regulate carbon dioxide from power plants." That's because the U.S. Court of Appeals for the D.C. Circuit this week "rejected the Trump EPA's argument that the Clean Air Act constrains EPA to only those improvements that can be made on-site at coal-fired power plants." Instead, the court ruled that the agency can consider options "envisioned under the Obama administration's Clean Power Plan." Meanwhile, the National Association of Manufacturers has **compiled its recommendations** for climate-related policies that promote U.S. manufacturing jobs. *1/20/2021*

U.S. EPA Announces More Actions to Address PFAS
January 22, 2021

This week, the U.S. EPA — under the outgoing Trump administration — **announced new steps** to address per- and polyfluoroalkyl substances (PFAS). The agency released a final regulatory determination finding that the two best-studied chemicals in the family, PFOA and PFOS, should be regulated in drinking water, launching the years-long process of developing a Safe Drinking Water Act limit.

The EPA also proposed requiring drinking water utilities to test for 29 types of PFAS as part of the next round of mandatory, nationwide sampling that will occur between 2023 and 2025. *1/20/2021*

EPA's Report on Toxics Release Shows Significant Improvement for Great Lakes Region
January 15, 2021

The U.S. EPA this week released its 2019 Toxics Release Inventory (TRI) National Analysis, which shows continued progress in reducing pollution. Between 2018 and 2019, releases of TRI chemicals fell by 9%, the report found.

According to the agency, chemical releases in **Region 5**, which includes Ohio, have decreased by nearly 400 million pounds (46%) since 2007. Since 2018, releases of TRI chemicals decreased by 49.2 million pounds (10%). *1/13/2021*

Ohio EPA Completes PFAS Testing
January 8, 2021

Last week, Ohio EPA **announced** it had received the final test results for the presence of certain per- and polyfluoroalkyl substances (PFAS) in drinking water from public water systems, bringing to a close the agency's statewide sampling initiative under Ohio's PFAS Action Plan.

Ohio EPA Director Laurie Stevenson noted that roughly 94% of the nearly **1,550 public drinking water systems tested** "revealed no detection of PFAS compounds," while "low levels of PFAS compounds, well below the health advisory level, were detected in 6% of systems." The testing found only two public water systems exceeding the state's action level; those systems are being remedied by Ohio EPA. *1/4/2021*

Ohio EPA Looks to Make Changes to Nitrogen Oxide Emission Rules
January 8, 2021

Ohio EPA has issued an "**Early Stakeholder Outreach**" regarding emissions of nitrogen oxides. The agency is considering changes that may be required under the Clean Air Act in the event the Cleveland and Cincinnati ozone non-attainment areas are reclassified from marginal to moderate non-attainment.

The Cleveland and Cincinnati areas are currently classified as marginal non-attainment areas under the 2015 ozone standard. The areas are required to meet the ozone standard by Aug. 3, 2021 based on monitoring data collected during the 2018-2020 ozone monitoring seasons, which extend from March 1 to Oct. 31 each year. Based on ozone monitoring data through Oct. 31, 2020, Ohio EPA anticipates that the Cleveland and Cincinnati areas will fail to meet the ozone standard by Aug. 3, 2021, as required.

Comments are due Jan. 11. The OMA and its Environment Committee are following this development and are engaged with Ohio EPA. If you have questions, please contact the OMA's **Rob Brundrett**. *1/7/2021*

Finding New Uses for Surplus Glass Supplies
January 8, 2021

Do you have recurring supplies of glass available? Ohio EPA will host a **virtual roundtable** on Jan. 12 at 10:30 a.m. to facilitate opportunities to solve specific materials challenges from regional businesses. Speakers will discuss existing and emerging end-markets for glass, and highlight Materials Marketplace listings for materials that could be redirected to processors and new applications. *1/7/2021*