



Environment Committee

May 28, 2020

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2020 Environment Committee
Calendar
Meetings begin at 10 a.m.

Tuesday, September 29

Our Meeting Sponsor:





Environment Committee Agenda

May 28, 2020

Welcome & Roll Call	Chairman Julianne Kurdila, ArcelorMittal
COVID-19 Update	Rob Brundrett, OMA Staff and Member Discussion
Guest Speaker	Bob Hodanbosi, Chief, Division of Air Pollution Control, Ohio EPA
Storm Water Update	Tim Ling, Corporate Environmental Director Plaskolite, LLC
Ohio Water Update	Chris Morgan, Jones Day
Counsel's Report	Frank Merrill, Bricker & Eckler LLP
Public Policy Report	Rob Brundrett, OMA Staff

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PROFESSIONAL BACKGROUND

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

PROFESSIONAL ASSOCIATIONS

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

EDUCATIONAL BACKGROUND

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

! 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. In order to reach us, 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**.

After March 23, our district offices and Central Office will be temporarily closed and will have increasingly 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. To report a spill or environmental emergency, contact the spill hotline **(800) 282-9378** or **(614) 224-0946**.

Coronavirus (COVID-19) Response, Questions, and Guidance

With the onset of the coronavirus (COVID 19) and the Governor's declaration of a state of emergency in Ohio, Ohio EPA is aware that regulated entities may be impacted from a reduced workforce necessary to maintain normal operations at some facilities.

All regulated entities remain obligated to take all available actions necessary to ensure compliance with environmental regulations and permit requirements to protect the health and safety of Ohioans and the environment. However, in the instance where regulated entities will have an unavoidable noncompliance situation, directly due to impact from the coronavirus, a form has been created by Ohio EPA to accept requests for the Director of Ohio EPA to consider providing regulatory flexibility, where possible, to assist entities in alternative approaches to maintaining compliance, such as extending reporting deadlines, consideration of waiving late fees and exercising enforcement discretion.

Regulated entities should **complete the request form** with specific information related to enforcement discretion. Form submittals will be monitored daily and Ohio EPA will work diligently to expeditiously review and respond to incoming requests from regulated entities. The following information is needed to complete the form:

- The specific regulatory or permit requirement which cannot be complied with
- A concise statement describing the circumstances preventing compliance
- The anticipated duration of time that the noncompliance will persist
- The mitigative measures that will be taken to protect public health and the environment during the need for enforcement discretion

- A central point of contact for the regulated entity, including an email address and phone number
- Where alternative compliance options are authorized by Ohio EPA, regulated entities must maintain records adequate to document activities related to the noncompliance and details of the regulated entity's best efforts to comply.

Where alternative compliance options are authorized by Ohio EPA, regulated entities must maintain records adequate to document activities related to the noncompliance and details of the regulated entity's best efforts to comply.

U.S. EPA Final Proposed 2020 MSGP Summary
R. Curt Spence, P.E.

The U.S. EPA published the Final Proposed 2020 MSGP on Friday, February 14 and the document includes 1,048 pages. The draft permit includes many of the recommendations of the National Academies of Sciences, Engineering, and Medicine document titled *“Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges.”* Significant changes are discussed below.

1. **Universal Benchmark Monitoring.** EPA will require industry-wide monitoring under the MSGP for pH, total suspended solids (TSS), and chemical oxygen demand (COD) as basic indicators of the effectiveness of stormwater control measures (SCMs) employed on site. EPA proposes that facilities monitor and report the three universal parameters on a quarterly basis for the entire permit term, regardless of any benchmark threshold exceedances, to ensure facilities have current indicators of the effectiveness of their stormwater control measures throughout the permit term.

Table 8.1.1 – Universal Benchmark Monitoring Applicable to All Sectors

<u>Parameter</u>	<u>Concentration</u>
pH	6.0 – 9.0 s.u.
Total Suspended Solids (TSS)	100 mg/L
Chemical Oxygen Demand (COD)	120 mg/L

2. **Stormwater Control Measures (SCMs).** EPA revised the MSGP’s sector-specific fact sheets to include additional storm water control measures via check sheets. The stormwater control measures for Sector E including ready mixed concrete plants is included in Attachment 1.
3. **Composite Samples.** EPA will allow the use of composite sampling for benchmark monitoring for all pollutants except those affected by storage time.

For benchmark monitoring, you may use a composite sampling method instead of taking grab samples. This composite method may be either flow-weighted or time-weighted. Flow-Weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge. Composite samples must be initiated during the first 30 minutes of the same storm event. Composite sampling may not be used to measure parameters that have a short holding time for processing or that degrade or transform quickly such as pH, temperature, oil and grease (O&G), and chromium.

4. **Additional Implementation Measures (AIM).** EPA proposes to have the following tiered approach to monitoring: 1) a possible “inspection-only” option in lieu of

benchmark monitoring available to low-risk facilities; 2) require new “universal benchmark monitoring” for pH, TSS, and COD; 3) continue existing benchmark monitoring requirements from the 2015 MSGP; and 4) require continued benchmark monitoring as part of the proposed Additional Implementation Measures (AIM) protocol for repeated benchmark exceedances.

AIM Tier 1. One annual average over the benchmark threshold or one single sampling event over 4 times the benchmark threshold.

Immediately review the selection, design, installation, and implementation of your control measures to determine if modifications are necessary to meet the benchmark threshold for the applicable parameter.

Implement additional implementation measures to ensure the effectiveness of your control measures to bring your exceedances below the parameter’s benchmark threshold; or if you determine nothing further needs to be done with your control measures, you must document and include in your annual report why you expect your existing control measures to bring your exceedances below the parameter’s benchmark threshold for the next 12-month period.

After compliance with the above, you must continue quarterly benchmark monitoring into the next year.

If any modifications related to control measures are necessary, you must implement those actions or modifications within 14 days, unless doing so within 14 days is infeasible. If doing so within 14 days is infeasible, you must document why it is infeasible and implement such modifications within 45 days.

AIM Tier 2. Two consecutive annual averages over the benchmark threshold; two single sampling events within a 2-year period are over 4 times the benchmark threshold; or one single sampling event is over 8 times the benchmark threshold (unless demonstrated to be an aberration via additional sampling during the next qualifying rain event).

You must implement all feasible SCMs within 14 days and document how the measures will achieve benchmark thresholds and why you did not implement any sector-specific measures from the checklist. If it is feasible for you to implement a measure, but not within 14 days, you may take up to 45 days to implement such measure. EPA may also grant you an extension beyond 45 days, based on an appropriate demonstration by the operator.

AIM Tier 3. Three consecutive annual averages over the benchmark threshold; three single sampling events within a 3-year period are over 4 times the benchmark threshold; two single sampling events within a 3-year period over 8 times the benchmark threshold; or four consecutive samples over the benchmark threshold with average more than 2-times the benchmark.

Install structural source controls (e.g. permanent controls such as permanent cover, berms, and secondary containment), and/or treatment controls (e.g., sand filters, hydrodynamic separators, oil-water separators, retention ponds, and infiltration structures). The treatment technologies or treatment train you install should be appropriate for the pollutants that triggered AIM Tier 3 and should be more rigorous than the pollution prevention-type measures employed under AIM Tier 2. You must select controls with pollutant removal efficiencies that are sufficient to bring your exceedances below the benchmark threshold. You must have a professional engineer or geologist assist with the installation of such controls for the discharge point in question and for substantially similar discharge points, unless you individually monitor those substantially similar discharge points and demonstrate that Tier 3 requirements are not triggered at those discharge points.

As an alternative or adjunct to structural source controls and/or treatment controls, you may install infiltration or retention controls (e.g., through green infrastructure) for your industrial stormwater, if such an approach is appropriate and feasible for your site-specific conditions. If this approach is feasible, the execution must be compliant with regulations for ground water protection and underground injection control (UIC). The analysis that shows infiltration/retention is appropriate for your site-specific conditions and is compliant with other applicable regulations must be provided to the EPA Regional Office BEFORE you can choose this option and the EPA Regional Office must concur with your conclusions. Successful compliance with the provisions in this part may allow EPA to waive or lessen benchmark monitoring requirements.

You must install the appropriate structural source and/or treatment control measures within 30 days. If it is not feasible within 30 days, you may take up to 90 days to install such measures, documenting in your SWPPP why it is infeasible to install the measure within 30 days. EPA may also grant you an extension beyond 90 days, based on an appropriate demonstration by the operator.

5. **Guidance for Retention and Infiltration.** EPA may develop guidance for retention and infiltration of industrial stormwater for protection of groundwater after it reviews any existing state or other federal guidance.
6. **Signage.** EPA proposes that the 2020 MSGP include a requirement that MSGP operators must post a sign of permit coverage at a safe, publicly accessible location in close proximity to the facility, as other NPDES permittees are required to do. EPA proposes that this notice must also include information that informs the public on how to contact EPA if stormwater pollution is observed in the discharge.
7. **Flooding Conditions.** EPA proposes that operators would be required to consider implementing enhanced measures for facilities located in areas that could be impacted by stormwater discharges from major storm events that cause extreme flooding conditions. The purpose of this proposed requirement is to encourage industrial site operators to consider the risks to their industrial activities and the potential impact of

pollutant discharges caused by stormwater discharges from major storm events that cause extreme flooding conditions. EPA also requests comment on how the permit might identify facilities that are at the highest risk for stormwater impacts from major storms that cause extreme flooding conditions.

8. **Cost.** Total incremental cost is estimated to be \$2,363 per facility over the 5-year permit term.

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R07-OW-2020-0061; FRL-10005-74-Region 7]

Notice of Approval of the Primacy Revision Application for the Public Water Supply Supervision Program From the State of Missouri**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of approval and solicitation of requests for a public hearing.**SUMMARY:** The Environmental Protection Agency (EPA) is hereby giving notice that the state of Missouri is revising its approved Public Water Supply Supervision Program delegated to the Missouri Department of Natural Resources (MDNR). EPA has reviewed the application and intends to approve these program revisions.**DATES:** This determination to approve the Missouri program revision is made pursuant to 40 CFR 142.12(d)(3). This determination shall become final on April 1, 2020, unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on his own motion. Any interested person, other than Federal Agencies, may request a public hearing.

A request for a public hearing must be submitted to the Regional Administrator at the address shown below by April 1, 2020. If a request for a public hearing is made within the requested thirty-day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination will become final on April 1, 2020.

All interested parties may request a public hearing on the approval to the Regional Administrator at the EPA Region 7 address shown below.

ADDRESSES: Requests for public hearing shall be addressed to: Regional Administrator, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.**FOR FURTHER INFORMATION CONTACT:** Samantha Harden, Environmental Protection Agency, Region 7, Groundwater and Drinking WaterBranch, (913) 551-7723, or by email at harden.samantha@epa.gov.**SUPPLEMENTARY INFORMATION:** The EPA is hereby giving notice that the state of Missouri is revising its approved Public Water Supply Supervision Program. MDNR revised their program by incorporating the following EPA National Primary Drinking Water Regulations: Lead and Copper: Short-Term Regulatory Revisions and Clarifications (72 FR 57781, October 10, 2007) and Revised Total Coliform Rule (78 FR 10269, February 13, 2013). The EPA has determined that MDNR's program revisions are consistent with and no less stringent than Federal regulations. Therefore, EPA intends to approve these program revisions.**Public Hearing Requests**

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. Requests for public hearing shall be addressed to: Regional Administrator, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday at the following offices: (1) Environmental Protection Agency, Region 7, Groundwater and Drinking Water Branch, Water Division, 11201 Renner Boulevard, Lenexa, Kansas 66219 and (2) the Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10, 142.12(d) and 142.13.

Dated: February 25, 2020.

James Gulliford,*Regional Administrator, Region 7.*

[FR Doc. 2020-04228 Filed 2-28-20; 8:45 am]

BILLING CODE 6560-50-P**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OW-2019-0372; FRL-10005-82-OW]

National Pollutant Discharge Elimination System (NPDES) 2020 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; request for public comment.**SUMMARY:** All ten of the Environmental Protection Agency's (EPA) Regions are proposing for public comment the 2020 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with industrial activity, also referred to as the "2020 Multi-Sector General Permit (MSGP)" or the "proposed permit." The proposed permit, once finalized, will replace the EPA's existing MSGP that will expire on June 4, 2020. The EPA proposes to issue this permit for five (5) years, and to provide permit coverage to eligible operators in all areas of the country where the EPA is the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. The EPA seeks comment on the proposed permit and on the accompanying fact sheet, which contains supporting documentation. This **Federal Register** document describes the proposed permit and includes specific topics on which the EPA is particularly seeking comment. Where the EPA proposes a new or modified provision, the Agency also solicits comment on alternatives to the proposal and/or not moving forward with the proposal in the final permit. The EPA encourages the public to read the fact sheet to better understand the proposed permit. The proposed permit and fact sheet can be found at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>.**DATES:** Comments must be received on or before May 1, 2020. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before April 1, 2020.**ADDRESSES:** You may send comments, identified by Docket ID No EPA-HQ-OW-2019-0372, by any of the following methods:

• *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

• Electronic versions of this proposed permit and fact sheet are available on the EPA's NPDES website at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>. Follow the online instructions for submitting comments.

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2019-0372 to the Federal eRulemaking Portal: <https://www.regulations.gov>. All submissions received must include the Docket ID No. for this proposed permit. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed permit, contact the appropriate EPA Regional office listed in Section I.F of this action, or Emily Halter, EPA Headquarters, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202-564-3324; email address: halter.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

This section is organized as follows:

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- III. Summary of Proposed Permit
 - A. 2015 MSGP Litigation and National Academies Study
 - B. Summary of Proposed Permit Changes
 - C. Other Requests for Comment
- IV. Paperwork Reduction Act (PRA)
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- VI. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- VII. Compliance With the National Environmental Policy Act (NEPA)
- VIII. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- IX. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

I. General Information

A. Does this action apply to me?

The proposed permit covers stormwater discharges from industrial facilities in the 30 sectors shown below:

- Sector A—Timber Products.
- Sector B—Paper and Allied Products Manufacturing.
- Sector C—Chemical and Allied Products Manufacturing.
- Sector D—Asphalt Paving and Roofing Materials Manufactures and Lubricant Manufacturers.
- Sector E—Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing.
- Sector F—Primary Metals.
- Sector G—Metal Mining (Ore Mining and Dressing).
- Sector H—Coal Mines and Coal Mining-Related Facilities.
- Sector I—Oil and Gas Extraction.
- Sector J—Mineral Mining and Dressing.
- Sector K—Hazardous Waste Treatment Storage or Disposal.
- Sector L—Landfills and Land Application Sites.
- Sector M—Automobile Salvage Yards.
- Sector N—Scrap Recycling Facilities.
- Sector O—Steam Electric Generating Facilities.
- Sector P—Land Transportation.
- Sector Q—Water Transportation.
- Sector R—Ship and Boat Building or Repairing Yards.
- Sector S—Air Transportation Facilities.
- Sector T—Treatment Works.
- Sector U—Food and Kindred Products.
- Sector V—Textile Mills, Apparel, and other Fabric Products Manufacturing.
- Sector W—Furniture and Fixtures.
- Sector X—Printing and Publishing.
- Sector Y—Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.
- Sector Z—Leather Tanning and Finishing.
- Sector AA—Fabricated Metal Products.
- Sector AB—Transportation Equipment, Industrial or Commercial Machinery.
- Sector AC—Electronic, Electrical, Photographic and Optical Goods.
- Sector AD—Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director.

Coverage under the proposed 2020 MSGP is available to operators of eligible facilities located in areas where the EPA is the permitting authority. A list of eligible areas is included in Appendix C of the proposed 2020 MSGP.

B. How do I submit written comments?

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2019-0372, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any

information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

C. Will public hearings be held on this action?

The EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period and must state the nature of the issue the requester would like raised in the hearing. Pursuant to 40 CFR 124.12, the EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If the EPA decides to hold a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

D. What process will the EPA follow to finalize the proposed permit?

After the close of the public comment period, the EPA intends to issue a final permit. This permit will not be issued until all significant comments have been considered and appropriate changes have been made to the proposed permit. The EPA's responses to public comments received will be included in the docket as part of the final issuance. Once the final permit becomes effective, eligible operators of industrial facilities may seek authorization under the 2020 MSGP.

E. Who are the EPA regional contacts for the proposed permit?

For the EPA Region 1, contact David Gray at: (617) 918-1577 or gray.davidj@epa.gov.

For the EPA Region 2, contact Stephen Venezia at: (212) 637-3856 or venezia.stephen@epa.gov, or for Puerto Rico contact Sergio Bosques at: (787) 977-5838 or bosques.sergio@epa.gov.

For the EPA Region 3, contact Carissa Moncavage at: (215) 814-5798 or moncavage.carissa@epa.gov.

For the EPA Region 4, contact Sam Sampath at: (404) 562-9229 or sampath.sam@epa.gov.

For the EPA Region 5, contact Matthew Gluckman at: (312) 886-6089 or gluckman.matthew@epa.gov.

For the EPA Region 6, contact Nasim Jahan at: (214) 665-7522 or jahan.nasim@epa.gov.

For the EPA Region 7, contact Mark Matthews at: (913) 551-7635 or matthews.mark@epa.gov.

For the EPA Region 8, contact Amy Clark at: (303) 312-7014 or clark.amy@epa.gov.

For the EPA Region 9, contact Eugene Bromley at: (415) 972-3510 or bromley.eugene@epa.gov.

For the EPA Region 10, contact Margaret McCauley at: (206) 553-1772 or mccauley.margaret@epa.gov.

II. Background of Permit

Section 405 of the Water Quality Act of 1987 added section 402(p) of the Clean Water Act (CWA), which directed the EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. The EPA published a final regulation on the first phase on this program on November 16, 1990, establishing permit application requirements for “stormwater discharges associated with industrial activity.” See 55 FR 48063. The EPA defined the term “stormwater discharge associated with industrial activity” in a comprehensive manner to cover a wide variety of facilities. See 40 CFR 122.26(b)(14). The EPA proposes to issue the MSGP under this statutory and regulatory authority.

III. Summary of Proposed Permit

The proposed 2020 MSGP, once finalized, will replace the existing MSGP, which was issued for a five-year term on June 4, 2015 (see 80 FR 34403). The 2020 MSGP will cover stormwater discharges from industrial facilities in areas where the EPA is the NPDES permitting authority in the EPA’s Regions 1, 2, 3, 5, 6, 7, 8, 9 and 10, and will also now provide coverage for industrial facilities where the EPA is the

NPDES permitting authority in the EPA’s Region 4. As proposed, this permit will cover facilities in the state of Idaho; the schedule for the transfer of NPDES Permitting Authority to Idaho for stormwater general permits is July 1, 2021. The geographic coverage of this permit is listed in Appendix C of the proposed permit. This permit will authorize stormwater discharges from industrial facilities in 30 sectors, as shown in section I.A. of this document.

The proposed permit is similar to the existing permit and is structured in nine (9) parts: General requirements that apply to all facilities (*e.g.*, eligibility requirements, effluent limitations, inspection and monitoring requirements, Stormwater Pollution Prevention Plan (SWPPP) requirements, and reporting and recordkeeping requirements) (Parts 1–7); industrial sector-specific conditions (Part 8); and state and Tribal-specific requirements applicable to facilities located within individual states or Indian Country (Part 9). Additionally, the appendices provide proposed forms for the Notice of Intent (NOI), the Notice of Termination (NOT), the Conditional No Exposure Exclusion, the Discharge Monitoring Report (DMR), and the annual report, as well as step-by-step procedures for determining eligibility with respect to protecting historic properties and endangered species, and for calculating site-specific, hardness-dependent benchmarks.

A. 2015 MSGP Litigation and National Academies Study

After the EPA issued the 2015 MSGP, numerous environmental non-governmental organizations (NGOs)¹ challenged the permit, two industry groups² intervened, and a Settlement Agreement was signed in 2016 with all parties. The settlement agreement did not affect the 2015 MSGP but stipulated several terms and conditions that the EPA agreed to address in the proposed 2020 MSGP. One key term from the settlement agreement stipulated that the EPA fund a study conducted by the National Academies of Sciences, Engineering, and Medicine’s National Research Council (NRC) on potential permit improvements, focused primarily on monitoring requirements, for consideration in the next MSGP. In the

¹ Environmental NGOs included Waterkeeper Alliance, Apalachicola Riverkeeper, Galveston Baykeeper, Raritan Baykeeper, Inc. d/b/a NY/NJ Baykeeper, Snake River Waterkeeper, Ecological Rights Foundation, Our Children’s Earth Foundation, Puget Soundkeeper, Lake Pend Oreille Waterkeeper, and Conservation Law Foundation (collectively, “Petitioners”).

² Industry intervenors included Federal Water Quality Coalition and Federal Storm Water Association. i

settlement agreement, the EPA agreed that, when drafting the proposed 2020 MSGP, it will consider recommendations suggested in the completed NRC Study.

The NRC delivered the results of their study, *Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges*, in February of 2019. The NRC study can be found at the following website: <https://www.nap.edu/catalog/25355/improving-the-epa-multi-sector-general-permit-for-industrial-stormwater-discharges>.

The NRC study’s overarching recommendation is that the MSGP is too static and should continuously improve based on best available science, new data, and technological advances. The following is a high-level summary of the NRC study’s recommendations the EPA addressed in the proposed 2020 MSGP, organized by category. The proposed Fact Sheet provides further discussion of the NRC study’s recommendations and the settlement agreement terms and how they were addressed in the proposed permit.

Where the EPA proposes a new or modified provision, the EPA also solicits comment on alternatives to the proposal and/or not moving forward with the proposal in the final permit. A more comprehensive discussion of the NRC study recommendations can be found in Part III of the fact sheet.

• Recommendations for MSGP pollutant monitoring requirements and benchmark thresholds:

• *Industry-wide monitoring for pH, total suspended solids (TSS), and chemical oxygen demand (COD) as basic indicators of the effectiveness of stormwater controls employed on site.* To address this recommendation, the EPA proposes to require “universal benchmark monitoring” for pH, TSS, and COD for all facilities. See Part 4.2.1 of the proposed permit and fact sheet.

• *A process to periodically review and update sector-specific benchmark monitoring requirements to incorporate new scientific information.* To address this recommendation, the EPA proposes revisions to the MSGP’s sector-specific fact sheets, and proposes specific benchmark monitoring for Sectors I, P, and R. See Parts 4.2.1.1 and 8, and Appendix Q of the proposed permit and fact sheet.

• *Benchmark levels based on the criteria designed to protect aquatic ecosystems from adverse impacts from short term or intermittent exposures, which to date have generally been acute criteria.* To address this recommendation, the EPA proposes to update and/or requests comment on benchmark thresholds for aluminum,

selenium, arsenic, cadmium, magnesium, iron, and copper based on the latest toxicity information. See Parts 4.2.1.2 and 8 of the proposed fact sheet.

• *Recommendations for sampling and data collection:*

• *Allowance and promotion of the use of composite sampling for benchmark monitoring for all pollutants except those affected by storage time.* To address this recommendation, the EPA proposes an explicit clarification that composite sampling is allowed for benchmark monitoring. See Part 4.1.4 of the proposed permit and fact sheet.

• *For permittees with average results that meet the benchmark, a minimum of continued annual sampling to ensure appropriate stormwater management throughout the remainder of the permit term.* To address this recommendation, as part of proposed “universal benchmark monitoring” for pH, TSS, and COD for all facilities in Part 4.2.1.1, the EPA proposes that facilities monitor and report for these three parameters on a quarterly basis for the entire permit term, regardless of any benchmark threshold exceedances, to ensure facilities have current indicators of the effectiveness of their stormwater control measures throughout the permit term. See Part 4.2.1.2 of the proposed permit and fact sheet.

• *A tiered approach to monitoring that recognizes the varying levels of risk among different industrial activities and that balances the overall burden to industry and permitting agencies.* To address this recommendation, the EPA proposes to have the following tiered approach to monitoring: (1) A possible “inspection-only” option available to low-risk facilities (see Part 4.2.1.1 of the proposed permit and fact sheet and associated request for comment in that Part); (2) require new “universal benchmark monitoring” for pH, TSS, and COD; (3) continue existing benchmark monitoring requirements from the 2015 MSGP; and (4) require continued benchmark monitoring as part of the proposed Additional Implementation Measures (AIM) protocol for repeated benchmark exceedances. See Parts 4.2. and 5.2 in the proposed permit and fact sheet.

• *Recommendations for stormwater retention to minimize pollutant loads:*

• *Incentives to encourage industrial stormwater infiltration or capture and use where appropriate.* The EPA acknowledges the importance of protecting groundwater during the use of stormwater infiltration systems. To address this recommendation, the EPA proposes infiltration, where the operator can demonstrate to the EPA that it is appropriate and feasible for site-specific

conditions, as an alternative or adjunct to structural source controls and/or treatment controls required in proposed Tier 3 AIM responses. See Part 5.2.3.2.b of the proposed permit and fact sheet.

In addition to the NRC study, the following are other key terms from the 2016 Settlement Agreement and how and where the EPA addressed those terms in the proposed permit:

• *Comparative analysis.* The EPA agreed to review examples of numeric and non-numeric effluent limitations (including complete prohibitions, if any) applicable to the discharge of industrial stormwater that have been set in other jurisdictions and evaluate the bases for those limitations. The EPA includes this analysis, titled “MSGP Effluent Limit Comparative Analysis,” in the docket for this proposed permit (Docket ID No EPA-HQ-OW-2019-0372).

• *Preventing recontamination of federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sites.* The EPA agreed to propose for comment an expansion to all the EPA Regions of the existing eligibility criterion regarding operators discharging to federal CERCLA sites that currently applies to operators in Region 10 in the 2015 MSGP. See Part 1.1.7 of the proposed permit and fact sheet.

• *Eligibility criterion regarding coal-tar sealcoat.* The EPA agreed to propose for comment a new eligibility condition for operators who, during their coverage under the next MSGP, will use coal-tar sealcoat to initially seal or to re-seal pavement and thereby discharge polycyclic aromatic hydrocarbons (PAHs) in stormwater. The EPA agreed to propose that those operators are not eligible for coverage under the MSGP and must either eliminate such discharge or apply for an individual permit. See Part 1.1.8 of the proposed permit and fact sheet.

• *Permit authorization relating to a pending enforcement action.* The EPA agreed to solicit comment on a provision covering the situation where a facility not covered under the 2015 MSGP submits an NOI for permit coverage while there is a related pending enforcement stormwater related action by the EPA, a state, or a citizen (to include both notices of violations (NOVs) by the EPA or the state and notices of intent to bring a citizen suit). In this situation, the EPA agreed to solicit comment on holding the facility’s NOI for an additional 30 days to allow the EPA an opportunity to (a) review the facility’s control measures expressed in its SWPPP, (b) identify any additional control measures that the EPA deems necessary to control site discharges in

order to ensure that discharges meet technology-based and water quality-based effluent limitations, and/or (c) to conduct further inquiry regarding the site’s eligibility for general permit coverage. See Part 1.3.3 and Table 1–2 of the proposed permit and fact sheet.

• *Additional Implementation Measures (AIM).* The EPA agreed to include in the benchmark monitoring section of the proposed MSGP “Additional Implementation Measures” (AIM) requirements for operators for responding to benchmark exceedances. See Part 5.2 of the proposed permit and fact sheet.

• *Facilities required to monitor for discharges to impaired waters without an EPA-approved or established Total Maximum Daily Load (TMDL).* The EPA agreed to propose for comment specific edits regarding monitoring for impaired waters. See Part 4.2.4.1 of the proposed permit and fact sheet.

• *Revision of Industrial Stormwater Fact Sheets.* The EPA agreed to review and revise the MSGP’s sector-specific fact sheets associated with the permit. See Appendix Q of the proposed permit.

B. Summary of Proposed Permit Changes

The proposed MSGP includes several new or modified requirements from the 2015 MSGP, many of which were discussed in the previous section and are being proposed to address terms in the 2016 Settlement Agreement and the NRC study’s recommendations. The EPA requests comment on these and all parts of the proposed permit.

1. *Streamlining of permit.* The EPA proposes to streamline and simplify language throughout the permit to present the requirements in a generally more clear and readable manner. Regarding structure of the proposed permit, proposed Part 4 (Monitoring) was previously Part 6 in the 2015 MSGP; proposed Part 5 (Corrective Actions and AIM) was previously Part 4 in the 2015 MSGP; and proposed Part 6 (SWPPP) was previously Part 5 in the 2015 MSGP. In the EPA’s view, formatting the permit in this new order (Monitoring, followed by Corrective Actions and AIM, then SWPPP requirements) makes more sequential sense as the latter parts often refer back to requirements in previous parts of the permit. This new structure should enhance understanding of and compliance with the permit’s requirements. The EPA also made a few additional edits to improve permit readability and clarity. The EPA revised the wording of many eligibility requirements to be an affirmative expression of the requirement instead of

assumed ineligibility unless a condition was met. For example, proposed Part 1.1.6.2 reads “If you discharge to an ‘impaired water’ . . . you must do one of the following:” In comparison, the 2015 MSGP reads “If you are a new discharger or a new source. . . you are ineligible for coverage under this permit to discharge to an ‘impaired water’ . . . unless you do one of the following.”

The EPA also numbered proposed permit conditions that were previously in bullet form to make it easier to follow and reference the permit conditions. Finally, the language of the proposed permit was changed from passive to active voice where appropriate (*e.g.*, “Samples must be collected . . .” now reads “You must collect samples . . .”).

2. Permit eligibility and authorization-related changes.

- *Eligibility for stormwater discharges to a federal CERCLA site.* The 2015 MSGP requires facilities in the EPA Region 10 that discharge stormwater to certain CERCLA or Superfund sites (as defined in MSGP Appendix A and listed in MSGP Appendix P) to notify the EPA Regional Office in advance and requires the EPA Regional Office to determine whether the facility is eligible for permit coverage. In determining eligibility for coverage, the EPA Regional Office may evaluate whether the facility has included appropriate controls and implementation procedures designed to ensure that the discharge will not lead to recontamination of aquatic media at the CERCLA site. While the 2015 MSGP permit cycle was limited to discharges to certain CERCLA sites in EPA Region 10, the Agency is concerned that CERCLA site recontamination from MSGP authorized discharges may be an issue in all EPA Regions. In the proposed permit, the EPA requests comment on whether this current eligibility criterion should be applied in all the EPA Regions for facilities that discharge to Federal CERCLA sites that may be of concern for recontamination from stormwater discharges. The EPA is interested in information from the public that would assist the Agency in identifying such sites. The EPA also requests comment on requiring such facilities to notify the EPA Regional Office a minimum of 30 days in advance of submitting the NOI form. See Part 1.1.7 in the proposed permit and fact sheet, and request for comment 1.

- *Eligibility related to application of coal-tar sealcoat.* The EPA proposes in Part 1.1.8 to include a new eligibility criterion related to stormwater discharges from pavement where there is coal-tar sealcoat. Operators who will use coal-tar sealcoat to initially seal or to re-seal their paved surfaces where

industrial activities are located and thereby discharge polycyclic aromatic hydrocarbons (PAHs) in stormwater, would be eligible for coverage under the 2020 MSGP only if they eliminate such discharge(s). This would reduce the amount of PAHs in industrial stormwater discharges. Alternatively, operators who wish to pave their surfaces where industrial activities are located with coal-tar sealcoat may apply for an individual permit. See Part 1.1.8 of the proposed permit and fact sheet, and request for comment 2.

- *Discharge authorization related to enforcement action.* The EPA proposes to establish a discharge authorization wait period of 60 calendar days after NOI submission for any operators whose discharges were not previously covered under the 2015 MSGP and who have a pending stormwater-related enforcement action by the EPA, a state, or a citizen (to include both NOV by the EPA or a state and notices of intent to bring a citizen suit). EPA is proposing this new requirement because the Agency is aware of some instances where a facility with a pending enforcement action will quickly submit an NOI without adequately developing their SWPPP or stormwater control measures (SCMs) in order to avoid further enforcement action. This additional review time would allow EPA to (a) review the facility’s SCMs detailed in the NOI and SWPPP to make sure they are appropriate for the facility which may already have stormwater pollution issues, (b) identify any additional SCMs that EPA deems necessary to control site discharges in order to ensure that discharges meet technology-based and water quality-based effluent limitations, and/or (c) conduct further inquiry regarding the site’s eligibility for permit coverage. See Part 1.3.3, Table 1–2 of the proposed permit and fact sheet, and request for comment 4.

- 3. *Public sign of permit coverage.* The EPA proposes that the 2020 MSGP include a requirement that MSGP operators must post a sign of permit coverage at a safe, publicly accessible location in close proximity to the facility. The EPA proposes that this notice must also include information that informs the public on how to contact the EPA if stormwater pollution is observed in the discharge. This addition will make the protocol for requesting a SWPPP easily understandable by the public and improve transparency of the process to report possible violations. The EPA requests comment on this proposal and what information could be included on any sign or other notice. See Part 1.3.6

of the proposed permit and fact sheet, and request for comment 6.

- 4. *Consideration of major storm control measure enhancements.* The EPA proposes that operators would be required to consider implementing enhanced measures for facilities located in areas that could be impacted by stormwater discharges from major storm events that cause extreme flooding conditions. The purpose of this proposed requirement is to encourage industrial site operators to consider the risks to their industrial activities and the potential impact of pollutant discharges caused by stormwater discharges from major storm events and extreme flooding conditions. The EPA also requests comment on how the permit might identify facilities that are at the highest risk for stormwater impacts from major storms that cause extreme flooding conditions. See Part 2.1.1.8 of the proposed permit and fact sheet, and request for comment 8.

- 5. Monitoring changes.

- *Universal benchmark monitoring for all sectors.* The EPA proposes to require all facilities to conduct benchmark monitoring for three indicator parameters of pH, TSS, and COD, called universal benchmark monitoring. This proposed requirement would apply to all sectors/subsectors, including those facilities that previously did not have any chemical-specific benchmark monitoring requirements and those that previously did not have these three specific benchmark parameters under the 2015 MSGP. These three parameters would provide a baseline and comparable understanding of industrial stormwater risk, broader water quality problems, and stormwater control effectiveness across all sectors. See Part 4.2.1 of the proposed permit and fact sheet, and requests for comment 10 and 13.

- *Impaired waters monitoring.* Under the 2015 MSGP, operators discharging to impaired waters must monitor once per year for pollutants for which the waterbody is impaired and can discontinue monitoring if these pollutants are not detected or not expected in the discharge. The EPA proposes to require operators discharging to impaired waters to monitor only for those pollutants that are both causing impairments and associated with the industrial activity and/or benchmarks. The proposal specifies that, if the monitored pollutant is not detected in your discharge for three consecutive years, or it is detected but you have determined that its presence is caused solely by natural background sources, operators may discontinue monitoring for that

pollutant. This proposed requirements potentially narrows scope of pollutants for which the operator must monitor and improves protections for impaired waters. See Part 4.2.4.1 of the proposed permit and fact sheet.

- *Benchmark values.* The EPA proposes to modify and/or requests comment on benchmark thresholds for selenium, arsenic, cadmium, magnesium, iron, and copper based on the latest toxicity information. See Parts 4.2.1 and 8 of the proposed fact sheet and fact sheet, and requests for comment 14, 15, 16, 17, 18, and 19.

- *Sectors with new benchmarks.* The 2015 MSGP does not require sector-specific benchmark monitoring for Sector I (Oil and Gas Extraction), Sector P (Land Transportation and Warehousing), or Sector R (Ship and Boat Building and Repair Yards). Based on the NRC study recommendation which identified potential sources of stormwater pollution from these sectors, the EPA proposes to add benchmark monitoring requirements for these three sectors. See Part 8 of the proposed permit, Parts 4.2.1.1 and 8 of the proposed fact sheet, and request for comment 12.

6. *Additional implementation measures.* The EPA proposes revisions to the 2015 MSGP's provisions regarding benchmark monitoring exceedances. The corrective action conditions, subsequent action deadlines, and documentation requirements in proposed Part 5.1 remain unchanged from the 2015 MSGP. In proposed Part 5.2, the EPA proposes new tiered Additional Implementation Measures (AIM), that are triggered by benchmark monitoring exceedances. The proposed AIM requirements would replace corresponding sections regarding benchmark exceedances in the 2015 MSGP ("Data exceeding benchmarks" in Part 6.2.1.2 in the 2015 MSGP). There are three AIM levels: AIM Tier 1, Tier 2, and Tier 3. Operators would be required to respond to different AIM levels with increasingly robust control measures depending on the nature and magnitude of the benchmark threshold exceedance. The EPA proposes to retain exceptions to AIM triggers based on natural background sources or run-on for all AIM levels. The EPA also proposes an exception in AIM Tier 2 for a one-time aberrant event, and an exception in AIM Tier 3 for operators who are able to demonstrate that the benchmark exceedance does not result in any exceedance of applicable water quality standards. Proposed AIM requirements will increase regulatory certainty while ensuring that discharges are sufficiently

controlled to protect water quality. See Part 5.2 of the proposed permit and fact sheet, and requests for comment 21, 22, 23, and 26.

7. *Revisions to sector-specific fact sheets.* The EPA proposes updates to the existing sector-specific fact sheets that include information about control measures and stormwater pollution prevention for each sector to incorporate emerging stormwater control measures. These fact sheets are also proposed to be used when implementing Tier 2 AIM. See Part 5.2.2.2 and Appendix Q of the proposed permit and fact sheet.

C. Other Requests for Comment

In addition to the specific proposed changes discussed previously on which the EPA seeks comment, the Agency also requests comment on the following:

1. *Eligibility related to use of cationic chemicals.* The EPA requests comment on adding an eligibility requirement to the MSGP for operators who may elect to use cationic treatment chemicals to comply with the MSGP, similar to that eligibility requirement in the EPA's Construction General Permit (CGP). See Part 1 of the proposed permit and fact sheet, and request for comment 3.

2. *Change NOI form.* The EPA requests comment on whether a separate paper Change NOI form would be useful for facilities for submitting modifications to a paper NOI form. See Part 1.3.4 of the proposed permit and fact sheet, and request for comment 5.

3. *New acronym for the No Exposure Certification (NOE).* The EPA requests comment on changing the acronym for the No Exposure Certification from "NOE" to "NEC" to more accurately represent what the acronym stands for. See Part 1.5 of the proposed permit and fact sheet, and request for comment 7.

4. *Alternative approaches to benchmark monitoring.* The EPA requests comment on viable alternative approaches to benchmark monitoring for characterizing industrial sites' stormwater discharges, quantifying pollutant concentrations, and assessing stormwater control measure effectiveness. See Part 4.2.1 of the proposed permit and fact sheet, and request for comment 9.

5. *Inspection-only option in lieu of benchmark monitoring.* The EPA requests comment on whether the permit should include an inspection-only option for "low-risk" facilities in lieu of conducting benchmark monitoring. See Part 4.2.1.1 of the proposed permit and fact sheet, and request for comment 11.

6. *Information about polycyclic aromatic hydrocarbons (PAHs).* The EPA requests comment on information

and data related to pollutant sources under all industrial sectors with petroleum hydrocarbon exposure that can release polycyclic aromatic hydrocarbons (PAHs) via stormwater discharges, any concentrations of individual PAHs and/or total PAHs at industrial sites, the correlation of PAHs and COD, and appropriate pollution prevention/source control methods and stormwater control measures that could be used to address PAHs. See Part 4.2.1.2 of the proposed permit and fact sheet, and request for comment 20.

7. *Modifying the method for determining natural background pollutant contributions.* The EPA requests comment on changing the threshold for the natural background exception throughout the permit from the 2015 MSGP, which required no net facility contributions, to the proposed 2020 MSGP method of subtracting natural background concentrations from the total benchmark exceedance to determine if natural background levels are solely responsible for the exceedance. EPA requests comment on implications of this change and other factors the Agency should consider in proposing this change to the exception. EPA also requests comment on other appropriate methods to characterize natural background pollutant concentrations. See Part 5.2.4 of the proposed permit and fact sheet, and requests for comment 24 and 25.

8. *Clarifications to Sector G monitoring requirements.* The EPA requests comment on whether the newly proposed language in Part 8.G.8.3 clarifies the monitoring requirements for that part and if the proposed monitoring frequency is appropriate. Given the overlap in parameters the operator is required to monitor for in Parts 8.G.8.2 and 8.G.8.3 and the potential confusion about the monitoring schedules for the same parameter, EPA proposes to align the monitoring schedule for Part 8.G.8.3 to that of Part 8.G.8.2. The EPA also requests comment on suspending the analytical monitoring currently required for radium and uranium in Part 8.G.8.3 until a relevant water quality criterion and possible benchmark value can be developed. The EPA requests comment on any alternative or additional clarifications to the monitoring frequencies the Agency should consider for this Part. See Part 8.G.8.3 of the proposed permit and fact sheet, and request for comment 27.

IV. Paperwork Reduction Act (PRA)

The information collection activities in this proposed permit have been submitted for approval to the OMB under the PRA. The Information

Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2040-NEW. You can find a copy of the ICR in the docket for this permit (Docket ID No EPA-HQ-OW-2019-0372), and it is briefly summarized here.

CWA section 402 and the NPDES regulations require collection of information primarily used by permitting authorities, permittees (operators), and the EPA to make NPDES permitting decisions. The burden and costs associated with the entire NPDES program are accounted in an approved ICR (EPA ICR number 0229.23, OMB control no. 2040-0004). Certain changes in this proposed permit would require revisions to the ICR to reflect changes to the forms and other information collection requirements. The EPA is reflecting the paperwork burden and costs associated with this permit in a separate ICR instead of revising the existing ICR for the entire program for administrative reasons. Eventually, the EPA plans to consolidate the burden and costs in this ICR into that master ICR for the entire NPDES program and discontinue this separate collection.

Respondents/affected entities: Industrial facilities in the 30 sectors shown in section I.A of this notice in the areas where the EPA is the NPDES permitting authority.

Respondent's obligation to respond: Compliance with the MSGP's information collection and reporting requirements is mandatory for MSGP operators.

Estimated number of respondents: The EPA estimates that approximately 2,400 operators will receive coverage under the 2020 MSGP.

Frequency of response: Response frequencies in the proposed 2020 MSGP vary from once per permit term to quarterly.

Total estimated burden: The EPA estimates that the proposed information collection burden of the proposed permit is 68,857 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The EPA estimates that the proposed information collection cost of the proposed permit is \$2,374,891.73 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods

for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed permit (Docket ID No EPA-HQ-OW-2019-0372). You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than April 1, 2020. The EPA will respond to any ICR-related comments in the final permit.

V. Cost Analysis

The EPA expects the incremental cost impact on entities that will be covered under this permit, including small businesses, to be minimal. The EPA anticipates the incremental cost for new or modified permit requirements will be \$472.75 per facility per year; or \$2,363.74 per facility over the 5-year permit term. A copy of the EPA's cost analysis for the proposed permit, titled "Cost Impact Analysis for the Proposed 2020 Multi-Sector General Permit (MSGP)," is available in the docket (Docket ID No EPA-HQ-OW-2019-0372). The economic impact analysis indicates that while there will be an incremental increase in the costs of complying with the new proposed permit, these costs will not have a significant economic impact on a substantial number of small entities.

VI. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations will be documented in the docket for this action (Docket ID No EPA-HQ-OW-2019-0372).

VII. Compliance With the National Environmental Policy Act (NEPA)

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4307h), the Council on Environmental Quality's NEPA regulations (40 CFR part 15), and the EPA's regulations for implementing NEPA (40 CFR part 6), the EPA has determined that the reissuance of the MSGP is eligible for a categorical exclusion requiring documentation under 40 CFR 6.204(a)(1)(iv). This

category includes "actions involving reissuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid, there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective." The EPA completed an Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the existing 2015 MSGP. The analysis and conclusions regarding the potential environmental impacts, reasonable alternatives, and potential mitigation included in the EA/FONSI are still valid for the reissuance of the MSGP because the proposed permit conditions are either the same or in some cases are more environmentally protective. Actions may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances. The EPA has reviewed the proposed action and determined that the reissuance of the MSGP does not involve any extraordinary circumstances listed in 6.204(b)(1) through (b)(10). Prior to the issuance of the final MSGP, the EPA Responsible Official will document the application of the categorical exclusion and will make it available to the public on the EPA's website at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/nepa/search>. If new information or changes in the proposed permit involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the permit may not meet the criteria for categorical exclusion, the EPA will prepare an EA or Environmental Impact Statement (EIS).

VIII. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that the proposed permit will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the requirements in the permit apply equally to industrial facilities in areas where the EPA is the permitting authority, and the proposed provisions increase the level of environmental protection for all affected populations.

IX. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. With limited exceptions, the EPA directly implements the NPDES program in Indian country as no tribe has yet obtained EPA authorization to administer the NPDES program. As a result, almost all eligible facilities with stormwater discharges associated with industrial activities in Indian country fall under the EPA MSGP or may be covered under an individual NPDES permit issued by the EPA.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this permit to have meaningful and timely input into its development to gain an understanding of and, where necessary, to address the tribal implications of the proposed permit. A summary of that consultation and coordination follows.

The EPA initiated a tribal consultation and coordination process for this action by sending a "Notice of Consultation and Coordination" letter on June 26, 2019, to all 573 federally recognized tribes. The letter invited tribal leaders and designated consultation representative(s) to participate in the tribal consultation and coordination process. The EPA held an informational webinar for tribal representatives on August 1, 2019. A total of 19 tribal representatives participated in the webinar. The EPA also presented an overview of the current 2015 MSGP and potential changes for the reissuance of the MSGP to the National Tribal Water Council during a July 10, 2019 call with EPA staff.

The EPA solicited comment from federally recognized tribes early in the reissuance process. Tribes and tribal organizations submitted one letter and three emails to the EPA. Records of the tribal informational webinar and a consultation summary summarizing the written comments submitted by tribes are included in the docket for this proposed action (Docket ID No EPA-HQ-OW-2019-0372).

The EPA incorporated the feedback it received from tribal representatives in the proposal. The Agency specifically solicits additional comment on this proposed permit from tribal officials.

The EPA also notes that as part of the finalization of this proposed permit, the

Agency will complete the Clean Water Act section 401 certification procedures with all authorized tribes where this permit will apply.

(Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*)

Dated: February 12, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Javier Laureano,

Director, Water Division, EPA Region 2.

Carmen R. Guerrero-Pé rez,

Director, Caribbean Environmental Protection Division, EPA Region 2.

Catherine A. Libertz,

Director, Water Division, EPA Region 3.

Jeanne M. Gettle,

Director, Water Division, EPA Region 4.

Thomas R. Short Jr.,

Acting Director, Water Division, EPA Region 5.

Brent E. Larsen,

Acting Director, Water Division, EPA Region 6.

Jeffrey Robichaud,

Director, Water Division, EPA Region 7.

Humberto L. Garcia, Jr.,

Acting Director, Water Division, EPA Region 8.

Tomás Torres,

Director, Water Division, EPA Region 9.

Daniel D. Opalski,

Director, Water Division, EPA Region 10.

[FR Doc. 2020-04254 Filed 2-28-20; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E.

Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551-0001, not later than March 16, 2020.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street, NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *S3 Dynamics, L.P., and S3 Management, L.L.C. (the managing members of which are John Charles Simpson, New Orleans, Louisiana; John Charles Simpson, Jr., Fenton, Missouri; and Simeon A. Thibeaux, Alexandria, Louisiana), as general partner, both of Alexandria, Louisiana;* to become members of the Simpson Family Control Group and to acquire voting shares of Red River Bancshares, Inc., and thereby indirectly acquire voting shares of Red River Bank, both of Alexandria, Louisiana.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Rex R. Weaver, Granger, Iowa, Steven L. Afdahl, Temecula, California, and Daniel L. Stockdale, Iowa Falls, Iowa, as co-trustees of the Rex R. Weaver Revocable Trust II Agreement, and Christopher W. Weaver, Iowa Falls, Iowa, each individually and together as a group acting in concert;* to retain voting shares of Green Belt Bancorporation and thereby indirectly acquire voting shares of Green Belt Bank & Trust, both of Iowa Falls, Iowa.

Board of Governors of the Federal Reserve System, February 25, 2020.

Yao-Chin Chao

Assistant Secretary of the Board.

[FR Doc. 2020-04161 Filed 2-28-20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting Requirements Associated with Regulation A (FR A; OMB No. 7100-0373).

DATES: Comments must be submitted on or before May 1, 2020.



March 2, 2020

VIA Electronic Mail (dap@lakeerie.ohio.gov)

Ohio Lake Erie Commission
P.O. Box 1049
Columbus, Ohio 43216

Re: Comments on the Ohio Lake Erie Commission's Draft *Domestic Action Plan 2020*

Dear Commissioners,

Last month the Ohio Lake Erie Commission (OLEC) and the State of Ohio released an updated draft of Ohio's *Domestic Action Plan* to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement. The draft is a continuation of the Western Basin of Lake Erie Collaboration Implementation Framework finalized by the State of Ohio in early 2017, and it supports Governor DeWine's H2Ohio plan which was released in the fall of 2019.

The OMA represents more than 1,300 members throughout the state. For more than 100 years, the OMA has supported reasonable, necessary, and transparent regulation that promotes the health and well-being of Ohio's citizens and the environment.

Over the past three years the OMA has remained engaged with Ohio's leaders as they drafted the state's previous *Domestic Action Plan* to ensure no undue negative effects on individual manufacturers or Ohio's manufacturing sector.

The OMA thanks both OLEC and the State of Ohio for the opportunity to provide comment on the draft *Domestic Action Plan 2020*. The OMA appreciates the significant work of OLEC in preparing and presenting the 2020 plan for comment. The OMA offers overall support for the presented plan, including the incorporation of an adaptive management philosophy, instead of a "one-size-fits-all" strategy, and the focus on addressing the primary sources of phosphorus through effective, evaluated management practices.

The focus of the 2020 draft around Governor's DeWine's H2Ohio plan is to be applauded. The new focus and coordination by the numerous state agencies has the opportunity to make real impacts on Lake Erie's water quality as outlined in four priorities:

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

Under “Strategies and Implementing Actions – Other Actions”, the draft Domestic Action Plan states: “The complete list of actions was provided in table form in an appendix in the Ohio DAP 1.0. We will redevelop this table as part of the final workup of this version of the Ohio DAP.”

The OMA requests that OLEC provide interested parties the opportunity to review the complete list of actions to be included in in the Domestic Action Plan 2020 prior to its finalization.

The OMA would also like to highlight the section entitled, “Public Involvement and Advisory Mechanisms.” OMA would like to be involved with all three concepts: Advisory Board, Annual Conference, and Ad Hoc. In particular, OMA appreciates the opportunity to provide input on the HUC12 load evaluations and any future load allocations in the Maumee River watershed. As previously stated the OMA remains committed to actively participating with OLEC on this 2020 plan and any future Domestic Action Plans.

If OLEC has any questions regarding the foregoing, please do not hesitate to contact me at (614) 629-6814 or rbrundrett@ohiomfg.com, or OMA’s environmental counsel, Frank Merrill of Bricker & Eckler LLP (614) 227-8871).

Sincerely,



Rob Brundrett
Director, Public Policy Services

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



February 28, 2020

Via Electronic Mail (lakeeriecommission@lakeerie.ohio.gov)

Ohio Lake Erie Commission
P.O. Box 1049
Columbus, Ohio 43216

Re: Comments on the Ohio Lake Erie Commission's Draft *Lake Erie Protection and Restoration Plan 2020*

Dear Commissioners,

The Ohio Manufacturers' Association (OMA) represents more than 1,300 members throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent regulation that promotes the health and well-being of Ohio's citizens and the environment. Manufacturers across the state are actively engaged in improving the health of one of Ohio's most important resources: Lake Erie.

Thank you for the opportunity to provide comments to the Ohio Lake Erie Commission's Draft *Lake Erie Protection and Restoration Plan 2020* (LEPR).

The OMA appreciates the extensive work and research that OLEC has performed to prepare the draft LEPR. Overall, the OMA is supportive of the general plan outlined in the draft. OMA supports Governor DeWine's H2Ohio initiative and its relationship with LEPR.

The OMA is glad to see and supports the establishment of metrics for each priority area and the continuation of a robust stakeholder engagement process as part of the plan. These features are outlined on page 31. The OMA would like to be involved with any stakeholder opportunities proposed by OLEC in order to ensure Ohio's manufacturers have access to the Commission throughout the plan's implementation.

The OMA appreciates the opportunity to comment on the draft plan and to share our thoughts at this stage. We would appreciate the opportunity to remain engaged with OLEC as an interested party throughout the development and implementation of the final draft.

If OLEC has any questions regarding the foregoing, please do not hesitate to contact me at (614) 629-6814 or rbrundrett@ohiomfg.com, or OMA's environmental counsel, Frank Merrill of Bricker & Eckler LLP (614) 227-8871).

Sincerely,



Rob Brundrett
Director, Public Policy Services

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



March 2, 2020

VIA Electronic Mail (dap@lakeerie.ohio.gov)

Ohio Lake Erie Commission
P.O. Box 1049
Columbus, Ohio 43216

Re: Comments on the Ohio Lake Erie Commission's Draft *Domestic Action Plan 2020*

Dear Commissioners,

Last month the Ohio Lake Erie Commission (OLEC) and the State of Ohio released an updated draft of Ohio's *Domestic Action Plan* to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement. The draft is a continuation of the Western Basin of Lake Erie Collaboration Implementation Framework finalized by the State of Ohio in early 2017, and it supports Governor DeWine's H2Ohio plan which was released in the fall of 2019.

The OMA represents more than 1,300 members throughout the state. For more than 100 years, the OMA has supported reasonable, necessary, and transparent regulation that promotes the health and well-being of Ohio's citizens and the environment.

Over the past three years the OMA has remained engaged with Ohio's leaders as they drafted the state's previous *Domestic Action Plan* to ensure no undue negative effects on individual manufacturers or Ohio's manufacturing sector.

The OMA thanks both OLEC and the State of Ohio for the opportunity to provide comment on the draft *Domestic Action Plan 2020*. The OMA appreciates the significant work of OLEC in preparing and presenting the 2020 plan for comment. The OMA offers overall support for the presented plan, including the incorporation of an adaptive management philosophy, instead of a "one-size-fits-all" strategy, and the focus on addressing the primary sources of phosphorus through effective, evaluated management practices.

The focus of the 2020 draft around Governor's DeWine's H2Ohio plan is to be applauded. The new focus and coordination by the numerous state agencies has the opportunity to make real impacts on Lake Erie's water quality as outlined in four priorities:

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

Under “Strategies and Implementing Actions – Other Actions”, the draft Domestic Action Plan states: “The complete list of actions was provided in table form in an appendix in the Ohio DAP 1.0. We will redevelop this table as part of the final workup of this version of the Ohio DAP.”

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The OMA would also like to highlight the section entitled, “Public Involvement and Advisory Mechanisms.” OMA would like to be involved with all three concepts: Advisory Board, Annual Conference, and Ad Hoc. In particular, OMA appreciates the opportunity to provide input on the HUC12 load evaluations and any future load allocations in the Maumee River watershed. As previously stated the OMA remains committed to actively participating with OLEC on this 2020 plan and any future Domestic Action Plans.

If OLEC has any questions regarding the foregoing, please do not hesitate to contact me at (614) 629-6814 or rbrundrett@ohiomfg.com, or OMA’s environmental counsel, Frank Merrill of Bricker & Eckler LLP (614) 227-8871).

Sincerely,



Rob Brundrett
Director, Public Policy Services

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

Guide to Total Maximum Daily Loads (TMDLs)

What is a TMDL?

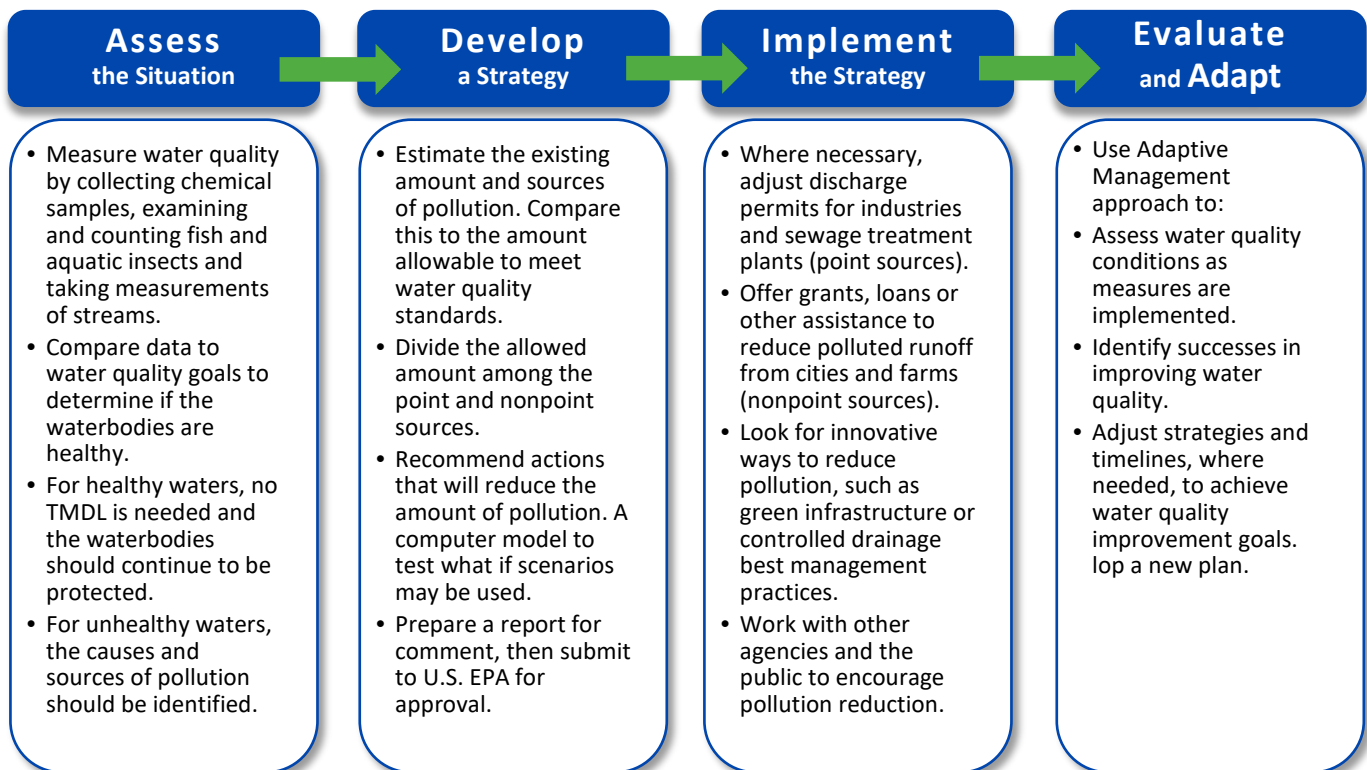
Total Maximum Daily Loads (TMDLs) are developed as a tool to help restore and protect waterbodies where beneficial uses are impaired or threatened for aquatic life, recreation, public drinking water or human health. According to the Clean Water Act, states must develop TMDLs for all the waters identified on their Section 303(d) list of impaired waters, according to their priority ranking on that list.

The objective of a TMDL is to determine the loading capacity of a waterbody and to allocate the load among different pollutant sources. A TMDL identifies the links between the waterbody use impairment, sources of impairment and the pollutant load reductions needed to meet the applicable water quality standards. It serves as a roadmap for measures that can be taken to improve water quality.

Under the TMDL, sources of pollutants are classified as either point sources, which receive a waste load allocation (WLA), or nonpoint sources, which receive a load allocation (LA). Point sources include all sources subject to regulation under the National Pollutant Discharge Elimination System (NPDES) program, including but not limited to wastewater treatment facilities and municipal separate storm sewer systems (MS4s). Nonpoint sources include all remaining sources of a pollutant as well as natural background loads. In addition to accounting for seasonal variations in water quality, a margin of safety (MOS) will be calculated to account for uncertainty in predicting how well pollutant reductions will result in meeting water quality standards. An allowance for future growth (AFG) can be included to account for anticipated new or increased pollutant loadings.

Nonpoint source load reduction actions under a TMDL involve collaboration between local, state, and federal partners and can include non-regulatory and incentive-based (e.g., a cost-share) programs. In addition, waterbody restoration can be assisted by voluntary actions on the part of citizen and/or environmental groups.

Basic Steps of the TMDL Process Include...



Does a TMDL give Ohio EPA any additional regulatory authority over non-point source pollution?

Preparing a TMDL does not give Ohio EPA additional regulatory authority over nonpoint sources of pollution that are targeted for load reduction under the TMDL. The TMDL contains “reasonable assurances” that load reductions from nonpoint sources can be accomplished, but this normally involves pointing to things like activities that are supported through various grant programs and other efforts, including voluntary measures, that reside outside of Ohio EPA.

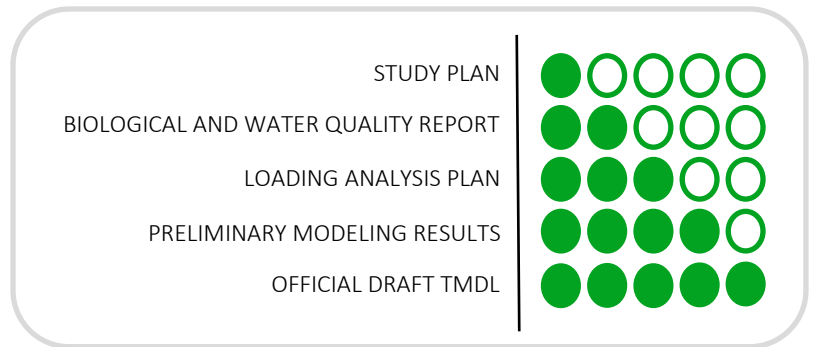
Is there flexibility to adjust the implementation strategies under the TMDL to align other state water quality plans, such as H2Ohio?

Yes. The TMDL is predominantly a state-delegated program. While U.S. EPA is involved in reviewing state TMDL plans, states take a lead role in crafting and implementing the strategies within the TMDL to meet the pollutant reduction and water quality improvement goals. As part of the TMDL process, Ohio EPA would work in collaboration with key stakeholders at the local, state and federal level in developing actions, measures and timelines for meeting the goals in the TMDL. Using principles of adaptive management, the State works with partners to identify successes and continuously assess and adjust strategies needed for pollutant reductions and water quality improvements.

What is the process in creating the TMDL and how is the public involved?

Ohio has a robust five-step public involvement process for its TMDL program. These requirements are found at Ohio Revised Code (ORC) Section 6111.562 and allow for public participation in four key stages of TMDL development process:

- (1) the project assessment study plan;
- (2) the biological and water quality report;
- (3) the loading analysis plan; a
- (4) the preliminary modelling results.



There is also opportunity for public comment and review on the official draft of the TMDL under ORC Section 6111.563. Stakeholders will be notified and asked to review and comment on each of the five steps. Each document through the preliminary TMDL modeling results will have a minimum 30-day comment period; the official draft TMDL receives a 60-day comment period.

How do I stay informed?

Ohio EPA sends announcements about the TMDL, its findings and associated public meetings to local newspapers and to those who express an interest. To be added to the list for updates, subscribe to Ohio EPA’s TMDL listservs at: ohioepa.custhelp.com/ci/documents/detail/2/subscriptionpage. For information about TMDLs in Ohio, visit: epa.ohio.gov/dsw/tmdl/index.aspx.

Lake Erie Protection and Restoration Plan

2020



Ohio Lake Erie Commission



Mike DeWine, Governor

Jon Husted, Lt. Governor

Laurie A. Stevenson, Director,
Ohio Environmental Protection Agency,
Commission Chair

Mary Mertz, Director,
Ohio Department of Natural Resources

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Jack Marchbanks, Director,
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About the Ohio Lake Erie Commission

Established in 1990, the Ohio Lake Erie Commission is a state commission that coordinates state agency efforts to protect and restore Lake Erie, participates in federal and international Great Lakes policies and programs, and engages with local communities and other stakeholders for outreach about Lake Erie resources.

The Commission is comprised of the directors of six state agencies including the Ohio Environmental Protection Agency, and the departments of Natural Resources, Health, Agriculture, Transportation, and Development Services. There are five additional members appointed by the governor and two board members of the Great Lakes Protection Fund who serve as ex-officio members of the Ohio Lake Erie Commission.

The Ohio Lake Erie Commission staff advises the Governor and the Commission on the development, implementation, and coordination of Lake Erie programs and policies; provides representation of the interests of Ohio in regional, national, and international forums pertaining to the resources of the Great Lakes; assists in the implementation of the Great Lakes Restoration Initiative; facilitates compliance with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Control Agreement; manages the distribution of money from the Lake Erie Protection Fund; and administers programs of the Ohio Lake Erie Commission to advance the priorities in the Lake Erie Protection and Restoration Plan.

The Ohio Lake Erie Commission provides a forum for the variety of agencies whose work touches Lake Erie to come together and coordinate across programs to improve program effectiveness outcomes for Lake Erie. The Commission's work is focused in five main categories.

- Ensure the coordination of funding and monitoring of federal, state, and local policies, programs, and priorities pertaining to Lake Erie. Primary program areas include nutrient-related water quality, beneficial use of dredge material, and Areas of Concern.
- Administer the Lake Erie Protection Fund for projects that help implement the objectives of the Commission's Lake Erie Protection and Restoration Plan through the Lake Erie license plate program and other donations and contributions.
- Coordinate and represent the interests of Ohio in state, regional, national, and international forums and related agreements pertaining to Lake Erie and the Lake Erie basin, primarily the Great Lakes Water Quality Agreement and Great Lakes Restoration Initiative.
- Increase awareness of the benefits and concerns of Lake Erie through marketing and education. A signature annual event is the Commission's "Life on Lake Erie" photo contest, designed to engage Ohioans and promote one of Ohio's great natural resources through existing venues of TourismOhio.
- Prepare and implement the Lake Erie Protection and Restoration Plan that sets the State's strategic direction for Lake Erie and its watershed. This work is implemented by Ohio Lake Erie Commission staff and through its member agencies and partners.

Our Great Lake

Lake Erie is a signature feature to the landscape in Ohio and was formed by glacial ice over thousands of years. Lake Erie is the front porch to eight coastal counties and gateway to 35 counties in its watershed with more than a thousand miles of rivers and streams. More than five million residents live within the drainage basin in Ohio.

Lake Erie is one of five Great Lakes that together hold more than 20 percent of the world's fresh surface water. Lake Erie itself stretches 271 miles long and 57 miles wide. Its coastline extends 312 miles from Michigan to Pennsylvania with depths of the basin itself ranging from two to 60 feet from nearshore to open waters.

Lake Erie is the warmest and most shallow of the Great Lakes, which enhances biologic productivity. Lake Erie is one of the signature fishery environments for the United States and is home to a wide diversity of plants, fish, animals, and habitats. The Lake is an asset for local communities and stronger economies.

These assets provide significant resource opportunities, but also bring many challenges. Ohio needs to develop the best mechanisms to protect and restore Lake Erie for years to come. The 2020 Lake Erie Protection and Restoration Plan (LEPR) sets forth actions by the State to meet these challenges and opportunities for improving and maintaining the environmental, economic, and recreational qualities of Ohio's Great Lake.



About the Ohio Lake Erie Protection and Restoration Plan



The Lake Erie Protection and Restoration Plan (LEPR) is administered by the Ohio Lake Erie Commission, as authorized by Ohio Revised Code (ORC 1506.21).

The commission shall publish a Lake Erie protection and restoration strategy that describes the goals of the commission and prioritizes the uses of the Lake Erie protection fund and other funds for the following state fiscal year.

The 2020 Lake Erie Protection and Restoration Plan reflects the state of Ohio's strategic priorities for the next two years to protect, preserve, and restore Lake Erie and its watershed, as well as to promote economic development associated with Lake Erie. Additionally, the Plan serves as the framework for administering the Lake Erie Protection Fund and securing federal funding to implement projects in Lake Erie.

The Lake Erie Protection and Restoration Plan (LEPR), sets in motion multiple actions by the Commission and other Ohio agencies in the coming two years. It is intended to be a comprehensive effort of the state agencies for the development of Lake Erie priorities and strategies, and ensures coordination of actions, progress reporting, and communication to stakeholders of these priorities.

Alignment with Great Lakes Agreements and Plans

The Ohio Lake Erie Commission strives to work in cooperation with the federal government, other Great Lakes states and provinces, and local jurisdictions to accomplish these goals. The Lake Erie Protection and Restoration Plan aligns with many Great Lakes agreements and plans. The core of these agreements and plans include the Great Lakes Water Quality Agreement (GLWQA) and its associated Annexes, the Lake Erie Action and Management Plan (LAMP), Great Lakes Restoration Initiative Action Plan III, and the Western Basin of Lake Erie Collaborative Agreement for nutrient reduction between Ohio, Michigan, and Indiana.

Through active participation in these initiatives, the Commission serves as the primary coordinator for the state. This plan provides a framework to have an effective strategy and implementation effort associated with these agreements and plans.

Funding for Lake Erie Protection and Restoration Plan Implementation

Funding for the Lake Erie Protection and Restoration Plan Priorities, Goals, Objectives, and Actions will be utilized through four primary funding mechanisms: H2Ohio for Lake Erie; other state funding; Great Lakes Restoration Initiative (GLRI); and partnerships with local and regional investments. Funding sources are identified in each Priority Area where applicable.

In 2019, the Governor initiated H2Ohio to embark on significant investments for improving the quality of the Lake Erie watershed over the next 10 years. The 2020 LEPR identifies priorities for H2Ohio funding in the Lake Erie Watershed under specific priorities. The Commission will work closely with state agencies and stakeholders on actions and tracking progress of these investments.

In 2019, U.S. EPA launched [Action Plan III](#) of the Great Lakes Restoration Initiative (GLRI) that outlines Great Lakes restoration priorities for the next five years. The GLRI provides funding in five focus areas of work. Leveraging GLRI funds with state and other funding sources will further make progress on milestone projects in Lake Erie. Some projects possess transformative opportunities to the quality of Lake Erie, but will require significant investments over many years to see results.

State funding through various state agency programs provide a vast network of finance options for implementation projects to achieve the goals set forth in the LEPR.

The leveraging of state investments will occur through a portfolio of funding resources that include other funding available through regional, local, and other partnerships. Innovative partnerships, existing or new, will be encouraged.

The Commission will consult with the leadership in its state agencies and through the OLEC staff to coordinate these funding mechanisms to fully realize effective progress of the LEPR goals and objectives.



Tracking Progress

In addition to the Priority Areas of Lake Erie set forth in this plan, utilizing tools to track progress is an overall priority of the State. The State will work in the coming year to collaborate on existing tools such as ErieStat and Blue Accounting through Great Lakes efforts, evaluate the utility and relaunch of the Lake Erie Quality Index and identify other tools to track LEPR actions as they relate to investments, progress toward restoration and protection goals, and communication to stakeholders on progress of work. There will be many partners and resources that will be part of the 2020 LEPR, and the Commission will work toward coordinating this work to share the story of progress.

Progress of Work from 2016 Plan

A key driver of the 2020 LEPR is to move priorities forward effectively to protect and restore Lake Erie. To ensure priorities, goals, and objectives are effective in 2020, efforts since the 2016 LEPR were reviewed. Since the 2016 LEPR was published, the State has worked toward achieving the 51 objectives that were identified to meet the goals of the Plan. Some highlights of those accomplishments include:

- Initiated the first State Domestic Action Plan and initial implementation actions.
- Initiated the Sandusky Bay Initiative that includes initial project evaluation, design, and engineering for coastal restoration projects.
- Removed five Beneficial Use Impairments from the four Lake Erie Ohio Areas of Concern.
- Launched an updated Beach and HABs Advisories system.
- Initiated projects to manage and prevent aquatic invasive species.
- Implemented \$18 million to reduce, repair, and replace home sewage treatment systems in 27 counties of the Lake Erie Basin.
- Initiated investments of \$1 million into the Dredge Material Management Program through the Healthy Lake Erie Fund with eight beneficial use projects identified for implementation.
- Local investments in coastal towns and cities for redevelopment, roads, parks, and trails through the leverage of state funding with local funding.
- Published two Nutrient Mass Balance studies by Ohio EPA to characterize loading of nutrients in key watershed basins.
- Expanded the Lakeside Daisy Preserve, opened North Bass Lake House, and dedicated Lake Erie water trails by the Ohio Department of Natural Resources (ODNR).
- Implemented the Ohio Working Lands Hay Buffer and Small Grains programs, components of the Soil and Water Phosphorus Program established in SB299 through soil and water conservation districts. During the first sign-up period established in 2018, 4,075 acres and 39,226 acres were enrolled in the programs, respectively, in the Western Lake Erie Basin to assist with nutrient management.

2020 Lake Erie Priorities

The 2020 LEPR outlines nine priorities in which investments, policies, and programs will be focused by the Commission. Each priority has an overall goal and strategic objectives to carry out the goal. In addition, the 2020 LEPR outlines under each priority five supplemental activities to support attainment of the goals and objectives listed on this page.

Nutrient Pollution Reduction

Habitat and Species

Invasive Species

Dredge Material Management and Maritime Infrastructure

Areas of Concern

Toxic Pollutants

Beach and Recreational Use

Tourism, Jobs, and Economy

Water Withdrawals

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research

Coordination and Partnerships

Technology and Infrastructure

Resiliency and Adaptation

Funding

Priority Area: Nutrient Pollution Reduction

Goal: Reduce excess nutrient loads from point and nonpoint sources to Lake Erie and its tributaries to achieve state and Great Lakes targets.

Strategic Objectives

Objective: Implement H2Ohio Lake Erie Initiative for Nutrient Reduction

Objective: Implement Ohio's Domestic Action Plan for Lake Erie through the OLEC, Ohio EPA, ODA, ODNR, and local partners. A focus will be the development and implementation of 9-element watershed plan compliant Nonpoint Source Implementation Strategies (NPS-IS) through soil and water conservation districts and other local entities.

Objective: Coordinate and implement point source and storm water management programs.

Nutrient pollution continues to affect Lake Erie particularly in the nearshore waters and the Western Basin by supporting the excessive growth of Harmful Algal Blooms (HABs). Phosphorus, particularly its dissolved reactive phosphorus (DRP) form, continues to be the most problematic nutrient in the system. Nutrient pollution reduction is being addressed with specific best management practices for agriculture, wetlands restoration, and other actions to reduce phosphorus from running off land. Focus on key contributing geographic areas and increased monitoring and modeling are also strategies being used. Research continues on the effectiveness of specific practices that have been designed to reduce phosphorus transport.

The State's work on nutrient pollution reduction is coordinated in conjunction with the Great Lakes Water Quality Agreement. This includes the [Ohio Domestic Action Plan](#) and the basin-wide goal to work toward nutrient reduction targets determined by the Annex 4 Subcommittee of the Great Lakes Executive Committee.

Ohio EPA, ODA, and ODNR lead efforts for this priority.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Lead efforts for 1) Lake Erie assessment activities through the National Coastal Condition Assessment and 303(d) Lake Erie assessment designations and 2) maintaining tributary monitoring programs through Ohio EPA and its partners that supports nutrient reduction targets. Track progress toward nutrient reduction targets using Annual Water Monitoring summary report, and ErieStat.

Coordination and Partnerships: Utilize the plans such as Ohio's Domestic Action Plan and [NPS-IS](#) to coordinate funding, partners, and implementation actions effectively.

Technology and Infrastructure: Identify new technologies for real-time monitoring and other tools associated with tracking progress. Identify opportunities for new technologies and infrastructure improvements that can address nutrient nonpoint source pollution.

Resiliency and Adaptation: Identify long-term effectiveness of nutrient reduction measures and their adaptation to varying Lake Erie conditions including weather patterns, water level variability, and landscape changes.

Funding: Through the development of the plans, identify a pipeline of project priorities to address nutrient reduction and associated funding (state, federal, or other) for investments specifically under [H2Ohio](#) and GLRI.



The H2Ohio Fund will be invested in targeted solutions to ensure safe and clean water across Ohio. A portion of the funding over 10 years will be utilized for the Western Basin of Lake Erie.

Priority Area: Habitat and Species

Goal: Protect, restore, and reintroduce native flora, fauna, and fish that will contribute to the overall health of Lake Erie.

The Lake Erie watershed encompasses a variety of landscapes that drive species diversity and ecosystem processes that are unique and valuable in sustaining its health. Protection and restoration of these habitats is critical to maintain a healthy Lake Erie and its natural assets.

Wetlands were a historically notable feature on the Lake Erie watershed landscape. Over time, wetlands have diminished in size, diversity, and function. Over the next two years, it will be a priority for Ohio to protect, restore, and enhance wetland habitats of both coastal and inland areas. This work will aim to regain the benefits of wetland functions such as improve water quality, increase spawning habitat, and provide greater ecological resilience for changing Lake Erie conditions. While the Black Swamp may not return to its original state, wetlands recovery toward a degree of the past can have benefits to the Lake Erie watershed.

ODNR and Ohio EPA programs lead the efforts for this priority.

Strategic Objectives

Objective: Support the protection, creation, enhancement, and restoration of coastal and riparian wetland habitats. This includes the development of in-water wetlands within nearshore and bay areas where feasible.

Objective: Maintain and enhance habitat diversity for signature Lake Erie habitats (coastal wetlands, riparian corridors, swamp forests, fish spawning and nursery areas, wildlife areas).

Objective: Increase connectivity of Lake Erie landscapes that will improve habitat and functions for water quality, wildlife and their resilience to changing Lake Erie conditions.

Objective: Increase areas of nature-based shoreline to improve nearshore habitat conditions.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Establish expanded monitoring of wetlands and habitat improvements and their role in improving habitat and other associated benefits.

Coordination and Partnerships: Identify project implementers and long-term stewards to sustain habitats. Continue coordination with Great Lakes networks including the Coastal Assembly and other management partnerships.

Technology and Infrastructure: Identify tools necessary to evaluate wetland restoration effectiveness.

Resiliency and Adaptation: Establish design principles that will assist in habitat restoration and protection measures that adapt to changing conditions, such as flow regimes, water levels, and other input conditions.

Funding: Advance investments through [H2Ohio](#), GLRI, and other state and federal funding mechanisms for the restoration, protection, and long-term stewardship of critical habitat areas in the Lake Erie Watershed.



Priority Area: Dredge Material Management and Maritime Infrastructure

Ohio's eight federal commercial Lake Erie harbors facilitate billions of dollars in business revenue and support thousands of jobs. Like all infrastructure, these harbors require regular maintenance. To remain deep enough for navigation, naturally accumulated sediment is routinely removed from these harbors in a process called dredging. Each year, the U.S. Army Corps of Engineers (Army Corps) dredges two million tons of material from Ohio's harbors. Historically, the Corps has disposed of most of that dredged material into Lake Erie. In 2015, Ohio prohibited the practice of open lake disposal, effective July 1, 2020.

Harbors will still need to be dredged beyond 2020, and for the past few years, Ohio has worked closely with the Army Corps and local stakeholders to develop projects to beneficially use the dredged material as an alternative to open lake disposal. The goal is to implement projects where the dredge material adds value to local communities. With support from Ohio and federal partners, local managers are developing and implementing projects for each of Ohio's federal commercial harbors on Lake Erie.

Ohio EPA and ODNR lead the efforts for this priority.

Goal: Implement beneficial use of dredge material projects for each Ohio Harbor in time for July 1, 2020 ban on open lake disposal.

Goal: Identify and invest in maritime infrastructure areas for Ohio's Lake Erie harbors and ports to sustain and prepare for existing and emerging port activities.

Strategic Objectives

Objective: Work with harbors and stakeholders to implement the currently identified alternatives for open lake disposal for each harbor.

Objective: Work with harbors and stakeholders to identify future beneficial use of dredged material projects and contingency plans.

Objective: Institute rules and permitting processes for dredging reuse activities including harbor sediment authorizations and general permits where applicable.

Objective: Work with harbors and ports to maintain and update maritime infrastructure.

Objective: Coordinate with federal and local entities for infrastructure or operational improvements for the navigational channels.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Measure the geophysical and chemical properties of dredge material for suitability with various end use applications.

Coordination and Partnerships: Continue working with federal partners, ports, and stakeholders on maintaining a safe and efficient maritime system. Continue working with communities on advancing projects that support local initiatives with the use of dredged material.

Technology and Infrastructure: Continue to explore innovative ways to effectively dewater dredged material and ways to construct habitat with dredged material. Continue evaluating the agronomic benefits of applying dredged material to farm fields.

Resiliency and Adaptation: Identify opportunities to reduce harbor sedimentation, such as sediment capture and preventing erosion. Expand the capacity and improve the efficiency of existing projects. Develop contingency plans and additional projects for each harbor.

Funding: Continue the utilization of various funding sources for implementation including: Healthy Lake Erie Fund; Harbor Maintenance Trust Fund; USACE CAP 204 fund; Great Lakes Restoration Initiative; Ohio Maritime Assistance Fund, and Great Lakes Protection Fund.



Priority Area: Invasive Species

Both terrestrial and aquatic invasive species continue to proliferate Ohio's portion of Lake Erie on land and in the water. Invasive species can destroy habitat for more desirable species such as sport fish, waterfowl, and native plants. Management and actions that will prevent and control invasive species will continue to be a priority.

ODNR, in partnership with many agencies, leads state efforts to address invasive species in Ohio.

Goal: Minimize the potential for invasive species to negatively affect native plants and animals and their habitat.

Strategic Objectives

Objective: Implement Ohio's State Management Plan for Aquatic Invasive Species and Rapid Response Plan.

Objective: Implement Ohio's Lake Erie Grass Carp Response Strategy.

Objective: Continue partnerships for invasive plant management and control with particular focus on hydrilla and phragmites.

Objective: Continue implementation and development of outreach and education to landowners, boat users, and lake carriers on measures to prevent introduction of invasive species.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Maintain measures of progress in conjunction with associated plans and Great Lakes committees to evaluate status of conditions including the [State's Grass Carp Response Strategy](#) and associated plans with the Great Lakes Fishery Commission and associated surveys for fish population, invasive plant surveys, and other priority invasive activities for the State.

Coordination and Partnerships: Maintain coordination and partnerships with Great Lakes committees on invasive species related issues. Maintain and identify additional partnerships for outreach and education on invasive species preventative measures, including the Phragmites Collaborative, Lake Erie Committee of the Great Lakes Fishery Commission

Technology and Infrastructure: Continue to explore innovative technologies to effectively prevent, control, and manage the introduction and spread of invasive species in Lake Erie.

Resiliency and Adaptation: Identify adaptive measures needed that may influence the implementation of established strategies as Lake Erie conditions change.

Funding: Through the Commission and ODNR, coordinate with GLRI Action Plan funding and other associated funding.



Priority Area: Areas of Concern

Ohio contains four Areas of Concern that are identified through Annex 1 of the Great Lakes Water Quality Agreement. Areas of Concern (AOC) are designated based upon 14 beneficial use impairments as defined by the International Joint Commission as “a change in the chemical, physical, or biological integrity to cause significant environmental degradation.”

Ohio’s AOCs include portions of the Maumee, Black, Cuyahoga, and Ashtabula Rivers and are at various stages of recovery and removal of their beneficial use impairments. A cornerstone of the AOC program is its partnerships with state and federal agencies and local advisory committees for each AOC.

The goals and objectives are set forth to align with the Great Lakes Restoration Initiative Action Plan Measures of Progress that are associated with completion of management action lists, completion of management actions, removal of beneficial use impairments, and delisting. The Great Lakes Legacy Act (GLLA) is a federal funding cost-share program focused on “accelerating sediment remediation in Areas of Concern” (U.S. EPA) and will play a key role for Ohio’s work ahead in its Areas of Concern.

The Ohio Lake Erie Commission and Ohio EPA lead the work set forth for Areas of Concern in Ohio.

Goal: Progress toward delisting the Maumee, Black, Cuyahoga, and Ashtabula designated areas of concern from the list of Great Lakes Areas of Concern.

Strategic Objectives

Objective: Complete remaining management action lists and implement approved management actions for all Ohio AOCs set forth for the next two years. This includes progress of work on Great Lakes Legacy Act (GLLA) projects in Ohio’s Areas of Concern.

Objective: Remove beneficial use impairments that Ohio sets forth to U.S. EPA in the next two years for its Areas of Concerns.

Objective: Evaluate remaining beneficial use impairments in all Areas of Concerns and the determination of delisting of the Ashtabula River AOC.



Activities to support attaining Priority Goals and Objectives

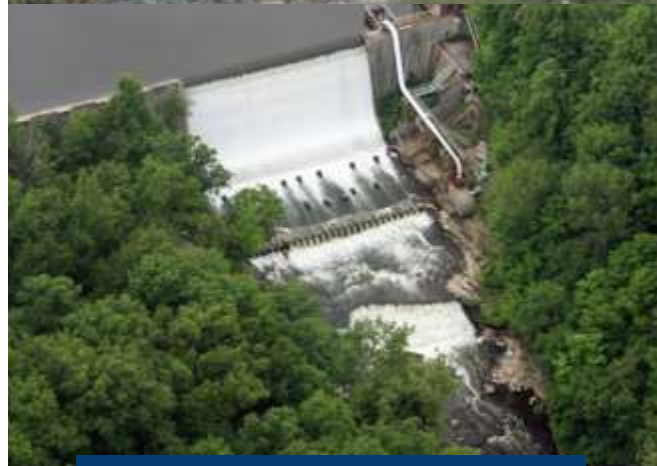
Monitoring, Measuring, Research: Continue evaluation of progress to remove Beneficial Use Impairments and the effectiveness of associated management actions.

Coordination and Partnerships: Continue strong partnerships with the State, Federal agencies, and the local AOC advisory committees to mark AOC milestones and project implementation.

Technology and Infrastructure: Continue use of technology to gauge progress and provide information to the public.

Resiliency and Adaptation: Work with local partners and federal agencies for long-term stewardship of completed management actions.

Funding: Coordinate funding with federal, state, and local entities in conjunction with GLRI and GLLA funding annually. Prioritize AOC project funding with management actions and align with non-AOC priority areas for restoration.



Priority Area: Toxic Pollutants

Remediation of historically contaminated sediments during the past 35 years have reduced the quantity of persistent toxic substances, particularly polychlorinated biphenyls (PCBs), mercury, and polycyclic aromatic hydrocarbons (PAHs). Controls on the manufacture and release of toxic substances have also contributed to declining concentrations. However, air deposition, legacy sediment and biotic contamination, and emerging contaminants in point and nonpoint sources continue to contribute persistent toxic substances throughout Lake Erie.

Remediation of historic contamination will continue to be a priority for Ohio. In addition, open lake disposal of dredged sediments will be banned starting July in 2020. Continued work in site remediation, point source control, research, and fish tissue evaluation are critical components for measuring progress.

Ohio EPA and Ohio Department of Health (ODH) lead the work for this priority area.

Goal: Reduce persistent bioaccumulative toxic pollutants in Lake Erie.

Goal: Clean-up of brownfield and other toxic pollution sources to reduce toxics contribution to Lake Erie.

Goal: Work toward goals set forth through Annex 3 of Great Lakes Chemicals of Mutual Concern.

Strategic Objectives

Objective: Support the on-going assessment of fish tissue and, when necessary, issuance of specific species consumption advisories.

Objective: Continued monitoring and quantification of conditions in the Lake Erie watershed that affect toxic compounds.

Objective: Continuing support to eliminate brownfield sites and encourage redevelopment for local communities within the coastal region of Ohio's Lake Erie watershed.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Continue evaluating fish tissue, clean-up activities, and toxic pollutants of concern to determine success of remediation actions.

Coordination and Partnerships: Participate on the Annex 3 SubCommittee for Great Lakes Chemical of Mutual Concern and associated priorities in Ohio.

Technology and Infrastructure: Identify and update systems to track and remediate toxic pollutants that are innovative and cost-effective.

Resiliency and Adaptation: Evaluate and assess emerging toxic pollutants and associated measures to manage changing conditions in Lake Erie.

Funding: Support research, monitoring, and actions to reduce toxic pollutants and brownfields in Lake Erie and its watershed, and to understand emerging contaminants of concern in Lake Erie sediments, water, and fish.



Priority Area: Beach and Recreational Use

Water-based recreational use of Lake Erie is a long tradition in Ohio whether it's on a beach, on a boat, or on a paddleboard. Millions of people participate in a variety of recreational activities on Lake Erie annually, including recreational boating, swimming on one of Ohio's 37 public beaches, fishing, and participating in various water sports activities. Maintaining clean water for direct contact recreation is an important goal for the State of Ohio.

State, regional, and local governments are making investments to address combined sewer overflows and failing home sewage treatment systems that can limit recreational use of Lake Erie. Continued work to upgrade Lake Erie basin infrastructure and maintain information to the public on conditions in Lake Erie will protect and expand its recreational uses today and for future generations.

Harmful Algal Blooms (HABs), bacterial pollution, or other emerging pollutants continue to hamper the fullest potential of the recreational use of Lake Erie. Continued implementation of the Ohio Harmful Algal Bloom Recreational strategy will facilitate a consistent statewide approach to identifying HABs and provide guidance to the public on how to minimize potential exposures to cyanotoxins.

ODH, Ohio EPA, and ODNR lead efforts for this priority.

Goal: Maintain and improve water quality for safe and healthy recreational uses of Lake Erie.

Strategic Objectives

Objective: Reduce bacterial contamination to recreational beaches through continued investments in long-term control plan implementation and reduction of failing home sewage treatment systems.

Objective: Oversee the bacteria and HABs monitoring program and BeachGuard for beach health and provide information to the public about conditions and advisories.

Objective: With local partnerships, continue to lead marine debris management and the Ohio Clean Marina Program.

Objective: Promote recreation safety to Lake Erie users to reduce exposure to contaminants and maintain quality experiences for all.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Maintain water quality monitoring to support the issuance of beach and HAB advisories for public access through [BeachGuard](#). Evaluate and continue research on recreation use activities and source tracking. Establish recreation use standards for open waters of Lake Erie to support use assessment protocols and associated monitoring program.

Coordination and Partnerships: Work with recreation providers and organizations to encourage use of safety information to reduce exposures to bacterial contamination and HABs and stewardship participation. Continue to maintain and implement the [Clean Marinas Program](#). Continue implementation of proper sewage system siting and installation, and local health district operation and maintenance programs to reduce poor quality home sewage discharges.

Technology and Infrastructure: Continue expanding the use of sensor technology to monitor and track bacterial and HAB conditions in Lake Erie and inform the public. Improve web-based tools to report beach and other recreational use conditions to the public.

Resiliency and Adaptation: Promote the use of measures for adapting to varying lake level conditions that include soft shoreline protection to maintain beaches and infrastructure for docks.

Funding: Utilize state funding through Ohio Environmental Education Fund, Coastal Management Assistance Grants, Environmental Financial Assistance, and Ohio Development Water Authority for continued local investments in infrastructure improvements and any associated federal funding such as GLRI.



Priority Area: Tourism, Jobs, and Economy

The Lake Erie economy continues to be part of a region that provides vital places to live, learn, work, innovate, and play. The Lake Erie coast and its watersheds continue to hold thriving economies through its breadth of diversity — whether it be tourism, agriculture, industry, or technology. Transportation in the Lake Erie Basin includes rail, road, and water-borne shipping corridors that feed across to both coasts of the United States and beyond. According to Lake Erie Shores and Islands Visitor Center, in 2018, 11 million visited Lake Erie generating nearly \$1.4 billion in the local economies.

Recommendations for model land use regulations and guidance that have been developed through the Ohio Balanced Growth Program can be used by Ohio local governments to implement land use plans and other local actions that will be more protective of the Lake Erie watershed while at the same time providing clear direction for continued development.

Maintaining current economic sectors, examining opportunities for emerging economic sectors for jobs, enhancement of infrastructure, and enhancing Lake Erie daily experiences will be critical to the quality of life on Lake Erie.

All Commission agencies lead efforts for this priority.

Goal: Promote economic opportunities that sustain and advance communities and their economic sector assets associated with Lake Erie.

Strategic Objectives

Objective: Promote public access and continue improvements to state parks, nature preserves, and wildlife areas, investments in local parks, and other recreational facilities for the enjoyment of all. This can include the State Water Trail program, the State Recreational Trails program, and ODOT’s Walk.Bike.Ohio Policy Plan.

Objective: Promote the initiatives of JobsOhio, InnovateOhio, [TourismOhio](#), and other State of Ohio programs in partnership with regional and local entities related to the Lake Erie economic sectors.

Objective: Promote opportunities to enhance Lake Erie tourism and travel experiences, visitor destinations, and recreational commerce for a variety of users.

Objective: Maintain local government access to Best Local Land Use Practice resources.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Continue to identify opportunities to track visitor use and patterns to plan for future improvements.

Coordination and Partnerships: Promote cooperation with state, regional, and local entities in the public and private sector for the Lake Erie economy.

Technology and Infrastructure: Promote new technologies and infrastructure design that sustains and creates new economic opportunities and improvement to the Lake Erie quality of life for communities, residents, and visitors.

Resiliency and Adaptation: Work with local communities on infrastructure needs to maintain economic sectors and adapt to conditions in Lake Erie.

Funding: Promote state funding programs for transportation, tourism, and other Lake Erie economic sectors.



Priority Area: Water Withdrawals

The Great Lakes Compact (Compact) through the Great Lakes Governors and Premiers serves as the binding agreement between the eight Great Lakes states for the protection and management of Great Lakes waters. The State of Ohio has established a permitting program for new or increased water withdrawals and consumptive uses within the basin. The state will continue to maintain and manage the waters of Lake Erie and its consumptive uses within Ohio's basin area.

ODNR leads the efforts for this priority.

Goal: Support the Great Lakes Compact.

Strategic Objectives

Objective: Continued cooperation with the Great Lakes Governors and Premiers for the regional implementation of the Compact and associated agreements.

Objective: Implement and maintain the requirements for water withdrawal and diversion permits associated with the Great Lakes Compact in Ohio.

Activities to support attaining Priority Goals and Objectives

Monitoring, Measuring, and Research: Maintain tracking of any water withdrawal, diversion, and consumptive use activities in Ohio's Lake Erie watershed.

Coordination and Partnerships: Continue participation on the Great Lakes Governors and Premiers Council of Water Resources for Compact activities.

Technology and Infrastructure: Promote opportunities for tracking Compact activities in Ohio. Promote water conservation activities in the basin through the continued development of ODNR's water conservation website.

Resiliency and Adaptation: Work through the Compact on any updates necessary to sustain the waters of Lake Erie.

Funding: Maintain funding to manage any Compact activities in Ohio.





Conclusion - Making it Happen

The 2020 Lake Erie Protection and Restoration Plan sets the vision over the next two years for Ohio's Lake Erie and state priorities. Setting the plan is the first step to making it happen. The Commission and its staff will expedite next steps to further identify any specific actions, establish metrics, and develop or utilize tools associated with tracking progress. These include, but are not limited to, the following initial steps.

- **Coordination of H2Ohio Year 1 and 2, including tracking progress of its investments.**
- **Establishment of metrics for each priority area's strategic objectives to determine progress of actions.**
- **Identification of reporting mechanisms for both funding and implementation progress.**
- **Maintenance of stakeholder engagement through existing and emerging ways for outreach with updates to the Lake Erie Commission website.**

Ohio's Lake Erie is a critical asset to the well-being of our state and the places we live, work, and play. The 2020 LEPR works toward maintaining and restoring that asset for generations to come.

Ohio Lake Erie Commission
50 West Town Street
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Columbus, OH 43125

<https://lakeerie.ohio.gov/>

The Lake Erie license plate supports [Ohio's Lake Erie Protection Fund \(LEPF\)](#). The funds support research and projects aimed at protecting, preserving, and restoring Lake Erie and its watershed.



COUNSEL'S REPORT

Frank L. Merrill & Christine Rideout Schirra, Bricker & Eckler LLP
Counsel to the OMA
May 28, 2020

A. Ohio EPA Activities of Note

1. Ohio EPA Guidance for Navigating Compliance-Related Issues During COVID-19

Ohio EPA has acknowledged its awareness that regulated entities may be impacted by a reduced workforce necessary to maintain normal operations at some facilities and issued guidance in response. To address instances in which regulated entities will have an unavoidable noncompliance situation directly due to impact from the coronavirus, Ohio EPA has created a specific email address to accept requests for the Director of Ohio EPA to provide regulatory flexibility when possible to assist entities in alternative approaches to maintaining compliance, including extending reporting deadlines, consideration of waiving late fees and exercising enforcement discretion.

Ohio EPA instructs regulated entities to email EPA.COVID-19REGFLEX@epa.ohio.gov with specific information related to enforcement discretion requests and to, at a minimum, include the following information:

- The specific regulatory or permit requirement that cannot be complied with
- A concise statement describing the circumstances preventing compliance
- The anticipated duration of time that the noncompliance will persist
- The mitigative measures that will be taken to protect public health and the environment during the need for enforcement discretion
- A central point of contact for the regulated entity, including an email address and phone number

Ohio EPA specifies that, when alternative compliance options are authorized by Ohio EPA, regulated entities must maintain records adequate to document activities related to the noncompliance and details of the regulated entity's best efforts to comply.

2. Ohio's Draft General Permit for Ephemeral Streams

On May 8, 2020, Ohio EPA issued a public notice for a new general permit, titled Ohio General Permit for Filling Category 1 and Category 2 Isolated Wetlands and Ephemeral Streams. The purpose of the General Permit is to fill gaps in the regulatory landscape following U.S. EPA's issuance of the Navigable Waters Protection Rule. The General Permit covers "the filling of, and the discharge of dredged material into, Category 1 and Category 2 isolated wetlands, of up to a total of one-half acre or less" and "the filling of, and the discharge of dredged material into ephemeral streams determined to not be waters of the United States and not subject to Section 404

or 401 of the Clean Water Act.” Many of these activities would be considered non-jurisdictional under the Navigable Waters Protection Rule.

On April 21, 2020, the U.S. Environmental Protection Agency (US EPA) and the Army Corps of Engineers published to the Federal Register their revised rule defining which waterbodies are subject to federal jurisdiction. The Navigable Waters Protection Rule, a replacement for the Obama Administration’s Clean Water Rule, seeks to define what constitutes “waters of the United States,” the term within the Clean Water Act that controls permitting and regulatory requirements for waterbodies that fall within that definition. The published rule is set to become final on June 22, 2020. Notably, the Navigable Waters Protection Rule details 12 categories of exclusions, or features, that are not “waters of the United States.” Among these are features that only contain water in direct response to rainfall (e.g., ephemeral features) and isolated wetlands (i.e., wetlands that do not abut, are separated by more than a natural berm from, are not inundated by flooding in a typical year from and do not have a direct hydrologic surface connection in a typical year to a jurisdictional non-wetland water).

Ohio EPA is accepting comments on the draft General Permit through June 17, 2020. The permit is expected to become effective on June 22, 2020—the same day as the Navigable Waters Protection Rule.

3. Final 2020 Integrated Water Quality Monitoring and Assessment Report

On May 11, 2020, Ohio EPA submitted its final 2020 Integrated Water Quality Monitoring and Assessment Report to U.S. EPA for approval. This long-anticipated Report indicates the general condition of Ohio's waters and identifies waters that are not meeting water quality goals. The report satisfies the Clean Water Act requirements for both Section 305(b) for biennial reports on the condition of the State's waters and Section 303(d) for a prioritized list of impaired waters. For each impaired water, Ohio EPA typically prepares a total maximum daily load (“TMDL”) analysis.

The 2020 Report is noteworthy as it identifies as impaired Lake Erie’s western shoreline, western open water, and islands, specifically impairments to public drinking water supply (algae) and recreation (algae), thus committing Ohio EPA to development of a TMDL for these portions of Lake Erie over the next two to three years. The TMDL program, established under Section 303(d) of the Clean Water Act, focuses on identifying and restoring polluted rivers, streams, lakes and other surface water bodies.

4. Ohio’s 2020 Lake Erie Protection & Restoration Plan

On April 23, 2020, the Ohio Lake Erie Commission approved its 2020 Lake Erie Protection & Restoration Plan (LEPR) at its April quarterly meeting. The LEPR, last published in 2016, reflects actions that the Ohio Lake Erie Commission and its member agencies will take over the next several years to protect, preserve, and restore Lake Erie and promote economic development in the region. The plan outlines the following nine priorities, in which investments, policies and programs will be focused by the Commission:

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

5. PFAS Regulation in Ohio

On March 16, 2020, Ohio EPA announced that it is temporarily suspending testing of the state’s more than 1,500 public drinking water systems for per- and polyfluoroalkyl substances (PFAS) due to the COVID-19 pandemic. The state had begun the testing program in late February 2020, in response to Governor Mike DeWine’s statewide action plan, issued on December 2, 2019, to analyze PFAS in Ohio’s drinking water.

As part of the plan, Ohio EPA announced that it will test nearly 1,500 public water systems for six PFAS chemicals: PFOA, PFOS, GenX, PFBS, PFHxS and PFNA. All test results will be posted on a website designed for the implementation of this action plan. If PFAS chemicals are detected, additional steps will be triggered by the Ohio Department of Health and Ohio EPA. The action plan will utilize the U.S. EPA health advisory level of 70 parts per trillion (“ppt”) for PFOA and PFOS as an action level and U.S. EPA’s established Drinking Water Equivalent Level method and toxicity data for the other four PFAS chemicals.

Testing had been scheduled to commence the first quarter of 2020 and to be complete by the end of 2020. It is not yet clear how the temporary suspension of testing will impact this timeline. Unless PFAS chemicals are detected, public drinking water systems will only be tested once to establish this baseline “snapshot” of PFAS chemicals in Ohio’s public drinking water systems.

B. U.S. EPA Activities of Note

1. Proposed Amendment to Ohio’s SIP

On March 23, 2020, U.S. EPA proposed to remove the air pollution nuisance rule from the Ohio State Implementation Plan (SIP), as U.S. EPA determined that the rule was not relied upon by Ohio to demonstrate attainment or maintenance of any National Ambient Air Quality Standards (NAAQS). On May 22, 2020, The OMA filed comments in support of U.S. EPA’s proposed action.

The removal of the air pollution nuisance rule from Ohio’s SIP will allow Ohio EPA to discontinue its current practice of including a nuisance provision as a standard term and condition within each air permit that it issues. 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.

2. Proposed New Multi-Sector General Permit for Industrial Stormwater

On March 2, 2020, the Environmental Protection Agency (EPA) proposed its new Multi-Sector General National Pollutant Discharge Elimination System Permit (MSGP), which authorizes the discharge of stormwater associated with industrial activity. Proposed new terms and conditions include new benchmarks, four levels of monitoring, and the incorporation of many of the recommendations from the National Research Council's 2019 study. While the federal MSGP is not used in Ohio, Ohio EPA will more than likely adopt some of these provisions in the state MSGP when it comes up for renewal on May 31, 2022. Comments on the new proposed federal MSGP are due on or before June 1, 2020.

3. U.S. EPA Issues Temporary Enforcement Policy

On March 26, 2020, US EPA issued a memorandum announcing a temporary policy to address noncompliance with environmental legal obligations resulting from the COVID-19 pandemic, in lieu of otherwise applicable EPA enforcement response policies. The temporary policy applies retroactively beginning March 13, 2020, and applies to actions or omissions that occur while the policy is in effect, even after the policy terminates. US EPA stated that it will notify the public at least seven days prior to terminating the policy.

The policy sets forth that regulated entities are still expected to make every effort to comply with all environmental compliance obligations. However, it generally states that the agency will exercise enforcement discretion for instances of noncompliance caused by COVID-19 and then sets forth how that discretion will differ depending on the type of noncompliance. The policy sets forth how US EPA intends to use its enforcement discretion for various types of anticipated civil violations that may be caused by the COVID-19 pandemic, including:

- routine compliance monitoring and reporting by regulated entities
- settlement agreement and consent decree reporting obligations and milestones, including administrative settlement agreements and consent decrees entered into with EPA and the DOJ
- facility operations

Entities that anticipate potential disruptions to operations as a result of COVID-19 should closely document their specific causes of noncompliance, and all efforts taken to return to compliance, and should closely evaluate US EPA's policy for specific reporting requirements applicable to their operations.

Notably, on May 13, 2020, nine states' attorneys general (New York, California, Illinois, Maryland, Michigan, Minnesota, Oregon, Vermont, and Virginia) sued U.S. EPA in the Southern District of New York over the policy, seeking an order declaring that the EPA exceeded its statutory jurisdiction in adopting the non-enforcement policy and requesting that the court vacate the policy and enjoin the EPA from applying it. See *State of New York et al. v. U.S. Environmental Protection Agency et al.*, No. 1:20-cv-03714. The suit alleges that the policy provides regulated

entities with a blanket waiver of mandatory compliance monitoring and reporting requirements set forth in the various environmental laws that U.S. EPA administers. The states' lawsuit follows a similar suit filed by a coalition of environmental groups on April 16, 2020. *See NRDC v. U.S. Environmental Protection Agency et al.*, No. 1:20-cv-03058.

4. U.S. EPA Information on Disinfectants for Use Against Coronavirus

On January 29, 2020, EPA activated its Emerging Viral Pathogen Program Guidance for Antimicrobial Pesticides in response to the coronavirus outbreak. USEPA maintains a list, referred to as List N, which includes products that meet EPA's criteria for use against SARS-CoV-2, the novel coronavirus that causes the disease COVID-19.

To identify whether a particular product is on the list, EPA advises checking the product's EPA registration number on the specific product label. If the EPA registration number on the product label is on List N, the product can be used against SARS-CoV-2. EPA advises that many products may be marketed and sold under different brand names, but if they have the same EPA registration number, they are the same product.

U.S. EPA's Guidance further outlines the process for registrants to follow to make limited claims of their product's efficacy against such pathogens. Registrants and applicants interested in making product claims against emerging viral pathogens are instructed to submit a label amendment request setting forth specific enumerated information about their product and how it meets the eligibility criteria for use against one or more categories of viral pathogens.

Lastly, U.S. EPA further maintains and updates a list of frequent questions about disinfectants and COVID-19, including information on use of UV lights and air purifiers, hand sanitizers, and fumigation.

5. U.S. DOJ Ends Use of Supplemental Environmental Projects as Settlement Tools

The U.S. Department of Justice (DOJ) recently issued a memorandum stating that settlements, including consent decrees, entered by U.S. EPA and other federal agencies can no longer include a Supplemental Environmental Project (SEP), unless the SEP is expressly authorized by Congress. Companies and individuals accused of violating environmental laws or permit requirements commonly agree to perform SEPs to fund projects that go beyond compliance instead of paying a higher cash penalty to the U.S. Treasury. Going forward, companies, individuals and local governments will no longer have SEPs as a settlement option. The new policy takes effect immediately.

Ohio EPA and the Ohio Attorney General's Office have not yet indicated what effect, if any, the DOJ SEP memorandum will have on their practices involving SEPs. Historically, SEPs have been employed in settlements of both administrative and civil enforcement actions.

6. U.S. EPA Proposes to Retain Current Particulate Matter Standards

On April 14, 2020, U.S. EPA proposed to retain the current national ambient air quality standards (NAAQS) for particulate matter (PM) without revision. After reviewing the air quality criteria and primary and secondary NAAQS for fine and coarse PM, the agency concluded that there is insufficient scientific evidence to support tightening these standards. U.S. EPA Administrator Andrew Wheeler stated that he believes the current levels will be protective of public health while the agency continues to evaluate PM. U.S. EPA is accepting public comments on its proposed action until June 29, 2020.

C. Judicial

1. U.S. Supreme Court Rules that the Clean Water Act Regulates Groundwater

In a 6-3 opinion issued on April 23, 2020, the U.S. Supreme Court ruled that the Clean Water Act regulates activities that release pollutants that are eventually conveyed through groundwater to navigable water. The ruling is contrary to Maui County's (and the federal government's) position that the Clean Water Act does not regulate pollutants that travel through groundwater. Justice Breyer, joined by Chief Justice Roberts and Justices Ginsburg, Sotomayor, Kagan and Kavanaugh, wrote the Court's opinion. Justices Thomas, Alito and Gorsuch dissented.

Creating a new test, the majority ruled that a permit is required when there is a direct discharge from a point source into navigable waters or when there is the "*functional equivalent of a direct discharge.*" In the underlying *County of Maui* case, several environmental groups sued Maui County, alleging that the county's discharge of treated municipal wastewater into underground injection wells without a National Pollutant Discharge Elimination System (NPDES) permit violated the Clean Water Act when the contaminants migrated through the groundwater to the ocean. The Ninth Circuit agreed with the environmental groups, holding that the county must get an NPDES permit for the discharge of pollutants to navigable waters that are "fairly traceable" from a point source to navigable waters.

The Court's decision represents an attempt to strike a middle ground between the lower Ninth Circuit decision and the position of the county and the federal government. The Court noted that the Ninth Circuit's "fairly traceable" test could cover the release of pollutants that reach navigable waters even many years after their release, constituting a broader grant of authority to US EPA than that which Congress intended. Yet, the Court also noted that the total exclusion of all discharges through groundwater from Clean Water Act regulation, as the county and federal government asserted, is also not within the intent of the statute.

The decision is likely to have far reaching implications for permitting and enforcement pursuant to the Clean Water Act. Critics of the decision, including the dissenting Justices, assert that it provides no clear guidance and, instead, creates an amorphous standard that will lead to arbitrary and inconsistent application. Notably, some states already regulate groundwater at the state level. Under Ohio law, the definition of "waters of the state" includes groundwater, and Ohio

EPA has taken the position that impacts to groundwater are subject to regulation under Ohio Rev. Code Chapter 6111.

2. Nationwide Permit 12 Vacated and Remanded

On April 15 and May 11, 2020, the U.S. District Court for the District of Montana issued two orders with broad-sweeping implications for energy-related projects—particularly for those involving the construction of new oil and gas pipelines—across the country.

The case centered on the permitting of the Keystone XL Pipeline. However, in resolving the plaintiffs’ particular claim that the U.S. Army Corps of Engineer’s 2017 reissuance of Nationwide Permit 12 (NWP 12) violated the Endangered Species Act (ESA), the court’s April 15 order broadly implicated the validity of the Corps’ NWP 12, which authorizes activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in U.S. waters. In its order, the court found that the Corps failed to comply with the ESA when issuing NWP12 by failing to conduct a programmatic ESA Section 7 consultation. The court vacated NWP 12 and remanded the permit back to the Corps, ordering it to complete a programmatic consultation pursuant to ESA Section 7.

In response to the April 15, 2020 order, the federal government filed a motion requesting that the court issue a stay of those portions of its April 15 order that vacate NWP 12 and enjoin the Corps from authorizing activities pursuant to the NWP 12, or at a minimum, to stay the vacatur and injunction as they relate to activities beyond those impacting the Keystone XL pipeline. In response, the court’s May 11 order denied the motion for partial stay but amended the remedy set forth in its prior April 15 order.

In its May 11 order, the court amended its previous order to specify that NWP 12 is vacated as it relates to the construction of new oil and gas pipelines, pending completion of the consultation process, but that NWP 12 is to remain in place for non-pipeline construction activities and routine maintenance, inspection and repair activities on existing NWP12 permitted projects. In so ordering, the court reasoned: “To narrow the vacatur of NWP 12 to a partial vacatur that applies to the construction of new oil and gas pipelines strikes a reasonable balance... while still redressing the potential harms to listed species and habitat that those projects pose.” (See May 11 order, page 15.)

3. *Drewes Farms Partnership and State of Ohio v. City of Toledo*, Case No. 3:19-cv-434 (N.D. Ohio Feb. 27, 2020).

On February 27, 2020, the Lake Erie Bill of Rights (“LEBOR”) was invalidated by U.S. District Judge Jack Zouhary of the Northern District of Ohio, who said in an eight-page ruling that his decision was “not a close call” because he believes the citizen-led referendum “is unconstitutionally vague and exceeds the power of municipal government in Ohio.” In his ruling, Judge Zouhary said Toledoans for Safe Water used language “that sounds powerful but has no practical meaning” when writing the Lake Erie Bill of Rights, and that the document’s purported right to self-governance is “an aspirational statement, not a rule of law.” He found that “[u]nder even the most forgiving standard, the environmental rights identified in LEBOR are void for

vagueness[.]” For all the power the law gave the city and its residents, Judge Zouhary wrote that its language does not clearly spell out key issues, such as what constitutes an infringement on the Lake’s rights, how a judge would decide what was a violation or even what constitutes a “clean and healthy environment.” The Court also found it unclear whether certain activities – such as catching fish, dredging a river, driving a gas-fueled vehicle or planting corn – would run afoul of the law.

On March 27, 2020, the City of Toledo filed an appeal of Judge Zouhary’s decision with the United States Court of Appeals for the Sixth Circuit. However, subsequently, on May 5, 2020, the City of Toledo voluntarily dismissed its appeal. City Law Director Dale Emch said the city “has aggressively defended this charter section but is not appealing these complicated legal matters during this time of budgetary constraints.”

LEBOR, as the Lake Erie Bill of Rights is often called, was approved by Toledo voters at a special election on February 26, 2019. The legal challenge that was the subject of the lawsuit was filed the next day, February 27, 2019, by Drewes Farms Partnership, a local farming operation in Wood County. The law, passed as an amendment to the city’s municipal charter, allowed the city and its residents to sue businesses and governments on the Lake’s behalf. The law also invalidated conflicting state laws and regulations and takes precedence over federal permits and licenses. Judge Zouhary ultimately found that LEBOR’s authors “ignored basic legal principles and constitutional limitations” in his decision striking down the law.

TO: OMA Environment Committee
FROM: Rob Brundrett
RE: Environment Public Policy Report
DATE: May 28, 2020

Overview

There was an expectation of a loaded winter and spring legislative session coming out of the holidays. That was brought to an abrupt halt with the onset of the COVID-19 pandemic. Several things that were once thought of as a priority have been placed on the backburner with both the administration and the General Assembly.

The House and the Senate returned to regular session and committee hearings in the early to middle part of May. They are expected to stay in session through at least the middle of June before leaving for the summer and their legislative campaign season.

Fortunately, Ohio is not expected to see any major environmental overhaul legislation in that short timeframe.

However, some projects continue such as the finalization of state water action plans aimed at reducing runoff into Ohio waterways, and especially Lake Erie. State responses to federal actions like the Waters of the U.S. are expected next month.

Last fall the Governor announced a more comprehensive plan for the new H2Ohio initiative – its initial funding appears to have avoided the budget chopping ax as agencies were asked to cut funding in response to the drastic shortage in tax revenue.

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

OHIO EPA COVID-19 INFORMATION

Ohio EPA Requests Electronic Filings of Plans, Permit Applications

Ohio EPA has announced that because its district offices and central office are temporarily closed, businesses are encouraged to submit plans, permit applications, and other required documents electronically when there are existing avenues to do so, such as eBiz. 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 are available on YouTube (<https://www.youtube.com/watch?v=BkeiTm5e9zE&feature=youtu.be>).

How to Contact Ohio EPA Staff During the COVID-19 Crisis

Due to COVID-19 concerns, Ohio EPA is currently operating with many staff members working remotely. The agency wants businesses to know that if you are working with staff on a current project — and you know the name of the employee you are working with — you can email them using this format: `firstname.lastname@epa.ohio.gov`. Or call the employee directly.

The agency's website has contact information for every district, division, and office. Businesses can contact Ohio EPA's main phone line at (614) 644-3020. To report a spill or environmental emergency, contact the spill hotline (800) 282-9378 or (614) 224-0946.

Ohio EPA COVID-19 Guidance

Ohio EPA has announced that all regulated entities remain obligated to take all available actions necessary to ensure compliance with environmental regulations and permit requirements.

Of course, in some instances regulated entities will have an unavoidable non-compliance situation directly related to COVID-19. In these cases, the director of Ohio EPA may consider providing regulatory flexibility, where possible, to assist entities in alternative approaches to maintaining compliance, such as extending reporting deadlines, waiving late fees, and exercising enforcement discretion.

An email address (EPA.COVID-19REGFLEX@epa.ohio.gov) has been established by the agency to accept such requests.

General Assembly News and Legislation

Senate Bill 2 – Statewide Watershed Planning

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

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

House Bill 7 – H2Ohio Trust Fund

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

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

Senate Bill 50 – Increase Solid Waste Disposal Fee

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

House Bill 166 – State Operating Budget

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

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

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

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

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

That money was protected when the Governor asked agencies to reduce their budgets due to falling tax revenue from COVID-19.

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

Senate Bill 222 – Container Use Restriction

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

House Bill 242 – Container Use Restriction

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

This so-called bag bill is aimed at providing uniformity across the state regarding packaging and other products that have been ground zero for local government bans. The OMA provided strong support in committee. The bill passed the House 58-35.

A Senate committee passed the bill last week. The OMA provided proponent testimony. The bill was amended in committee adding a 12-month sunset.

House Bill 328 – PFAS Firefighting Foam

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

House Bill 491 – Plastic Pollution Awareness Day

The bill designates the fifteenth day of February as “Plastic Pollution Awareness Day.” The bill has not had any hearings.

House Bill 497 – PFAS Drinking Standard

The bill would require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants (PFAS). The has not had any hearings and was referred to the House Health committee.

House Bill 522 – Waste Disposal Conservancy Districts

The bill authorizes conservancy districts to provide for the collection and disposal of solid waste. The bill has not had any hearings to date.

Regulations

Ohio EPA Asks for Comments on Ephemeral Streams and Isolated Wetlands Permit

Ohio EPA has issued a public notice for a new general permit, titled “Ohio General Permit for Filling Category 1 and Category 2 Isolated Wetlands and Ephemeral Streams.” This covers the filling of, and the discharge of, dredged material into ephemeral streams determined to not be waters of the U.S. and not subject to Section 404 or 401 of the Clean Water Act. Ohio EPA’s stated intent with the general permit is to fill gaps in the regulatory landscape after the issuance of U.S. EPA’s Navigable Waters Protection Rule.

OMA Files Federal Comments on Ohio Air Pollution Nuisance SIP

Last week the OMA led a coalition of business groups by filing comments to the U.S. EPA’s correction of the inclusion of Ohio’s air pollution nuisance rule. The comments agree with U.S. EPA’s proposal to remove the nuisance rule from the Ohio SIP. Ohio’s public nuisance provision is a general rule prohibiting public nuisances and has not connection with the purposes for which SIPs are developed and approved. Manufacturers often find themselves in the crosshairs of lawsuits based on the SIP provision even though they are in total compliance with the permit limits.

Ohio Lake Erie Commission Releases 2020 Plan and Ohio Submits 2020 Integrated Water Quality Monitoring and Assessment Report

The Ohio Lake Erie Commission recently approved its 2020 Lake Erie Protection and Restoration Plan (LEPR). The LEPR, last published in 2016, reflects actions that the commission and its member agencies will take over the next several years to protect and restore the lake, while promoting economic development for the region. The state’s actions complement federal and local initiatives. The plan is available at the Ohio Lake Erie Commission website.

Ohio Environmental Protection Agency submitted the final 2020 Integrated Water Quality Monitoring and Assessment Report to U.S. EPA for approval. The final report is available [here](#).

The OMA and its nutrient water working group worked tirelessly with Ohio EPA and others to ensure manufacturing is not disproportionately harmed by any new regulations on nutrients. The OMA commented on both the draft plans prior to their release and submittal.

EPA Approves new WOTUS Rule

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

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

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

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

Manufacturers Could See More Regulation Due to Federal Ozone Standards

Ohio EPA hosted two regional meetings for interested parties, including manufacturers and the OMA, to discuss the likelihood that the Cleveland and Cincinnati airsheds will be bumped up from "marginal" to "moderate non-attainment" under the federal ozone standard. The standard was lowered to 70 parts per billion during the Obama administration.

A change in status will trigger additional compliance requirements under the federal Clean Air Act. One of the key components of additional regulatory restrictions would be emissions offsets, so that any new emissions creator would need to be set at the New Source Review offset ratio 1.15:1.

The OMA will continue to work with members and Ohio EPA on this important issue that could affect many of the state's manufacturers and Ohio's overall economy.

U.S. EPA Proposes to Retain Current Particulate Matter Standards

On April 14, U.S. EPA proposed to retain the current national ambient air quality standards (NAAQS) for particulate matter (PM) without revision. After reviewing the air quality criteria and primary and secondary NAAQS for fine and coarse PM, the agency concluded that there is insufficient scientific evidence to support tightening these standards. U.S. EPA Administrator Andrew Wheeler stated he believes the current levels will be protective of public health while the agency continues to evaluate PM. EPA will accept public comment for 60 days after the proposed standards are published in the Federal Register.

Ohio EPA Agency News

Ohio EPA Launches 'Ask an Expert'

Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) has created a new avenue for companies to receive free and confidential environmental assistance regarding regulatory concerns about air, waste, water, and other environmental requirements. This service is available Monday through Friday, from 10 a.m. to 12 p.m. — and from 1 p.m. to 3 p.m.

<https://ohioepa.custhelp.com/app/contactus>

Ohio Changes Direction on PFAS Testing

Ohio has slowed its statewide PFAS testing plan due to COVID-19. The plan is to restart later in the year.

Last year Gov. Mike DeWine directed state agencies to analyze the prevalence of per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water. This action followed a Sept. 18

letter from Gov. DeWine and 14 other governors to federal lawmakers, calling for more comprehensive federal legislation on PFAS standards.

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

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

America's Improved Air Quality

The U.S. EPA published statistics showing that between 1970 and 2018, the combined emissions of the six common pollutants dropped by 74% across the U.S. This progress occurred as the economy expanded, Americans drove more miles, and the nation's population and energy use increased. Details are available on the U.S. EPA's AirTrends website.



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

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

MAY 20, 2020

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

The OMA was created in 1910 to advocate for Ohio's manufacturers; today, it has nearly 1,300 members. Its mission is to protect and grow Ohio manufacturing.

Manufacturing is the largest of the state's 20 primary industry sectors. Manufacturing contributed more than \$112 billion in GDP according to the most recent data. This amounts to nearly 17% of the state's economy. According to the most recent data, over 701,000 Ohioans work in manufacturing.

Ohio is home to:

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

These manufacturers alone produce more than \$7 billion in output for the Buckeye State. These same manufacturers employ more than 16,300 Ohioans with an average annual wage of over \$50,000. These are solid, family-sustaining jobs.

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

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

This is why the OMA routinely advocates mitigating locally-imposed restrictions, mandates and taxes. In many cases these types of regulations are most appropriately

adopted at the federal government level so as to not disadvantage businesses in one state over businesses in another state.

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

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

Please feel free to contact me at rbrundrett@ohiomfg.com with any questions.

DRAFT

Effective Date: INSERT DATE
Expiration Date: INSERT DATE

**OHIO GENERAL PERMIT FOR FILLING
CATEGORY 1 AND CATEGORY 2 ISOLATED WETLANDS AND
EPHEMERAL STREAMS**

Pursuant to Section 6111.021 and 6111.03(J)(1) of the Ohio Revised Code (ORC), the Director of the Ohio Environmental Protection Agency hereby authorizes the filling of, and the discharge of dredged material into, Category 1 and Category 2 isolated wetlands, where the proposed project involves the filling of, or the discharge of dredged material into Category 1 and Category 2 isolated wetlands of a total of ½ acre or less and any filling or discharge of dredged material into ephemeral streams, in accordance with the conditions specified in Parts I through VIII of this general permit.

For projects that do not require a Pre-Activity Notice (PAN), permittees are required to comply with all terms and conditions of this permit, except where specifically exempted in a specific condition.

Coverage under this general permit is conditioned upon payment of applicable fees, outlined in Part II. below, and submittal of a complete PAN when required.

This Isolated Wetland and Ephemeral Stream General Permit shall be effective for five (5) years and shall expire at midnight on the expiration date shown above.

Laurie A. Stevenson
Director

Part I. COVERAGE UNDER THIS PERMIT

Isolated Wetlands: Coverage under this permit is limited to the filling of, and the discharge of dredged material into, Category 1 and Category 2 isolated wetlands, of up to a total of one-half acre or less. The filling of, or discharge of dredged material into, greater than one-half acre of Category 1 or 2 wetlands, or any Category 3 isolated wetlands is specifically not authorized under this general permit.

Ephemeral Streams: Coverage under this permit is limited to the filling of, and the discharge of dredged material into ephemeral streams determined to not be waters of the United States and not subject to Section 404 or 401 of the Clean Water Act.

Part II. NOTIFICATION REQUIREMENTS

- A) Notification requirements outlined in this section are required for any amount of fill or discharge into isolated wetlands and the fill or discharge into ephemeral streams exceeding 300 linear feet.
- 1) For culvert maintenance and replacement: Only the impacts to ephemeral streams beyond the enclosed configuration of an existing culvert structure apply toward the linear foot notification and mitigation thresholds referenced in this permit.
- B) Contents of Notification: For coverage under this general permit, a PAN must be submitted, when required per condition A. above, to the Ohio EPA and must contain the following information:
- 1) A completed Isolated Wetland and Ephemeral Stream General Permit Application Form;
 - 2) An acceptable wetland delineation as performed in accordance with the 1987 U.S. Army Corps of Engineers wetland delineation manual and any other procedures and requirements adopted by the U.S. Army Corps of Engineers for delineating wetlands, including a determination from the U.S. Army Corps of Engineers that the wetlands and ephemeral streams proposed to be covered by this general permit are not Waters of the United States and not subject to Section 404 of the Clean Water Act;
 - 3) A completed Ohio Rapid Assessment Method (ORAM 5.0) wetland categorization form for each isolated wetland on the project site. Ohio EPA will make the final assignment of a wetland category in accordance with OAC 3745-1-54 of the Ohio Administrative Code (OAC);
 - 4) A stream physical habitat assessment (i.e., Qualitative Habitat Evaluation Index or Headwater Habitat Evaluation Index) for each ephemeral stream on the project site;
 - 5) A detailed project description;
 - 6) Maps showing project footprint, including a U.S. Geological Survey topographic map, and other maps that may be pertinent to assessing the functional level of the isolated wetlands and flow regime of the ephemeral streams proposed to be covered under the PAN, such as county soil maps and National/Ohio Wetland Inventory maps;

- 7) Photographs of each isolated wetland and ephemeral stream proposed to be covered by this permit with a photograph location map showing photograph number and direction the photograph was taken; and
 - 8) For isolated wetlands, an acceptable mitigation proposal in accordance with ORC Sections 6111.022(D) and 6111.027 including documentation that mitigation credits have either been purchased or reserved. If the proposal includes in-lieu fee mitigation for wetland impacts, an evaluation of other mitigation alternatives must be provided. For ephemeral stream permanent impacts, an acceptable mitigation proposal including documentation that mitigation credits have either been purchased or reserved, if applicable.
- C) Fees: A PAN shall be accompanied by an application fee of \$200.00 and a review fee of \$500.00 per acre of isolated wetland to be impacted (ORC 3745.113).
- D) Timing: Within fifteen (15) business days after the Director's receipt of a PAN, Ohio EPA shall notify the applicant whether the application is complete. If the application is not complete, Ohio EPA shall include in the notice an itemized list of the information or materials necessary to complete the application. If the applicant fails to provide the information or materials that are necessary to complete the application within sixty (60) days after the Director's receipt of the PAN, Ohio EPA may return the application and take no further action on it.

The Director shall notify the applicant within thirty (30) days after the Director's receipt of a complete PAN if the proposed filling of, or the discharge of dredged material into isolated wetlands and/or ephemeral stream(s) will result in a significant negative impact on state water quality and, therefore, the project is not authorized under this general permit. If the applicant has not received notice that the project is not authorized by this general permit within thirty (30) days after the Director's receipt of a complete PAN, the applicant may move forward with the proposed project in accordance with the conditions stated in this general permit.

Part III. GENERAL CONDITIONS

Projects authorized under this general permit shall be subject to the following conditions:

- A) The project shall be constructed in accordance with the information as set forth in the complete PAN.
- B) The terms and conditions outlined in this section apply to project and mitigation construction as described in this permit.
- C) A copy of this permit shall remain on-site for the duration of the project and mitigation construction activities.
- D) In the event of an inadvertent spill, the permittee must immediately call the Ohio EPA Spill Hotline at 1-800-282-9378, as well as the Ohio EPA Section 401 Manager (614-644-2001).
- E) Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401 Manager (614-644-2001), for further evaluation.

- F) Pesticide application(s) for the control of plants and animals shall be applied in accordance with the NPDES General Permit to Discharge Pesticides In, Over or Near Waters of the State available at: <https://www.epa.ohio.gov/portals/35/permits/OHG870002%20FINAL%20PERMIT.pdf> and may require a pesticide applicator license from the Ohio Department of Agriculture.
- G) Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
- H) In the event that there is a conflict between the application, including the mitigation plan, and the conditions within this permit, the condition shall prevail unless Ohio EPA agrees, in writing, that the application or other provision prevails.
- I) When a project will result in the temporary removal of hydric topsoil from isolated wetlands, the hydric soil shall be separated and placed as the topmost backfill layer when the wetlands are restored.
- J) Wetland narrative and chemical criteria described in OAC 3745-1-51 and 3745-1-52 of the Administrative Code shall be maintained in isolated wetlands wholly or partially avoided.
- K) Best Management Practices (BMPs)
- 1) All isolated wetlands and ephemeral streams which are to be avoided, shall be clearly indicated on site drawings demarcated in the field and protected with suitable materials (e.g., silt fencing) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process and removed after completion of construction.
 - 2) Unless subject to a more specific storm water National Pollutant Discharge Elimination System (NPDES) permit, all best management practices for storm water management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available at: <http://www.epa.ohio.gov/dsw/storm/index.aspx>, or any watershed specific construction general permit.
 - 3) Sediment and erosion control measures and best management practices must be designed, installed, and maintained in effective operating condition at all times during construction activities as required by applicable NPDES permits. Proper maintenance ensures corrective measures will be implemented for failed controls within 48 hours of discovery.
 - 4) Disturbance and removal of vegetation from the project construction area is to be avoided where possible and minimized to the maximum extent practicable. Entry to surface waters shall be through a single point of access to the maximum extent practicable to minimize disturbance to riparian habitat. Unavoidable temporary impacts to forested riparian habitat shall be restored as soon as practicable after in-water work is complete using tree and shrub species native to the specific ecoregion where the project is located.

- 5) Straw bales shall not be used as a form of sediment control unless used in conjunction with another structural control such as silt fencing. Straw bales may be utilized for purposes of erosion control such as ditch checks.
- 6) Heavy equipment shall not be placed below the ordinary high water mark of any surface water, except when no other alternative is practicable.
- 7) Fill material shall consist of suitable non-erodible material and shall be maintained and stabilized to prevent erosion.
- 8) All dewatering activities must be conducted in such a manner that does NOT result in a violation of water quality standards.
- 9) All disturbed areas which remain dormant in excess of fourteen days must be protected from erosion within seven days from the last earth disturbing activity.
- 10) All areas of final grade must be protected from erosion within seven days.
- 11) In the event of authorized in-stream activities, provisions must be established to redirect the stream flow around or through active areas of construction in a stabilized, non-erosive manner to the maximum extent possible.
- 12) Materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as fill or bank protection.
- 13) Concrete rubble used for fill or bank stabilization shall be in accordance with ODOT specifications; free of exposed re-bar; and, free of all debris, soil and fines.
- 14) Chemically treated lumber which may include, but is not limited to, chromated copper arsenate and creosote treated lumber, shall not be used in structures that come into contact with waters of the state.
- 15) All temporary fill material must be removed to an area that has no waters of the state at the completion of construction activities and the stream and wetland bottom restored to pre-construction elevations to the maximum extent practicable.
- 16) Culverts
 - a) When practicable, culverts shall be installed at the existing streambed slope, to allow for the natural movement of bedload and aquatic organisms.
 - b) The culvert base or invert with the substrate shall be installed at or below the sediment to allow natural channel bottom to develop and to be retained.
 - c) The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms.

- d) Where culverts are installed for temporary crossings, the bottom elevations of the stream shall be restored as nearly as possible to pre-project conditions.

Part IV. RESTORATION OF TEMPORARY EPHEMERAL STREAM IMPACTS

- A) Temporary impacts are those that facilitate the nature of the activity or aid in the access, staging or development of construction; are short-term in nature; and that are expected, upon removal of the temporary impact, to result in the surface water returning to conditions which support pre-impact biological function with minimal or no human intervention within 12 months following the completion of the temporary impact.
- B) All ephemeral streams subject to temporary impacts, shall be restored onsite to pre-existing contours and conditions upon the completion of the temporary impacts.
- C) The flow regime shall be restored to that of the pre-impact ephemeral flow regime.
- D) The ephemeral stream channel shall be stable.
- E) The ephemeral stream physical habitat, as measured prior to impact, shall be restored.
- F) Restoration Monitoring and Reporting when a PAN is required
 - 1) When a PAN is required per condition Part II.A, all restored ephemeral streams shall be monitored for up to two years following the completion of restoration activities. If the restoration areas are meeting or exceeding the restoration performance criteria after the first year of post construction monitoring, the applicant may request to be released from any further monitoring. If the restoration areas are not meeting the restoration performance criteria by the end of the second year of post construction monitoring, the monitoring period may be extended, and/or the permittee may be required to revise the existing restoration plan.
 - 2) When a PAN is required per condition Part II.A, annual restoration reports shall be submitted to Ohio EPA by December 31 of each year following the end of the first full growing season and completion of restoration construction. Each report shall contain, at a minimum, the following information:
 - a) The status of all restoration required for the project as specified in the application and authorization.
 - b) Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the permittee, consultant, and/or owner.
 - c) Discussion of stability of the stream channel and restoration of pre-impact flow regimes.
 - d) Stream physical habitat assessment (i.e., Qualitative Habitat Evaluation Index or Headwater Habitat Evaluation Index) utilizing the same methodology as the pre-impact

assessment.

- e) A minimum of three high resolution color photographs taken at the restored area, including one facing upstream, one facing downstream, and a close up which clearly depicts the substrate composition and size for each restored stream. Photographs must accurately depict the quality of the stream and may not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow or ice.

Part V. MITIGATION FOR PERMANENT EPHEMERAL STREAM IMPACTS

- A) Mitigation for permanent impacts to ephemeral streams is required for impacts over 300 linear feet in order to qualify for coverage under this general permit.
- B) The permittee shall conduct mitigation through either purchasing credits from an approved mitigation bank with a service area that includes the impacted watershed, purchasing credits from an approved In-lieu fee program that serves the impacted watershed, or constructing permittee responsible mitigation.
- C) Mitigation for the permanent filling of, or the permanent discharge of dredged material into ephemeral streams covered under this permit when required shall be conducted as follows:
 - Ephemeral streams with sand/silt/muck/clay dominated substrates at a minimum rate of one linear foot for every linear foot (1:1) of permanently impacted ephemeral stream.
 - Ephemeral streams with bedrock/boulder/cobble/gravel/sand mixed substrates at a minimum rate of one and a half linear feet for every linear foot (1.5:1) of permanently impacted ephemeral stream.
- D) When mitigation will occur at an approved wetland mitigation bank or In-lieu Fee program, mitigation credits must be acquired within 30 days after receipt of the written notice of approval authorizing impacts to ephemeral streams. Proof mitigation credits have been purchased shall be sent to Ohio EPA within 30 days after receipt of approval for coverage under this general permit.
- E) Permittee Responsible Mitigation
 - 1) All permittee responsible mitigation for ephemeral streams shall be monitored for up to five years following the completion of mitigation construction activities. If the mitigation areas are meeting or exceeding the performance criteria prior to the end of the fifth year of mitigation monitoring, the applicant may request to be released from any further monitoring. If the mitigation areas are not meeting the performance criteria by the end of the fifth year of mitigation monitoring, the monitoring period may be extended, and/or the permittee may be required to revise the existing mitigation plan.
 - 2) Construction of permittee responsible mitigation, shall commence within 30 days after completion of fill activities authorized under this general permit, and shall be completed prior to termination of coverage of approval under this general permit.
 - 3) The permittee responsible mitigation site shall be protected long term, and appropriate

practicable management measures, including appropriate vegetative buffers, shall be implemented to restrict harmful activities that jeopardize the mitigation.

- 4) Annual monitoring reports shall be submitted to Ohio EPA by December 31 of each year following the end of the first full growing season and completion of mitigation construction. Each report shall contain, at a minimum, the following information:
 - a) The status of all mitigation required for the project as specified in the application and authorization.
 - b) Current contact information for all responsible parties including phone number, email, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to, the permittee, consultant, and/or owner.
 - c) Clearly identify the specific monitoring period the report is intended to represent, as well as the calendar year the monitoring occurred. The report shall also provide a summary of current mitigation status, which compares the previous years' monitoring information with the current report including graphs and tables showing trends, etc.
 - d) A list of species planted in all mitigation areas.
 - e) The first-year report shall include plan views and cross sections of the as-built mitigation area including the location and types of planting.
 - f) Discussion of stability of the mitigation stream channel.
 - g) Stream physical habitat assessment (i.e., Qualitative Habitat Evaluation Index or Headwater Habitat Evaluation Index) of the mitigation stream channel.
 - h) A minimum of three high resolution color photographs taken for each mitigation stream, including one facing upstream, one facing downstream, and a close up which clearly depicts the substrate composition and size for each stream proposed for impact. Photographs must accurately depict the quality of the stream and may not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow or ice.

5) Monitoring Requirements

- a) At a minimum, the first, third and fifth year annual reports shall include longitudinal (profile view along the thalweg) and cross-sectional plan view measurements of the mitigation stream and shall be taken to include those measurements necessary to determine sinuosity, meander wavelength, belt width, radius of curvature, and meander arc length for a minimum of two meander bends if applicable.
- b) Observations of the stream mitigation channel and banks, including up and downstream, shall be made. Signs of negative effects from the stream mitigation such as excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation shall be noted in the annual report, and corrective actions shall be taken.

- c) For forested riparian buffers, the location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named. The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report.
 - d) For forested riparian buffers, standard forestry measurements (e.g., frequency, density, and dominance) for all woody species shall be calculated. These data shall be graphed against time to demonstrate that each of these areas is developing into a functional forested ecosystem.
- 6) Performance standards. Within five years after completion of construction of the mitigation, the permittee shall have:
- a) Provided the minimum number of linear feet of ephemeral stream mitigation required by Part V.C. above.
 - b) Demonstrated that the physical habitat assessment of the mitigation stream channel is equal to or greater than the physical habitat assessment of the originally impacted ephemeral stream.
 - c) Demonstrated that the stream mitigation channel and banks including up and downstream of the mitigation are stable and show no signs of excessive bank erosion, sedimentation, head cutting, aggradation, entrenchment, or degradation.
 - d) Demonstrated that a minimum of 400 native, live and healthy (disease and pest free) woody plants per acre (of which at least 200 are tree species) are present at the end of the monitoring period in the upland buffer, if applicable.

Part VI. MITIGATION FOR ISOLATED WETLAND IMPACTS

- A) Mitigation, in accordance with ORC Sections 6111.022(D) and 6111.027, is required in order to qualify for coverage under this general permit for impacts to isolated wetlands.
- B) Without the objection of the Director and at the discretion of the applicant, the applicant shall conduct either mitigation at a wetland mitigation bank within the same USACE district as the location of the proposed filling, permittee responsible mitigation, or at the director's discretion, the applicant may purchase credits from an approved In-lieu fee program that serves the impacted watershed.
- C) Mitigation for the filling of, or the discharge of dredged material into, isolated wetlands covered under this permit shall be conducted in accordance with the following ratios:
 - 1) For Category 1 and Category 2 isolated wetlands, other than forested Category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted at a rate of two times the area of isolated wetland that is being impacted;

- 2) For forested Category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted at a rate of two and one-half times the area of isolated wetland that is being impacted;
 - 3) All other mitigation shall be subject to mitigation ratios established in division (F) of rule 3745-1-54 of the OAC.
- D) Mitigation that involves the enhancement or preservation of isolated wetlands shall be calculated and performed in accordance with rule 3745-1-54 of the OAC.
- E) The mitigation site shall be protected long term, and appropriate practicable management measures, including reasonable vegetative buffers, shall be implemented to restrict harmful activities that jeopardize the mitigation.
- F) When mitigation will occur at an approved wetland mitigation bank or In-lieu Fee program, mitigation credits must be acquired within 15 days after receipt of the written notice of approval authorizing impacts to isolated wetlands. Proof mitigation credits have been purchased shall be sent to Ohio EPA within 15 days after receipt of approval for coverage under this general permit.
- G) Construction of permittee responsible mitigation not located at an approved bank, shall commence within 30 days after completion of fill activities authorized under this general permit, and shall be completed prior to termination of coverage of approval under this general permit specified in ORC 6111.022(E).

Part VII. LIMITATIONS

An applicant that qualifies for coverage under this general permit shall complete the filling of, and the discharge of dredged material within two (2) years after the end of the thirty-day period following the Director's receipt of a complete PAN. If the applicant does not complete the filling of, and the discharge of dredged material within that two-year period, the applicant shall submit a new PAN. This two-year, project-specific time limitation should not be confused with the five-year effective period of this general permit. If construction has started but is not complete, and the two-year time limitation has not expired, the permittee will be covered by the Isolated Wetland and Ephemeral Stream General Permit that was valid at the time Ohio EPA determined the project met the PAN requirements even if the five-year effective period has expired.

Part VIII. FURTHER INFORMATION

Coverage under this general permit does not relieve the permittee from the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.



May 22, 2020

Re: Comments on the United States Environmental Protection Agency’s (“EPA’s”) “Air Plan Approval; Ohio; Technical Amendment”, Docket ID No. EPA-R05-OAR-2020-0055, FRL-10006-83-Region 5

Dear Administrator Wheeler:

The Ohio Chamber of Commerce, the Ohio Chemistry Technology Council, The Ohio Manufacturers’ Association, API Ohio, and the Ohio Oil and Gas Association (the “Commenters”) respectfully submit the following comments in response to EPA’s proposed correction of the inclusion of Ohio’s air pollution nuisance rule, OAC 3745-15-07 (“Nuisance Rule”), in the applicable Ohio State Implementation Plan (“SIP”) under section 110 of the Clean Air Act (“CAA”), at 40 CFR 52.1870. The Commenters support EPA’s proposed action.

The Commenters agree with the agency’s proposal to remove the Nuisance Rule from the Ohio SIP on the basis 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 Ohio public nuisance provision is a general rule prohibiting public nuisances. It has no connection with the purposes for which SIPs are developed and approved, no reasonable connection with the NAAQS, and no connection to Ohio’s NAAQS control strategy. As such, EPA has clear authority under CAA Section 110(k)(6) to remove the Nuisance Rule from the SIP.

I. EPA Has Clear Authority to Remove the Nuisance Rule From the SIP.

Under CAA Section 110(k)(6), EPA has authority to revise a SIP whenever the agency determines that the “action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error.”¹ EPA interprets this provision to authorize EPA to correct a promulgated regulation when:

- (1) EPA clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and

¹ 42 U.S.C. § 7410(k)(6).

(2) [O]ther information persuasively supports a change in the regulation.²

EPA has used its Section 110(k)(6) authority many times to remove public nuisance provisions similar to the Ohio Nuisance Rule and has clear authority to do so here.

II. It Is EPA's Longstanding Policy and Practice to Remove General Nuisance Provisions From SIPs.

The CAA as amended in 1970 required the states, within nine months, to develop SIPs to reduce criteria pollutant emissions in areas not meeting the NAAQS. In response, thousands of state and local agency regulations were submitted to EPA for incorporation into SIPs in the 1970s and early 1980s.³ Many states and districts submitted their entire legacy air programs, “including many elements not required pursuant to the Act.”⁴ The Ohio Nuisance Rule was initially promulgated as regulation AP-2-07, now OAC-3745-15-07, by the Ohio Air Pollution Control Board (predecessor to Ohio EPA) and was approved as part of the Ohio SIP on April 15, 1974⁵. Due to resource constraints at the time, EPA focused its reviews of the submissions on “the required technical, legal, and enforcement elements” and conducted only “minimal review” of the other elements.⁶ EPA has since recognized that many of the provisions initially approved in SIPs “were not appropriate for approval,” including provisions “that prohibit emissions causing general nuisance or annoyance in the community.”⁷

In 1979, while EPA was in the process of reviewing many states' SIP submissions, EPA's Office of General Counsel (“OGC”) advised its Regional Counsel that a state's measures that either control non-criteria air pollutants or are not sufficiently related to a state's strategy for the attainment and maintenance of the NAAQS may not legally be included in the SIP.⁸ Consistent with EPA's guidance, numerous SIPs have been corrected to remove nuisance rules similar to Ohio's and other general air pollution control rules because those provisions do “not

² Designations of Areas for Air Quality Planning Purposes; Amendments and Corrections, 57 Fed. Reg. 56762, 56763 (November 30, 1992) (emphasis added).

³ Air Plan Revisions; California; Technical Amendments, 83 Fed. Reg. 43576, 43576 (Aug. 27, 2018) (proposed rule).

⁴ Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Wyoming; Corrections, 61 Fed. Reg. 47058, 47058 (Sept. 6, 1996).

⁵ EPA's initial approval of AP-2-07 in 1972 was vacated on procedural grounds in *Buckeye Power Inc. et al. v. EPA*, 481 F.2d 162 (6th Cir. 1973).

⁶ *Id.*; 83 Fed. Reg. at 43576.

⁷ 83 Fed. Reg. at 43576.

⁸ Memorandum from Michael James, Associate General Counsel of EPA's Air, Noise, and Radiation Division to Regional Counsels and Air Branch Chief regarding “Status of State/Local Air Pollution Control Measures not related to NAAQS,” February 9, 1979. See attached at Tab A.

have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act.”⁹ EPA also has rejected states’ requests to include such provisions in their SIPs.¹⁰

As EPA explained in past rulemakings, state and local agencies can choose whether to adopt and enforce nuisance provisions, but it would be inappropriate to make them federally enforceable.¹¹ General nuisance provisions have “essentially no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the [NAAQS].”¹² The Ohio Nuisance Rule is no different.¹³

The Ohio Nuisance Rule is most like the nuisance rules in California, Michigan, and Georgia, all of which were removed from their respective SIPs under CAA Section 110(k)(6). The Ohio Nuisance Rule provides, in part, that:

[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.

⁹ 63 Fed. Reg. at 65557 (Nov. 27, 1998) (removing “a general prohibition against air pollution” from the New York SIP because it was “not designed to control NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy.”); Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan, 71 Fed. Reg. 13551 (March 16, 2006) (removing a nuisance provision from the Georgia SIP, because it was “not related to the attainment and maintenance of the [NAAQS].”); Approval and Promulgation of Implementation Plans; Michigan Correction, 64 Fed. Reg. 7790, 7791 (February 17, 1999) (removing from the Michigan SIP a general nuisance provision primarily used to address odors and other local nuisances and not to attain or maintain the NAAQS); 61 Fed. Reg. at 47058 (Sept. 6, 1996) (removing odor control rules from the Wyoming SIP, because they had been “erroneously incorporated into the SIP” and “[did] not have a reasonable connection” to the NAAQS); Approval and Promulgation of Implementation Plans; Minnesota, 60 Fed. Reg. 27411 (May 24, 1995) (removing odor provision from the Minnesota SIP); Approval and Promulgation of Implementation Plans; Commonwealth of Puerto Rico, 62 Fed. Reg. 3211 (January 22, 1997) (removing odor provision from the Puerto Rico SIP); Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules, 83 Fed. Reg. 60386, 60388 (proposed rule) (November 26, 2018) (proposing removal of the definition of “nuisance” from the Oregon SIP because it is not “related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA.”); *see also* 84 Fed. Reg. 5000 (final rule) (February 20, 2019) (final removal of “nuisance” definition); Air Plan Revisions; California; Technical Amendments, 84 Fed. Reg. 45422, 45422 (August 29, 2019) (removing numerous local nuisance rules from the California SIP that had been “approved in error.”).

¹⁰ Clean Air Act Approval and Promulgation of PM₁₀ Implementation Plan for Montana, 59 Fed. Reg. 2537, 2539 (January 18, 1994) (declining to incorporate odor provisions into the Montana SIP as part of larger SIP submission); Approval and Promulgation of Implementation Plans: Washington, 59 Fed. Reg. 44324, 44326 (August 29, 1994) (same for Washington SIP).

¹¹ *See, e.g.*, 83 Fed. Reg. at 43577.

¹² *Id.* at 43576.

¹³ In 1999, Ohio submitted a request to EPA to modify the SIP to remove the nuisance provision. Ohio certainly would not have requested that the Nuisance Rule be removed from the SIP if the rule were part of its NAAQS control strategy.

The Ohio Nuisance Rule covers a broad range of activity, prohibiting the discharge from *any* source of *any* substance or odor that will harm the public or property. The Nuisance Rule is silent with respect to criteria air pollutants, and does not require any particular reductions or controls, or establish limits or standards. It is impossible to quantify reductions in criteria air pollutant emissions that can be attributed to future enforcement of the Nuisance Rule, and Ohio has not done so. Compliance with the Nuisance Rule can only be determined through case-by-case adjudications of subjective factors (and exhaustion of appellate remedies), without any pre-defined compliance test methods. Contrary to CAA Section 110(a)(2), the Ohio Nuisance Rule does not limit “the quantity, rate, or concentration of emissions of air pollutants on a continuous basis” to enable a State to rely on it for purposes of its NAAQS demonstration. Reductions in criteria pollutant emissions from compliance with the Nuisance Rule are not, and could not possibly be, quantified or accounted for in Ohio’s attainment demonstration.

Like the provisions EPA has already removed from other SIPs, the Ohio provision is a general prohibition against public nuisances.¹⁴ Most recently, EPA issued a technical correction to the California SIP, to remove numerous local nuisance rules very similar to the Ohio Nuisance Rule that were “approved in error.”¹⁵ In each case, the local rule prohibits the discharge of “air contaminants or other material which cause injury, detriment, nuisance, or annoyance . . .”¹⁶ EPA determined that the local nuisance rules were included in error because they are general prohibitions against air pollution and not part of the districts’ NAAQS control strategies.¹⁷

Michigan’s Rule 901 was removed from Michigan’s SIP in 1999 for similar reasons. EPA determined that Rule 901 is “a general rule that prohibits the emission of an air contaminant which is injurious to human health or safety . . . or which causes unreasonable interference with the comfortable enjoyment of life or property.”¹⁸ In using its authority to correct the Michigan SIP under CAA Section 110(k)(6), EPA explained that it was removing the nuisance rule from the SIP because it primarily has been used to address odors and other nuisances and “the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act.”¹⁹ Likewise, Georgia’s nuisance rule was removed from the SIP pursuant to CAA Section 110(k)(6) “because the rule is not related to the attainment and maintenance of the NAAQS.”²⁰

Ohio’s Nuisance Rule is no different than the California, Michigan, Georgia and other nuisance rules that have been removed from SIPs. The Ohio Nuisance Rule prohibits undefined quantities of “smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances . . .” Similarly, the Michigan nuisance rule (Mich. Admin. Code R 336.1901) prohibits “air contaminants,” defined as “dust, fume, gas, mist, odor,

¹⁴ The general nuisance provision is even couched, aptly, in the “General Provisions on Air Pollution Control” section of the Ohio SIP.

¹⁵ 84 Fed. Reg. at 45422.

¹⁶ 83 Fed. Reg. at 43577; *see, e.g.*, Amador County APCD Rule 205 (nuisance); Butte County AQMD Section 2-1 (nuisance).

¹⁷ 83 Fed. Reg. at 43576-77.

¹⁸ 64 Fed. Reg. at 7791.

¹⁹ *Id.*

²⁰ 71 Fed. Reg. at 13552.

smoke, vapor, or any combination thereof.”²¹ *Id.* at R 336.1101(f). The Georgia nuisance rule (Ga. Comp. R. & Regs. 391-3-1-.02(2)(a)(1)) also prohibits “air contaminants”, including but not limited to “solid or liquid particulate matter, dust, fumes, gas, mist, smoke, or vapor . . .” *Id.* at 391-3-1-.01(c). And many of the local rules removed from the California SIP prohibit “air contaminants,” which are defined, for example, to include “smoke, dust, charred paper, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter.” Amador County APCD Rule 102 (definition of “air contaminant or pollutant”); Amador County APCD Rule 205 (nuisance). EPA recognizes that broadly-defined air pollution, as in the aforementioned cases, “does not necessarily equate to a condition that would interfere with attainment or maintenance of the NAAQS.”²² The term “air contaminant,” as used in the California, Michigan, Georgia, and other nuisance rules, matches the list of substances regulated in the Ohio Nuisance Rule, i.e., “smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances.”²³

In addition to the state-specific cases, EPA has even given an example of a nuisance provision that would not be appropriate for inclusion in a SIP:

“A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.”²⁴

The Ohio Nuisance Rule is almost identical to EPA’s hypothetical provision and is no more related to attainment and maintenance of the NAAQS than EPA’s example or the general nuisance provisions that EPA has already removed from other SIPs.

III. Keeping the Nuisance Rule in Ohio’s SIP is Unnecessary to Protect Public Health and Welfare.

Finally, EPA must reject arguments that retaining the Nuisance Rule is needed to protect public health and welfare or air quality. First and foremost, the decision to remove the Nuisance Rule from the SIP must be guided by the law—the plain language of the CAA—and not any individual or group’s interest in retaining the status quo. Nothing in 42 U.S.C. § 7410 would allow EPA to retain SIP provisions unrelated to the “implementation, maintenance, and enforcement” of primary and secondary NAAQS, even if doing so were necessary to advance public policy goals unrelated to Section 110’s purpose.

²¹ *Id.*

²² 83 Fed. Reg. at 6974.

²³ *Cf.*, e.g., N.Y. Comp. Codes R. & Regs. tit. 6, § 211.1 (general prohibition on the emission of “air contaminants,” defined at § 200.1 to include “chemical[s], dust, compound[s], fume[s], gas[es], mist, odor[s], smoke, vapor[s], pollen or any combination thereof”).

²⁴ 83 Fed. Reg. at 43576 n.1.

But keeping the Nuisance Rule in Ohio's state plan is not necessary to protect public health and welfare or air quality, for several reasons. First, the law in Ohio prohibiting public nuisances will not change when the Nuisance Rule is removed from the SIP. The rule, OAC 3745-15-07, will remain an enforceable provision in the state air regulations just as it always was. Second, Ohio citizens will continue to be able to bring a variety of public and private common law nuisance claims against defendants that interfere with the use and enjoyment of property. Third, citizens also will retain the right to bring CAA citizen suit actions for violations of emission limits and standards that are part of the state plan to attain and maintain compliance with the NAAQS. 42 U.S.C. 7604(a)(1). Citizen suits within the scope of Section 110 of the CAA will not be affected by EPA's proposal to correct the erroneous inclusion of the Nuisance Rule in the SIP.

IV. Conclusion

SIPs have a singular purpose, to control NAAQS regulated pollutants, and they may only include provisions that are part of the state's NAAQS control strategy. The Nuisance Rule is a general prohibition against public nuisances, not an emission limit or standard intended to control NAAQS regulated pollutants. The former Ohio Air Pollution Control Board never determined, demonstrated, or even considered, in 1972 when the nuisance rule (then AP-02-07) was submitted, or in 1974 when the nuisance rule was approved as part of the SIP, that the nuisance rule was "necessary or appropriate" to attain and maintain the NAAQS. And Ohio has since affirmed that it has never relied on the Nuisance Rule or intended to rely on the Nuisance Rule in any attainment demonstration or otherwise considered the Nuisance Rule to be part of its NAAQS control strategy. Accordingly, the Nuisance Rule should never have been included in Ohio's SIP, and our associations support EPA's decision to correct the error, as it has done in many other states, using CAA Section 110(k)(6).

Sincerely,

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02/09/1979

VOC570209791

Category: 57 – Exemptions/Applicability

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
February 9, 1979

Office of
General Counsel

MEMORANDUM

SUBJECT: Status of State/Local Air Pollution Control
Measures Not Related to NAAQS

FROM: Michael A. James, Associate General Counsel
Air, Noise and Radiation Division (A-133)

TO: Regional Counsels
Regional Air Branch Chiefs

I want to bring to your attention an issue that I neglected asking Jeff Corer and Larry Novey to mention at the Air Branch Chiefs' Meeting in Atlanta last week. That issue is the status on the SIP of State or local air pollution control measures that are not designed to control national ambient air quality standard (criteria) pollutants or their precursors.

OGC has always advised the Regions that measures to control non-criteria pollutants may not legally be made part of a SIP. Section 110 of the Clean Air Act makes clear that the SIPs have this limitation.¹ This limited scope seems to be pretty well understood and only rarely does a Regional Office include a non-criteria pollutant measure in a SIP approval proposal.

I mention this now because as States submit their major SIP revisions to meet the new requirements of Part D and other provisions of the 1977 Amendments, they may not always differentiate between their regulations to control criteria pollutants and their air pollution control regulations in general. The Regional Office should differentiate if the State does not. The usual practice is that the Region notes in the proposed approval/disapproval preamble that EPA is not taking any action on an identified non-criteria pollutant measure because it cannot legally be part of the SIP.

Regulations for controlling odors, fluorides,² and arsenic are some of the non-criteria pollutant measures that have been included in State submissions for EPA approval. Visible emissions regulations are, to my knowledge, always considered SIP measures and are required for many source

¹ Measures that are not part of the approved SIP may not be enforced by EPA.

² State fluoride regulations covering certain source categories are subject to EPA approval under S 111(d), but not as parts of SIPs.

categories by 40 CFR 51.19©). If you have any questions about whether a particular emission limitation may be included in the SIP, please contact OAQPS staff on technical issues, and my staff on legal questions.

cc: Dick Rhoads
Steve Kuhrtz

SUMMARY OF PROPOSAL TO RETAIN THE AIR QUALITY STANDARDS FOR PARTICLE POLLUTION

On April 14, 2020 U.S. Environmental Protection Agency (EPA) proposed to retain the nation's air quality standards for particle pollution, also referred to as particulate matter or PM.

THE PROPOSED STANDARDS

- The Clean Air Act requires EPA to set two types of outdoor air quality standards: *primary standards*, to protect public health, and *secondary standards*, to protect the public against adverse environmental effects. The law requires that primary standards be “requisite to protect public health with an adequate margin of safety,” including the health of sensitive groups of people. For PM, the evidence suggests that people with heart or lung disease, children and older adults, and nonwhite populations are at particular risk. Secondary standards must be “requisite to protect the public welfare” from both known and anticipated adverse effects.
- EPA will accept public comment for 60 days after the proposed standards are published in the Federal Register. Details on virtual public hearings will be announced shortly. EPA will issue the final standards by the end of 2020.

Primary (Health) Standards for Fine Particles:

- EPA sets both an annual and a 24-hour standard for fine particles (PM_{2.5}). These standards work together to protect the public from harmful health effects from both long- and short-term fine particle exposures.
- EPA reviewed thousands of studies as part of this review of the standards, including hundreds of new studies published since EPA completed the last review in 2012. The new evidence includes many new epidemiological, controlled human exposure, and animal toxicological studies. EPA also considered analyses by agency experts and input from the Clean Air Scientific Advisory Committee (CASAC).
- **Annual standard:** The annual fine particle standard is designed to protect against health effects associated with both long- and short- term exposure to PM_{2.5}. The current annual standard has been in place since 2012.
 - **EPA is proposing to retain the current annual standard, with its level of 12.0 µg/m³.** An area would meet the standard if the three-year average of its annual average PM_{2.5} concentration is less than or equal to the level of the standard.
- **24-hour standard:** The 24-hour primary standard is designed to provide supplemental health protection against short-term fine particle exposures, particularly in areas with high peak PM_{2.5} concentrations. The current 24-hour standard was issued in 2006.

- EPA is proposing to retain the existing 24-hour standard, with its level of 35 $\mu\text{g}/\text{m}^3$. An area would meet the 24-hour standard if the 98th percentile of the yearly distribution of 24-hour $\text{PM}_{2.5}$ concentrations, averaged over three years, is less than or equal to 35 $\mu\text{g}/\text{m}^3$.

Primary (Health) Standard for Coarse Particles

- EPA is proposing to retain the existing 24-hour primary standard for coarse particles (PM_{10}), with its level of 150 $\mu\text{g}/\text{m}^3$. An area meets the 24-hour PM_{10} standard if it does not exceed the 150 $\mu\text{g}/\text{m}^3$ level more than once per year on average over a three-year period.
- The existing coarse particle standard has been in place since 1987.

Secondary Standards for Particle Pollution:

- Particle pollution causes haze in cities and some of the country's most treasured national parks. In addition, particles such as nitrates and sulfates contribute to acid rain formation which erodes buildings, historical monuments, and paint on cars. Particle pollution also can affect the climate by absorbing or reflecting sunlight, contributing to cloud formation and influencing rainfall patterns.
- EPA's current secondary standards for particle pollution are identical to the primary standards for $\text{PM}_{2.5}$ and PM_{10} , except for the annual $\text{PM}_{2.5}$ standard which has a level of 15.0 $\mu\text{g}/\text{m}^3$. After reviewing the science on particle pollution, analysis by EPA experts and advice from the agency's independent science advisors, the Clean Air Scientific Advisory Committee (CASAC), EPA is proposing that the current secondary standards are adequate to protect against PM-related visibility impairment, climate effects, and effects on materials.

BACKGROUND

- EPA has regulated particle pollution since 1971. The agency has revised the standards four times -- in 1987, 1997, 2006 and 2012 – to ensure they continue to protect public health and welfare. A [table of historical PM standards](http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_history.html) is available at http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_history.html)
- The Clean Air Act requires EPA to review national air quality standards every five years to determine whether they should be retained or revised.

FOR MORE INFORMATION:

- To read the proposal, visit <https://www.epa.gov/naaqs/particulate-matter-pm-standards-federal-register-notice-current-review>

For technical documents related to this review of the standards, visit <https://www.epa.gov/naaqs/particulate-matter-pm-air-quality-standards>

Coronavirus stalls testing for forever chemicals in Ohio's public water systems

Beth Burger

The Columbus Dispatch

Posted Mar 19, 2020 at 1:17 PM

Testing of a vast majority of the state's water systems has been postponed as a result of the coronavirus.

Ohio's testing of 90% of the state's public water systems for so-called "forever chemicals" has come to a halt due to the coronavirus pandemic.

This month, the **Ohio Environmental Protection Agency began testing the state's public water systems** for the family of thousands of man-made per- and polyfluoroalkyl substances (PFAS) known as forever chemicals. The testing began with schools and day care sites that have their own water systems.

Once consumed, forever chemicals can harm the immune system and development in infants and children, increase the risk of cancer, reduce fertility in women, interfere with hormones, and increase cholesterol levels, according to the federal Centers for Disease Control and Prevention.

"Ohio EPA has sampled 229 out of a total of 245 schools and day cares that have their own public water systems. These systems were prioritized under the action plan because they serve sensitive populations of children," said Heidi Griesmer director of communications for Ohio EPA. "To date, Ohio EPA has received laboratory results from 121 schools and day cares, with 120 systems not showing any detection of PFAS chemicals."

The **one positive sample** for forever chemicals was at the Manchester United Methodist Church/Here for You Preschool and Child Development Center in New Franklin in Summit County.

Between PFOS and PFOA categories, testing levels found were at 42.3 parts per trillion. Collectively, the totals between all categories tested was nearly 200 parts per trillion.

Although the U.S. Environmental Protection Agency does not regulate these chemicals, it has issued an advisory guideline of 70 parts per trillion (ppt) that Ohio is using.

“If these are testing results and not below the detection limit, we would raise concern that the total concentration of PFAS is nearly 200 ppt,” said David Andrews, a researcher in chemistry and nanotechnology at Environmental Working Group, a health and environmental nonprofit. “Many states have or are in the process of setting limits near 10 ppt for PFOA/PFOS and other [forever chemicals].”

Employees at the Manchester preschool and day care center reported to Ohio EPA that they have not used their well for drinking water for about 20 years, according to a statement.

Because of that, “Ohio EPA does not anticipate any immediate response protocols to be issued for the site,” the agency said in a statement.

However, the Ohio EPA does plan to sample schools near the Manchester preschool site once testing resumes. The agency suspended sampling on Monday.

“There are a lot of entities that are being shut down and will not be operational, including schools and day cares, etc. So we definitely have some limitations on the degree that we can move forward with sampling at this point in time, but certainly it’s a high priority of ours,” Ohio EPA Director Laurie Stevenson said in an interview with The Dispatch. “And as soon as we’re able to mobilize back and continue those activities, we want to step back in as soon as possible.”

It’s unclear when testing will resume.

“Until such time as sampling is resumed, Ohio EPA will continue to review incoming sample results for all sampling completed prior to March 16,” Griesmer said.

The new coronavirus has many Ohio EPA employees working remotely but allows them to still “be responsive on a day-to-day basis on questions that may come up from both regulated entities and citizens,” Griesmer said.

The agency’s critical core functions continue, she said, including: “maintaining emergency-response capabilities to respond to releases and other environmental emergencies; assisting communities in ensuring continued operation of critical

infrastructure, which includes drinking-water and wastewater plants; [and] supporting Ohio's Emergency Operations Center."

bburger@dispatch.com

Ohio EPA suspends testing drinking water for 'forever chemicals' amid COVID-19 concerns

Ismail Turay Jr. – Dayton Daily News

The Ohio Environmental Protection Agency has temporarily suspended testing the state's more than 1,500 public drinking water systems for so-called "forever chemicals" amid the COVID-19 pandemic.

The testing program was suspended on March 16, after Gov. Mike DeWine issued a stay-at-home order, forcing businesses and public buildings where getting access to samples would not be possible, said Heidi Griesmer, deputy director of communications for the agency. The governor's order is aimed at slowing the spread of COVID-19.

The Ohio EPA officially kicked off the testing program at the beginning of March. Of the water systems tested in eight Southwest Ohio counties so far, all were determined to be safe, according to Ohio EPA.

The testing is part of Ohio's PFAS action plan — released in December — to determine if the contaminants are present in drinking water. The plan was to start with the 245 schools and daycare facilities across the state that have their own public water systems. "These systems were prioritized under the action plan because they serve sensitive populations of children," Griesmer said.

The state's EPA and health department developed the plan last summer in an effort to address potential threats to both public and private drinking water systems.

PFAS, or per-and polyfluoroalkyl substances, were once widely used in manufacturing, carpeting, upholstery, food packaging and other commercial and military uses. Notably, the substances were — and still are, in some places — used to extinguish fires that couldn't be extinguished with water alone.

PFAS-based foams were formerly used at the city of Dayton Fire Training Center during testing exercises. The foams also have been used in exercises and actual fires at Wright-Patterson Air Force Base. Both sites are located above the aquifer that supplies the region's drinking water.

Levels of PFAS were discovered in both Dayton and Wright-Patt drinking water supplies several years ago and both took the appropriate steps to minimize the risk to people, the Ohio EPA has said.

Ohio EPA's PFAS action plan and the testing will not affect the city of Dayton, which supplies drinking water to more than 400,000 people, including Montgomery County residents, Dayton Water Director Michael Powell has said. That's because the city already monitors the raw and effluent water at both of its water treatment plants monthly, he said, noting that results are sent to the state.

Before testing was suspended, the Ohio EPA sampled 229 of the state's 245 schools and daycare facilities for PFAS, Griesmer said. The agency received laboratory results for 222 of the tests, with 199 schools and daycare facilities' water systems were non-detect for PFAS, meaning the level of contaminants were below the reporting limits. The U.S. EPA has set a health advisory for chemicals, recommending drinking water not contain PFAS above 70 parts per trillion.

In Southwest Ohio, the Ohio EPA tested at least one public water system each in Champaign, Clark, Darke, Greene, Logan, Mercer and Miami counties. The Ohio EPA hired three contractors to conduct the tests, Griesmer said. The contractors collected the water samples, which were sent to labs for testing, and the results were given to the state.

Municipalities have the option of conducting their own tests and sending the results to the state, as long as they follow the same collection procedures and methods as Ohio EPA. They also must meet the quality assurance results and agree to allow the agency to post the results on its website, Griesmer said. Although testing has been suspended, the Ohio EPA will continue reviewing incoming results for all sampling that were completed prior to March 16, Griesmer said.

"PFAS testing remains a priority of this administration, and Ohio EPA will resume coordination of sampling and testing of all remaining public water systems under the action plan, as soon as we are able to have our contractors back out to sample these systems," Griesmer said. "At this time, we do not have a specific timeframe on when this will occur, but we intend to re-mobilize as soon as it is safe to do so."

Public drinking water systems in Southwest Ohio that have been tested for PFAS so far

- Champaign County: 6 of 27
- Clark County: 7 of 40
- Darke County: 3 of 14
- Greene County: 1 of 23
- Logan County: 3 of 42
- Mercer County: 2 of 16
- Miami 4 of 15



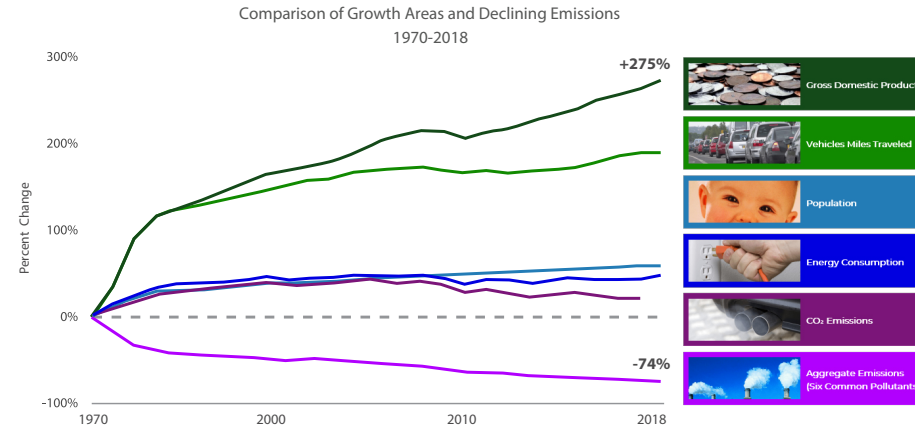
Our Nation's Air

Air Quality Improves as America Grows

<https://gispub.epa.gov/air/trendsreport/2019>

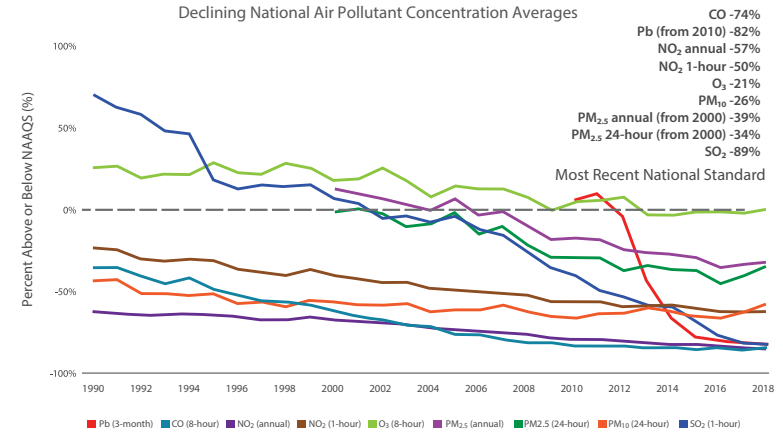
Economic Growth with Cleaner Air

Between 1970 and 2018, the combined emissions of the six common pollutants (PM_{2.5} and PM₁₀, SO₂, NO_x, VOCs, CO and Pb) dropped by 74 percent. This progress occurred while the U.S. economy continued to grow, Americans drove more miles and population and energy use increased.



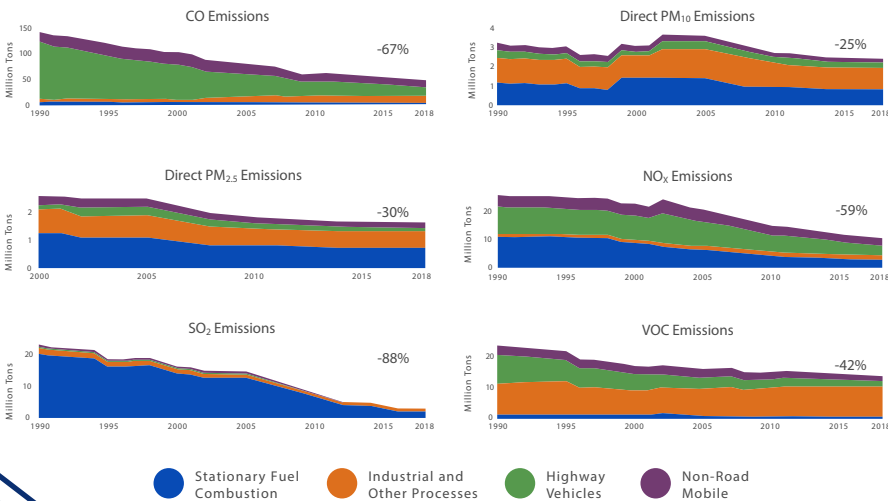
Air Quality Trends Show Clean Air Progress

While some pollutants continue to pose serious air quality problems in areas of the U.S., nationally, criteria air pollutant concentrations have dropped significantly since 1990 improving quality of life for many Americans. Air quality improves as America grows.



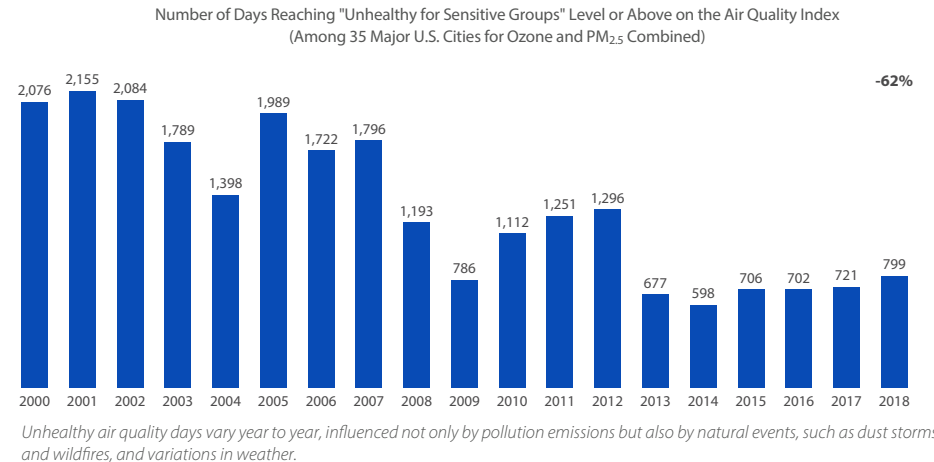
Air Pollutant Emissions Decreasing

Emissions of key air pollutants continue to decline from 1990 levels. These reductions are driven by federal and state implementation of stationary and mobile source regulations.



Unhealthy Air Days Show Long-Term Improvement

The Air Quality Index (AQI) is a color-coded index EPA uses to communicate daily air pollution for ozone, particle pollution, NO₂, CO, and SO₂. A value in the unhealthy range, above national air quality standard for any pollutant, is of concern first for sensitive groups, then for everyone as the AQI value increases. Fewer unhealthy air quality days means better health, longevity, and quality of life for all of us.



Environment

Senate Committee Passes OMA-Supported Auxiliary Container Preemption Bill

May 22, 2020

This week a Senate committee passed **House Bill 242** along party lines. The bill prohibits local governments from placing fees or taxes on auxiliary containers or packaging including plastic bags and cardboard containers. The bill was amended to sunset after 12 months. The OMA **provided proponent testimony** and has actively worked to pass the bill in both the House and Senate. *5/21/2020*

U.S. EPA Updates FAQs on Disinfecting

May 15, 2020

The U.S. EPA has updated its **FAQs page** on disinfectants and COVID-19. Included are responses to questions about **UV lights and air purifiers, hand sanitizers, and fumigation**. *5/13/2020*

Ohio Lake Erie Commission Releases 2020 Plan

May 15, 2020

The Ohio Lake Erie Commission recently approved its 2020 Lake Erie Protection and Restoration Plan (LEPR). The LEPR, last published in 2016, reflects actions that the commission and its member agencies will take over the next several years to protect and restore the lake, while promoting economic development for the region. The state's actions complement federal and local initiatives. The plan is available at the **Ohio Lake Erie Commission website**. *5/14/2020*

Ohio Submits 2020 Integrated Water Quality Monitoring and Assessment Report

May 15, 2020

This week, the Ohio Environmental Protection Agency submitted the final 2020 Integrated Water Quality Monitoring and Assessment Report to U.S. EPA for approval. The final report is **available here**. *5/14/2020*

Ohio EPA Asks for Comments on Ephemeral Streams and Isolated Wetlands Permit

May 15, 2020

Ohio EPA has issued a public notice for a new general permit, titled "Ohio General Permit for Filling Category 1 and Category 2 Isolated Wetlands and Ephemeral Streams." This covers the filling of, and the discharge of, dredged material into ephemeral streams determined to not be waters of the U.S. and not subject to Section 404 or 401 of the Clean Water Act. Ohio EPA's stated intent with the general permit is to fill gaps in the regulatory landscape after the issuance of U.S. EPA's Navigable Waters Protection Rule.

Ohio EPA has asked that comments on the general permit be submitted by June 1. All comments should be submitted by **email** or by U.S. Mail, sent to: Ohio EPA, Division of Surface Water – Permits Processing Unit, P.O. Box 1049, Columbus, Ohio 43216-1049. Please let **Rob Brundrett** know if your company is interested in submitting comments.

Meanwhile, on May 21, OMA environmental counsel Bricker & Eckler LLP will be hosting an **informative webinar** on this issue, as well as the impacts of the District of Montana decision on Nationwide Permit 12 and Ohio EPA's 401 water quality certifications. *5/14/2020*

Lake Erie Remains at Record High Levels

May 8, 2020

Lake Erie last month broke its April record, rising 9 inches above the April 2019 level. The U.S. Army Corps of Engineers says the lake has broken high water average records for eight of the last 12 months, according to **reports**. *5/6/2020*

U.S. EPA Will Hold Call on Disinfecting the Workplace

May 1, 2020

Ohio business leaders are invited to take part in a call with U.S. EPA Administrator Andrew Wheeler on Monday, May 4, at 4:15 p.m. (ET). Call-in line is (866) 609-6049, followed by this code: 6429667.

The call will focus on the recent guidance from the EPA and the Centers for Disease Control and Prevention (CDC) to help facility operators and families properly clean and disinfect spaces to prevent the spread of COVID-19.

The call will include a question and answer session for Ohio businesses in attendance. If a company would like to ask a question, **email EPA staff.** 4/30/2020

U.S. EPA and Army Corps Publish Final WOTUS Rule

May 1, 2020

The U.S. EPA and the Army Corps of Engineers recently published the long-awaited final “waters of the United States” rule, which defines the scope of waters that are federally regulated under the Clean Water Act. It will go into effect June 22. According to **analysis** by OMA Connections Partner Thompson Hine, industry groups and agricultural groups have hailed the Trump administration’s rule, but legal battles are on the horizon. 4/28/2020

Post-COVID-19 Environmental Compliance Checklist

May 1, 2020

As companies begin re-opening or resuming normal operations, OMA Connections Partner Thompson Hine has developed **this checklist** that businesses can use to assess their environmental compliance status following the lifting or reduction of federal and state limitations and guidelines. 4/28/2020

U.S. Supreme Court Rules that the Clean Water Act Regulates Groundwater

April 24, 2020

In a 6-3 opinion issued Thursday, April 23, the **U.S. Supreme Court ruled** that the federal Clean Water Act regulates activities releasing pollutants that are eventually conveyed through groundwater to navigable water. Rejecting the Trump administration’s views, the majority ruled in **County of Maui v. Hawaii Wildlife Fund et al.** that a permit is required when there is a direct discharge from a point source into navigable waters, or when there is the “functional equivalent of a direct discharge.”

According to the OMA’s legal counsel, Bricker & Eckler, the Supreme Court’s decision is likely to have far reaching implications for permitting and enforcement pursuant to the Clean Water Act. 4/23/2020

Ohio EPA’s Earth Day Reminder: Free, Confidential Compliance Assistance Available

April 24, 2020

To mark the **50th anniversary celebration of Earth Day**, Ohio EPA this week noted that half a century ago, businesses had few places to go for guidance with environmental issues. Today, Ohio’s businesses can contact Ohio EPA for free and confidential compliance assistance. According to the agency, compliance staff has assisted more than 80,000 businesses. **Learn more here.** 4/22/2020

U.S. EPA Proposes to Retain Current Particulate Matter Standards

April 17, 2020

On April 14, U.S. EPA **proposed to retain** the current national ambient air quality standards (NAAQS) for particulate matter (PM) without revision. After reviewing the air quality criteria and primary and secondary NAAQS for fine and coarse PM, the agency concluded that there is insufficient scientific evidence to support tightening these standards. U.S. EPA Administrator Andrew Wheeler stated he believes the current levels will be protective of public health while the agency continues to evaluate PM. EPA will accept public comment for 60 days after the proposed standards are published in the Federal Register. 4/16/2020

\$9M Awarded to Great Lakes Restoration Efforts

April 17, 2020

This week, the U.S. EPA **announced** 15 Great Lakes Restoration Initiative (GLRI) grants totaling more than \$9 million to fund projects addressing excess nutrient runoff from non-point sources, including stormwater and agriculture, to the Great Lakes. Approximately \$2.5 million of this amount will be going to Ohio entities. 4/14/2020

Honda, GM Announce Jointly Developed Electric Vehicles

April 10, 2020

General Motors and Honda **recently announced** an agreement to jointly develop two new Honda electric vehicles (EV) using GM's global EV platform powered by proprietary batteries. The vehicles are scheduled to be released for the 2024 model-year.

"This collaboration will put together the strength of both companies, while combined scale and manufacturing efficiencies will ultimately provide greater value to customers," said Rick Schostek, executive vice president of American Honda Motor Co. Meanwhile, U.S. Sen. **Rob Portman** (R-OH) and U.S. Rep. **Tim Ryan** (D-Niles) celebrated the news, noting that the cars would use batteries made at the forthcoming Lordstown plant. *4/7/2020*

H2Ohio Funding at Risk Due to Pandemic

April 10, 2020

The **H2Ohio program** could see its funding cut due to reductions in state spending during the coronavirus outbreak. Hannah News Service reported this week that Ohio Department of Agriculture Director Dorothy Pelanda said the program will undergo a budgetary "reevaluation" along with other agency programs as a result of the pandemic.

Earlier this year, Gov. Mike DeWine and Pelanda announced that \$30 million in H2Ohio funding would be made available for farmers in 14 Northwest Ohio counties to reduce agricultural phosphorous pollution, which is the most significant contributor to the formation of harmful algal blooms in Lake Erie. *4/7/2020*

Fuel Economy Rules Rolled Back

April 3, 2020

On March 31, the Trump administration **announced** it had finalized its roll-back of the Obama-era fuel economy standards for automakers. The administration says the move will save 3,300 lives, as well as billions of dollars in added costs. Several environmental groups have already promised lawsuits over the new rule, which requires that auto fleets average 40 mpg by 2026 — versus 55 mpg by 2025.

The Alliance for Automotive Innovation, which represents major auto manufacturers, **said this**

week that progress toward manufacturing more fuel-efficient vehicles will continue regardless. *3/31/2020*

Ohio EPA Advises Against Flushing Wipes

April 3, 2020

You knew this was coming: As some Ohioans search for alternatives to toilet paper, Ohio EPA this week **issued an advisory** to not flush any product other than toilet paper to avoid clogging sewers and septic systems. *3/31/2020*

Ohio EPA COVID-19 Guidance

March 27, 2020

Ohio EPA has announced that all regulated entities remain obligated to take all available actions necessary to ensure compliance with environmental regulations and permit requirements.

Of course, in some instances regulated entities will have an unavoidable non-compliance situation directly related to COVID-19. In these cases, the director of Ohio EPA may consider providing regulatory flexibility, where possible, to assist entities in alternative approaches to maintaining compliance, such as extending reporting deadlines, waiving late fees, and exercising enforcement discretion.

An **email address** has been established by the agency to accept such requests. **Click here** for more details. *3/26/2020*

Ohio EPA Requests Electronic Filings of Plans, Permit Applications

March 27, 2020

Ohio EPA has **announced** that because its district offices and central office are temporarily closed, businesses are encouraged to submit plans, permit applications, and other required documents electronically when there are existing avenues to do so, such as eBiz. 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 are **available on YouTube**. *3/25/2020*

How to Contact Ohio EPA Staff During the COVID-19 Crisis

March 20, 2020

Due to COVID-19 concerns, Ohio EPA is currently operating with many staff members working remotely. The agency wants businesses to know that if you are working with staff on a current project — and you know the name of the employee you are working with — you can email them using this format: **firstname.lastname@epa.ohio.gov**. Or call the employee directly.

The **agency's website** has contact information for every district, division, and office. Businesses can contact Ohio EPA's main phone line at (614) 644-3020. To report a spill or environmental emergency, contact the spill hotline (800) 282-9378 or (614) 224-0946. *3/20/2020*

OMA Submits Comments on Two Lake Erie Plans

March 6, 2020

This week, the **OMA submitted comments** on two different clean water draft plans issued by the Ohio Lake Erie Commission.

Earlier this year, officials announced the release of the updated **Ohio Domestic Action Plan**, aimed at reducing phosphorus in Lake Erie under the bi-national Great Lakes Water Quality Agreement. Last month, the **Lake Erie Protection and Restoration Plan (LEPR)** for 2020 was also released for public comment. The LEPR, last published in 2016, reflects actions that the Ohio Lake Erie Commission and its member agencies will take during the next several years.

The OMA has created a water nutrient working group to respond and actively engage on water quality issues to ensure that manufacturing interests are heard. *3/5/2020*

Testing Begins for PFAS in Ohio Drinking Water

March 6, 2020

Ohio EPA **has begun collecting samples** to test for the presence of certain per- and polyfluoroalkyl substances (PFAS) in Ohio's drinking water. Ohio EPA expects to complete its sampling of Ohio's 1,500 public water systems by the end of 2020. The agency has created **this site** for updates. (It's worth noting that testing for PFAS in human blood has

shown **significant declines** over the past decade thanks to collaborative efforts led by manufacturers.)

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 OMA's **Rob Brundrett**. *3/2/2020*

Cleveland Manufacturers Could See More Regulation Due to Federal Ozone Standards

February 28, 2020

Ohio EPA this week hosted its **second regional meeting** for interested parties, including manufacturers and the OMA, to discuss the likelihood that the Cleveland airshed will be bumped up from "marginal" to "moderate non-attainment" under the federal ozone standard. The standard was lowered to 70 parts per billion during the Obama administration. Earlier this month, Ohio EPA notified parties in the **Cincinnati area** of the same possibility. A change in status will trigger additional compliance requirements under the federal Clean Air Act. One of the key components of additional regulatory restrictions would be emissions offsets, so that any new emissions creator would need to be set at the New Source Review offset ratio 1.15:1.

The OMA will continue to work with members and Ohio EPA on this important issue that could affect many of the state's manufacturers and Ohio's overall economy. *2/27/2020*

Trump Administration Plans Overhaul of NEPA Review Process

February 28, 2020

The White House Council on Environmental Quality has published a notice of proposed rulemaking reflecting changes to the implementation of the National Environmental Policy Act (NEPA). The proposed changes would streamline NEPA's environmental review process and narrow how, and whether, federal agencies consider the effects of climate change in their review of energy and infrastructure projects.

OMA Connections Partner Jones Day, in its **quarterly update**, notes the proposed rule "will shorten the environmental review process

and improve coordination between local, state and federal permitting agencies.” The public comment period is open until March 10, as the administration seeks to get the final rule published before the November election. *2/27/2020*

TMDL on the Horizon for Lake Erie February 21, 2020

Last week, Ohio EPA released its draft “2020 Integrated Water Quality Monitoring and Assessment Report,” which is available for comment until March 13, 2020. This report is noteworthy because for the first time Ohio is identifying Lake Erie’s western basin as an “impaired” water. Due to this declaration, Ohio EPA is now committed to prepare a total maximum daily load (TMDL) analysis. **Learn more here.**

The OMA will be reviewing the report and preparing comments for members. The new TMDL has the potential to impact many manufacturers with operations in Northwest Ohio.

Ohio EPA will present information about the draft impaired waters list during the agency’s 2 p.m. webinar on Monday, March 2. The webinar can be viewed at Ohio EPA’s central office (50 West Town Street, Suite 700, in Columbus) or **online**. *2/20/2020*

Ohio EPA Launches ‘Ask an Expert’ February 21, 2020

Ohio EPA’s Office of Compliance Assistance and Pollution Prevention (OCAPP) has created a new avenue for companies to receive free and confidential environmental assistance regarding regulatory concerns about air, waste, water, and other environmental requirements. This service is available Monday through Friday, from 10 a.m. to 12 p.m. — and from 1 p.m. to 3 p.m. To utilize this service, **click here**. *2/20/2020*

Webinar to Spotlight Ohio Plan to Reduce Phosphorus in Lake Erie February 21, 2020

Ohio EPA has **announced** that the Ohio Lake Erie Commission will host a **webinar** on Monday, Feb. 24, from 4 to 5 p.m. to answer questions about the draft “Ohio Domestic Action Plan 2020,” released late last month. The plan seeks to reduce phosphorus from entering Lake Erie under the binational Great Lakes Water

Quality Agreement in accord with Gov. DeWine’s H2Ohio plan. *2/19/2020*

At a Glance: America’s Improved Air Quality February 21, 2020

The U.S. EPA has published **this flier** showing that between 1970 and 2018, the combined emissions of the six common pollutants dropped by 74% across the U.S. This progress occurred as the economy expanded, Americans drove more miles, and the nation’s population and energy use increased. Details are available on the U.S. EPA’s **AirTrends website**. *2/18/2020*

OMA Environment Committee Holds First 2020 Meeting February 14, 2020



This week, the OMA Environment Committee held its first meeting of 2020 to review numerous regulatory and legislative matters that could affect Ohio manufacturers. Guest speaker Anne Vogel, the governor’s assistant policy director for energy and environment, briefed members on the H2Ohio initiative and state monitoring of PFAS levels in drinking water.

Tim Ling, Plaskolite’s corporate environmental director, updated members on **Ohio’s storm water permitting**. Additional meeting topics included Lake Erie remediation plans, hazardous waste rules, and the potential **effects** of the U.S. EPA’s 2015 ozone standard on Ohio cities.

The **next meeting** of the OMA Environment Committee will be Thursday, May 28. All members are welcome to register. *2/12/2020*

Anne Vogel with Gov. Mike DeWine’s office spoke this week to the OMA Environment Committee.

Ozone Regs About to Choke Cincinnati, Cleveland Manufacturers?

February 14, 2020

This week, Ohio EPA hosted a meeting with interested parties, including the OMA, to discuss the likely possibility that Ohio's southwest region will soon be designated as an area in "**moderate non-attainment**" of the federal ozone standard — which was lowered to 70 parts per billion during the Obama administration.

The region's status change from "marginal" to "moderate" non-attainment will trigger additional compliance requirements under the federal Clean Air Act. This change in designation will likely result in NOx Reasonably Available Control Technology, VOC Control Technique Guidelines, emissions offsets, and other new programs to be initiated for Ohio to reach attainment.

A meeting is scheduled for later this month in Cleveland to address these same concerns, as Northeast Ohio also appears to be headed for a new designation of moderate non-attainment. The OMA will be working with members and Ohio EPA on this important issue, which could affect manufacturers and Ohio's overall economy. *2/13/2020*

Reporting Season is Here

February 14, 2020

The deadlines for filing Ohio EPA's hazardous waste and air reports are nearing.

The **Hazardous Waste Report** (HWR) is due March 1. (Because this is a Sunday, Ohio EPA will receive the reports on Monday, March 2.) The report is required of any facility that generated more than 2,200 pounds of hazardous waste (or 2.2 lbs. of acute hazardous waste) during any one calendar month in 2019. Treatment, storage, and disposal facilities are also required to submit an HWR. Ohio EPA encourages electronic filing using **this site**.

Meanwhile, some of the key deadlines for required air reports include:

- Feb. 18 – Permit Evaluation Report (for some facilities);
- April 15 – Annual Emissions Report;
- April 30 – Title V Compliance Certification; and
- April 30 – Quarterly Compliance Report.

Reminders of these annual reporting requirements were sent via U.S. mail last week. *2/13/2020*

New PFAS Bill Introduced in Ohio Legislature

February 14, 2020

Late last week, two freshman legislators Rep. **Mary Lightbody** (D-Westerville) and Rep. **Allison Russo** (D-Upper Arlington) introduced **House Bill 497**. The bill would require Ohio to set its own drinking water standard for per and polyfluoroalkyl chemicals — more commonly known as PFAS.

This group of chemicals has been manufactured since the 1940s for use in a variety of industries around the globe and in a wide range of products — from firefighting foam to stain-resistant carpets. PFAS are ubiquitous in the environment, and there is much debate and disputed science surrounding the potential effects of these chemicals.

Recently, Ohio Gov. Mike DeWine **ordered** Ohio EPA and the Ohio Department of Health to implement an **action plan** for the testing of more than 1,500 public water supplies. Instead of creating an Ohio standard, the state has shown deference to U.S. EPA in setting a national maximum containment level for PFAS. The OMA has been heavily engaged in this issue. Members interested in learning more should contact **Rob Brundrett**. *2/13/2020*

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on May 27, 2020

- HB7** **H2OHIO PROGRAM** (GHANBARI H, PATTERSON J) To create the H2Ohio Trust Fund for the protection and preservation of Ohio's water quality, to create the H2Ohio Advisory Council to establish priorities for use of the Fund for water quality programs, and to authorize the Ohio Water Development Authority to invest the money in the Fund and to make recommendations to the Treasurer of State regarding the issuance of securities to pay for costs related to the purposes of the Fund.
Current Status: 10/22/2019 - Senate Finance, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-7>
- HB94** **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95** **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB242** **BAN PLASTIC BAG FEES** (LANG G, JONES D) To authorize the use of an auxiliary container for any purpose, to prohibit the imposition of a tax or fee on those containers, and to apply existing anti-littering law to those containers.
Current Status: 5/27/2020 - **PASSED BY SENATE**; Vote 23-9
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-242>
- HB340** **DRAINAGE LAW** (CUPP B) To revise the state's drainage laws.
Current Status: 5/27/2020 - House State and Local Government, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-340>
- HB491** **PLASTIC POLLUTION AWARENESS DAY** (CRAWLEY E) To designate the fifteenth day of February as "Plastic Pollution Awareness Day."
Current Status: 2/11/2020 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-491>
- HB497** **SAFE DRINKING WATER ACT** (LIGHTBODY M, RUSSO A) To require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants.
Current Status: 2/11/2020 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-497>

- HB522 WASTE DISPOSAL - CONSERVANCY DISTRICTS** (SOBECKI L, SWEARINGEN D) To authorize conservancy districts to provide for the collection and disposal of solid waste.
Current Status: 3/10/2020 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-522>
- HB675 REGARDING CLEAN OHIO PROGRAM** (HILLYER B, SWEARINGEN D) Relating to the Clean Ohio Program and to make an appropriation.
Current Status: 5/27/2020 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-675>
- HR247 AIR QUALITY STANDARDS** (ROEMER B) To respectfully urge Congress and President Donald Trump to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program and direct the Administrator of USEPA to begin new rule-making procedures under the Administrative Procedures Act to repeal and replace the 2015 National Ambient Air Quality Standards; to respectfully urge Congress and President Donald Trump to pass legislation to achieve improvements in air quality more efficiently while allowing companies to innovate and help the economy grow; to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress and the President fail to act; and to encourage OEPA to explore alternatives to E-Check in Ohio.
Current Status: 2/20/2020 - **PASSED BY HOUSE**; Vote 62-29
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HR-247>
- HR307 PLASTIC POLLUTION AWARENESS DAY** (CRAWLEY E) Designating Plastic Pollution Awareness Day in Ohio, February 15, 2020.
Current Status: 2/4/2020 - Introduced
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HR-307>
- SB2 STATEWIDE WATERSHED PLANNING** (PETERSON B, DOLAN M) To create a statewide watershed planning structure for watershed programs to be implemented by local soil and water conservation districts.
Current Status: 2/19/2020 - **BILL AMENDED**, House Energy and Natural Resources, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-2>
- SB50 INCREASE SOLID WASTE DISPOSAL FEE** (EKLUND J) To increase state solid waste disposal fee that is deposited into the Soil and Water Conservation District Assistance Fund, and to make an appropriation.
Current Status: 4/2/2019 - Senate Finance, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-50>

Ohio EPA

Division of Air Pollution Control

Highlights/Goals/Challenges 2020

EHS Symposium

May 28, 2020

Robert Hodanbosi

Air Quality

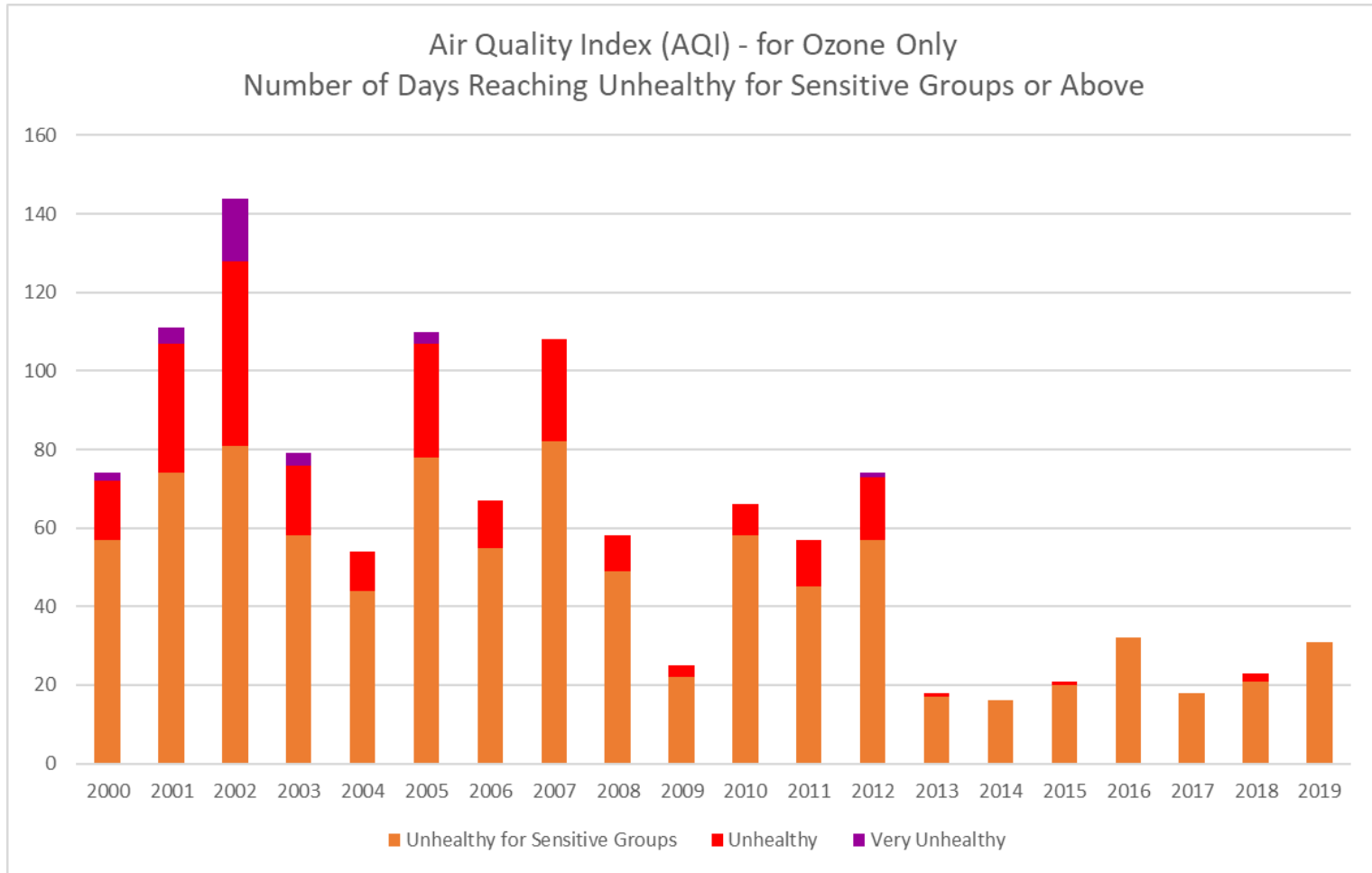
Highlights/Goals/Challenges

- Highlights
 - Improving Air Quality
 - Permitting
- Goals
 - Meeting AQ Standards
 - Affordable Clean Energy Rule
 - Permit Timeliness
 - Ambient Air Quality Monitoring Improvements
 - Prepare Approvable Transport SIP
 - Funding for Program
- Challenges/COVID-19

Improving Air Quality, But Challenges Ahead.....

- Columbus area redesignated to attainment for 2015 ozone standard – first in country to be redesignated for that standard
- Steubenville attainment demonstration for SO₂ approved – redesignation to attainment approved – one area in Ohio remains designated nonattainment
- Cleveland area redesignated to attainment for 2012 PM_{2.5} standard – first area in Region V to be redesignated

Improving Air Quality from 2000

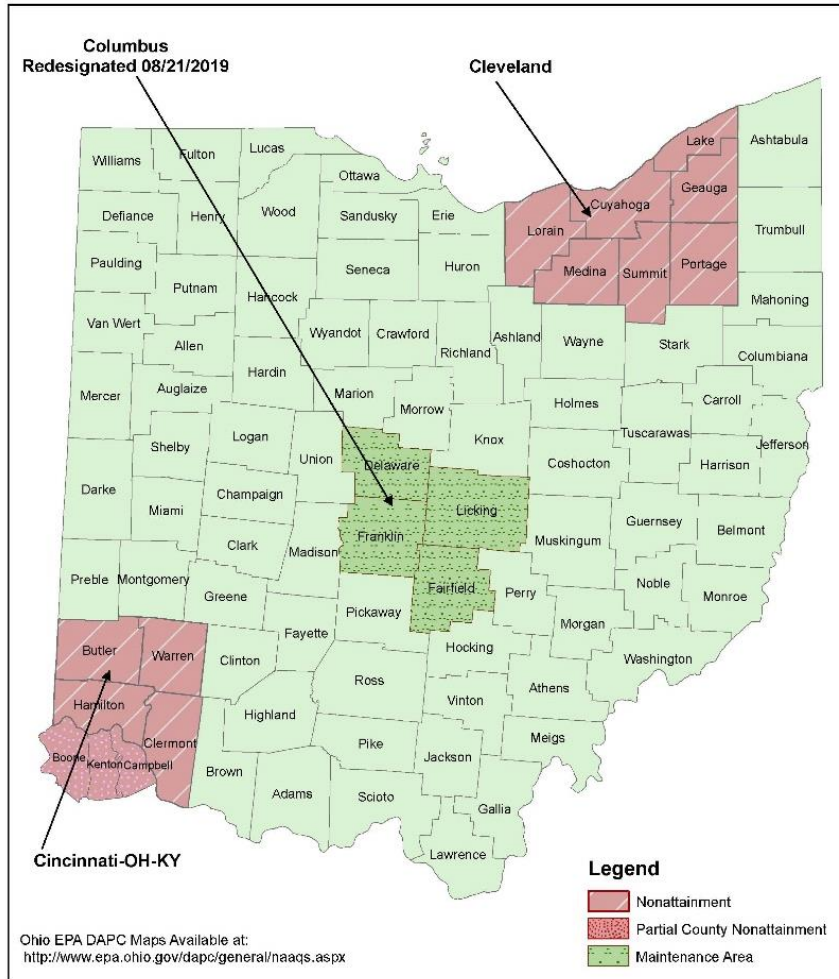


But not good enough?.....

Background

- Ozone is formed from precursor emissions of nitrogen oxides (NO_x) 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
- Ozone standard lowered to 70 ppb in 2015
 - based on a 3-year average of annual 4th high values (called “design value”)

Background



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

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

Requirements for Marginal Ozone Nonattainment Areas

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

Cleveland Ozone Outlook

- **Cleveland is highly unlikely to meet standard by end of 2020**
- Required to meet standard (“attain”) by August 3, 2021
 - 2020 is last ozone season before attainment date
- Critical monitor (Eastlake) would need a 2020 4th high below 66 ppb
 - Lowest 4th high since 2000 was 70 ppb in 2013
 - Exceeded this value 10 times in 2017, 18 times in 2018, 7 times in 2019
- Unlikely to qualify for 1-year extension
 - All monitors in area would need 2020 4th high meeting standard (70 ppb or below)

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	2017-2019 Design Value	2020 4th high needed to violate 2015 standard	2020 4th high needed for 1 year extension
District 6	39-035-0034	Cuyahoga	71	68	69	69	72	68	69	73	70
GT Craig NCore	39-035-0060	Cuyahoga	66	63	63	61	63	66	63	84	70
Berea BOE	39-035-0064	Cuyahoga	59	66	68	64	66	63	64	84	70
Mayfield	39-035-5002	Cuyahoga	61	72	70	68	75	70	71	68	70
Notre Dame	39-055-0004	Geauga	65	73	74	71	73	68	70	72	70
Eastlake	39-085-0003	Lake	75	74	74	73	76	71	73	66	70
Painesville	39-085-0007	Lake	62	70	69	72	69	69	70	75	70
Sheffield	39-093-0018	Lorain	67	62	68	65	69	58	64	86	70
Chippewa	39-103-0004	Medina	64	63	66	64	66	54	61	93	70
Lake Rockwell	39-133-1001	Portage	61	64	59	65	66	58	63	89	70
Patterson Park	39-153-0020	Summit	58	65	61	66	69	66	67	78	70

Cincinnati Ozone Outlook

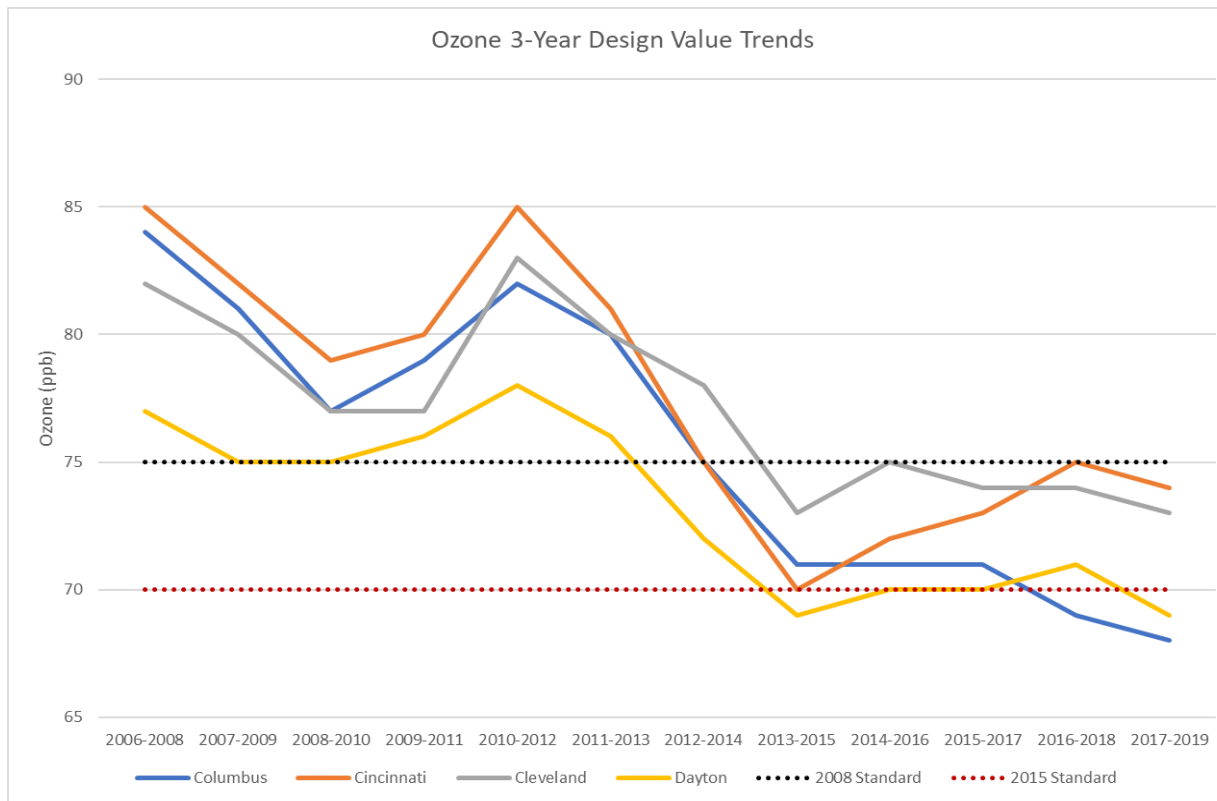
- **Cincinnati is highly unlikely to meet standard by end of 2020**
- Required to meet standard (“attain”) by August 3, 2021
 - 2020 is last ozone season before attainment date
- Critical monitor (Sycamore) would need a 2020 4th high below 61 ppb
 - Lowest 4th high since 2000 was 69 ppb in 2013
 - Exceeded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

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

2019 4th High and Ozone Design Value

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



So far in 2020.....through May 26

Area	Cleveland	Cincinnati
County	Lake	Hamilton
Monitor (Site ID)	Eastlake (39-085-0003)	Sycamore (39-061-0006)
1st High (ppb)	58 (5/26/20)	61 (4/4/20)
2nd High (ppb)	56 (5/25/20)	60 (5/2/20)
3rd High (ppb)	54 (5/3/20)	54 (4/3/20)
4th High (ppb)	52 (5/24/20)	54 (4/28/20)

2015 Ozone Standard

What if we don't attain at the end of 2020?

- Request 1-year extension....if we qualify...
 - 2020 4th highest daily maximum 8-hr average must be ≤ 70 ppb.
- Can request a 2nd 1-year extensionif we qualify...
 - 2020 and 2021 average of the 4th highest daily maximum 8-hr average must be ≤ 70 ppb.
- If don't qualify or run out of extensions - “Bump up” from marginal to moderate.
- More mandated controls under Clean Air Act

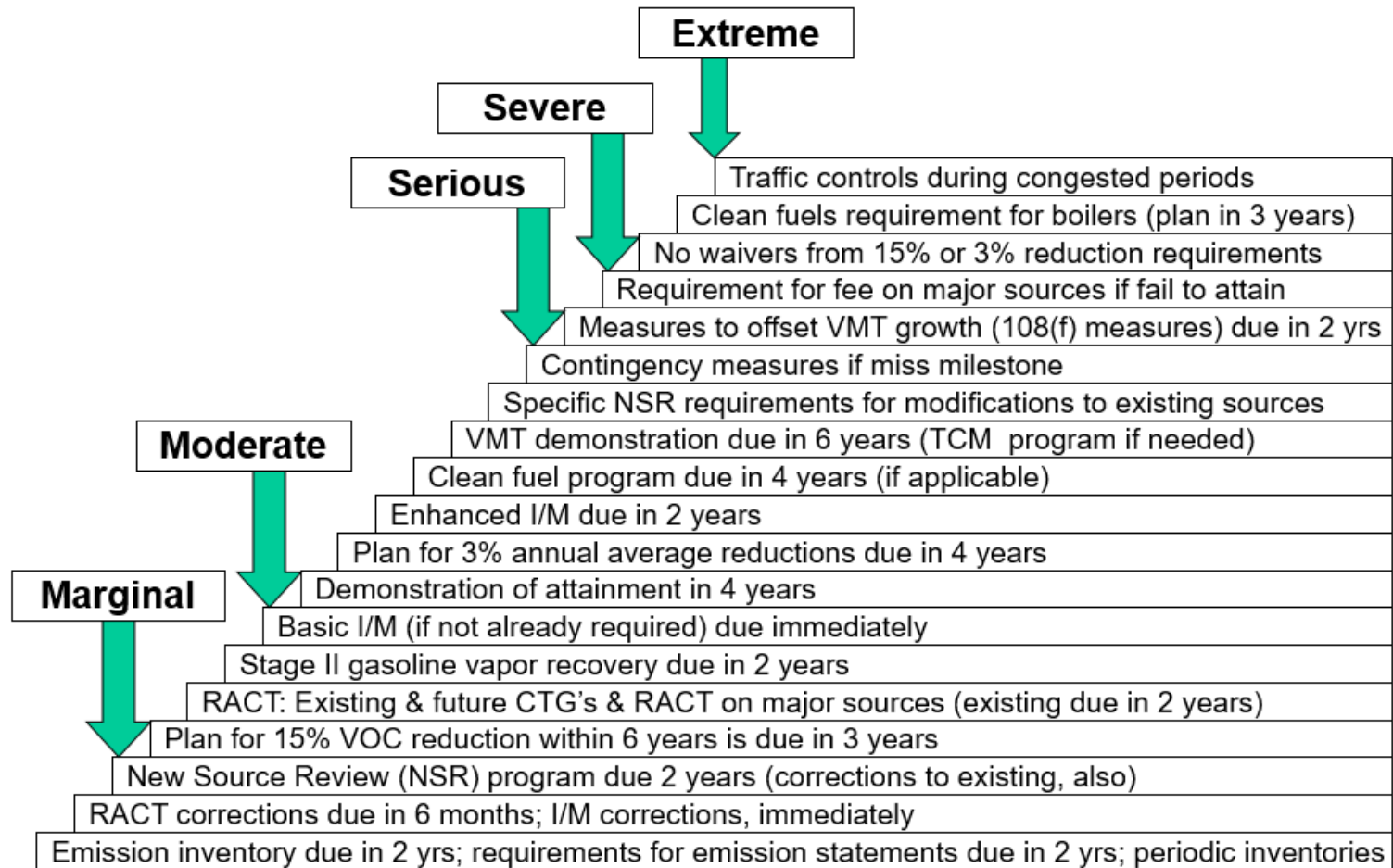
2015 Ozone Standard

What if we don't attain at the end of 2020?

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

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

Requirements for Ozone Nonattainment Areas (from 1990 Clean Air Act Amendments)



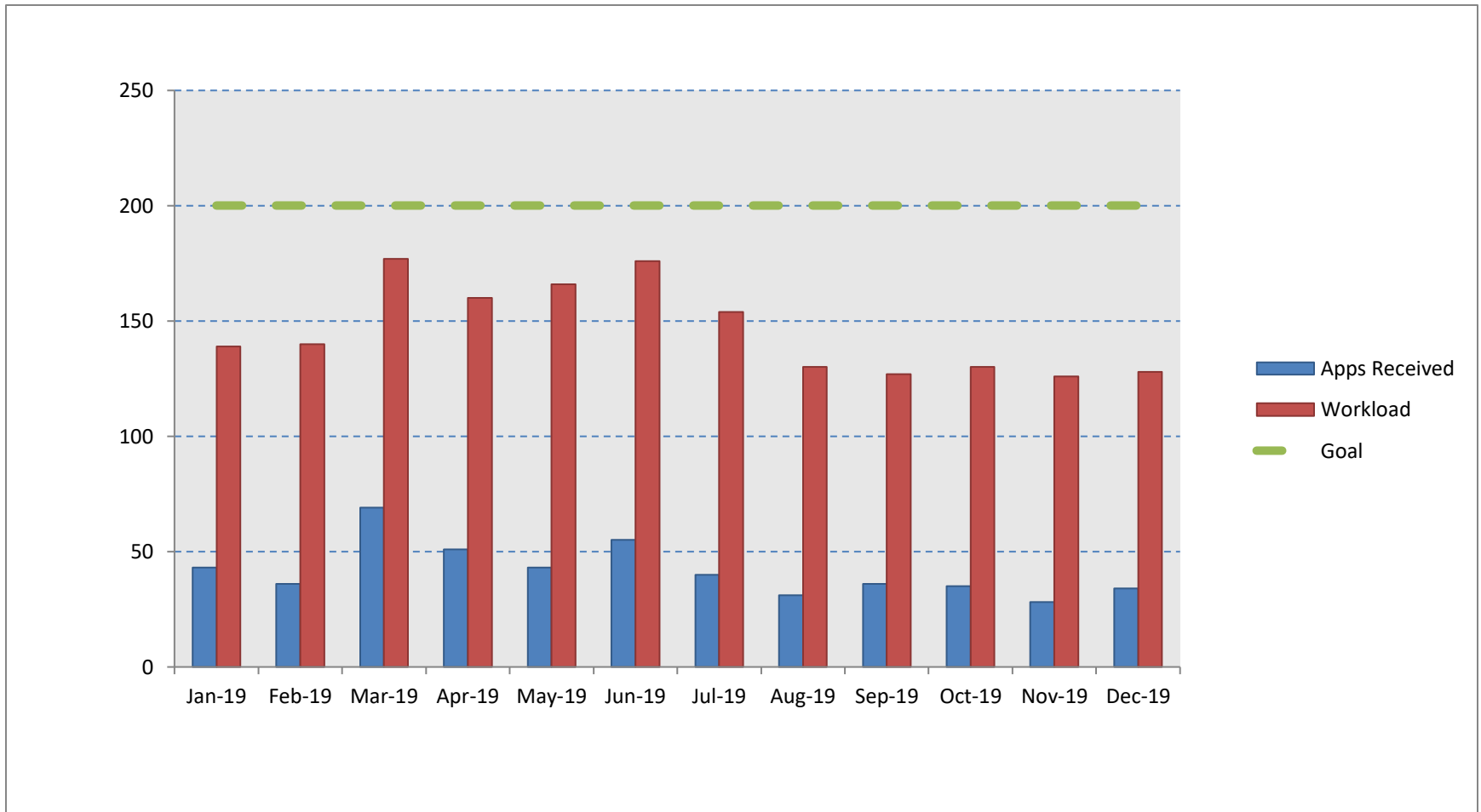
Goal: Develop State Affordable Clean Energy Rule (ACER)

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

Goal: Maintain Permit Timeliness

- Maintain less than 200 construction permits in queue
- Reduce Title V late permits to zero from 10% backlog (10% is U.S. EPA goal).

Construction Permit Timeliness



Goal: Upgrade Air Quality Monitoring

- Upgrade equipment – been stretching equipment as long as possible – searching Ebay for parts
- Other purchases needed (i.e. outdated modems)
- U.S. EPA Technical Services Audits
 - Very intensive scrutiny of equipment/data
 - Ohio EPA/Local Air Agencies responding to findings – improving operations
- Director Stevenson authorized U.S. EPA Multi-Purpose Grant toward air monitoring

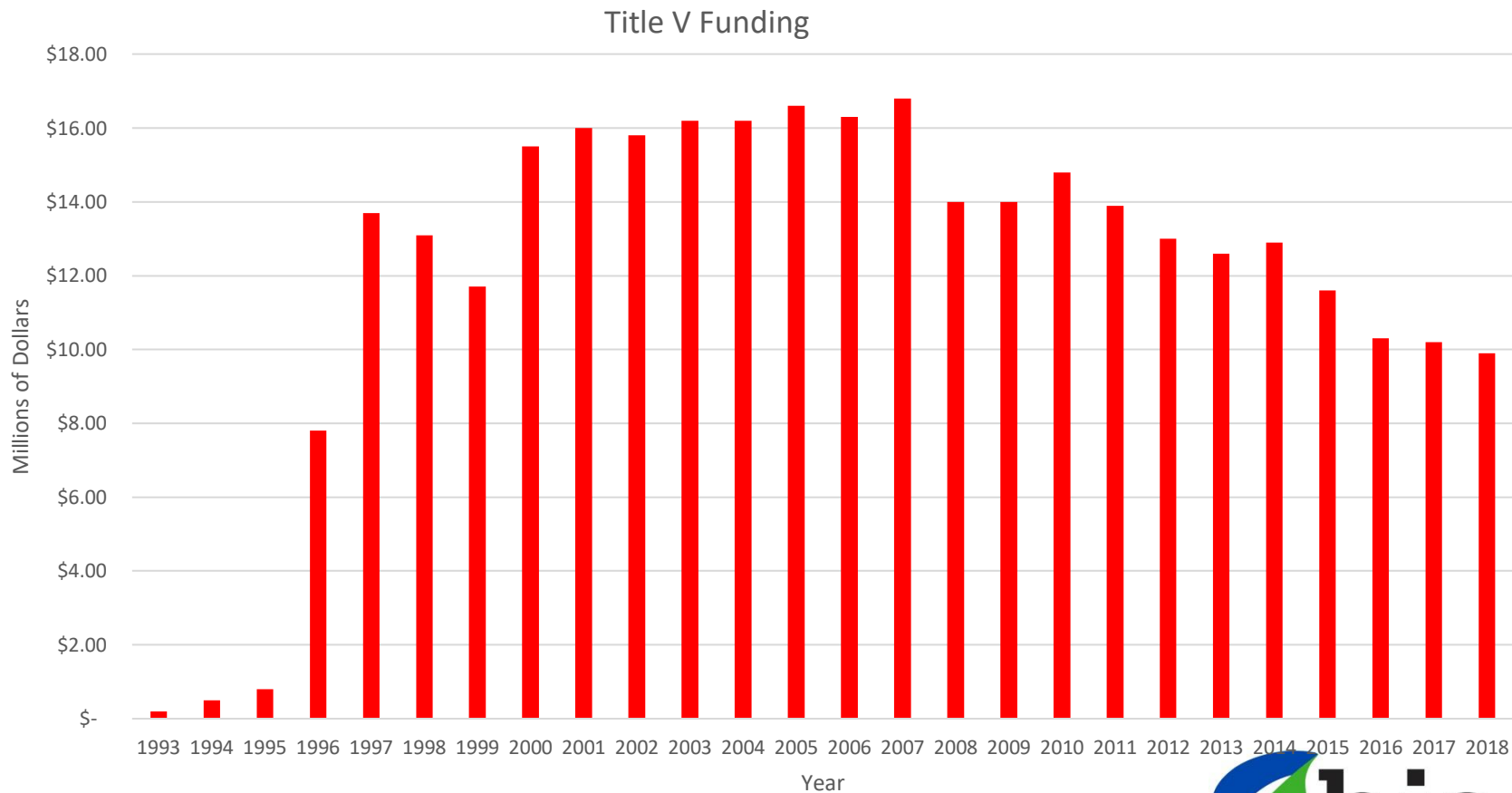
Goal: Develop Acceptable Transport SIP

- 2015 – 110(a)(2)(D) transport required under new standard
- Ohio EPA submitted document by deadline
- What will be U.S. EPA response?
- Court Cases
 - 176A – U.S. EPA upheld on the disapproval of the petition to include Ohio into the Ozone Transport Commission
 - 2008 Interstate Rule (CASPR Close Out) – Mostly upheld, but remanded back to U.S. EPA due to lack of firm compliance date in rule
 - Multiple lawsuits by Northeastern States

Goal: Develop Approach to Increase Title V Income

- Largest sources of revenue – power plants – several now closing
- Title V fee program dropping
- Other programs reducing emissions – reducing revenues
- Workload not decreasing
- Just three plants closing – AES Stuart, AES Killen, and AEP Conesville reduces Title V income by \$1.2 million dollars per year

Title V Fees Dropping



Tightening Our Belts – DAPC Reduced Staffing Over Time



► DAPC Staffing Level:

- **FY2010 budgeted level: 220.6 FTEs**
- **FY2012-13 budgeted level: 206.5 FTEs**
- **FY2014-15 budgeted level: 190 FTEs**
- **FY2016-17 budgeted level: 190 FTEs**
- **FY2018-19 budgeted level: 185 FTEs***
- **FY2020-21 budgeted level: 182 FTEs***
- ***includes 7 positions transferred from ODH for asbestos program merger, funded by asbestos notification and licensing fees**

Program Challenges

- Landfills – U.S. EPA revised rules, excessive emissions, hot and/or stinky
- Ethylene oxide – Significantly increased risk value from U.S. EPA
- PFAS – Impacts from air releases
- Last SO₂ Nonattainment Area in Ohio – Prepare approvable SO₂ SIP Plan - Beverly

Program Challenges COVID - 19

- Reg-Flex – Agency website, email for facilities to request relief of regulatory requirements as a result of COVID – 19.
- Agency has received 204 requests with DAPC having 93 requests

Program Challenges COVID - 19

- Director Stevenson priority keeping staff safe
- Agency staff working from home
- Only “Essential” employees even have access to office
- Both challenges and efficiency improvements
- More calls, less interruptions

Program Challenges COVID - 19

- DAPC specific issues
 - Staff working from home....getting folks equipped with technology
 - Shutdown monitoring network in March
 - Shutdown Echeck in northeast Ohio

Program Challenges COVID - 19

- Restarting network in phases
 - Critical monitors started back in April
 - Important NAAQS monitors starting up over past two weeks (cool May- no big issues)
 - Going in phases based on likelihood of contact
 - Needed to find PPE and develop protocols for safe monitoring
- Big picture lesson – very difficult to restart complex operation once it is completely shutdown

Program Challenges COVID - 19

- Restarting E-check as same time as BMV, this Tuesday
- Contractor had people laid off
- Needed to develop modified protocol for testing, acquire PPE, etc.
- Very busy first days after start up

Program Challenges COVID - 19

- Routine inspections not being performed
- Reports being reviewed by staff
- Many stack tests delayed
- Agency working on “virtual inspections”
 - Some on committee may be contacted

Questions?

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- Ohio EPA
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