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

October 26, 2017

Table of Contents

OMA Environment Committee Meeting Sponsor:

ArcelorMittal

OMA Environment Committee

October 26, 2017

Agenda

Welcome & Roll Call	Chairman Julianne Kurdila, ArcelorMittal
Guest Speaker	Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers
Member Perspective	John Rego, Jones Day – Ohio and U.S. EPA
Member Presentation	Tim Ling, Plaskolite – Storm Water Permit Update
Counsel's Report	Frank Merrill, Bricker & Eckler
Guest Presentation	Bill Petruzzi, Hull and Associates – Ohio Beneficial Use Update
Public Policy Report	Rob Brundrett, OMA Staff
Lunch	
ArcelorMittal Welcome	Margaret Krolikowski – Division Manager of Quality, ArcelorMittal Cleveland
Tour	

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

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

OMA Environment Committee Meeting Sponsor:

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Ross Eisenberg

Vice President, Energy and Resources Policy

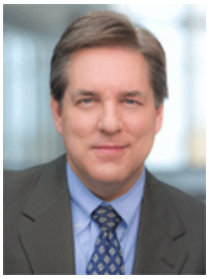
Download Hi-Res Photo

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

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

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

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



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EXPERIENCE HIGHLIGHTS

Eramet Marietta defends litigation alleging natural resource damages and violations of the Clean Water Act

Gould Electronics completes landmark agreement with Ohio EPA for voluntary environmental cleanup

Aerojet-General negotiates environmental due diligence and indemnification issues for sale of defense-related business

HONORS & DISTINCTIONS

Frequently recognized as a leading Ohio and U.S. environmental counselor by *Chambers*, *The Best Lawyers in America*, and *Ohio Super Lawyers*

EDUCATION

University of Virginia (J.D. 1986; Order of the Coif; Law Review); Stanford University (B.S. in Chemical Engineering with honors 1982)

BAR ADMISSIONS

Ohio

CLERKSHIPS

Law Clerk to Judge Stanley S. Harris, United States District Court, District of Columbia (1986-1987)

GOVERNMENT SERVICE

Chair, Public Advisory Group to Ohio Environmental Protection Agency's Comparative Risk Project (1994-1997)

With three decades of experience as an environmental advocate for clients and training as a chemical engineer, John Rego resolves environmental disputes by blending sound scientific positions with practical legal guidance. He has used this pragmatic, fact-driven approach to negotiate and, when necessary, litigate on behalf of companies in the electronics, petroleum, metals, and manufacturing sectors in matters ranging from litigation of natural resource damage claims to settlement of substantial bankruptcy claims to negotiation of federal air emission standards. Because he understands the language of environmental scientists, John is able to advocate for reasonable, risk-based outcomes to environmental challenges.

John's environmental litigation experience encompasses defense of Superfund and Clean Water Act claims, common law "toxic tort" claims, and hazardous waste citizen lawsuits, as well as successful administrative challenges to actions by state and federal agencies. For example, on behalf of Eramet Marietta, John challenged the federal manganese emission standards for ferroalloys production, leading to a settlement in which the U.S. EPA withdrew its standards and adopted those proposed by our client. He also obtained summary judgment against Ohio EPA's challenge to a precedent-setting cleanup under Ohio's Voluntary Action Program. However, John believes that with creativity, diligence, and a sound technical approach, most environmental disputes can be avoided or resolved without costly litigation.

John is the executive editor of Jones Day's quarterly electronic climate change advisory, *The Climate Report*.

Biographical Sketch

Timothy W. Ling, P.E.
Corporate Environmental Manager
Plaskolite, LLC.
P.O. Box 1497, Columbus, OH 43216-1497
(614) 294-3281, tim.ling@plaskolite.com

Mr. Ling is the Corporate Environmental Manager for Plaskolite LLC., a 67-year old, Columbus-based manufacturer of continuously processed acrylic sheet. Mr. Ling is responsible for Plaskolite's environmental compliance at its 6 manufacturing facilities in Ohio, California, Texas, Mississippi, and Mexico. He has over 26 years of experience in environmental engineering, both as a consultant to businesses, and now as in-house environmental manager. He has spoken and written on a wide range of environmental topics.

Mr. Ling graduated at the top of his class with a Bachelor of Science degree in Civil Engineering from the Florida Institute of Technology (1989), and a Master of Science degree in Civil Engineering from the University of Notre Dame (1991). He is a Registered Professional Engineer in the states of Ohio and Florida.

WILLIAM G. PETRUZZI, P.G. | Principal:

William (Bill) is a leader in Hull's material and material management practice and waste-related strategic initiatives out of Hull's Toledo, Ohio office, where he has worked since 1987. His areas of expertise include: material management and solid waste strategies; material characterization and beneficial use; material and waste harvesting initiatives; environmental monitoring/compliance, risk evaluation and compliance programs; hydrogeochemical evaluations; remedial investigations, and corrective measures; and a technical lead to support Hull's energy and brownfield redevelopment markets; and special regulatory and research and development projects. He is responsible for client relations; project development/management; permitting, closure and post-closure programs; life cycle analyses and financial evaluations; environmental compliance; beneficial use initiatives; integrated conservation/restoration projects; project development; strategic planning; regulatory advocacy and outreach programs; and expert witness/litigation support.

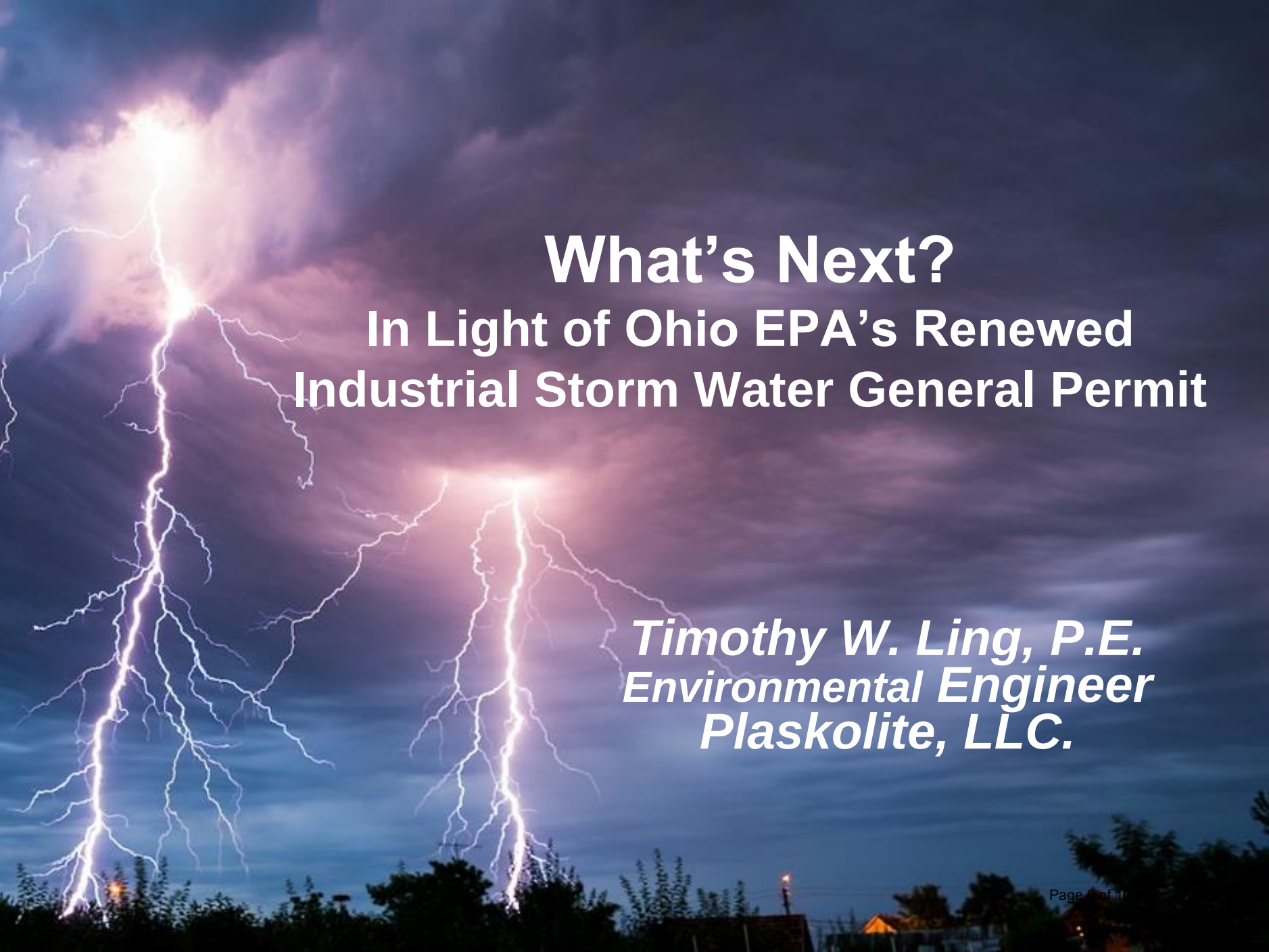
Bill is a registered Professional Geologist in the Commonwealth of Kentucky and State of Pennsylvania. He has worked on several different community, academic and industry groups. Advisory committees have included the University of Toledo, Youngstown State University, and Owens Community College. Bill is also active in the ASTM, American Coal Ash Association, Ohio Mineland Partnership Association, Ohio Mineral and Aggregate Association, Marcellus Shale Coalition, Ohio Oil and Gas Association, and the Ohio Petroleum Council. He has multiple publications, has lectured at universities and conferences and has worked to develop and advance environmental regulations and policies. Bill is currently working with ASTM to prepare a standard guide for the reclamation of coal combustion products from existing storage areas.

Bill holds a Bachelor of Science in Geology with a minor in Mathematics from Youngstown State University. He completed his Master of Science coursework in Geology, with emphasis in Hydrogeology, from the University of Toledo.

Margaret Krolikowski

Margaret Krolikowski is the Division Manager of Quality for the ArcelorMittal Cleveland facility. She has spent her entire career working in the steel industry. Following her graduation from University of Michigan with a degree in Metallurgical Engineering, Margaret started with ArcelorMittal predecessor company LTV Steel in the quality department. She has spent the majority of her time working at the Cleveland facility in hot rolling and finishing quality and has also been the Division Manager for Customer Technical Service.

In her role as Division Manager of Quality, Margaret is responsible for internal and external customers as well as grade development. She has been instrumental in the development of advanced high strength steel at the Cleveland facility.



What's Next?

In Light of Ohio EPA's Renewed Industrial Storm Water General Permit

Timothy W. Ling, P.E.
Environmental Engineer
Plaskolite, LLC.

NOW WHAT?

- Permit No. OHR000006
- 6/1/2017 – 5/31/2022
- SO…What do you think?

Noteworthy Changes

- Part 1.1.3 - Pavement washwaters
- Part 4.3 - No annual comprehensive site compliance evaluation…BUT…
- Part 6.1 - "Outfall" includes "location where sheet flow leaves a facility's property"

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Noteworthy Changes

- Part 6.1.4 - Samples within “first 30 minutes of … storm event”

- Response 8 - “However, Part 6.1.4 provides flexibility and states that if it is not possible…the sample shall be collected as soon as practicable after the first 30 minutes and documentation shall be kept…”

Part 6.2.1.2

- 4 benchmark samples first 3 years
- New permittees…in years 4 and 5 …must complete benchmark monitoring…to the extent of… periods before permit expires
- Sample more than 4 times?

Part 6.2.1.2 (Page 31 of 146)

Ideally your storm water samples will contain only runoff from your site. However, storm water from a neighboring facility can run-on and comingle with your regulated storm water discharge, possibly adding contaminants not found at your facility. The SWPPP site description shall document the locations and sources of any run-on. If you feel your discharge is exceeding a benchmark value due to, run-on from neighboring properties, you may collect and analyze samples of the run-on. Determined contaminant concentrations of run-on from neighboring properties may be deducted from your storm water discharge when determining whether a benchmark has been exceeded. This information shall be documented within eDMR's comment section. All sample data and findings shall be maintained with your SWPPP.

If it is determined that a water quality standard is less restrictive than this permit's benchmark value, you may use the less restrictive value for benchmark monitoring purposes.

In accordance with Part 2, determined pollutant concentrations from your facility's structures (roofs, walls, fencing, etc.) can be considered to determine if it is technologically available and economically practical and achievable in light of best industry practice to implement additional control measures or not when a benchmark has been exceeded.

Part 6.2.1.2

- Neighbor's run-on
  - Sample run-on
  - Document within eDMR's comment section
  - Deduct from your data
  - Exceed benchmark?

Part 6.2.1.2

- Different benchmark value if a parameter's water quality standard is less restrictive than the permit's benchmark value
- Document with SWPPP and available upon request

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Zinc

- Permit Benchmark = 0.04 - 0.39 mg/l
- Aquatic OMZM/A = 0.04 - 0.39 mg/l
- Aquatic IMZM = 0.07 - 0.78 mg/l
- Ohio River HH OMZA = 9.1 mg/l

Part 6.2.1.2

- Pollutant from facility's structures … may be considered … if it is technologically available and economically practical and achievable in light of best industry practice … to implement additional control measures or not

- Document with SWPPP

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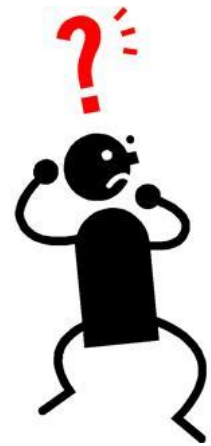
The Future…

- Start planning for OHR000007 in 2022
- In light of USEPA MSGP circa 2020
- And another thing…



2016 USEPA-Enviro Settlement

- 3-Tiers of corrective measures
  - Based on annual average & single exceedance
  - Tier 3 requires source and/or treatment controls
  - "California model"?
- USEPA to fund storm water study

USEPA Storm Water Study

- Monitoring “improvements”
- Numeric retention (flow) standards
- “High-priority” industries
- Add BAT/BMP to specific sectors
- Discharges to impaired waters

The Future…

- ~~BMPs~~ → Sample/Corrective Action
- New, lower benchmarks [for ALL]?
- Benchmarks today…NELs tomorrow
- TMDL and/or WQL (Part 6.2.4)

The Future…

- Increased sampling
- "Perpetual" non-compliance
- Tougher BMPs (e.g., treatment)
- Impacts of "sue-and-settle"

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Related Practices

- Water Supply and Quality - Land Use
- Environmental

Stormwater Forecast: Prepare for More Aggressive Benchmark Monitoring and Corrective Action Requirements under the Next Proposed MSGP

Authors: Stephen M. Richmond and Virginie K. Roveillo
Beveridge & Diamond, P.C., August 29, 2016

Click here for a PDF version of this news alert.

EPA is expected to propose a revised system of benchmark monitoring and corrective action requirements to replace those of the current 2015 Multi-Sector General Permit for Stormwater Associated with Industrial Activities ("MSGP"). EPA has just entered into a settlement agreement with environmental groups that challenged EPA's issuance of the 2015 MSGP, under which EPA has agreed to propose a number of new conditions for incorporation into the next version of the permit. The settlement agreement has no effect on the terms and conditions of the current 2015 MSGP, which remains in place until June 2020, however, facilities subject to benchmark monitoring should take note of the changes expected to be proposed, particularly for those facilities consistently facing benchmark exceedances. Under the current permit, benchmark exceedances do not on their own result in non-compliance, but can trigger the need for enhanced stormwater management practices.

Benchmark Monitoring

The settlement agreement covers several stormwater management issues but places a strong emphasis on benchmark monitoring. EPA has agreed to both study the effectiveness of the 2015 MSGP's benchmark monitoring provisions and to propose a tiered set of corrective action measures. The proposed tiered system's structure builds on sample results from year-to-year, and its increasingly sophisticated action requirements will translate

into a need to make greater capital expenditures and to consult more regularly with professional engineers.

We summarize the proposed tiers in the attached table, with a comparison point to the 2015 MSGP's requirements in the first row of the chart.

Eligibility Under MSGP

EPA has also agreed to propose a provision extending the discharge authorization date from 30 to 60 days for new dischargers (i.e., facilities not covered under the 2015 MSGP) that submit an NOI while subject to a pending stormwater enforcement action by EPA, a state, or a citizen group, including any facility that has received a citizen group's Notice of Intent to Sue. This means that EPA would be alerted of alleged stormwater violations at the time of a facility's application for permit coverage and may take the opportunity to impose additional stormwater control requirements.

EPA will also propose that facilities with pavement coated with coal tar sealant will not be eligible for permit coverage under the MSGP. Facilities would need to eliminate the discharge of PAHs from the coal tar sealant before seeking permit coverage, which would likely require repaving.

Other Provisions

In addition, EPA also agreed to the following:

- Fund a study by the National Resource Council to evaluate and provide recommendations on:
    - Suggested improvements to the current MSGP's benchmark monitoring requirements;
    - Feasibility of numeric retention standards; and
    - Identification of the highest priority industrial facilities or industrial sectors to consider for more stringent discharge requirements.
- Revise EPA's sector-specific fact sheets to incorporate emerging stormwater control measures that reflect industry practices for Best Available Technology

("BAT") and Best Control Technology ("BCT").
- Propose in the next MSGP to extend the eligibility criterion for facilities discharging to federal CERCLA sites to all EPA Regions.
- Propose in the next MSGP annual monitoring requirements for stormwater discharging to impaired waters without a TMDL.

While the proposed MSGP will not be issued for at least three years, facilities subject to the 2015 MSGP should be aware that the study recommendations together with the conceptual benchmark and eligibility provisions described above could significantly change facilities' response obligations to monitoring and sampling requirements under the permitting program. It could also widen the net of facilities subject to the permitting program, or even result in a shift in focus to specific "high-priority" industrial sectors.

Facilities currently struggling to meet benchmark thresholds may want to start the planning process to consider the steps that can be taken to reduce benchmark exceedances. If EPA ultimately adopts the proposed conditions, facilities with consistently high benchmark exceedances may expose themselves to increased federal or citizen group oversight.

For questions involving EPA's MSGP, please contact the authors.

Overview

News

Presentations

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Proposed Benchmark Monitoring Implementation Tiers for Next MSGP

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

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Proposed Benchmark Monitoring Implementation Tiers for Next MSGP

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

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

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COUNSEL'S REPORT

Frank L. Merrill & Christine Rideout Schirra,
Bricker & Eckler LLP, Counsel to the OMA
October 26, 2017

ENVIRONMENTAL DEVELOPMENTS

A. Ohio EPA Activities of Note

1. Proposed Surface Water Quality Rules

On October 4, 2017, Ohio EPA adopted revised OAC rules 3745-1-01 and -04 pertaining to select water quality standards rules and narrative water quality criteria applicable to all surface waters. Amendments include the addition of criteria covering harbor or navigation maintenance activities in support of the recent Ohio law banning open lake disposal by 2020, and revisions to language covering pesticide applications in OAC 3745-1-01. Ohio EPA also established a revised bacteria threshold value used to define public health nuisance caused by raw or poorly treated sewage. The rules will become effective January 2, 2018.

2. Biosolids Program Draft Rules

Ohio EPA has proposed revisions to rules in OAC Chapter 3745-40 pertaining to the disposal, use, storage, transfer, and treatment of sewage sludge and biosolids and the beneficial use of biosolids. Biosolids are defined to include sewage sludge, or mixtures containing sewage sludge that have been treated for beneficial use. Numerous significant changes to the rules are being considered by Ohio EPA, with the goal of providing a better understanding of when a biosolids management plan or non-traditional feedstocks approval is required, as well as clarity with the frozen ground restrictions, facility storage requirements, agronomic rate calculations, and nuisance odor abatement. Ohio EPA anticipates filing proposed rules with JCARR in the fall of 2017, and adopting the rules as final in late 2017.

3. Alternative Daily Cover Fee Exemption Amendment

In its most recent budget bill, the Ohio Legislature passed an amendment related to Ohio EPA's use of fees levied on alternative daily cover ("ADC"). ADC is cover material, other than earthen material, placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day. Its use is to control vectors, fires, odors, blowing litter, and scavenging. Examples of previously-approved ADC material include contaminated soil, foundry sand, slag, and certain industrial residuals (i.e. filter cakes). Before material may be used as ADC, the Director of Ohio EPA must grant written approval of the material in question. Proposed material is typically approved if the material is non-organic, and the owner or operator can demonstrate to the satisfaction of the director that the proposed

material provides protection that is comparable to six inches of soil and is protective of human health and the environment.

ADC is typically categorized as a "solid waste." As such, under the previous iteration of R.C. Chapter 3734, many different fees were associated with its use. Following a lobbying effort by OMA and others seeking to reuse and repurpose ADC, the recently passed budget bill expands the affordability of using approved ADC by excluding the ADC from local and state fees. This amendment is a positive development for industries throughout the State who generate materials that could possibly be used as ADC, which include bottom ash, geosynthetics, and coal combustion residuals, among others. Companies that produce such materials can seek to reuse these materials for use as ADC without being responsible for the somewhat onerous fees that typically accompany solid waste disposal. Additionally, the rule amendment encourages manufacturers to find new ways to repurpose such materials in a way that could generate new business relationships, cut down on on-site waste storage, and perhaps even eliminate the need to "dispose" of materials in a traditional sense. Businesses that believe they may be currently generating ADC-approvable materials should contact Ohio EPA regarding potential approval and look for new relationships in their area with landfill owners and operators who may be interested in reuse of that material.

4. Universal Waste Rules

On September 11, 2017, Ohio EPA issued proposed Ohio-specific Universal Waste rules. The public comment period closed on October 17, 2017, and OMA attended the public hearing held by Ohio EPA on October 17, 2017. Ohio's universal waste rules, found in Ohio Administrative Code Chapter 3745-273, apply to handlers, transporters, and destination facilities for specific categories of hazardous waste streams, including lamps, pesticides, mercury-containing equipment and discarded batteries. The new proposed universal waste rules add hazardous non-empty aerosol cans, hazardous antifreeze, and hazardous paint and paint-related wastes to the definition of universal waste, as proposed in significant part by the OMA and some of its members.

5. Plan to Reduce Nutrients in Lake Erie Basin

The Ohio Lake Erie Commission and the State of Ohio have released a draft Ohio Domestic Action Plan to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement, with a goal of reducing phosphorus loading to Lake Erie by 40 percent by 2025. The draft plan includes, among other things, creating an annual discharge limit of 1 milligram/liter of total phosphorus for every permitted facility.

6. Exclusion for Hazardous Textile Articles

Ohio EPA has issued for early stakeholder outreach a proposal to conditionally exclude from regulation as a waste commonly used hazardous textile articles such as gloves, aprons, smocks, and uniforms that become contaminated and that are laundered and returned to service. The current exclusion only applies to "solvent related wipers." Ohio EPA is accepting written comments on the rule change through November 3, 2017.

7. BUSTR Rule Amendments

Ohio's Bureau of Underground Storage Tank Regulations (BUSTR) recently amended its rules that regulate the closure and cleanup of underground storage tanks (USTs), which became effective on September 1, 2017. The major changes include new chemicals of concern (COCs), modified action levels

and new piping trench sampling and testing requirements. The proposed rules will likely increase the cost of UST closure assessments and corrective action work due to increased analytical testing costs. The proposed action level changes will provide some new challenges in completing corrective action projects. UST closure assessments performed under the proposed rules at sites with prior NFAs (No Further Action) may fall back into corrective action even if a subsequent release has not occurred. This may also be problematic when evaluating existing NFA sites for real estate transactions and when planning future UST upgrades.

8. Total Maximum Daily Loads Early Stakeholder Outreach

Ohio EPA has released for early stakeholder outreach OAC rule 3745-2-12, which covers procedures for developing Total Maximum Daily Loads (TMDLs) for waters listed on Ohio's 303(d) list of impaired waters that do not meet Ohio's water quality standards, as required by Clean Water Action Section 303.

Ohio EPA is proposing minor updates to style, as well as more substantive revisions necessary to make the rule consistent with the requirements for TMDLs set forth in House Bill 49 of the 132nd General Assembly, signed by Governor Kasich on June 30, 2017. House Bill 49 specifically requires Ohio EPA to adopt rules to establish procedures for providing notice of TMDL development to stakeholders, and criteria for determining what constitutes significant public interest in TMDL development. The rule amendments therefore seek to provide for formalized stakeholder notification and comment opportunities and participation in the TMDL development process. The OMA has been actively engaged in discussions with Ohio EPA and stakeholders over the draft TMDL rule language, and will continue this involvement as Ohio EPA works to implement the new TMDL rule language in House Bill 49.

B. U.S. EPA Activities of Note

TSCA Rulemaking

On June 22, 2017, US EPA issued three major rules pursuant to 2016 amendments to the Toxic Substances Control Act ("TSCA"), which are aimed to direct future review of chemical risks. The three TSCA rules address: (1) procedures to "reset" the TSCA chemical inventory; (2) procedures to prioritize chemicals that will be evaluated; and (3) the methodology US EPA will use for conducting chemical risk evaluations.

The reset rule gives industry 180 days to report chemicals manufactured or imported for non-exempt commercial purposes in the ten-year period that ended on June 21, 2016. The goal of the reset rule is to subdivide the inventory into separate lists of "active" and "inactive" substances, and to then include these designations on the TSCA inventory. The final prioritization rule describes how US EPA will determine which of the existing chemicals will undergo risk evaluations and when. Only those substances designated as high priority will receive detailed scrutiny, a decision on whether or not they present an unreasonable risk to health or the environment, and risk management requirements. The final risk evaluation rule describes the process by which US EPA will determine whether chemicals present an unreasonable risk of injury to human health or the environment, including the scope of the risk evaluation, hazard assessment, exposure assessment, risk characterization, and risk determination.

In addition to these three rules, US EPA also released an external risk evaluation guidance, describing the science, standards, and processes to be followed when interested parties are drafting and submitting a risk evaluation to US EPA, as well as a notice on scoping documents for the first ten

chemical substances to be the subject of US EPA's initial chemical risk evaluations. The final rules have prompted adverse reactions from environmental groups, and rule challenges are anticipated.

C. Legislative

WOTUS Rulemaking

On July 27, 2017, US EPA and the Army Corps of Engineers jointly proposed to rescind the 2015 revisions to the Clean Water Act definition of "waters of the United States" ("WOTUS"). This proposal is consistent with the Executive Order signed by the President on February 28, 2017, directing the agencies to reexamine the rule and make revisions necessary to be consistent with Justice Scalia's opinion in *Rapanos v. United States*, and is the first step in a two-step process intended to review and revise the definition of WOTUS. The agencies seek to replace the definition of WOTUS with the definition in place prior to the 2015 revisions to the definition, believing that this will provide continuity and certainty for regulated entities, the States, agency staff, and the public. The second step in the process will be for the agencies to pursue future separate notice-and-comment rulemaking, in which the agencies will conduct a substantive reevaluation of the definition of WOTUS.

D. Judicial

1. DC Circuit Vacates US EPA's Stay of Implementation of Methane Rule

On July 3, 2017, the U.S. Court of Appeals for the DC Circuit in *Clean Air Council v. Pruitt* held that US EPA lacked authority under the Clean Air Act to stay the Obama-era rule pertaining to methane and other greenhouse gases. The rule was issued by US EPA in June 2016, establishing new source performance standards for fugitive emissions of methane and other pollutants common to the oil and natural gas industries, and was designed to prevent leaks of methane at oil and gas facilities. The rule took effect on August 2, 2016, and required regulated entities to identify potential leaks of methane from their facilities by June 3, 2017. Following several industry group petitions for reconsideration of the rule pursuant to Section 307(d)(7)(B) of the Clean Air Act, new US EPA Administrator Scott Pruitt announced that US EPA would reconsider certain portions of the rule and would stay its implementation for 90 days. On June 16, 2016, US EPA announced its intention to extend the stay for two years and to look broadly at the entire 2016 rule during the reconsideration proceeding.

The DC Circuit ultimately found that reconsideration of a final rule pursuant to Section 307(d)(7)(B) is only permitted when the objection to the rule is of "central relevance" and would have been "impractical" to raise during the notice and comment period preceding the final rule, and therefore held that the US EPA stay was unlawful, as the objections raised by the industry groups could have been, and were, raised during the rule's notice and comment period. However, the DC Circuit left the door open for US EPA to delay the methane rule's effective date through a new rulemaking action. The current rule remains in effect until replaced, and oil and natural gas entities now face uncertainty regarding how US EPA will enforce the rule's requirements for reducing fugitive emissions of methane.

2. Challenges to US EPA Stay of Risk Management Plan Rule

On June 15, 2017, one day after US EPA finalized its rule delaying the effective date of the updated Risk Management Plan ("RMP") rule (passed in the final days of the Obama administration, on January 13, 2017) by twenty months, thirteen environmental groups filed suit in the DC Circuit to prevent the delay. The Risk Management Program rule applies to any facility holding more than a threshold quantity of a "regulated substance" as identified in 40 C.F.R. Part 68, and include facilities in the chemical

manufacturing, agricultural, petroleum manufacturing, general manufacturing, and food and beverage sectors. The amendments to the rule address accident prevention, emergency response, and data availability, and were developed under the previous administration in response to Executive Order 13650, which ordered federal agencies to take actions to improve chemical facility safety and security.

On July 24, 2017, eleven Democratic state attorneys general filed their own challenge to the delay of the RMP rule. The challengers argue that US EPA's delay of the rule by an additional twenty months exceeds the agency's authority and is arbitrary and capricious. Likely emboldened by the DC Circuit's ruling pertaining to the methane rule, the challengers further argue that the Clean Air Act Section 307(d)(7) only allows for delay of the effective date for up to three months, not twenty. The challenges remain pending with the DC Circuit.

Bricker & Eckler
ATTORNEYS AT LAW

MEMORANDUM

TO: Rob Brundrett

FROM: Christine Rideout Schirra

DATE: October 23, 2017

RE: Ohio-specific Universal Waste Rules

Ohio EPA's Proposed Rulemaking and Procedural History

On September 11, 2017, the Ohio EPA Division of Environmental Response and Revitalization issued proposed changes to its rules regarding universal waste management. Ohio's current universal waste rules, found in Ohio Administrative Code Chapter 3745-273, apply to handlers, transporters, and destination facilities for specific categories of hazardous waste streams, including lamps, pesticides, mercury-containing equipment and discarded batteries. Ohio EPA's new proposed universal waste rules add hazardous non-empty aerosol cans, hazardous antifreeze, and hazardous paint and paint-related wastes to the universal waste management rules, as proposed in part by OMA and some of its members.

Ohio EPA's proposed rulemaking follows Ohio EPA's prior issuance of draft rules on November 18, 2016. The OMA submitted comments to Ohio EPA regarding those draft rules on December 21, 2016. Ohio EPA issued a Response to Comments document in response to all comments received during the November 22 – December 21, 2016 comment period, in which it addressed many of the OMA's comments, and Ohio EPA has incorporated many of the OMA's comments into the revised proposed rules. The OMA did not submit additional comments to Ohio EPA in response to the latest proposed rule issuance. On October 17, 2017, the OMA attended Ohio EPA's public hearing on the proposed rulemaking, during which there were no oral comments submitted by any party.

Ohio EPA's rulemaking follows ongoing conversations between Ohio EPA and the OMA that have occurred over the past few years, during which the OMA petitioned Ohio EPA to expand the scope of Ohio's universal waste rules. It is expected that the rules will be filed in final form and become effective shortly.

Summary of Ohio EPA's Proposed Ohio-specific Universal Waste Rules

Under the prior version of the universal waste rules, the definition of universal waste included batteries, pesticides, mercury-containing equipment, and lamps. OAC 3745-273-09(Q). Under the new proposed rules, "Ohio-specific universal waste" has been added to the definition of universal waste. OAC 3745-273-09(Q). Ohio-specific universal waste is defined to include aerosol containers, antifreeze, and paint and paint-related wastes. OAC 3745-273-09(A), (C), (L), (M), (Q)(5). Ohio EPA's rule changes are all aimed to expand the provisions related to universal waste management to include Ohio-specific universal waste.

The waste management standards that apply to small quantity handlers of universal waste have been updated to apply to small quantity handlers of each of the Ohio-specific universal wastes, as have labeling or marking standards for such small quantity handlers. OAC 3745-273-13 and -14. Similarly, waste management standards applicable to large quantity handlers of universal waste have been amended to include management standards for large quantity handlers, as have labeling or marking standards for such large quantity handlers. OAC 3745-273-33, -34. Additionally, a provision has been added to clarify instances where OAC Chapter 3745-273 does not apply to persons managing aerosol containers, antifreeze, and paint and paint-related wastes. OAC 3745-273-89.

Outline of Ohio Administrative Code Rule Changes

Ohio EPA's proposed rule changes include changes to numerous provisions of the Ohio Administrative Code. These specific code changes include:

- 3745-50-45(C)(8): This rule outlines specific exclusions to the requirement to obtain a hazardous waste permit. Ohio-specific universal waste, defined to include aerosol containers, antifreeze, and paint and paint-related wastes, has been added to the exclusion allowing "universal waste handlers" and "universal waste transporters" from obtaining a hazardous waste permit. Batteries, pesticides, mercury-containing equipment, and lamps were already defined as universal wastes and included in the exclusion.
- 3745-51-09: Ohio-specific universal waste has been added to this provision applicable to universal waste, to clarify that these wastes are not fully regulated as hazardous waste, and instead are subject to regulation under OAC Chapter 3745-273, which governs Management Standards for Universal Waste.
- 3745-54-01, 3745-65-01, and 3745-270-01: These rules have each been amended to clarify that such rules do not apply to Ohio-specific universal wastes, as these wastes are to be regulated by OAC Chapter 3745-273.
- 3745-273-09: "Ohio-specific universal wastes" has been added to the definition of "Universal waste," which are defined to specifically include "aerosol container," "antifreeze," "paint," and "paint-related waste." Each of these terms are defined as follows:
    - 3745-273-09(A): "'Aerosol container' means a non-opening, non-refillable container that holds a substance under pressure and that can release the substance as a spray, gel, or foam by means of a propellant gas."

- 3745-273-09(C): "'Antifreeze' means propylene glycol or ethylene glycol including aggregated batches of propylene glycol or ethylene glycol used as a heat transfer medium in an internal combustion engine; heating, ventilating, and air conditioning units; and electronics cooling applications; or used for winterizing equipment."
- 3745-273-09(L): "'Paint' means a pigmented or unpigmented powder coating, or a pigmented or unpigmented mixture of binder and suitable liquid resulting from commercial, industrial, mining, agricultural, and post-consumer activities that upon drying forms an adhering coating on the surface that the paint is applied. Powder coating is a surface coating that is applied as a dry powder and is fused into a continuous coating film through the use of heat."
- 3745-273-09(M): "'Paint-related waste' means a material contaminated with paint that results from the packaging of paint, wholesale and retail operations, paint manufacturing, and paint application or removal activities, or a material derived from the reclamation of paint-related wastes that is recycled in a manner other than burning for energy recovery or used in a manner constituting disposal according to rules 3745-51-02 and 3745-266-20 of the Administrative Code.

- 3745-273-13: This rule outlines the standards by which small quantity handlers of universal waste shall manage the waste. Specific provisions to address Ohio-specific universal waste have been added at subparts (E), (F), and (G).
- 3745-273-14: Labeling or marking requirements for small quantity handlers of universal waste have been amended to include labeling or marking requirements as they pertain to Ohio-specific universal waste.
- 3745-273-15: The accumulation time limits specific to small quantity handlers of universal waste have been amended, as specifically applicable to aerosol containers.
- 3745-273-32: This rule has been amended to clarify that large quantity handlers of universal waste shall provide notification to US EPA of all types of universal waste managed by the handler, including Ohio-specific universal wastes.
- 3745-273-33: This rule outlines the standards by which large quantity handlers of universal waste shall manage the waste. Specific provisions to address Ohio-specific universal waste have been added at subparts (E), (F), and (G).
- 3745-273-34: Labeling or marking requirements for large quantity handlers of universal waste have been amended to now include labeling or marking requirements as they pertain to Ohio-specific universal waste.
- 3745-273-35: The accumulation time limits specific to large quantity handlers of universal waste have been amended, as specifically applicable to aerosol containers.
- 3745-273-39: Requirements applicable to large quantity handlers when tracking universal waste shipments have been amended to make such requirements applicable to Ohio-specific universal wastes.
- 3745-273-62: Universal waste shipment tracking requirements applicable to owners or operators of a destination facility as set forth in this rule have been updated to apply to Ohio-specific universal wastes.
- 3745-273-89: This rule has been added to clarify the instances in which persons managing Ohio-specific universal wastes would fall outside of the regulatory scope of OAC Chapter 3745-273.

Ohio Manufacturers' Association
Environmental Policy Committee Meeting

Ohio Beneficial Use Program Update

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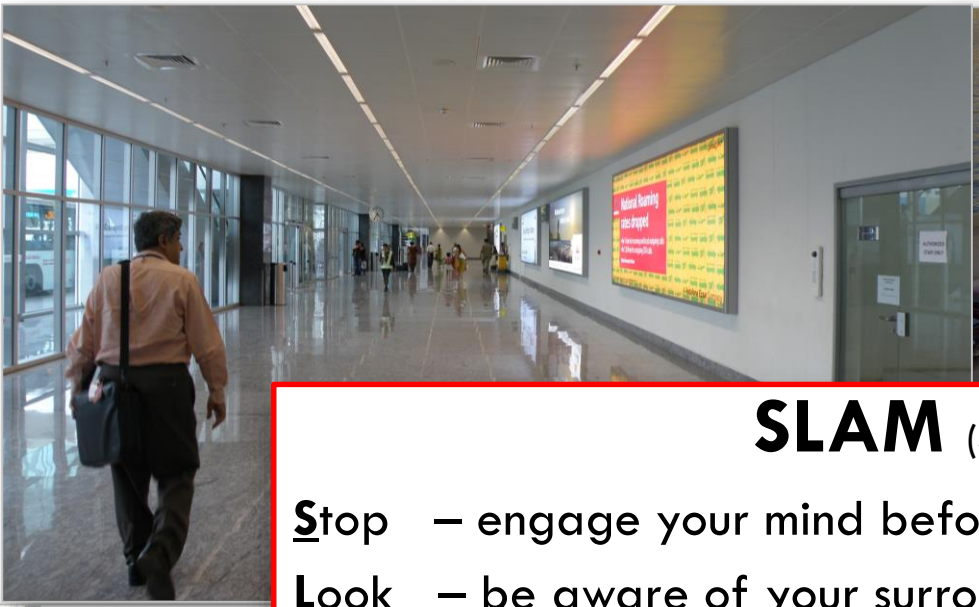
October 26, 2017

The Ohio Manufacturers' Association

HULL
Environment / Energy / Infrastructure

Safety Moment – Situational Awareness



SLAM (4 steps)

Stop – engage your mind before your hands.

Look – be aware of your surroundings.

Assess – know the effects of potential hazards or situations.

Manage – do what is needed to be safe.

Objectives

1. Review Ohio EPA beneficial use programs.
2. Hear OMA members' thoughts on current program.
3. Discuss potential opportunity to improve/expand Ohio EPA's beneficial use program.

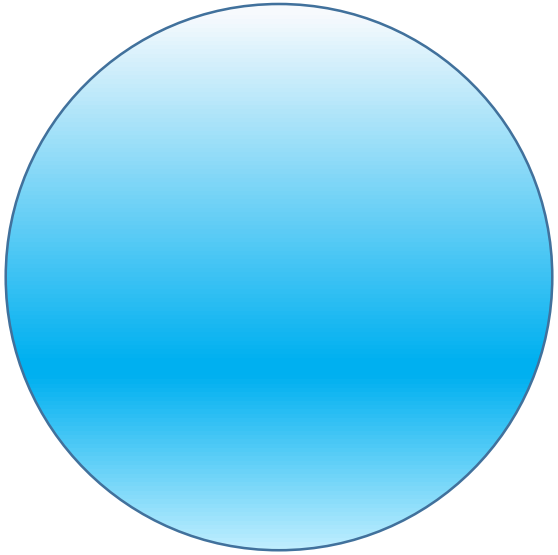
Beneficial Use Drivers

- Diversion of materials from landfills
- Industry need for materials
- Improved strength and durability of materials
- Compliance/Corrective Measures
- Economics and financial assurance
- Conservation/Reduce virgin materials
- Sustainability/environmental uplift
- Risk and liability management

Ohio EPA Materials Marketplace

The Ohio Materials Marketplace is a free online platform allowing businesses and organizations to connect and find reuse and recycling solutions for waste and by-product materials.

https://ohio.materialsmarketplace.org/



Ohio EPA Beneficial Use/Alternative Disposal LAMP/IAWMP

Land Application Management Plan Lamp (LAMP)

Ohio EPA DSW – other waste or industrial waste excluded from definition of solid waste; typically used at multiple locations

Integrated Alternative Waste Management Plan (IAWMP)

Ohio EPA DMWM – alternative disposal of solid waste; typically used at one location

Observations

- Ohio EPA is working to merge programs
- Definitions are not consistent
- Overlap of authority is a challenge

A Waste Is a Waste Is Always a Waste

Ohio EPA Beneficial Use/599 Program

OAC 3745-599 (effective March 2017) - After encouraging input from stakeholders over the years, Ohio EPA began implementing new regulations in which…

A Waste Is a Waste Is <u>Not</u> Always a Waste –
A Waste Can Be Beneficial Use Byproduct

Ohio EPA Beneficial Use/599 Waste Types

Waste types include:

1. Foundry sands that are a solid waste, industrial waste, or other waste.
2. Material resulting from the treatment of a public water system's source water supply for drinking or industrial purposes that are a solid waste, industrial waste, or other waste.
3. Solid waste, industrial waste, or other waste for use as fuel or as an ingredient in a combustion unit.
4. Material excavated or dredged from a federal navigational channel during harbor or navigation maintenance activities.
5. Sewage sludge incinerator ash.

Ohio EPA Beneficial Use/599 Program

Authorizations by Rule – use as an ingredient in a construction material (asphalt concrete, cement concrete, chip and seal pavement, controlled low-strength material, grout, glass, masonry unit)

General Permit – Director-approved permit with no application for select waste streams that meet established compliance criteria (notice of intent, sampling/characterization, record keeping/reporting requirements)

Individual Permit – Director-approved permit for use not specified by General Permit or compliance limits not satisfied (same information as General permit and similar information included in LAMP/IAWMP)

Ohio EPA Beneficial Use/ 599 Program Good & Bad

Good

- Forward thinking
- Redefines waste
- Standardized program
- Blending allowance
- Conservation/Sustainability

Bad

- Limited waste streams
- Restricted use areas
- Compliance limits
- Inter-department authority
- Lack of positive promotion

Beneficial use byproducts should be promoted no differently than other products or raw materials

What Waste Types are Not Included in 599?

- Dredged material for non-navigational channels
- Some Coal Combustion Products
- FGD
- Some industrial byproducts
- Other

Ohio Beneficial Use/Equivalency Issue

The category could be identified as an "inclusive byproduct category" in which a waste material is demonstrated to be suitable for use as an ingredient (or on its own) to form a product that meets or exceeds the performance standards achieved by raw materials or other products.

The Ohio Manufacturers' Association

HULL Environment / Energy / Infrastructure

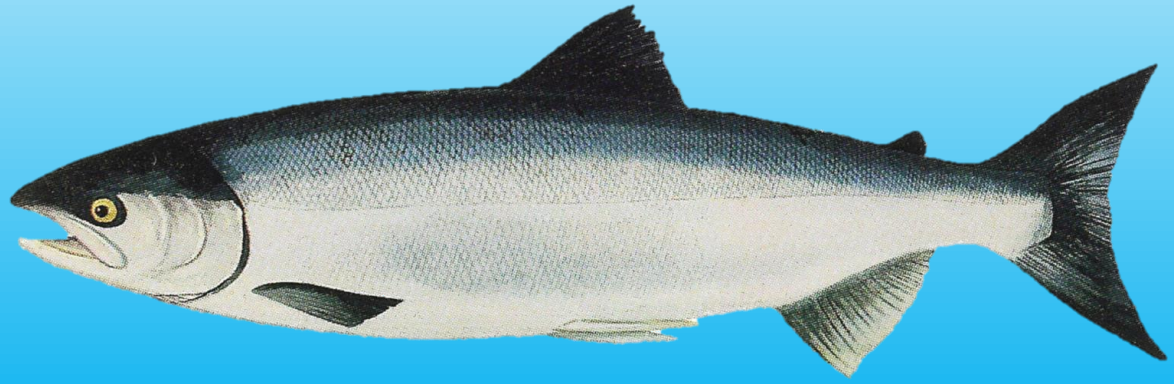
Big Issues Moving Forward

- Number of wastes included
- Harvesting
- Definitions (i.e. non-toxic, wanted, etc.)
- Regulated or unregulated materials
- Encapsulated or unencapsulated
- Unrestricted use
- Equivalency issues
- Risk-based standards and strategies
- Need for interagency promotion of concept
- Need for incentives
- Other

599 Moving Forward

- SB 2 passage is prompting Ohio EPA to open 599 for revisions (slag/dredged material/housekeeping)
- Expect Ohio EPA to initiate revisions in Q1 2018
- Ohio EPA open to addressing stakeholder ideas and requests for inclusion of additional wastes and materials
- Stakeholders may engage Ohio EPA to advocate for OMA members' initiatives

Ohio EPA Wants to Work with Industry



Fin

TO: **OMA Environment Committee**
FROM: **Rob Brundrett**
RE: **Environment Public Policy Report**
DATE: **October 26, 2017**

Overview

Ohio EPA has been quiet on the legislative front after the passage of Senate Bill 2. The state budget bill contained several changes beneficial to manufacturers and also included a new process for the creation of TMDLs. Last month the Ohio Lake Erie Commission outlined its draft action plan which would need legislative approval in 2018. Ohio EPA continues to work most aggressively on its rules and is actively highlighting its Encouraging Environment Excellence program.

General Assembly News and Legislation

Senate Bill 2 – Ohio EPA Water Bill

Senator Cliff Hite (R-Findley) introduced Senate Bill 2. The bill was formerly the Ohio EPA Water MBR bill in the 131st General Assembly. That bill ran into some last minute controversy and was not passed during lame duck in 2016. Among the provisions is language that would exempt slag from Ohio's water statutes. The OMA and some OMA members provided proponent testimony. The bill was passed by both chambers of the legislature and signed into law by the Governor in early July.

House Bill 49 – State Budget Bill

The Governor's budget bill had countless hearings in both chambers. Ohio EPA proposed several law changes in the bill. Among items of interest includes language that responds to the Ohio Supreme Court's decision requiring all TMDLs go through the ORC 119 rule making process.

Each TMDL, including modified TMDLs, must go through the public notice, public comment, and public hearing process. The compromise allows for appeals to Ohio Environmental Review Appeals Commission (ERAC) of any permit containing limits based on a TMDL, and specifies that indirect dischargers as well as direct dischargers may appeal. The rule therefore provides for due process considerations for all parties involved.

Other changes include expansion of the local air agency statute, the authority to waive or reduce late payment penalties and fees, and to authorize explosive landfill gas monitoring. A late amendment in the Senate removed the fees associated with Alternative Daily Cover at landfills. OMA advocated heavily for this change.

Regulations

Universal Waste

The OMA-led initiative to expand Ohio EPA's definition of universal waste to include more items, among them, paint and paint-related wastes, took another step forward in December. The OMA working group submitted comments in reaction to Ohio EPA's universal waste proposal.

The OMA has been working closely with Ohio EPA over the past two years to expand Ohio's universal waste program to include items now considered hazardous wastes, thus providing waste management relief for Ohio manufacturers.

The OMA commented on a variety of issues from storage to transportation to management standards. Ohio EPA prepared responses to comments and final rule was approved by the agency. Ohio EPA filed the rules with JCARR only to pull the rules to be refiled again in two weeks. The agency is eyeing the November JCARR hearing to be on the agenda.

Thank you to the members who participated in drafting comments.

Ohio Lake Erie Commission – Draft Action Plan

The OMA filed comments with the Ohio Lake Erie Commission on its Draft Domestic Action Plan 2018; portions of the plan could be detrimental to manufacturers.

OMA outlined its concern regarding the draft plan's call for a legislative mandate of a 1.0 mg/L monthly average phosphorus limit for all treatment works in Ohio. OMA wrote: "… this radical and unjustifiable shift in NPDES permitting in Ohio is completely unfounded, arbitrary, contrary to current statutory programs in Ohio, and not scientifically defensible. It would impose unnecessary and extensive costs on regulated parties without measurable decrease in Lake Erie phosphorus loads. … For the Action Plan to meet due process and other legal requirements and to align with the Action Plan's broader adaptive management protocols, the legislative mandate must be removed from the draft Action Plan."

Ohio EPA Announces TMDL Rule Early Stakeholder Outreach

Ohio EPA started the first steps for the Total Maximum Daily Load (TMDL) Program Rule OAC 3745-2-12. An early stakeholder outreach took place in August and September.

According to Ohio EPA: "Dischargers covered under a National Pollutant Discharge Elimination System (NPDES) permit are indirectly impacted through the setting of permit effluent limitations based upon the wasteload allocations established in the TMDL. The rule amendments will provide for formalized stakeholder notification and comment opportunities and participation in the TMDL development process which should lead to a better TMDL product and improved water quality."

These rules are being considered due to changes made in House Bill 49, the state operating budget.

Startup, Shutdown, Malfunction

On October 25, 2016, Ohio EPA released draft amended rules for public comment related to changes to Ohio's startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The amendments were being made in response to a U.S. EPA call for modifications to the rules on June 12, 2015 in 80 FR 33840.

The OMA submitted two sets of comments in response to the interested party rules package.

Ohio EPA is provided the OMA with an additional opportunity to review the changes based on the comments received. Several new amendments were drafted responding to the comments, along with a new amended business impact analysis and a response to comments document for the amended draft rules.

OMA submitted two additional sets of comments to Ohio EPA in response to its updated draft rules for startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The first set of comments was submitted in conjunction with other business allies and outlined four specific areas of needed change. The second set of comments was submitted by OMA alone and focused on maintenance days for specific equipment used in certain manufacturing industries.

Hazardous Waste Management Program

Ohio EPA announced that early stakeholder outreach (ESO) comments for the Hazardous Waste Management Program are due September 26, 2017.

The rule changes under consideration are federally-driven updates. Ohio's hazardous waste rules must match their federal Resource Conservation and Recovery Act (RCRA) counterpart regulations in 40 CFR Parts 260 to 279.

A number of Ohio rules need to be rescinded, added or amended to address changes to, or the creation of, their federal RCRA counterpart provisions, as published in the Federal Register.

Ohio EPA Agency News

Ohio EPA Sustainability Conference

Ohio EPA recognizes that many businesses, communities, and other organizations are moving beyond compliance and incorporating sustainable environmental practices into their daily operations.

On October 3, 2017, Ohio EPA hosted its first Sustainability Conference. This conference demonstrated how to leverage sustainable practices and resources to strengthen Ohio communities and businesses. The agency also recognized numerous OMA members for their sustainability accomplishments.

Ohio Materials Marketplace

The Ohio EPA continues to invite OMA members to participate in its newly launched Ohio Materials Marketplace with the objective to advance Ohio towards a circular material economy.

The free online platform enables Ohio businesses to list by-product and waste materials, as well as post requests for desired materials. The Materials Marketplace aims to assist manufacturers and other businesses in advancing their zero-landfill goals, decreasing greenhouse gas emissions, and reducing material and waste management costs.

Raw materials, by-products, and massive volumes are welcomed. Materials can range from computer monitors to waste paper to clay.

Bricker & Eckler
ATTORNEYS AT LAW

MEMORANDUM

TO: Rob Brundrett

FROM: Elyse Akhbari

DATE: July 20, 2017

RE: Alternative Daily Cover Fee Exemption Amendment

I. Alternative Daily Cover

In the most recent Budget Bill, the Ohio Legislature passed an amendment related to the Ohio Environmental Protection Agency's use of fees levied on "alternative daily cover" also known as "ADC." ADC is cover material, other than earthen material, placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day. Its use is to control vectors, fires, odors, blowing litter, and scavenging. Examples of previously-approved ADC material has included contaminated soil, foundry sand, slag, and certain industrial residuals (i.e. filter cakes).

II. Regulation of ADC

Before material may be used as ADC, the Director of Ohio EPA must approve the material in question. Proposed material is typically approved if the material is non-organic, and the owner or operator can demonstrate to the satisfaction of the Director that the proposed material provides protection that is comparable to six inches of soil and is protective of human health and the environment. The owner or operator must obtain written approval to use solid waste for daily cover prior to utilizing the solid waste.

ADC is typically categorized as a "solid waste." As such, under the previous iteration of Ohio Revised Code Chapter 3734, it had many different fees associated with its use. These fees included:

- **State fees**: $4.75 per ton of ADC;
- **Local fees**: Between $1.00 and $2.00 per ton of ADC generated and disposed of within a solid waste management district *or* an amount between $2.00 and $4.00 per ton of solid waste generated outside the district; and
- **Township fees**: $0.25 per ton paid to the township hosting the solid waste landfill.

III. R.C. 3734.578 Amendment

Pursuant to a lobbying effort by OMA and others seeking to reuse and repurpose ADC, the recently passed Budget Bill expands the affordability of using approved ADC by excluding the ADC from local and state fees. The language of the Amendment reads:

> Sec. 3734.578. Fees applicable to solid waste under this chapter do not apply to solid waste that the director of environmental protection approves for use as alternative daily cover in accordance with rules adopted under section 3734.02 of the Revised Code and that is used as alternative daily cover in accordance with those rules.

IV. Positive Impact for Manufacturers

This Amendment is a positive development for industries throughout the State who generate materials that could possibly be used as ADC. This includes a wide variety of materials such as bottom ash, geosynthetics, and coal combustion residuals, among others. Because of this new Amendment, companies who produce such materials can seek to reuse these materials for use as ADC without being responsible for the somewhat onerous fees that typically accompany solid waste disposal. Combined, businesses can save between $6.00 and $9.00 per ton of ADC generated and reused at a solid waste landfill.

Additionally, the Amendment encourages manufacturers to find new ways to repurpose such materials in a way that could generate new business relationships, cut down on on-site waste storage, and perhaps even eliminate the need to "dispose" of materials in a traditional sense. The hope is that innovative industry leaders will look to repurpose materials generated from their manufacturing practices, and benefit from the fee exemption in coming up with new and different ways to use ADC.

Businesses who believe they may be currently generating ADC-approvable materials should contact Ohio EPA regarding potential approval and look for new relationships in their area with landfill owners and operators who may be interested in reuse of that material. The following link has additional information regarding ADC requests and contact information. http://www.epa.ohio.gov/portals/34/document/guidance/gd_654.pdf

V. Additional Reuse and Resale Opportunities

Organizations interested in additional reuse and resale opportunities should also look to take advantage of the recently launched Ohio Materials Marketplace (OMM). Begun by Ohio EPA, the OMM is a collaboration between public and private organizations. The online service allows Ohio businesses, not-for-profits and government organizations to advertise via an online platform and acquire potentially useful products and materials that might otherwise be destined for disposal in landfills. More than 260 organizations have already signed up for the program, and just this week the first transaction using the OMM took place. More information can be found in the following press release from Ohio EPA: http://www.epa.state.oh.us/News/OnlineNewsRoom/NewsReleases/TabId/6596/ArticleId/1164/l

anguage/en-US/ohio-epa-announces-first-transaction-via-ohio-materials-marketplace.aspx. Interested parties can also look for opportunities and information regarding postings at: http://www.ohio.materialsmarketplace.org/.

Citizen Advisory
September 5, 2017

State of Ohio Releases Plan to Reduce Nutrients in Lake Erie Basin;
Public Meetings to be Held on Sept. 12 and 13

The Ohio Lake Erie Commission and the State of Ohio have released a draft Ohio Domestic Action Plan to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement with a goal of reducing phosphorus loading to Lake Erie by 40 percent by 2025. The Commission will host two public meetings on Sept. 12 and 13, 2017, to provide information about the draft plan.

Both meetings will be held from 7-9 p.m. The Sept. 12 meeting will be at Lake Erie Center, 6200 Bay Shore Rd, Oregon. The Sept. 13 meeting will be at Painesville Township Hall, 55 Nye Rd., Painesville.

This draft Ohio plan is a continuation of the Western Basin of Lake Erie Collaboration Implementation Framework finalized by the State of Ohio in early 2017.

The Ohio Lake Erie Commission will coordinate finalizing the Ohio Domestic Action Plan with Ohio EPA, Ohio Department of Agriculture (ODA), Ohio Department of Health (ODH) and Ohio Department of Natural Resources (ODNR), who each share responsibility for implementing the plan. Each agency will be accountable for implementing their respective areas of authority included in the state plan to meet the overall 40 percent reduction.

New action items included in the draft focus on:

- creating nutrient reduction targets for sub-watersheds in the Maumee and Sandusky basins;
- creating an annual discharge limit of 1 mg/l of total phosphorous for every permitted facility;
- prioritizing combined sewer overflow communities in Lake Erie basin;
- incorporate the Nutrient Mass Balance Study;
- funding and completing engineering and design work for potential in-water coastal wetland restoration projects in the western basin that beneficially use dredged material and can help assimilate in-lake nutrients in the mouth of the Maumee River and for the Sandusky Bay Initiative;
- establish a pilot program with Wood and Henry County Soil and Water Conservation Districts that will enable producers to voluntarily provide information on BMPs being implemented in select watersheds;

- established and maintain the Ohio Applicator Forecast website. The Forecast is designed to help nutrient applicators identify times when the weather-risk for applying is low. The risk forecast is created by the National Weather Service and takes snow accumulation and melt, soil moisture content, and forecast precipitation and temperatures into account. The chances of surface runoff in the next 24 hours are displayed on the overview map of the state.

Since 2011, the State of Ohio has invested $2.5 billion in Ohio's portion of the Lake Erie Basin for both point source and nonpoint source nutrient reduction and drinking water treatment.

The adaptive management process is central to the long-term implementation of the Ohio Domestic Action Plan. This means that water quality monitoring, sampling and nutrient management practices are being developed, evaluated and adjusted as circumstances change in order to meet the goals of the binational Great Lakes Water Quality Agreement. Verification that implemented programs are working to reduce nutrients from entering the lake will be needed as the state moves towards its goal. This means that this plan will change over time to ensure Ohio is focusing on the correct practices to achieve the required nutrient reductions.

The draft plan was developed with input from various stakeholder groups and state agencies and is available at lakeerie.ohio.gov/LakeEriePlanning/OhioDomesticActionPlan2018.aspx and on the respective state agency websites. Public comments can be emailed to dap@lakeerie.ohio.gov and are being accepted until the close of business on Sept. 25.

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

###

For more information, contact:
Mary McCarron, Ohio EPA
614-644-2160

September 25, 2017

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

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

Re: Ohio Manufacturers Association Comments on the Ohio Lake Erie Commission's Draft *Domestic Action Plan 2018*

Dear Commissioners,

Pursuant to the September 1, 2017, public notice published by the Ohio Lake Erie Commission (OLEC), The Ohio Manufacturers' Association (OMA) hereby submits written comments on the draft Ohio Domestic Action Plan (Action Plan).

The OMA represents over 1,400 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio's citizens. Many of OMA's members will be adversely impacted by the new standards and requirements set forth in the draft Action Plan. While OMA strongly supports the efforts of OLEC and its coordinating agencies, we have significant concerns regarding certain components of draft Action Plan, which concerns are outlined in these comments.

General Statement

OMA supports the hard work and study that OLEC has performed in preparation of the draft Action Plan and we expect, upon full review of the Plan, to support many of the components of the draft Action Plan. While we generally support OLEC's efforts, OMA has identified several critical concerns related to the draft Action Plan. Each of these concerns is outlined in detail in the following sections, and briefly summarized as follows:

A. We have grave concern regarding the draft Action Plan's call for a legislative mandate of a 1.0 mg/L monthly average phosphorus limit for all treatment works in Ohio. As detailed in Section 1 below, this radical and unjustifiable shift in NPDES permitting in Ohio is completely unfounded, arbitrary, contrary to current statutory programs in Ohio, and not scientifically defensible. It would impose unnecessary and extensive costs on regulated parties without measurable decrease in Lake Erie phosphorus loads. The draft Action Plan adequately addresses point source discharges through other permitting components, such as facility-specific assessment of need, and this legislative mandate only

undermines that methodical and defensible approach to permitted dischargers. For the Action Plan to meet due process and other legal requirements and to align with the Action Plan's broader adaptive management protocols, the legislative mandate must be removed from the draft Action Plan.

B. OMA is concerned about the very general reference in the draft Action Plan to development of a recreational use standard related to microcystin for the open water of Lake Erie (Item 9, page 16). To the extent OEPA proceeds with development of a standard or a protocol for microcystin, OEPA and OLEC should evaluate and take into consideration the many serious concerns raised by the scientific and regulated community in response to USEPA's December 2016 proposed "Draft Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin"(Docket ID No. EPA-HQ-OW-2016-0751, www.regulations.gov).

C. The Action Plan comprises dozens of regulatory and other controls and standards new to the Lake Erie basin that will impact businesses, local governments, and residents in a variety of ways for decades to come. As detailed in Section 3 below, it is unreasonable, arbitrary, and contrary to both the letter and the spirit of Ohio's administrative laws to provide a mere 24-day public review period for such an important agency action. We believe that under Ohio law, OLEC is required to provide additional time for thoughtful review by the public to ensure the Action Plan is ultimately viable and defensible. We reserve the right to supplement these comments upon completion of a full review the draft Action Plan and supporting documentation.

The following sections address each of these concerns in detail.

1. The proposed blanket phosphorus limit for NPDES dischargers is arbitrary and not scientifically principled, and, for the Action Plan to be lawful, it must rely on the facility-specific permitting provisions and not this unfounded mandate.

While OMA understands and supports the need for action items to address phosphorus loads from both point and non-point sources to achieve the Lake Erie phosphorus reduction goals, the proposal to establish a legislative mandate for 1.0 mg/L phosphorus limits in all NPDES permits is arbitrary and unfounded. This proposal, first presented on page 16 (item 7) of the draft, contravenes the legal requirements for establishing permit limits and departs sharply from the goals of the Action Plan and the directives in the Great Lakes Water Quality Agreement and the Western Basin of Lake Erie Collaborative Framework, which focus on adaptive management protocols to achieve the most reduction in the most efficient and reasonable manner. The proposed blanket, arbitrary concentration limit would, in many cases, impose unnecessary, unreasonable and expensive controls without creating any meaningful progress towards the targets of

the Action Plan. Each of these general objections is discussed in more detail in the following subsections.

A. The 1.0 mg/L limit will in many cases be arbitrary and unnecessary, with no measurable benefit to Lake Erie but implemented at great cost to the discharger, and this mandate is not necessary or appropriate to achieve the targets of the Domestic Action Plan.

As documented in the Figure on page 5 of the draft Plan, point source dischargers, in total, comprise only 9% of the total phosphorus load in the priority Maumee Watershed and comprise a similar amount in other watersheds. Furthermore, of that already small contribution, large, heavily regulated POTWs contribute the majority of the load, leaving the load from small phosphorus sources as a generally negligible source to Lake Erie. In fact, many of the facilities that would face this new limit are far upstream and are outside of the priority basins. Imposing a 1.0 mg/L limit on these small sources will essentially have no measurable impact on the load to the Lake Erie basin, but will impose an enormous cost on these dischargers, many of whom do not have, and are not required to have, the technology in place to remove phosphorus (including most impacted industrial facilities). Additionally, a 1.0 mg/L phosphorus limit would impose far more stringent reductions on certain dischargers than the 40% load reduction set forth in the Great Lakes Agreement and thus goes well beyond the legal framework of the Action Plan. Finally, for these facilities, it is likely that mandating phosphorus limits and compelling the implementation of treatment will cause more environmental harm than is justified by the small load reductions. In sum, there is no scientific or regulatory basis for these limits, and the attempt to impose this kind of blanket limit is unreasonable and indefensible.

Additionally, to the extent OEPA needs to limit phosphorus from a point source discharger in order to reasonably and prudently achieve the Action Plan targets, other provisions of the draft Action Plan already cover this need. Phosphorus limits can (and should) be determined in accordance with Item 1 on page 15 of the Plan, whereby OEPA commits to imposing appropriate phosphorus limits as necessary on a facility-specific basis. Thus, where a 1.0 mg/L limit is necessary based on sound science and reasonable and fair planning, the Action Plan already accounts for this process. Because it is both arbitrary and unnecessary, the reference to a 1.0 mg/L mandated limit must be removed from the draft Action Plan.

B. The proposed statutory mandate would violate the due process rights of certain NPDES dischargers by establishing arbitrary and unnecessary limits without the right of appeal.

The draft Action Plan provides no scientific support for a blanket 1.0 mg/L phosphorus discharge limit. In many cases, as noted above, the blanket standard would be imposed on dischargers where achieving the 1.0 mg/L limit would not result in a measurable

reduction in phosphorus at the Lake. Additionally, the reduction to 1.0 mg/L will in some cases require as much as 80 to 90% reductions, as some dischargers have very low load but a concentration much higher than 1.0 mg/L – and all of this reduction would come at significant cost. However, while these limits would be arbitrary and unnecessary, the discharger would have limited right to appeal its permit given the statutory basis for the limit. It is arbitrary to impose a statutory mandate that creates an unnecessary and burdensome limit but implicitly strips the discharger of its due process rights to challenge such a limit.

C. *The proposal to mandate a stringent phosphorus limit in all circumstances contradicts the Adaptive Management process that underlies the Western Lake Erie Basin Collaborative Implementation Framework (WEBCF) and OEPA's articulated process for addressing nutrients.*

In addition to risking the imposition of arbitrary and unnecessary limits on certain facilities, the proposed mandate also contradicts the core principle of the Domestic Action Plan and the WEBCF. In its opening section, the draft Action Plan provides that "[c]entral to the implementation of the Domestic Action Plan is the adaptive management process." (Plan at page 3) Similarly, the WEBCF contains an identical directive and supports the concept of evaluating loads and directing reductions through a methodical approach that secures the most benefit in the most efficient manner possible. (WEBCF at 3). The adaptive management approach recognizes that, in order to avoid unnecessary and often costly reductions, priority actions should be implemented and measured in steps or phases, with successive steps being informed by the success and outcomes of the previous work.

Contrary to this core principle of the Action Plan, the proposed 1.0 mg/L blanket phosphorus permit limit for "all treatment works" defies adaptive management. It would require all dischargers, irrespective of contribution, location, and cost and without any adaptive management protocols, to meet this restrictive standard in the first instance. This is particularly important where (a) some of the targeted sources are small or de minimis contributors to the phosphorus load, (b) a 1.0 mg/L constitutes far more than a 40% reduction, and (c) the costs to meet a 1.0 mg/L limit are often high, especially where phosphorus treatment is not a technically feasible option. To reiterate, some small dischargers would see load reduction requirements far in excess of 40% if subject to this unreasonable limit.

Unlike the blanket limit, Item 1 on page 15 of the draft Action Plan sets forth a reasonable and prudent adaptive management approach to phosphorus permitting, and one that fits squarely within the action plan established in the WEBCF. This provision, and not an arbitrary mandate, should control the NPDES permitting process for the Lake Erie Basin.

As an additional matter, OEPA is implementing adaptive management measures through both SB-1 and through the development of the Stream Nutrient Assessment process. Both of these important programs look to adaptive management protocols, based on sound science and technology, to evaluate the necessary controls for facilities. A blanket 1.0 mg/L mandate would fundamentally undermine and contravene these programs, notwithstanding the fact that OEPA relies on the SB-1 program as an action item in the draft Action Plan.

D. The proposed mandate fails to comply with Ohio law requiring OEPA to perform a technical feasibility and economic reasonableness analysis on any proposed permit limits.

OEPA must perform a technical feasibility and economic reasonableness analysis on any proposed permit limits. R.C 6111.03(J)(3). If this legislative mandate proceeds, it would contravene this existing legislative requirement and strip dischargers of these important statutory protections. Even if an overall target of 1.0 mg/L from a permitted point source could be scientifically justified, the Action Plan as drafted would exclude more reasonable and economically-justifiable site-specific approaches that would allow offsets from facilities that are capable of achieving higher reductions at lower costs (or other adaptive management tools).

E. The proposed phosphorus creates secondary concerns as well.

In addition to the key legal and technical concerns outlined above, the proposal suffers additional drawbacks. First, while no blanket limit is appropriate, the reliance on a concentration limit is particularly unreasonable. The Great Lakes Agreement is premised on the phosphorus load, and a concentration limit of 1.0 mg/L bears little relationship to the load itself and is the wrong value to assess.

Second, and only as a point of clarification, the OLEC is not authorized to, and, we expect, did not intend to, impose standards or expectations outside of the Lake Erie watershed. This limitation should be clarified throughout the draft Action Plan, as certain statements appear to be applied statewide when such an action would be well outside of OLEC's statutory authorization. R.C. 1506.21.

2. <u>OEPA should engage a stakeholder process and consider the serious concerns of the scientific and regulated community if it proceeds with development of a recreational use standard and advisory protocol for microcystin.</u>

OMA is concerned about the very general reference in the draft Action Plan to development of a recreational use standard related to microcystin for the open water of Lake Erie (Item 9, page 16). To the extent OEPA proceeds with development of a standard or a protocol for microcystin, OEPA and OLEC should evaluate and take into

consideration the many serious concerns raised by the scientific and regulated community in response to USEPA's December 2016 proposed "Draft Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin"(Docket ID No. EPA-HQ-OW-2016-0751, www.regulations.gov). Additionally, given the complexity and wide-ranging implications of such a standard or protocol, OEPA should engage a technical advisory group comprised of a variety of stakeholders to support and inform the development process.

3. Because the Action Plan will impose new standards and requirements with broad impact across Ohio, more time for review of the Plan is required by interested parties.

By its own statements, the draft Action Plan establishes the standards, including key regulatory action items by a number of administrative agencies that will ultimately govern the nutrient load entering Lake Erie. The draft Action Plan includes standards established by OEPA and other agencies that would impose significant costs on a variety of stakeholders – farmers, agribusiness, municipalities, industrial facilities, and residents of and visitors to Ohio – and that will govern these stakeholders for decades into the future. Each of these groups and individuals has a strong stake in this Action Plan – both in its burdens and, more importantly, in its success.

As an initial matter, OLEC's Plan states that it was developed "with input through meetings and conversations with various stakeholder groups…" Action Plan at 2. The core stakeholder group did not include representatives of industrial dischargers (or, for that matter, any municipal wastewater groups). Critically-affected entities were not involved in the development of this important Plan.

With this background, a robust public notice and public review and comment period becomes all the more critical. It is impossible to evaluate the impacts of such an important set of standards and mandates, which will control operations in Ohio for decades to come, in the timeframe initially proposed by Ohio EPA for review and comment. While we appreciate the fact that comments after the deadline will be given thoughtful consideration, OMA remains concerned that interested manufacturing parties will not be able to provide comments in a timely fashion.

Conclusion

The OMA appreciates the opportunity to comment on the draft Action Plan. As outlined above, while OMA and its members support the hard work of OLEC and OEPA in the Lake Erie basin, we have serious concerns about certain components of the draft Action Plan. We look forward to working with OLEC and OEPA to ensure a scientifically-sound approach to phosphorus regulations for point source dischargers in the Lake Erie Basin that does not impose unreasonable, unnecessary and arbitrary controls on individual municipal and industrial dischargers.

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

Sincerely,

Rob Brundrett
Director, Public Policy Services

cc: Mr. Karl Gebhardt, OEPA
William Fischbein, Esq., OEPA
Frank Merrill, Esq.

State of Ohio's DRAFT

Domestic Action Plan

In accordance with the Great Lakes Water Quality Agreement

Ohio Lake Erie Commission

Ohio Department of Agriculture

Ohio Department of Natural Resources

Ohio Environmental Protection Agency

Ohio Department of Health

Table of Contents

Introduction

Ohio's Domestic Action Plan (DAP) will advance efforts toward the proposed 40% nutrient reduction target put forth in the Great Lakes Water Quality Agreement of 2012 (GLWQA). On June 13, 2015, the governors of Ohio and Michigan, and the premier of Ontario committed to a goal of reducing phosphorus loadings to Lake Erie by 40 percent through the signing of the Western Basin of Lake Erie Collaborative Agreement (Collaborative). The Collaborative was intended to serve as the precursor to Ohio's DAP. Ohio's DAP will expand on the Collaborative implementation initiatives and will also include the Central Basin as well as the Western Basin of Lake Erie.

Goals of the Ohio Domestic Action Plan

- Achieve a 40 percent total spring load reduction in the amount of total and dissolved reactive phosphorus entering Lake Erie's western basin by the year 2025 with an aspirational goal of a 20 percent reduction by 2020[1]. This goal applies to priority tributary watersheds to the Western Basin of Lake Erie in Ohio as identified by the Objectives and Targets Task Team of the Annex 4 Subcommittee under the GLWQA, which include the Maumee, Toussaint, and Portage Rivers. Ohio EPA will continue to develop a process to identify and recommend additional priorities within these watersheds at the HUC 12 level, with a focus on the Maumee River watershed.
- Achieve a 40 percent total annual load reduction in the amount of total phosphorus entering Lake Erie's central basin by the year 2025 with an aspirational goal of a 20 percent reduction by 2020. This goal applies to priority tributary watersheds to the Central Basins of Lake Erie in Ohio as identified by the Objectives and Targets Task Team of the Annex 4 Subcommittee under the GLWQA, which include the Sandusky, Huron, Vermilion, Cuyahoga, and Grand Rivers[2].
- To use 2008 as the base year from which progress will be measured.

The Domestic Action Plan is based on the following guiding principles:

- **Implementation** of point and nonpoint nutrient reduction practices.
- **Verification** of targeted practice implementation and effectiveness.
- **Documentation** of water quality changes resulting through the implementation of nutrient reduction practices.
- **Adaptability** to allow for the modification of programs, practices and policy as new information is obtained and changes occur.
- **Accountability** to ensure clear areas of responsibilities and that the commitment is made and kept toward achieving the goals.

The Domestic Action Plan was developed with input through meetings and conversations with various stakeholder groups and state agencies. The initial draft was then made available for additional interest group and public comment.

[1] Achieving a spring (March – July) Flow-Weighted Mean Concentration (FWMC) of .23 mg/l TP and .05 mg/l DRP and a target of 860 MT total phosphorus and 189 MT Dissolved Reactive Phosphorus in the Maumee River will achieve a 40 percent reduction from the base year of 2008.

[2] The spring load targets for the Maumee, Toussaint, and Portage Rivers will also serve to reduce phosphorus to the Central Basin of Lake Erie.

Central to the implementation of the Domestic Action Plan is the adaptive management process. This means the Domestic Action Plan is intended to convey an understanding that there will be changes in data, programs, and policy that will need to be reflected in the Domestic Action Plan going forward.

While the focus the Domestic Action Plan is to achieve nutrient reductions from the base year of 2008, at the same time we need to consider the potential impact of new sources of phosphorus coming into in the watershed and their relationship to the over-all net reduction of nutrients in relationship to the established goals.

How does the Domestic Action Plan fit in the context of Ohio's over-all efforts to address Harmful Algal Blooms in Lake Erie?

Ohio's long history of problems and solutions for nutrient enrichment and nuisance and/or harmful algal blooms in Lake Erie is laid out extensively in the Ohio Lake Erie Phosphorus Task Force I and II reports. To summarize, after a lengthy but successful fight to reduce previously high nutrient levels in Lake Erie, algal blooms had abated in the 1980s. However, in the mid-1990s, toxin-producing blue-green algal blooms began to appear in the western basin of Lake Erie. A particularly massive bloom occurred in 2003, and blooms of varying intensity have recurred most years since then.

The State of Ohio has been in the forefront of developing a response to the problems impacting Lake Erie. The Ohio Lake Erie Phosphorus Task Force I convened in January, 2007, in response to the increased harmful algal blooms in the early 2000s. Led by the Ohio Environmental Protection Agency (Ohio EPA), Ohio Department of Agriculture (ODA), Ohio Lake Erie Commission (OLEC) and Ohio Department of Natural Resources (ODNR), the Task Force included representatives from state and federal agencies, Lake Erie researchers, soil scientists, agricultural program representatives and wastewater treatment plant personnel and drew on the expertise of many other experts in a variety of disciplines.

The Task Force developed a variety of recommendations to address nutrient reductions, particularly to the western basin of Lake Erie. Recommendations were made for all the sources examined with a major focus on upland measures that influence agricultural practices. The report included a research agenda, which has served as a basis for directing millions of dollars of state and federal research funds.

In response to the findings of the Task Force, the State of Ohio directors of ODA, ODNR and Ohio EPA convened the Directors' Agricultural Nutrients and Water Quality Working Group on Aug. 25, 2011. The purpose of this group was to identify and implement, at the state level, those agricultural practice initiatives which would ultimately result in the reduction of harmful algal blooms developing in Ohio's inland lakes and Lake Erie, while at the same time continuing to assure that the region's agricultural base was not impaired by unintended consequences. As a guiding principle, the final report encouraged farmers to adopt nutrient application guidelines known as 4R Nutrient Stewardship (4R). The 4R concept promotes using the right fertilizer source, at the right rate, at the right time, with the right placement. It was believed that this approach would be in part effective in reducing phosphorus and nitrogen from impacting waterways across the state.

Starting in 2012, Ohio EPA, coordinating with ODA and ODNR, developed Ohio's Nutrient Reduction Strategy. This comprehensive framework to manage point and nonpoint sources of nutrients and reduce their impact on Ohio's surface waters was an outgrowth of Ohio's participation on the Mississippi River/Gulf of Mexico Watershed Nutrient (Hypoxia) Task Force. The strategy recommends regulatory initiatives and voluntary practices that can reduce point and nonpoint sources of nutrients throughout the state.

The Point Source and Urban Runoff work group of the Hypoxia Task Force recommended that Ohio develop a statewide nutrient mass balance that examines both point and nonpoint sources of nutrients to Ohio's watersheds. This is necessary to determine appropriate reductions for all sources and to enable cost-benefit assessments to determine the most environmentally effective and economically feasible mechanism for the state to reduce nutrient loading to watersheds. This effort is currently underway with watersheds in the Lake Erie watershed receiving a high priority for analysis. Results from the mass balance study will be integrated into the DAP.

Simultaneously with those efforts, Ohio EPA, OLEC, ODA and ODNR reconvened the Ohio Lake Erie Phosphorus Task Force as a Phase II effort. The Task Force II final report (2013) includes a detailed review of state and federal efforts, including research results from some of the initial studies recommended by the Task Force I. After hearing from numerous experts at several meetings, the Task Force II worked to develop a phosphorus target for Lake Erie's Western Basin.

Based on a comparison of discharge, total phosphorus loads and dissolved reactive phosphorus loads for the Maumee River for water year and spring (March-June) totals for 2000 through 2012, the Task Force II recommended an annual loading reduction of approximately 40 percent to significantly reduce or eliminate HABs in the Western Basin. The Task Force II also recommended an adaptive management approach that would allow annual reviews of progress and evaluation/modification of loading targets.

As the Task Force II was completing its final report, the GLWQA Nutrients Annex Subcommittee was beginning the process of revising the prior GLWQA nutrient loading goal for Lake Erie. Modeling showed that spring loading of phosphorus from the Maumee River is the determining factor. The Subcommittee determined that there should be a reduction of 40 percent in spring loads of both total and dissolved phosphorus from the Maumee River. A 40 percent reduction to the Maumee equates to a target spring load of 860 metric tons per year of total phosphorus and 186 metric tons per year of soluble reactive phosphorus under high spring discharge conditions. This goal is intended to limit the formation of harmful algal blooms in nine years out of 10, which allows for an occasional very wet year in which the goal would not be achievable. The proposed goal, drafted in February 2015, has been finalized with the development of state and province Domestic Action Plans due by 2018.

This recommended loading goal tracked very closely to the recommended value from the Task Force II. Therefore, the state decided to move forward with accepting the proposed goal in the Domestic Action Plan.

Major Sources of Phosphorus in Ohio

In 2016, the State of Ohio, Environmental Protection Agency conducted a nutrient mass balance study [3] to evaluate major sources of phosphorus in select watersheds across the state, including the most significant four of the Annex 4 priority watersheds in Ohio (Maumee, Portage, Sandusky, and Cuyahoga).

The next edition of this study, required by state law to be completed by the end of 2018, will add the Huron watershed, which is also an Annex 4 priority watershed. The two remaining Annex 4 priority watersheds are the Vermilion River and the Grand River. These two tributaries have very small contributing loads (an order of magnitude less than the Maumee River load) and need further study to determine whether significant load reductions are feasible.

[3] The following source discussion is extracted in part from the Nutrient Mass Balance Study. For more details and a complete set of figures, see document at http://epa.ohio.gov/Portals/35/documents/Final%20Nutrient%20Mass%20Balance%20Report_12_30_16pdf.pdf.

Sources of Phosphorus in the Maumee River Watershed

The Maumee River drains 6,568 sq. mi. in northwestern Ohio, southeastern Michigan and northeastern Indiana. Agricultural production dominates the watershed, which includes the fertile drained lands of the Great Black Swamp. There is a notable shift in land use as the river enters the Toledo metropolitan area downstream of Waterville. Downstream of this point, the proportion of agricultural production reduces from 79 percent to 49 percent whereas both high/low intensity development and natural lands increase in proportion.

Total P loads from the Maumee River were 2,295 metric tons per year (mta) in water year 2013 (October-September) and 2,062 mta for water year 2014. See Figure below for source breakdown by percentage. For more details and data for water year 2014, see the Nutrient Mass Balance Study document.

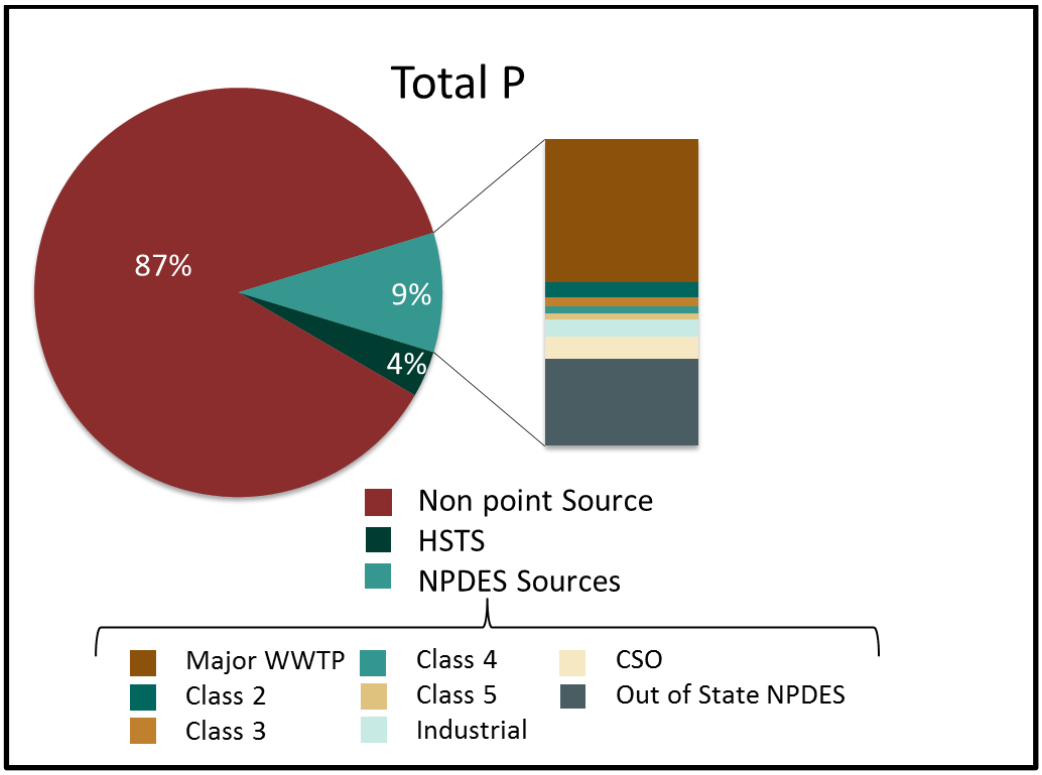


Figure: Total phosphorus source breakdown for Maumee River, water year 2013. From Nutrient Mass Balance Study 2016. See report for more details.

The nonpoint source is the largest proportion of the load in the Maumee River at 87 percent for total P. The permitted point sources (NPDES) comprised 9 percent of the total P. These sources are further broken down into source categories corresponding to plant type and size. The majority of the NPDES load (total P – 47 percent) is from major WWTPs. The second largest NPDES contribution is from out of state sources at 28 percent of the NPDES total P load. Home sewage treatment systems are the remaining 4 percent of the annual total phosphorus load.

Sources of Phosphorus in the Portage River Watershed

The Portage River drains 585 sq. mi. in northwest Ohio. Agricultural production dominates the landscape, with 81 percent of the total land area being dedicated to agricultural production. Natural

areas and low intensity development were similar to each other at 8.4 percent and 8.7 percent respectively.

Total P loads from the Portage River were 168 metric tons per year (mta) in water year 2013 and 219 mta for water year 2014.

The nonpoint source is the largest proportion of the load in the Portage River at 84 percent for total P. The permitted point sources (NPDES) comprised 11 percent of the total P. The single largest permitted point source load contributor is major WWTPs (total P – 34 percent). CSOs and class 2 WWTPs (0.5 – 1.0 mgd) are also large total P load contributors contributing 22 and 27 percent of the total NPDES loads, respectively. Home sewage treatment systems are the remaining 6 percent of the annual total P load.

Sources of Phosphorus in the Sandusky River Watershed

The Sandusky River drains 1,420 sq. mi. in north central Ohio. Agricultural production dominates, with 80 percent of the total land area. Natural areas are the second leading land use at 11 percent and the remainder are developed lands. The watershed is home to 220,000 people (120 people per square mile), making it the least densely populated of Ohio's major watersheds.

Total P loads from the Sandusky River were 711 metric tons per year (mta) in wy13 and 615 mta for wy14. The nonpoint source is the largest proportion of the load in the Sandusky River at 94 percent for total P. The NPDES sources comprised 4 percent of the total P loads. The single largest NPDES load contributor is from CSOs for total P, comprising 42 percent of the NPDES total P load. The major WWTPs contributed a similar amount of total P as the Class 2 facilities (0.5 – 1.0 mgd) for total P at 28 and 23 percent, respectively. Discharge limits for phosphorus are the reason that the major WWTPs are not the leading NPDES source. HSTS are the remaining 2 percent of the annual total P load.

Sources of Phosphorus in the Cuyahoga River Watershed

The Cuyahoga River drains 808 sq. mi. in northeast Ohio. Natural areas and low intensity development dominate the land use of the Cuyahoga watershed at 38 percent and 36 percent, respectively. Closer to the lake shore, there is a notable shift in land use with a reduction of natural and agricultural areas to largely low and high intensity development, 56 percent and 36 percent, respectively.

Total P loads from the Cuyahoga River were 327 metric tons per year (mta) in wy13 and 402 mta for wy14. The nonpoint source is the largest proportion of the total P load in the Cuyahoga River at 60 percent. The NPDES sources comprised 29 percent of the total P load. The single largest NPDES load contributor is from major WWTPs for total P comprising 56 percent of the total P load. CSOs were the second leading NPDES contributor at 40 percent of the NPDES total P load. HSTS are the remaining 11 percent of the annual total P load.

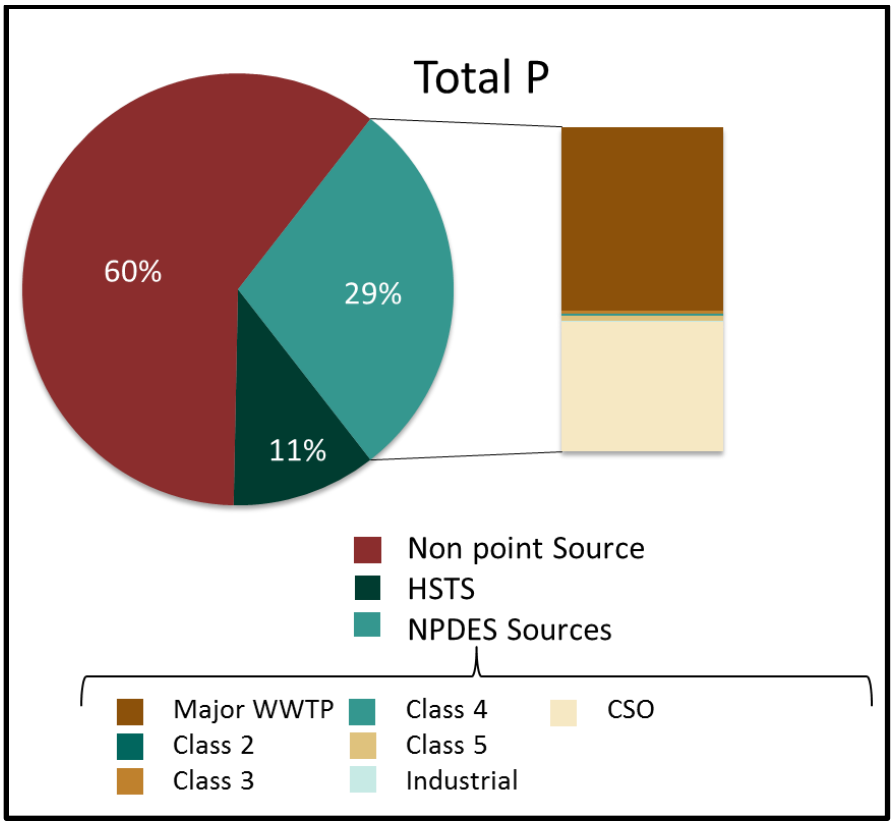


Figure: Total phosphorus source breakdown for Cuyahoga River, water year 2013. From Nutrient Mass Balance Study 2016. See report for more details.

State Agencies, Partners, and Related Areas of Responsibility

The Ohio Lake Erie Commission will serve as the coordinating entity working in conjunction with the various state agencies, federal agencies, and other partners to achieve the Domestic Action Plan goals. The Ohio Lake Erie Commission (OLEC) is comprised of the directors for six state agencies most directly involved in implementing this Domestic Action Plan and five public members. Through the Lake Erie Protection and Restoration Strategy, OLEC has identified Nutrient Reduction as a Priority Area for 2017. The Ohio Revised Code 1506.21 which was amended through Senate Bill 2 in 2017 provides the Commission authority to ensure the coordination of state and local policies and programs pertaining to Lake Erie with a priority on those identified in the Lake Erie Protection and Restoration Strategy.

The responsibility and accountability for ensuring implementation of programs and progress toward the agreed to goals will be with the various state agencies. Generally, the Ohio Department of Agriculture (ODA) has responsibility for agricultural nonpoint sources; Ohio EPA (OEPA) has responsibility for point source and water quality monitoring; Ohio Department of Natural Resources (ODNR) has responsibility for Coastal program coordination, habitat, and fisheries, and the Ohio Department of Health (ODH) has responsibility for household and small flow sewage treatment systems. Specific areas of responsibility and involvement are listed below for the primary state agencies and partners engaged in this initiative. This list may not be a total reflection of responsibilities and involvement and they may change over time.

In addition to coordinating agencies listed below, the Commission will coordinate with other parties from time-to-time on specific issues, such as monitoring and research. These parties may include other

universities, non-profit organizations, Indiana and Michigan state agencies, and international agencies such as Environment and Climate Change Canada, the Ontario Ministry of the Environment and Climate Change, and Ontario Ministry of Agriculture, Food, and Rural Affairs.

Ohio Department of Agriculture (ODA)

- Agricultural nonpoint program implementation
- Agriculture Fertilizer Applicator Certification Program
- CAFO permitting and regulatory oversight
- Certified Livestock Manager training and inspections
- Manure and Fertilizer Application (SB 1) enforcement
- Fertilizer sales records
- Watershed coordinator program administration
- Agricultural nonpoint BMP technical assistance and oversight
- Agricultural Pollution Abatement Program
- Ohio Runoff Risk Forecast website
- Conservation Reserve Enhancement Program implementation

Ohio Environmental Protection Agency (Ohio EPA)

- National Pollutant Discharge Elimination System (NPDES) permit approval and oversight
- Wastewater treatment technical and feasibility studies
- Storm water management program administration
- Water quality monitoring (watershed and Lake Erie)
- Combined Sewer Overflow permitting and oversight
- Environmental Infrastructure funding (wastewater, drinking water)
- 319 Grant, Surface Water Improvement Fund (SWIF), GLRI Fund administration
- Areas of Concern program administration
- Harmful Algal Bloom program administration
- Total Maximum Daily Load (TMDL) studies (See Appendix A for further discussion of TMDLs)
- Administer and enforce a program for the regulation of sewage sludge management

Ohio Department of Health (ODH)

- Establish Sewage Treatment System standards and oversight (local health districts)
- Bathing beach advisories and sample results posted on BeachGuard website
- Bathing Beach monitoring for Lake Erie beaches

Ohio Department of Natural Resources (ODNR)

- Private lands wildlife habitat management
- Posting of bathing beach advisories on state park beaches and boat ramps

- Lake Erie fisheries
- In-water beneficial reuse of dredge material
- In-water coastal wetland for habitat restoration and nutrient reduction

Ohio Lake Erie Commission (OLEC)

- Domestic Action Plan coordination
- Lake Erie Protection and Restoration Strategy coordination
- Issues grants from the Lake Erie Protection Fund

Natural Resource Conservation Service (NRCS)

- Farm Bill program financial and technical assistance for conservation planning and practice implementation.
- GLRI grants
- Co-Chair the WLEB Partnership with the U.S. Army Corps of Engineers
- Maintain Ohio Field Office Technical Guide conservation practices and standards

Farm Service Agency (FSA)

- Conservation Reserve Program administration
- Conservation Reserve Enhancement Program administration
- Farmable wetlands program administration

U.S. Environmental Protection Agency (U.S. EPA)

- Great Lakes Water Quality Agreement administration
- Total Maximum Daily Load review
- NPDES permit review
- Nine Element Watershed Plan oversight
- 319 funding and GRLI funding administration

US Geological Survey (USGS)

- Stream gauge operation and water quality monitoring

National Ocean and Atmospheric Agency (NOAA)

- Ohio Sea Grant
- Satellite imaging
- Coastal Resource Management

Heidelberg University National Center for Water Quality Research (NCWQR)

- Water quality monitoring and data analysis

Ohio Department of Higher Education

- Harmful Algal Bloom Research Initiative

The Ohio State University (OSU – Stone Lab)

- Water quality monitoring
- Data analysis
- Research coordination and summaries

The Ohio State University College of Food, Agriculture and Environmental Sciences

- Research on agricultural and production processes, practices and nutrient best management practices
- Educational programs and producer certification training through OSU Extension

University of Toledo (UT)

- Lake Erie water quality monitoring

Bowling Green State University

- Sandusky Bay water quality monitoring

Great Lakes Commission

- Eriestat

Stakeholder Groups providing input for the Domestic Action Plan

- Ohio Corn Growers
- Ohio Soybean Association
- Ohio Cattleman's Association
- Ohio Pork Producers
- Ohio Agri-business Association
- Ohio Federation of Soil and Water Conservation Districts
- Ohio Association of Soil and Water Conservation District Employees
- Ohio Farm Bureau Federation
- The Nature Conservancy
- National Wildlife Federation
- Environmental Defense Fund
- Ohio Environmental Council
- Black Swamp Land Conservancy
- Alliance for the Great Lakes
- Pheasants Forever
- Ducks Unlimited
- Great Lakes – St. Lawrence Cities Initiative
- Toledo Metropolitan Area Council of Governments

- Ohio Charter Boat Captains Association
- County Commissioner Association of Ohio
- Lake Erie Foundation
- Stone Lab/Sea Grant
- The Ohio State University College of Agriculture, Food and Environment
- The Ohio State University – Stone Lab
- Ohio Sea Grant Program

Domestic Action Plan Actions

Action items are broken down into four categories. Agricultural Land Management includes actions to reduce nutrient export from nonpoint sources in lands used for agriculture. Community-Based Nutrient Reduction includes actions to reduce nutrients from urban and rural communities and publicly or privately owned permitted point sources. Restoration and Support of Ecosystem Services includes actions to protect and restore natural lands. Monitoring, Tracking, and Support includes other actions necessary to implement the Domestic Action Plan and track progress toward the GLWQA targets.

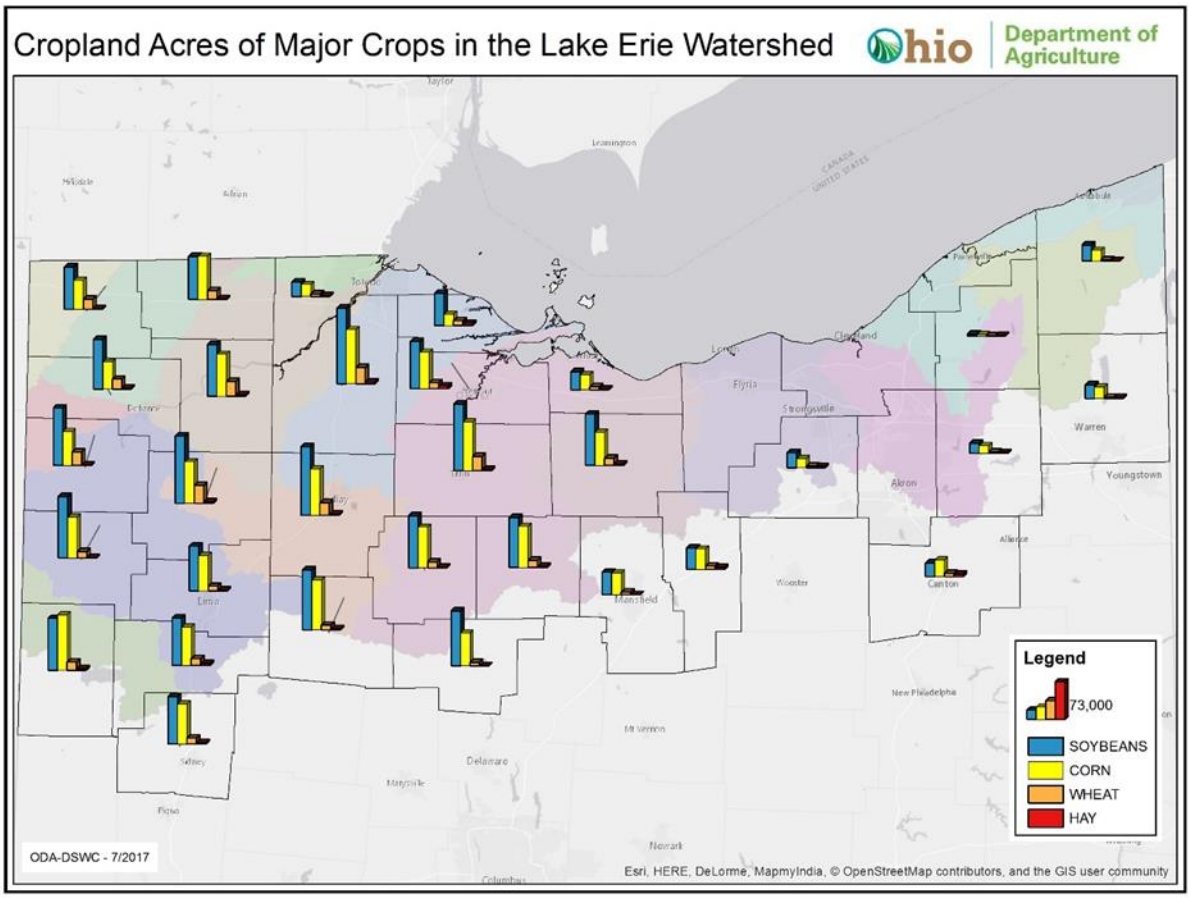
Agencies will evaluate these lists of action items to identify a priority order or significance hierarchy of actions in each area.

Additional actions to reduce nutrient loads may have been identified in specific areas served by Total Maximum Daily Load Implementation Plans. For discussion about this, see Appendix A.

Agricultural Land Management

Agriculture is the dominant land use in Ohio's portion of the Lake Erie basin. As described above, runoff from agricultural land is a major nonpoint source of nutrients to Lake Erie. In the Northwest Ohio HUC-8 watersheds (Auglaize, Blanchard, Cedar-Portage, Lower Maumee, Raisin, Sandusky, St. Joseph, St. Marys, Tiffin, Upper Maumee), row crop agriculture accounts for 65-80% of the land use (NASS, 2012). These watersheds were once the Great Black Swamp, and drainage is necessary for agricultural production. The intensity of row crop agriculture decreases from west to east across the northern part of Ohio. In Northeast Ohio, developed and forested land dominate the landscape. Within these watersheds (Ashtabula-Chagrin, Black-Rocky, Chautauqua-Conneaut, Cuyahoga, Grand, and Huron-Vermillion) agriculture only accounts for 11-57% of the land use (NASS, 2012).

Based on the 2012 NASS Agricultural Census there are approximately 20,700 farms within the Lake Erie basin, with over 14,000 located in the Western Lake Erie Basin (WLEB) watershed. Soybeans, corn, wheat and hay are the four dominant crops within the Lake Erie watershed. Soybeans and corn make up approximately 90 percent of the production, with over 50 and 39 percent of the acreage respectively. Wheat acres make up about 8 percent of the WLEB watershed, and hay accounts for another 2 percent (NASS, 2012). Comparatively, corn in the Cedar-Portage, Maumee, and Sandusky watershed counties cover approximately 1.55 million acres of the 1.85 million acres of corn grown in the whole Lake Erie watershed within Ohio.



There are sixty-five concentrated animal feeding facilities permitted within the Lake Erie watershed in Ohio. These operations are permitted through the Ohio Department of Agriculture - Division of Livestock Environmental Permitting (DLEP). Similar to the row crop agricultural production, permitted livestock facilities are concentrated in Northwest Ohio. Fifty-six of the concentrated animal feeding operations are in the western basin drainage. These permitted facilities must follow manure management plans and DLEP reviews manure application rates and records.

Because of the predominance of agricultural activity, especially in Ohio's portion of the watershed of the Western Basin of Lake Erie, actions to manage agricultural lands to reduce the export of phosphorus as both total and dissolved forms is of critical importance in meeting the targets set by Annex 4. Ohio's proposed actions for management of agricultural land include:

Ohio Department of Agriculture (ODA)

1) ODA will be engaged in the process with the USDA Agricultural Research Service, NRCS, and OSU to finalize and present results from edge-of-field monitoring and research, and to establish next steps in the continuation of this research.
2) ODA will be engaged in the progress of OSU and other state and federal agencies to complete potential revisions to the Tri-State Fertility Guide and the Phosphorus Index. This includes a

timeline for making recommendations to adjust the Index, such as variations to the Index pertaining to commercial fertilizer and manure.

3) ODA will continue the Ohio Clean Lake Initiative - Impaired Watershed Restoration Program through the Division of Soil and Water Conservation. This program aims to reduce phosphorus loading, including dissolved phosphorus loading, from agricultural landscapes to waters of western Lake Erie, the Maumee River and its tributaries. Specifically, this project will target four of the most impaired Watershed Assessment Units (WAU) in the Western Lake Erie Basin Watershed. A "systems approach" using a combination of management practices (soil testing, cover crops, drainage water management, fertilizer placement technology and manure storage structures and/or roofed feedlots) known to reduce nutrient loading will be targeted within portions of 10 counties in Ohio, of select sub-basins of the Maumee and Sandusky Rivers.
4) ODA will work with NRCS to establish a Western Lake Erie Basin Technical Advisory committee as a subcommittee to the State Technical Committee to provide technical assistance specific to nutrient management issues and agricultural practices in the basin.
5) ODA will coordinate with the United States Department of Agriculture Commodity Credit Corporation to strengthen and stimulate the Ohio Lake Erie Conservation Reserve Enhancement Program (LE-CREP) to achieve its 2004 goal of voluntarily establishing 67,000 acres of filter strips, riparian buffers, hardwood tree plantings, wildlife habitat and field windbreaks. Incentives will be prioritized based on targeted watersheds and on optimal placement and effectiveness of the riparian practices.
6) ODA will collaborate with the USDA – NRCS, the Ohio Federation of Soil and Water Conservation Districts, and other partners to identify a suite of agriculture nonpoint BMPs (for example, drainage water management, nutrient placement, soil testing and livestock waste management) to be promoted basin-wide but with a priority for placement in targeted watersheds. Additional funds will be sought to provide cost incentives for implementing these BMPs, and BMP implementation will be tracked at the HUC 12 level.
7) ODA will educate producers on the importance of following the fertilizer and manure application restrictions and fertilizer certification requirements in the WLEB. Implementation and enforcement of these restrictions will be a top priority for ODA and Ohio's SWCDs.
8) ODA will develop a Farm Stewardship Certification for farmers who protect farmland and natural resources by voluntarily implementing best management practices (BMPs) on their farms. Farmers that fully implement the 4Rs, including nutrient placement or nutrient application onto a living crop, will be eligible to receive this newly created certification. A farm level nutrient management plan (NMP) will provide verification that appropriate BMPs have been implemented and all aspects of the 4Rs are being utilized. Ohio's SWCDs will assist with the review and verification components of the NMP and will recommend farms deserving of the stewardship certification. Acres included in the NMPs and enrolled in the certification program will be tracked at the HUC 12 level.
9) ODA will identify existing programs and consider development of new programs to install practices that reduce or eliminate water quality impacts from agricultural drainage. This will include programs for the installation of drainage control structures and developing incentives for water detention/retention structures in the agricultural landscape.
10) ODA will work with NRCS to encourage the establishment of stream-line processes, sign-up periods, and application requirements for various federal and state funding and technical

assistance programs. This may include developing a "carve-out" of Farm Bill programs and processes specific to the multistate Lake Erie basin for a specified period.

11) ODA will work with NRCS and encourage an assessment of the scoring criteria for Farm Bill program eligibility to ensure that those farmers in most need of technical and financial assistance are receiving higher consideration for assistance.

12) ODA will establish a pilot program with Wood and Henry County SWCDs that will enable producers to voluntarily provide information on BMPs being implemented in select watersheds.

13) ODA has established and will maintain the Ohio Applicator Forecast website[4]. The Forecast is designed to help nutrient applicators identify times when the weather-risk for applying is low. The risk forecast is created by the National Weather Service and takes snow accumulation and melt, soil moisture content, and forecast precipitation and temperatures into account. The chances of surface runoff in the next 24 hours are displayed on the overview map of the state.

Ohio Environmental Protection Agency (Ohio EPA)

1) The Ohio Environmental Protection Agency, Ohio Department of Agriculture, and the Ohio Federation of Soil and Water Conservation Districts are developing a program jointly recognizing individuals and organizations that support sustainable agriculture and environmental stewardship by preventing nutrient loss and protecting water quality through the Stewardship Credit Recognition Program. Organizations could purchase credits from any participating water quality trading program.

2) Ohio EPA will continue to work with the Great Lakes Commission to determine the feasibility for the establishment of a cross boundary nutrient trading program for portions of the Lake Erie watershed.

3) Ohio EPA will continue work on establishing rules within the water quality standards rule 3745-01-04 that address the public health nuisance associated with the presence of manure in waters of the state.

Community-Based Nutrient Reduction

There are eight counties along the coast: Lucas, Ottawa, Sandusky, Erie, Lorain, Cuyahoga, Lake, and Ashtabula. According to the U.S. Census Bureau (2016 estimate), the combined population of Ohio's coastal counties (Wood County included) was 2,490,123 people, amounting to nearly one-quarter of the state's total population. There are 332 cities or villages and 403 townships in Ohio's part of the watershed, with four prominent urban areas. From west to east, such populated areas include greater Toledo, the expansive Cleveland metropolitan region, greater Akron, and Youngstown. In addition to these major population centers, there are numerous county seat population centers. For example, in the southwestern portion of the watershed, Norwalk (Huron County), Fremont (Sandusky County), Tiffin (Seneca County) and Findlay (Hancock County).

Community-based sources of phosphorus include major wastewater treatment plants (WWTPs), industrial facilities, or minor publicly-owned treatment works (POTWs). There are a combined total of 913 permitted facility outfalls in the Annex 4 priority watersheds in Ohio, which discharged a combined

[4] http://www.agri.ohio.gov/divs/plant/OhioApplicatorForecast/oaf.aspx

annual total of 304.8 metric tons for water year 2016 (Oct. 2015-Sept. 2016). The outfalls are distributed as indicated in the following table.

Table: Number of NPDES individual facility permits by Annex 4 Priority Watershed, with water year 2016 total phosphorus annual load from all permitted outfalls. This includes all facilities, public or private, that report discharge of total phosphorus. A detailed list of facilities is presented in Appendix C.

Watershed		Number of Permitted Outfalls	Total Phosphorus Load (MTA)
Annex 4 Priority Watersheds (State of Ohio)	Maumee	342	134.5
	Sandusky	104	11.1
	Portage	97	14.0
	Huron	44	2.65
	Vermillion	24	1.74
	Cuyahoga	200	135.4
	Grand	102	5.47
Annex 4 Priority Total		913	304.8
All others		584	172.0
Total		2410	476.8

In addition, some communities have storm water outfalls that are regulated, which include Combined Sewer Outfalls (CSOs) and individual or general storm water permits. Combined sewer overflows (CSOs) from urban storm water are the primary source of untreated sewage discharges to Lake Erie. In the Lake Erie basin, 62 communities have CSOs. Ohio EPA estimates that the six communities with the largest CSO volumes discharged an annual average CSO volume of approximately 10,600 million gallons per year (based on 2014-16 values). Because the amount and timing of storm water discharge varies tremendously from year to year and the phosphorus concentrations also vary, please see the Ohio EPA Nutrient Mass Balance Study, Appendix B for estimates of CSO loadings in selected Lake Erie tributaries for water years 2013 and 2014.

There are numerous communities with storm water permits in the Lake Erie watershed[5]. *(more)*

Estimates of the number, capacity, and failure/discharge rates of home sewage treatment systems were developed for the watersheds in the Nutrient Mass Balance Study. *(more)*

Every community in Ohio's Lake Erie watershed has a role to play in reducing nutrient loads. These actions outline opportunities for communities to participate in nutrient reduction that will improve conditions in local receiving streams as well as in Lake Erie downstream.

Ohio Environmental Protection Agency (Ohio EPA)

1) Ohio EPA has identified those top facilities in each of the Annex 4 priority watersheds in Ohio with an NPDES permit that report discharging phosphorus (Appendix C). Ohio EPA will evaluate those facilities that currently do not have a permit limit for total phosphorus to determine options on a facility by facility basis for reducing the phosphorus discharge level.

[5]Interactive map of permitted storm water communities is available at http://oepa.maps.arcgis.com/apps/webappviewer/index.html?id=b680bd65d1874023ae6ec2f911acb841

2) Ohio EPA has implemented the requirement of SB1 that all facilities discharging more than 1 MGD will include monitoring of both total phosphorus and ortho-phosphorus by Dec. 1, 2016 if this requirement does not currently exist. Data for ortho-phosphorus will be available at the end of water year 2017 (October). Five additional facilities will have new total phosphorus limits in their renewed permits (noted in the tables in Appendix C).

3) Ohio EPA will continue to refine the arrangement with Battelle and possibly other institutes to conduct an evaluation of processes, and product effectiveness for addressing nutrient and/or microcystin management, treatment and control with a focus on drinking and wastewater treatment.[6]

4) Ohio EPA in coordination with ODA has compared the various components of the Biosolid Land Application and Management Plan rules with those of the nutrient and manure management plans to ensure more consistency.[7] Rule development is underway and is expected to be complete around the end of 2017.

5) Ohio EPA and ODA will coordinate with local entities in the development of Watershed Implementation Plans (WIPs)[8] with a focus on priority watersheds that are not already covered by a WIP. The WIP ideally will meet the nine element watershed plan criteria established by U.S. EPA to meet expectations for providing reasonable assurance that nutrient reductions will be achieved and maintained and eliminate nutrient impairment for a particular stream. A WIP meeting the nine-element standard will also enable the county and others to apply for 319 grants and other state and federal funding even if an approved TMDL is not in place. Cost share from the state for the WIP will be sought through a re-allocation of existing dollars or new funding.

6) Ohio EPA will continue to focus State Revolving Loan Fund dollars and coordinate with other infrastructure funding programs to direct funding at Division of Surface Water priority CSO separation projects, wastewater treatment plant upgrades, storm water management and home sewage treatment systems.

7) Ohio EPA will propose legislation that will limit all treatment works discharging waste water containing phosphorus to achieve at least a monthly average effluent concentration of 1 mg/L phosphorus unless alternative limits or conditions are deemed appropriate by the Director.

8) Ohio EPA's stormwater management program working with ODA, local SWCDs and watershed groups will investigate opportunities to utilize storm water management in addressing hydrologic factors that influence nutrient loading into Lake Erie. Revisions to the Rain Water Manual[9] may include increasing upland, channel or storm water storage, floodplain reconnection, and nutrient treatment. Implementation would be in conjunction with landowners and watershed managers on both headwater and larger watersheds basis.

9) Ohio EPA will continue to work with USEPA on establishing a recreational use standard and advisory protocol for microcystin for the open waters of Lake Erie.

[6] The evaluation procedure is detailed at http://epa.ohio.gov/Portals/35/hab/WQRiskSurvey.pdf.
[7] See
OAC Chapter 3745-40 Sewage Sludge Rules at http://epa.ohio.gov/dsw/rules/3745_40.aspx.
[8] http://www.epa.state.oh.us/dsw/nps/index.aspx#120845160-9-element-nps-is
[9] http://epa.ohio.gov/Portals/35/storm/technical_assistance/RLD_11-6-14All.pdf

10) Ohio EPA will evaluate the existing long term control plans for CSOs and the impacts on nutrient loading.

11) Ohio EPA will track the installation of point source nutrient reduction BMPs since 2008. Tracking will include all major NPDES permits with discharge limits, those required to complete a technical and feasibility study (SB1), CSO outfalls, and state or federal funded storm water management practices.

Ohio Department of Health (ODH)

1) ODH will continue to work with local health districts to ensure implementation of their Operation and Maintenance Tracking programs for sewage treatment systems as required in the Ohio Administrative Code, and provide options and resources for implementing operations and maintenance tracking including identification of failing sewage treatment systems within targeted watersheds[10].

2) Upon identification of a failing system, local health districts will establish specific action plans and timeframes for correction of the nuisance conditions which may include repair, alteration or replacement of the sewage treatment system, or connection to public sewers, where available.

3) Local health districts will continue to work with state and local government agencies and local public sewage treatment providers to facilitate extension of sewers to areas of concentrated failing HSTS.

Restoration and Support of Ecosystem Services

Ecosystem services are the benefits people obtain from ecosystems. Protection and restoration of the natural ecosystems of the Lake Erie watershed provides low cost mechanisms for nutrient reduction among other benefits. Examples of key ecosystems include inland, stream side, and coastal wetlands.

Wetlands are areas that are wet at a frequency and duration sufficient to support vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas inland, along streams, and along the coast. Wetlands are an integral part of the Great Lakes ecosystem because they store water and act as reservoirs, reducing the risk of flooding. They also help to improve the quality of water by filtering sediment and nutrients.

Wetlands have not always been valued for these functions. The last couple of centuries have brought about a great decrease in the number and acreage of wetlands in Ohio. This loss has been caused by agricultural and urban development, water level fluctuations, shoreline stabilization, and changes in drainage patterns. In the 2006-2007 National Wetland Inventory, there were 47,323 individual wetlands identified in Ohio's Lake Erie watershed, totaling 289,447 acres. For comparison, the total acreage of the Lake Erie watershed is 7,455,360 acres.

Increasing the number and quality of wetlands in Ohio, with particular attention to the type and location, is part of the overall strategy for nutrient reduction and also provides other benefits such as wildlife habitat and beneficial reuse of dredged material.

[10] http://www.odh.ohio.gov/odhprograms/eh/sewage/STSpages/OMTrackingProg.aspx

Ohio Department of Natural Resources (ODNR)

1) ODNR, in cooperation with Ohio EPA and OLEC, will continue to fund and complete engineering and design work for potential in-water coastal wetland restoration projects in the western basin that beneficially use dredged material and can help assimilate in-lake nutrients. Specifically, in-water coastal wetland restoration projects in the mouth of the Maumee River and Phase 1 projects as identified in the Sandusky Bay Initiative (see detailed project listing, timeline, and milestones in Appendix D).
2) ODNR and Ohio EPA will coordinate with the USACE and other Federal agencies to identify opportunities to restore coastal wetlands and natural shorelines that beneficially reuse dredge material along the entire Ohio Lake Erie coastline. This includes the identification of potential local partners and public-private partnerships to leverage state and federal resources.
3) ODNR will continue to coordinate with and assist the USFWS/NOAA Upper Midwest and Great Lakes Landscape Conservation Cooperative (LCC) Coastal Conservation Workgroup to develop and implement tools to identify potentially restorable wetlands for the western basin that incorporates Landscape Conservation Design (LCD) principles and goals, with a focus on restoring and conserving functional coastal wetlands that maximize coastal habitat, water retention, sediment trapping and nutrient processing/reduction benefits.
4) ODNR shall administer and implement two coastal wetland pilot demonstration projects recommended for GLRI funding by the LCC Coastal Conservation Workgroup that will reconnect existing degraded tributary and diked wetlands with Sandusky Bay resulting in restored nutrient processing functions and enhancing habitat connectivity with the Bay.
5) ODNR, in cooperation with Ohio Sea Grant, shall jointly fund projects to investigate and quantify nutrient processing and reduction benefits of coastal wetlands at Old Woman Creek NERR and as part of the Sandusky Bay Initiative.
6) ODNR through the Division of Wildlife will evaluate opportunities through their Private Lands program and joint state-federal programs to develop projects in the Lake Erie basin that provide a combination of long-term wildlife habitat along with water quality benefits such as riparian buffers and wetlands.

Ohio Lake Erie Commission (OLEC)

1) OLEC, in conjunction with the Department of Taxation, will evaluate the establishment of a pilot Statewide Conservation Land Tax which would serve as an incentive to landowners to place land which would also provide water quality benefits into long-term conservation programs. As part of this initiative, OLEC could fund through the Lake Erie Protection Fund a study to evaluate tax revenue implications to local governments and school districts, possible models such as the State Homestead Exemption program and acceptance by landowners and other stakeholders.
2) OLEC, Ohio EPA, ODA and ODNR will meet with the Maumee Conservancy District to evaluate their role related to the design, construction, funding and management of storm water management including water retention/detention options. More effectively managing surface and subsurface water would help to minimize “flashiness” of streams often resulting in short-term but higher nutrient loads. The conservancy district model may be a structure worth

evaluating as a way for implementation and funding large-scale water management issues in the WLEB.

Monitoring, Tracking, and Support

Monitoring Water Quality and Tracking Progress

Ohio Environmental Protection Agency (Ohio EPA)

1) Ohio EPA has established a comprehensive water quality monitoring network specific to tracking progress toward meeting the requirements of the Ohio's Domestic Action Plan and Annex 4 (Appendix E). Monitoring locations have been established at key subwatersheds and at the most practical location near the mouth of the direct primary tributaries to Lake Erie as specified in Appendix E. Ohio will coordinate these monitoring activities with other jurisdictions, particularly for the shared Maumee River watershed with Michigan and Indiana.
2) Ohio EPA, in cooperation with Heidelberg University's National Center for Water Quality Research and USGS, will continue to develop and implement a program to monitor and track water quality improvements resulting from nutrient reduction practices and BMPs. These correlations will be developed at the finest scale practical, whether it is edge of field, HUC12, or HUC10 level.
3) Ohio EPA will publish a Water Quality Target for each Annex 4 priority watershed and major western Lake Erie basin HUC 8 Maumee River subwatershed once the methodology is available. These targets will be used in assessing nutrient reduction progress toward the Domestic Action Plan targets. Work on an appropriate methodology, and the development of numeric spring load targets for the Tiffin River and St. Joseph River HUC 8 sub-basins of the Maumee River, is underway through a grant by USEPA to an outside contractor and is expected to be complete in April, 2018.
4) Ohio EPA will take a leadership role with member entities on the Annex 4 Monitoring Work Group (Ohio, Indiana, Michigan, and Ontario) to ensure a consistent sampling and lab testing protocol is in place and being followed. It is recommended that one common platform, such as the Great Lakes Commission's ErieStat program, be used to collect, share, and report on progress toward and verification of achieving the Great Lakes Water Quality Agreement and Domestic Action Plan goals.
5) Ohio EPA along with federal and university-based research partners will establish a western Lake Erie open water monitoring system to monitor the presence and amount of harmful algae and microcystin. This information will be used to track progress towards the Annex 4 Lake Ecosystem Objectives for Lake Erie, including reducing the size and toxicity of algal blooms in the lake to no larger than the 2008 bloom. This open water monitoring system will also provide a science based methodology for assessing use attainment for the open waters of Lake Erie.
6) Ohio EPA in conjunction with ODH will work with researchers to establish a methodology for identifying the potential source of nutrients that may be resulting from manure or human waste through DNA analysis.
7) Ohio EPA will coordinate with local authorities to conduct monitoring of nutrient discharge levels from priority combined sewer overflows. The purpose will be to evaluate the total nutrient load resulting from these periodic discharges to improve estimates for future versions of the Nutrient Mass Balance Study.

Ohio Lake Erie Commission (OLEC)

1) OLEC and member agencies will provide an annual update to the Ohio House and Senate Agriculture, Agriculture and Rural Development, Energy & Natural Resources committee as well as the Lake Erie Caucus on the state of the water quality in the Lake Erie watershed. These updates and status reports will be made available to the public on the OLEC website.

Tracking Funding and Practices

Ohio Lake Erie Commission (OLEC)

1) OLEC will coordinate with the member agencies and federal partners on the establishment of a nutrient reduction fiscal operations plan. This plan will serve as guide for identifying short-term and long-term funding needs and potential long-term funding sources including re-allocation as well as new local, state, and federal funding opportunities for nutrient reduction. Priority should be given to a consistent and possibly a dedicated funding source for water quality monitoring.

2) Significant dollars and other resources are made available annually from various federal, state, local and private sources to address the issues of Lake Erie. These funds include the Great Lakes Restoration Initiative Funds (GLRI), 319 Grants and other federal funding programs through United States Department of Agriculture (USDA), U.S. EPA, NOAA, United States Army Corps of Engineers (USACE), United States Fish and Wildlife Service (USFWS) and USGS. Several state agencies, ODNR, Ohio EPA, and ODA also have provided significant funding over the years to help address Lake Erie issues. While the combination of funds is significant and it is often easy to point to the resulting projects, there continues to be the need to ensure dollars are being directed to projects and programs that truly address coordinated or stated priority issues. OLEC will seek cooperation, request coordination and may review funding requests made to federal or state agencies from state agencies, government subdivisions, and organizations for funding related to Lake Erie or Lake Erie Basin projects. OLEC does not have the authority to approve or disapprove an application but will evaluate the funding request to confirm if the project is helping to achieve state or federal priorities related to the Lake Erie basin.

3) OLEC will establish methods for tracking the amount of all public funds, and when possible, private sources such as foundations that are expended in Ohio for nutrient reduction. It is recommended that fiscal tracking programs be utilized by all levels of government and by those entities receiving public funds, including Soil and Water Conservation Districts, Sewer and Water Districts, and Watershed Programs that can track dollars received and expended on nutrient reduction and to help document the potential need for funding to achieve the desired program objectives. This would not include identifying the individuals or private business entities receiving cost-share dollars through Farm Bill programs, or other programs where confidentiality of the recipient is protected by law.

Ohio Environmental Protection Agency (Ohio EPA)

1) Ohio EPA will continue to revisit and revise as necessary the Maumee sub-basin priority watersheds at the HUC 12 level (Appendix B). The establishment of these priority watersheds does not mean that nutrient reduction practices for both point source and non-point should not nor will not continue to be implemented throughout the western Lake Erie basin. Establishing Maumee sub-basin priority watersheds at the HUC12 level is intended to indicate those areas where it is believed that the most effective use of resources would potentially result in the

quickest reduction in nutrient impacts to water quality and be verified as a result of targeted water quality monitoring. Priority watersheds are initially based on the results of a recent report examining six water quality models (Scavia, 2016), nutrient monitoring data collected as part of the Ohio EPA Watershed Assessment Program, and agency staff best professional judgment specific knowledge of each watershed. These priority watersheds can be placed in groups based on characteristics that will affect specific nutrient sources and nutrient management practices. These groups are:

a. The proportion of hydrologic soil group D (intense tillage and drainage)
b. Soil slope (erosion)
c. Livestock presence (nutrient source and timing)
d. Various landscape characteristics

Further, within these priority watersheds other known nutrient sources exist. These would include NPDES permitted point sources (focus on those without total phosphorus limits) Biosolid Land Application Management Plans, and known unsewered communities with failing household sewage treatment systems. If these sources exist within a priority watershed they will be identified. Groundtruthing of various nutrient sources, updates to the maps produced by the multi-model research group (currently being led by OSU), implemented BMP's, and resulting water quality improvements will be used to confirm and if necessary adjust these Maumee sub-basin HUC12 priority watersheds as part of the adaptive management process.

Programmatic Support

Ohio Lake Erie Commission (OLEC)

1) OLEC will take the lead to ensure there is annual coordination between state and federal agencies for identifying priority programs, priority areas, and timelines related to Lake Erie and the Lake Erie Basin. Each OLEC members' state agency will coordinate with the OLEC staff to maximize opportunities for the coordination of state and federal priorities.
2) OLEC will establish the DAP Advisory Committee in late 2017 involving similar stakeholders as those involved in the Phosphorus Task Force initiatives which will meet once or twice per year. This Committee would provide input and evaluation to the Commission on the progress of implementation toward achieving the stated nutrient reduction goals.
3) OLEC will coordinate inter-agency engagement and recommendations for the up-coming Farm Bill as they relate to Lake Erie in addition to coordinating state recommendations to be submitted to the Great Lakes Commission for the development Farm Bill recommendation with a Great Lakes basin focus.
4) OLEC with its member agencies will coordinate the development of an Adaptive Management Process "trigger mechanism" which would cause a change of program, practice or policy if the goals are not reached or if no measurable progress is observed toward achieving the goals. Any trigger will be based on the best available science and engagement of interested parties and state agencies.

Major Benchmarks

Major benchmarks are the loading and concentration targets pinned to specific times.

Targets to Address HABs

Priority Tributary	Spring (March 1-July 31) Values				
	2008 Baseline			Targets under 40% Reduction by 2025	
	Discharge (km^3)	Load metric tons	FWMC mg/L	Load Metric tons	FWMC mg/L
Maumee River	3.76	1,414 TP 302 DRP	0.38 TP 0.08 DRP	860 TP 186 DRP	0.23 TP 0.05 DRP
Portage River	NA	NA	NA	TBD	TBD
Sandusky River	*(TBD)**	*(TBD)** *(TBD)**	0.40 TP 0.07 DRP	230 TP 43 DRP	0.23 TP 0.05 DRP

* To be determined - data available, but the calculations for the seasonal values are not yet complete.

Baseline data are not available for the Portage River in 2008 due to gaps in the data set. The development of a spring loading and concentration target for the Portage River will be completed once the methodology to develop the Maumee River HUC 8 sub-basin targets is completed.

Targets to Address Hypoxia (Metric Tons Annually, MTA)

Priority Tributary	**2008 Annual Load***	**40% Reduction Amount**	**Target Load by 2025**
Maumee River	3,812	1,525	2,287
Portage River	359	144	215
Sandusky River	1,100	440	660
Cuyahoga River	452	181	271

*Annual load estimates based on Maccoux, 2106 values.

The remaining three Annex 4 Priority Watersheds, the Toussaint, Vermilion, and Grand Rivers, are not included in this table because of their relatively small annual load totals (less than 150 MTA each). This represents less than 100 MTA of total reduction. Hence these watersheds, while important, are a lower priority for Ohio and will be considered for specific actions and load reductions at a later date.

How Progress Will Be Measured

It is the goal of the overall water quality monitoring strategy in Ohio to include monitoring data from edge of field, sub-watershed, Annex 4 priority watersheds, and Lake Erie in order to provide a total picture of nutrient sources and the nutrient delivery system. The primary indicator of progress will be

water quality monitoring and associated load calculations at the key downstream station on each of the Annex 4 priority watersheds in Ohio.

The State of Ohio is committed to working with the Annex 4 Subcommittee's Objectives and Targets Task Team as they develop further the Lake Erie Tributary Monitoring Strategy that will inform progress on the GLWQA Annex 4 targets.

Ohio is committed to working with USEPA to coordinate at the federal and state level to provide progress tracking information in a consistent, timely manner. That may include participation in the ErieStat online platform, annual webinars or other public forums, further publications of Ohio's Water Monitoring Fact Sheets, or other mutually agreed upon mechanisms.

Appendix A
The Role of Maumee River Subwatershed TMDLs in meeting the Goals of the Domestic Action Plan

The Total Maximum Daily Load (TMDL) program, established under Section 303(d) of the Clean Water Act, focuses on identifying and restoring polluted rivers, streams, lakes and other surface waterbodies. TMDLs are prepared for waters identified as impaired on the 303(d) list in the Integrated Report which is provided by Ohio EPA to the U.S. EPA as a requirement of the Clean Water Act.

A TMDL is a written, quantitative assessment of water quality problems in a waterbody and contributing sources of pollution. It specifies the amount a pollutant needs to be reduced to meet water quality standards, allocates pollutant load reductions, and provides the basis for taking actions needed to restore a waterbody. Each TMDL report includes an implementation plan that lists these actions.

Watersheds are assessed on a rotating basis. The current schedule for reassessing each subwatershed of the Maumee is given in the most recent Integrated Report (also see table). The oldest assessment and approved TMDL is the one for the Upper Auglaize River, which was completed in 2004. This subwatershed is scheduled for an updated assessment in 2018.

There are six completed TMDLs for subwatersheds of the Maumee River and three in preparation. All the TMDLs contain phosphorus load allocations for some or all parts of the respective subwatershed, based on local impairments due to nutrient loading. As of the current publication of the Domestic Action Plan, these TMDLs have not factored in phosphorus load allocations based on proposed phosphorus targets for Lake Erie. However, the actions recommended to address local nutrient impairments will also aid in reducing the loading to the lake.

Ohio EPA is working with USEPA, their contractor (Tetratech), Indiana and Michigan in the development of a methodology which describes the protocols for developing total phosphorus (TP) and soluble reactive phosphorus (SRP) load and concentration targets which meet the criteria and goals of Annex 4 lake targets for the St. Joseph and Tiffin river watersheds. The protocols described in the methodology will be flexible so that the methodology can be replicated in other subwatersheds of the Maumee River basin. After finalizing the methodology, the contractor is expected to use the procedures to calculate TP and SRP load and concentration targets for the St. Joseph and Tiffin river watersheds that do address the far field targets for Lake Erie.

In addition to actions recommended in the Domestic Action Plan, we incorporate the implementation plans from each TMDL for the Maumee, Portage, Toussaint, and Sandusky Rivers by reference (see list).

List of Maumee Basin TMDL documents

Total Maximum Daily Loads for the Upper Auglaize River Watershed Final Report. Ohio EPA Division of Surface Water. August 16, 2004.

Total Maximum Daily Loads for the Blanchard River Watershed Final Report. Ohio EPA Division of Surface Water. May 22, 2009.

Total Maximum Daily Loads for the Maumee River (lower) Tributaries and Lake Erie Tributaries Watershed Final Report. July 5, 2012. Tetra Tech Inc.

Total Maximum Daily Loads for the Ottawa River (Lima Area) Watershed Final Report. Ohio EPA Division of Surface Water. November 6, 2013.

Total Maximum Daily Loads for the Powell Creek Watershed Final Report. Ohio EPA Division of Surface Water. April 7, 2009.

Total Maximum Daily Loads for the Swan Creek Watershed Final Report. Ohio EPA Division of Surface Water. October 9, 2009.

OHIO ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL

Ohio Administrative Code Rules 3745-14-11, 3745-15-01, 3745-15-06, and 3745-17-07 – Startup, Shutdown or Malfunction and Scheduled Maintenance Rules

Interested Party Review
October 4, 2017

Comments of the Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association on Ohio EPA's Revised Draft Rule Language for the Startup, Shutdown or Malfunction and Scheduled Maintenance Rules

I. Introduction

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association (the "Commenters") respectfully submit the following comments in response to Ohio EPA's revised Interested Party Review draft amendments to Ohio's startup, shutdown, and malfunction (SSM) rules in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods.

The Ohio Chemistry Technology Council represents the interests of over 80 chemistry industry-related companies doing business in Ohio. The Ohio Chamber of Commerce represents the interests of over 8,000 member companies, including manufacturers, utilities, and small businesses, in addition to hosting the Ohio Small Business Council. And the Ohio Manufacturers' Association represents the interests of over 1,400 member companies to protect and grow Ohio manufacturing. The Commenters' members are regulated by Ohio's Clean Air Act State Implementation Plan (SIP) and have a direct and substantial interest in the Ohio SIP's SSM provisions.

II. Comments on Revised Draft Rule Language

A. There should be no "incorporation by reference" of federal law in OAC 3745-15-01.

As currently written, Ohio Admin. Code 3745-15-01(AA) appears to serve two purposes. First, in subparagraph (1), it provides "[i]nformation on the availability of" certain materials referenced in Ohio Admin. Code Chapter 3745-15, including the Code of Federal Regulations and the United States Code. Second, it appears to "incorporate" specific "materials subject to change," such as the federal Clean Air Act (2004 edition) (and, redundantly, the 2014 edition of Section 112(b) of the Clean Air Act although Congress has not amended that statute since 1999).

There is no longer any real reason to "reference" a federal statute or volume of regulations into Ohio EPA rules. There is such easy electronic access to the Clean Air Act and its implementing regulations that it is unnecessary to clutter up Ohio EPA rules with instructions on

where to find them. Moreover, state law does not require the inclusion of such instructions unless Ohio EPA intends to actually incorporate those federal laws into state law. *See* R.C. 121.72.

To that point, Ohio EPA's most recent amendments to Ohio Admin. Code 3745-15-01 indicate that Ohio EPA does not intend to actually incorporate those federal laws into state law. Prior to the most recent amendments to Ohio Admin. Code 3745-15-01, paragraph (AA) (previously numbered as paragraph (BB)) was titled "Incorporation by reference" and explicitly stated that the referenced materials "are hereby made a part of the regulations in this chapter." Ohio EPA modified the title to "Referenced materials" and removed the incorporation language from the paragraph. Moreover, Ohio EPA modified the sentence "Material is *incorporated* as it exists on the effective date of this rule" to instead say "Material is *referenced* as it exists on the effective date of this rule." (Emphasis added.) This suggests the paragraph's references to "incorporated" materials in paragraph (AA) and subparagraph (AA)(2) are errors. If that is the case, Ohio EPA should edit Ohio Admin. Code 3745-15-01, existing paragraph (AA) (draft paragraph (BB)), as follows:

> (BB) Referenced materials. This chapter includes references to certain subject matter or materials. The text of the referenced materials is not to be treated as if it were included in the rules contained in this chapter. Information on the availability of the referenced materials, as well as the date of and/or the particular edition or version of the material is included in this rule. For materials subject to change, only the specific version specified in this rule are ~~incorporated~~referenced. Material is referenced as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not included unless and until this rule as been amended to specify the new dates. * * *
>
> (2) ~~Incorporated~~List of referenced materials. * * *

Leaving Ohio Admin. Code 3745-15-01(AA) uncorrected, and revising it in the manner Ohio EPA has suggested, could effectively incorporate vast new swathes of federal law into Ohio law, without explanation or discussion, through the regulatory equivalent of a footnote. As Ohio EPA knows, under Ohio law, an "incorporation by reference" that meets the requirements of R.C. 121.72 is not simply a reference; it is an adoption of the full text of the referenced material as if it were printed in the Ohio Administrative Code. And the latest draft revisions to Ohio Admin. Code 3745-15-01(AA) (renumbered in the revised draft amendments as subparagraph (BB)) could be interpreted to expand the incorporation of federal law to include the entirety of 40 C.F.R. Part 60 (the federal New Source Performance Standards) and 40 C.F.R. Part 63 (the federal National Emissions Standards for Hazardous Air Pollutants) – over 1500 pages of federal regulations.

There is no reason or authority for incorporating the entire NSPS and MACT program rules into Ohio law. The fact that Ohio EPA's draft revisions to Ohio Admin. Code 3745-15-06(E) cite to 40 CFR Parts 60 and 63 would not justify or necessitate incorporating those entire multi-volume CFR parts. Ohio EPA's proposed revisions to Ohio Admin. Code Chapter 3745-15-06 would not truly make the federal NSPS and MACT rules part of Ohio law; rather, they would identify a certain set of SSM plans developed pursuant to and compliant with 40 C.F.R. 63.6(e)(3) (for MACT standards), and emission limits and work practice standards adopted as New Source

Performance Standards, as acceptable for Ohio SIP purposes. For the reasons provided above, Ohio EPA should delete Ohio Admin. Code 3745-15-01(AA) (draft paragraph (BB)) in its entirety, or at the very least strike or revise subparagraph (2) ("Incorporated materials") so that all the materials described are listed as "referenced" materials, and none as "incorporated materials."

B. OAC 3745-15-06(A)(6) should not redefine a reportable "deviation"

In Ohio Admin. Code 3745-15-06, Ohio EPA has commendably, and appropriately, proposed to specify work practice standards applicable during scheduled maintenance of air pollution control equipment. Such work practice standards are within the definition of "emission limitation" in 302(k) of the Clean Air Act, and well within the ambit of "other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements" for state implementation plans in Clean Air Act § 110(a)(2)(A). For scheduled maintenance of air pollution control equipment, the work practice standards in Ohio Admin. Code 3745-15-06(A) *will be* the SIP "emission limitations" or "other measures, means, or techniques" that apply under those operating conditions, unless the director approves a site-specific alternative emission limit under Ohio Admin. Code 3745-15-06(E).

The draft language for deviation reporting in Ohio Admin. Code 3745-15-06(A)(6), however, is too narrow to correspond with the work practice standards Ohio EPA is establishing (and the alternative emission limits Ohio EPA may establish) for scheduled maintenance. The wording "*exceedance* of any emission limit" implies a *numerical* mass emission limitation, to the exclusion of work practice standards (and also other forms of emission limitations, such as percent reduction or restrictions on the type of fuel or raw material used) for purposes of deviation reporting. An operator that complies with the work practice and notification requirements of Ohio Admin. Code 3745-15-06(A) or site-specific alternative emission limits established under Ohio Admin. Code 3745-15-06(E) complies with the SIP. It does not "exceed" or deviate from any emission limitation that applies during operating conditions *other* than scheduled maintenance of air pollution control equipment, because the new work practice standards or alternative emission limits will apply to operating conditions under which those other emission limitations do not apply. In short, compliance with the SIP is not a *deviation* reportable for Title or PTIO purposes. Accordingly, Ohio EPA should revise Ohio Admin. Code 3745-15-06(A)(6) as follows:

> The ~~exceedance of any emission limit or~~ deviation ~~of~~from any applicable emission limitation or relevant term or condition of a permit shall be reported in accordance with Chapter 3745-77 of the Administrative Code or paragraph (D) of rule 3745-15-03 of the Administrative Code.

C. OAC 3745-15-06(E) should be revised for clarity and to avoid imposing undue and irrelevant application requirements

Commenters recommend that, for purposes of clarity and consistency, the term "emission limitation" rather than the term "emission limit" be used in every instance in Ohio Admin. Code 3745-15-06(E), in alignment with the term "emission limitation" in sections 110 and 302 of the Clean Air Act. It may appear that the term "emission limit" is meant to refer to a mass emission limit (such as pounds per unit of another parameter), rather than to the full spectrum of "emission limitations" as defined in section 302(k) of the Clean Air Act and draft subparagraph

(E)(2) of Ohio Admin. Code 3745-15-06. Because the term "emission limit" invites confusion in addition to being unduly narrow, Ohio EPA should replace it with "emission limitation."

We also recommend that Ohio EPA rethink the requirements for alternative emission limitation applications in Ohio Admin. Code 3745-15-06(E)(3). The draft section is captioned "Alternative emission limit applications" and lists eight items that "*each* application *shall* include." However, the eight items are not appropriate for all scenarios for which alternative emission limitations may be sought. Some of these items are more in the nature of criteria for acting upon the application, and some apply to certain kinds of alternative emission limitations but not to others. For example, an owner/operator might request alternative emission limitations only for malfunction periods. But draft Ohio Admin. Code 3745-15-06(E)(3), as currently written, would require that owner/operator to take steps to minimize the frequency and duration of start-ups and shutdowns and the impact of emissions on ambient air quality during start-ups and shutdowns; to analyze the potential worst-case emissions that could occur during start-ups and shutdowns; and to document the owner/operator's actions during start-ups and shutdowns. The whole point of alternative, source-specific emission limitations uniquely applicable only during startup, shutdown, and/or malfunction modes of operation, reviewed and approved by Ohio EPA on a case-by-case basis, is to pragmatically and flexibly address the diversity of equipment, processes, and controls that exist at regulated emission units. A "one size fits all" set of application mandates just doesn't fit these circumstances.

We respectfully suggest the following revisions to the draft text in 15-06(E):

(E) Alternative emission limitations applicable to operations during periods of start-up, shutdown, malfunction, and scheduled maintenance.

(1) Applicability.

(a) Paragraph (E) of this rule shall apply to any new or existing source that has a permit issued by the director containing emission limitations.

(b) An owner or operator of a source may request that the director establish by permit one or more ~~site~~source-specific alternative emission limits to apply during the periods of start-up, shutdown, ~~or~~ malfunction, or ~~other operating periods during~~ scheduled maintenance.

(2) Form of alternative emissions limitations.

Alternative emission limitations may be in a different form than the emission limitation applicable to any source during other modes of operation, provided that the alternative emission limitation is in one of the following forms, and results in a system of continuous emission limitation ~~that is applicable at all times~~:

(a) A numerical emission limitation reflecting best engineering practices for the source.

(b) A numerical alternative emission limitation or work practice standard established under a federal new source performance standard under 40 CFR Part 60 or national emission standard for hazardous air pollutant under 40 CFR Part 63 that is applicable to a source during one or more of the modes of operation outlined in paragraph (E)(1)(b) of this rule.

(c) A work practice standard representative of best engineering practices for the source.

(3) Alternative emission limitation applications.

Requests shall be made through, and compliant with, the permit application, permit modification, or permit renewal requirements in Chapter 3745-77 of the Administrative Code ~~and~~or Chapter 3745-31 of the Administrative Code, as applicable. In addition, each application shall include the following demonstrations, as applicable:

(a) ~~Each~~That the alternative emission limit ~~shall~~will meet all permitting requirements applicable ~~levels of stringency for the type of emission limit, for example, the limit meets best available control technology for the purposes of the prevention of significant deterioration permitting program~~to the emission unit and pollutant combination in question, such as best available technology, best available control technology, and lowest achievable emission rate.

(b) ~~All~~ That the requested alternative emission limitations ~~must~~will be legally and practically enforceable.

(c) That the a~~A~~lternative emission limitations ~~or work practices shall be limited to specific, narrowly defined source categories (or to a single source or related group of sources) using specific control strategies. For example, cogeneration facilities burning natural gas and using selective catalytic reduction~~are appropriately tailored to the emission unit(s), pollutant(s), and emission control(s) in question~~.~~

(d) The measures the source ~~shall~~will take ~~steps~~ to minimize, to the extent practicable, the frequency and duration of operation in start-up or shutdown mode.

(e) The measures the source ~~shall~~will take ~~steps~~ to minimize the impact of emissions on ambient air quality during start-up and shutdown mode.

~~(f) The source shall analyze the potential worst-case emissions that could occur during start-up and shutdown mode based on the applicable alternative emission limit, and include the results of that analysis in the alternative emission limitation plan.~~

~~(g) At all times, the source shall be operated in a manner consistent with good engineering practice for minimizing emissions, including efforts regarding planning, design, and operating procedures.~~

~~(h) The owner or operator's actions during start-up and shutdown mode shall be documented by contemporaneous operating logs or other relevant evidence.~~

D. Ohio EPA should omit the changes in OAC 3745-15-06 and retain the changes in OAC 3745-15-10

Finally, Ohio EPA should return Ohio Admin. Code 3745-15-06 to its original form and retain the draft revisions in that rule only in the new draft Ohio Admin. Code 3745-15-10. In its Response to Comments, Ohio EPA indicated that it intended to address concerns "regarding having two sets of requirements being applicable while awaiting SIP revision by creating a new OAC rule 3745-15-10 which will replace OAC rule 3745-15-06 in its entirety, only when approved by U.S. EPA into Ohio's SIP." However, Ohio EPA's draft revisions to Ohio Admin. Code 3745-15-06 mirror the language in draft Ohio Admin. Code 3745-15-10. If Ohio EPA wants the existing SIP requirements in Ohio Admin. Code 3745-15-06 to remain in effect unless and until (1) the SSM SIP Call is affirmed and (2) EPA approves Ohio Admin. Code 3745-15-10 as part of Ohio's SIP, then Ohio EPA should remove the draft revisions from Ohio Admin. Code 3745-15-06 and maintain only the comment at the top regarding the rule's termination date. A simpler alternative would be to make the effective date of the amendments to Ohio Admin. Code 3745-15-06 the date of SIP approval by EPA. That would make Ohio Admin. Code 3745-15-10 unnecessary.

III. Conclusion

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association again appreciate the opportunity to comment on Ohio EPA's revised Interested Party Review draft rulemaking in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods. As stated in our prior comments, Ohio EPA's proposed amendments to Ohio Adm.Code 3745-15-01, 3745-15-06, and 3745-17-07 offer several improvements over existing law. The revised drafts of those rules continue to build on the improvements introduced in the prior draft.

For the reasons provided above, we continue to support Ohio EPA's proposed response to EPA's SSM SIP Call, with the exceptions noted in these and our prior comments.

Very truly yours,

Robert L. Brubaker

Eric B. Gallon

Counsel for
The Ohio Chemistry Technology Council
and The Ohio Chamber of Commerce

Frank L. Merrill

Environmental Counsel for
The Ohio Manufacturers' Association

10/4/2017

VIA Electronic Mail (paul.braun@epa.ohio.gov)

Paul Braun
Ohio Environmental Protection Agency, DAPC
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Draft Rule Comment – Startup, Shutdown or Malfunction Scheduled Maintenance Rules

Dear Mr. Braun,

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

OMA welcomes the opportunity to provide additional comments to the draft amended rules related to changes to Ohio's startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment. After reviewing the latest changes provided by Ohio EPA the OMA still has concerns outlined below.

First, OMA appreciates Ohio EPA's agreement to allow up to 25 days of maintenance at non-recovery coke battery operations based on its review of maintenance requests. However, this maintenance period is reduced to 14 days in a rolling 24-month period for byproduct recovery coke plants, which does not allow for all components to be properly inspected and repaired. Neither OMA nor Ohio EPA wants to compromise the reliability and availability of desulfurization plants or other air quality equipment at coke plants.

OMA believes that a further records review would demonstrate that byproduct recovery coke plants have needed between 21 – 25 days for annual outages of desulfurization plants, along with shorter periods of time to maintain other equipment, as has been previously pre-approved annually by Ohio EPA. These activities have occurred for decades, and are necessary to properly maintain the equipment, ensure optimal SO2 reduction, and avoid potential malfunctions that could be catastrophic in nature. Thus, regulatory scheduled outages provide both environmental and health and safety benefits.

Provided below is a summary of the time necessary to safely and properly shut down a desulfurization plant at a byproduct recovery coke facility. First, the system must be properly isolated and purged prior to conducting maintenance activities. There are three major processes in the Desulfurization Plant that undergo maintenance activities during the outage. Approximately 9 days are needed to purge each of the systems as shown below:

1) Sulfiban Process – 3 days to purge
2) HCN Process – Approximately 10 days to purge. The reactor takes a longer time to reach safe purge conditions.
3) Claus Plant – 6 days to purge

Maintenance activities start as soon as the third day. The duration depends on the extent of the work needed. Inspection and maintenance of the major areas in the Desulfurization Plant includes but is not limited to the following areas: process re-claimer; cooling tower; site boilers used for steam generation; cooling tower; inlet separator; contactor; rich tanks; catalytic reactors; and burner and heat recovery.

After maintenance activities have been completed, the system processes can be brought back on line. Bringing the system on line must be done in a systematic way and each process area will take time to properly heat up. The start-up takes approximately 10 days. Each reactor takes three days to warm up.

Ohio EPA has historical records that support the need for annual outages of byproduct recovery coke plants for approximately 21 – 25 days per year for desulfurization plants. Because of these real-world operational constraints, the OMA strongly suggests that paragraph (F) of the rule be revised to allow a coke oven battery 25 days per year to conduct routine maintenance activities, as set forth in the proposed startup, shutdown and malfunction (SSM) rules . The proposed revised language is as follows:

(F) During routine maintenance of pollution control equipment, an owner or operator of a coke oven battery or non-recovery coke oven battery shall be exempt from specified provisions related to any individual source affected by the routine maintenance contained in any permit-to-install or permit-to-install and operate issued under Chapter 3745-31 of the Administrative Code or any permit-to-operate issued under Chapter 3745-77 of the Administrative Code if all of the following occur:

(1) Routine maintenance of individual (or each) pollution control equipment does not exceed twenty-five days per year.

(2) Routine maintenance is conducted in a manner consistent with good engineering
practices for minimizing emissions.

(3) A report is submitted to the director ten days prior to the start of the routine maintenance containing an explanation of the schedule of the maintenance

and specifying the provisions that the source will be exempt from, including identification of permit number and term.

As Ohio EPA continues to develop these rules please include the OMA in these developments, and OMA environmental counsel Frank L. Merrill at Bricker & Eckler. We look forward to working with Ohio EPA on this issue and appreciate the opportunity to participate in this process.

Regards,

Rob Brundrett
Director, Public Policy Services

cc: Frank L. Merrill, Esq.
Julianne Kurdila, Committee Chair

Environment

Ohio EPA Seeks Feedback re. Haz Waste Contaminated Textiles
October 13, 2017

Ohio EPA has issued an **Early Stakeholder Outreach** (ESO) concerning the potential to develop an Ohio-specific rule to conditionally exclude hazardous waste contaminated textile products that are not currently excluded under the solvent wipe rule. It would include gloves, aprons, smocks and uniforms that are laundered and returned to service.

Comments are due by November 3, 2017. Please contact OMA's **Rob Brundrett** with questions or comments. *10/12/2017*

Ohio EPA Recognizes OMA Members for Sustainability Efforts
October 6, 2017

At Ohio EPA's first sustainability conference this week OMA members were among companies recognized for their sustainability efforts.

Bendix and Kenworth earned Silver Level Encouraging Environmental Excellence Awards, while Crown Equipment, General Motors and Honda were awarded Gold Level Encouraging Environmental Excellence Awards.

Click here to **learn more about Ohio EPA's Encouraging Environmental Excellence (E3) Program and how to apply**. *10/5/2017*

OMA Submits Additional Comments to Ohio EPA on Air Pollution Equipment
October 6, 2017

OMA submitted two additional sets of comments to Ohio EPA in response to its updated draft rules for startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The **first set of comments** was submitted in conjunction with other business allies and outlined four specific areas of needed change. The **second set of comments** was submitted by OMA alone and focused on maintenance days for specific equipment used in certain manufacturing industries. *10/5/2017*

OMA Files Concerns with Ohio Lake Erie Commission re. Draft Action Plan
September 29, 2017

This week the **OMA filed comments** with the Ohio Lake Erie Commission on its Draft Domestic Action Plan 2018; portions of the plan could be detrimental to manufacturers.

OMA outlined its concern regarding the draft plan's call for a legislative mandate of a 1.0 mg/L monthly average phosphorus limit for all treatment works in Ohio. OMA wrote: "… this radical and unjustifiable shift in NPDES permitting in Ohio is completely unfounded, arbitrary, contrary to current statutory programs in Ohio, and not scientifically defensible. It would impose unnecessary and extensive costs on regulated parties without measurable decrease in Lake Erie phosphorus loads. … For the Action Plan to meet due process and other legal requirements and to align with the Action Plan's broader adaptive management protocols, the legislative mandate must be removed from the draft Action Plan."

The OMA environment committee will learn more about this plan – among other issues – when it meets on October 26 in Cleveland at our host member, ArcelorMittal. **Register now**. *9/28/2017*

Universal Waste Webinar – a Few Seats Left
September 22, 2017

Ohio EPA has a few spots left for its Universal Waste webinar on September 27. **You can register here**.

This webinar will provide an overview of the recently updated rules that govern the management and disposal of universal wastes.

The webinar will be helpful to small and large quantity handlers of universal wastes as well as to transporters and permitted hazardous waste facilities. *9/20/2017*

Opportunity to Comment on Startup, Shutdown, Malfunction Amendments
September 22, 2017

On October 25, 2016, Ohio EPA released draft amended rules for public comment related to changes to Ohio's startup, shutdown or malfunction and scheduled maintenance rules as they pertain to air pollution control equipment.

The amendments were being made in response to a U.S. EPA call for modifications to the rules on June 12, 2015 in 80 FR 33840.

The OMA submitted two sets of comments (**here** and **here**) in response to the interested party rules package.

Ohio EPA is providing the OMA with an additional opportunity to review the changes based on the comments received. Several **new amendments** were drafted responding to the comments, along with a new **amended business impact analysis** and a **response to comments** document for the amended draft rules.

Please let OMA's **Rob Brundrett** know if you would like to file additional comments after reviewing the latest changes. The deadline for filing new comments is October 4, 2017. All comments should be sent electronically to EPA's **Paul Braun**. *9/20/2017*

Universal Waste Rule Changes Spearheaded by OMA Move to JCARR
September 15, 2017

This week Ohio EPA filed with Joint Committee on Agency Rule Review (JCARR) the long awaited universal waste rules governing paint and paint-related wastes among other hazardous wastes.

A public comment period will run until October 17, 2017. A public hearing on this proposed rulemaking will be held in accordance with the Ohio Revised Code. The hearing will be held at Ohio EPA, 50 West Town Street, Columbus, Ohio in Conference Room A, on October 17, 2017 at 10:30 a.m.

The proposed rules, public notice, and the response to comment documents are available for download on the **DERR website** on the hazardous waste rules Proposed Rules tab. If you need more information, please contact EPA's **Karen Hale**.

A big thank you to all the OMA members who participated in the work group to make these beneficial changes possible. *9/14/2017*

OMA Asks U.S. EPA to Reconsider 2015 Ozone Standards
September 8, 2017

This week the OMA along with other business allies across the country **sent a letter to U.S. EPA Administrator Scott Pruitt** asking the agency to reconsider its 2015 ozone standard.

In the letter the groups state: "Despite over three decades of cleaner air and before states can catch up with EPA's delays in implementing existing (2008) ozone standards, EPA finalized tighter standards of 70 parts per billion that could bring additional areas of the country into nonattainment."

Ohio, which has made major strides in air quality over the last 30 years, is vulnerable in some regions of the state falling into nonattainment. Without offsetting reductions in nonattainment areas new manufacturing investment is not permitted.

With the improvements made over the past decades it is important to leave the 2008 ozone standards in place and allow Ohio and other states to work to lower levels in a more reasonable time frame. *9/7/2017*

Ohio Looks to Create Phosphorous Discharge Limit for Permitted Facilities
September 8, 2017

The Ohio Lake Erie Commission and the State of Ohio have **released** a draft Ohio Domestic Action Plan to reduce phosphorus entering Lake Erie under the binational Great Lakes Water Quality Agreement with a goal of reducing phosphorus loading to Lake Erie by 40% by 2025. The **draft Ohio plan** is a continuation of the Western Basin of Lake Erie Collaboration Implementation Framework finalized by the State of Ohio in early 2017.

The Ohio Lake Erie Commission will coordinate finalizing the Ohio Domestic Action Plan with Ohio EPA, Ohio Department of Agriculture, Ohio Department of Health and Ohio Department of Natural Resources, which each share responsibility for implementing the plan. Each agency will be accountable for implementing their respective areas of authority included in the state plan to meet the overall 40% reduction.

Included in the plan is a proposal to create an annual discharge limit of 1 mg/l of total phosphorous for every permitted facility. This could prove problematic for manufacturers.

Public comments can be **emailed to the commission** and are being accepted until the close of business on Sept. 25. The commission will host two public meetings on Sept. 12 and 13, 2017, to provide information about the draft plan. Both meetings will be held from 7-9 p.m. The Sept. 12 meeting will be at Lake Erie Center, 6200 Bay Shore Rd, Oregon. The Sept. 13 meeting will be at Painesville Township Hall, 55 Nye Rd., Painesville. *9/7/2017*

Ohio EPA Announces TMDL Rule Early Stakeholder Outreach
August 25, 2017

Ohio EPA **announced** that comments regarding the Total Maximum Daily Load (TMDL) Program Rule OAC 3745-2-12 ESO are due September 12, 2017.

According to Ohio EPA: “Dischargers covered under a National Pollutant Discharge Elimination System (NPDES) permit are indirectly impacted through the setting of permit effluent limitations based upon the wasteload allocations established in the TMDL. The rule amendments will provide for formalized stakeholder notification and comment opportunities and participation in the TMDL development process which should lead to a better TMDL product and improved water quality.”

These rules are being considered due to changes made in House Bill 49, the state operating budget.*8/23/2017*

Ohio EPA Announces Early Stakeholder Outreach – Hazardous Waste Management Program
August 25, 2017

Ohio EPA **announced** that early stakeholder outreach (ESO) comments for the Hazardous Waste Management Program are due September 26, 2017.

The rule changes under consideration are federally-driven updates. Ohio’s hazardous waste rules must match their federal Resource Conservation and Recovery Act (RCRA) counterpart regulations in 40 CFR Parts 260 to 279.

A number of Ohio rules need to be rescinded, added or amended to address changes to, or the creation of, their federal RCRA counterpart provisions, as published in the Federal Register. *8/23/2017*

Ohio EPA Awards Gold to MillerCoors
August 18, 2017

The Ohio EPA recently announced that OMA member, MillerCoors in Trenton, OH, was awarded its E3 Gold Award in May 2017. The Gold Level recognizes organizations that have a good environmental compliance record, have completed environmental stewardship activities and are committed to pursuing environmental improvement projects.

Ohio EPA said the brewery has not sent garbage to a landfill since 2009, among other sustainability achievements. The facility is located on 1,100 acres, 2.5 acres of wetlands, more than 30 acres of managed prairie grass and more than 500 acres used by local farmers.

According to the announcement, the brewery turns out up to 11 million barrels of beer a year with 510 employees and is the second largest facility of seven MillerCoors breweries.

Read **more here**. *8/17/2017*

Ohio EPA Offers Webinar on Updated Universal Waste Rules
August 4, 2017

Ohio EPA has **opened registration** for its Universal Waste webinar on September 27.

This webinar will provide an overview of the recently updated rules that govern the management and disposal of universal wastes.

The webinar will be helpful to small and large quantity handlers of universal wastes as well as to transporters and permitted hazardous waste facilities. *8/3/2017*

Ohio’s New Budget Provides ‘Alternative Daily Cover’ Opportunity for Manufacturers
July 21, 2017

The budget dust had settled. The governor’s veto pen was back in its drawer. And the provision making alternative daily cover (ADC) more affordable had survived.

ADC is cover material, other than earthen material, placed on the surface of a solid waste landfill at the end of each operating day.

Prior to passage of the state budget bill, ADC which is typically defined as solid waste, had a variety of fees associated with its use. The budget expanded the affordability of using approved ADC by excluding ADC from local and state fees.

You can read more about this beneficial change for manufacturers **in this memo** from OMA environmental counsel, Bricker & Eckler. *7/20/2017*

U.S. EPA Issues TSCA Inventory Reset Rule
July 21, 2017

From OMA Connections Partner, Squire Pattton Boggs: “On June 22, 2017, as required by the amended Toxic Substances Control Act (TSCA), the US Environmental Protection Agency issued its rule to “reset” the TSCA Inventory. The rule requires every chemical manufacturer and importer to notify US EPA of each chemical substance it manufactured or imported for a non-exempt commercial purpose in the US during the 10-year period ending June 21, 2016 (the “lookback period”). … ”

Read a **fact sheet from Squire about the rule requirements**. *7/19/2017*

Ohio EPA Plans First Sustainability Conference – October 3
July 14, 2017

Ohio EPA recognizes that many businesses, communities, and other organizations are moving beyond compliance and incorporating sustainable environmental practices into their daily operations. On October 3, 2017, Ohio EPA will host its first Sustainability Conference. This conference, to be held in Columbus, will demonstrate how to leverage sustainable practices and resources to strengthen Ohio communities and businesses.

Here are all the details. *7/12/2017*

Conferees Make Positive Changes to Environment Portion of Budget
June 30, 2017

Late Tuesday night House and Senate conferees reviewed and settled around 600 differences between the two chambers' versions of the state budget bill, including portions of the budget related to environmental law.

Included in the final language was an amended version of the Total Maximum Daily Load (TMDL) language that was first introduced by the governor. The new provision, which OMA worked on with other interested parties and the agency, was accepted by the conference committee. The provision outlines **Ohio's new statutory procedure** for establishing TMDL limits for a body of water.

The committee also agreed to keep in the provision that eliminates fees associated with alternative daily cover (ADC). The **OMA backed provision** will help create a stronger market for ADC materials in Ohio. *6/28/2017*

Slag Path Paved to the Governor
June 23, 2017

The long hard road to remove slag's definition as a waste in Ohio's Clean Water Act finished its legislative journey this week with an affirmative House vote. Now **Senate Bill 2** awaits the governor's signature.

Senate Bill 2 focuses on a variety of Ohio water issues ranging from public water systems to Lake Erie dredging. Included in the bill is an OMA-backed **provision which would recognize slag** as a marketable product and not a waste under Ohio's water laws. Specifically, the bill exempts slag from excessive regulation, while at the same time requires that it be used in a manner conforming with appropriate water quality standards.

This is great news for Ohio's steelmakers and slag processors. *6/22/2017*

State Budget Adds Environment Amendment
June 23, 2017

In action on the state budget bill, the Senate this week passed an amendment for which the **OMA advocated** that would eliminate the fees associated with alternative daily cover (ADC). ADC is material placed on an active waste landfill at the end of each operating day. Removing the fees associated with ADC helps create a stronger market for materials used as ADC.

Another item that was expected to be included in the amendment, but was not, unfortunately, is a provision regarding total maximum daily loads (TMDLs). An amendment was submitted that **outlined Ohio's statutory procedure** (described here by OMA environmental counsel Frank Merrill of Bricker & Eckler) for establishing limits for a body of water. The amendment was the product of several meetings between regulators and interested parties. There is speculation that the amendment will yet be included during the upcoming conference committee. *6/22/2017*

HB29 **MUNICIPAL WATER RESERVOIR BUFFERS** (LELAND D, BOGGS K) To eliminate law authorizing the maintenance of buffers around municipal water reservoirs by contiguous property owners.

Current Status: 4/25/2017 - House Energy and Natural Resources, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-29

HB62 **WATER QUALITY IMPROVEMENT** (PATTERSON J, SHEEHY M) To require the Director of Agriculture to adopt rules establishing the Ohio Water Quality Improvement Program, to exempt land enrolled in the Program from taxation, and to reimburse local taxing units for revenue lost due to that exemption.

Current Status: 5/10/2017 - House Agriculture and Rural Development, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-62

HB85 **ENTER HEALTH CARE COMPACT** (RETHERFORD W) To enter into the Health Care Compact.

Current Status: 3/7/2017 - House Federalism and Interstate Relations, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-85

HB225 **ABANDONED WELL REGULATION** (THOMPSON A) To allow a landowner to report an idle and orphaned well or abandoned well, to require the Chief of the Division of Oil and Gas Resources Management to inspect and classify such a well, to require the Chief to begin plugging a well classified as distressed-high priority within a specified time period, and to authorize an income tax deduction for reimbursements paid by the state to a landowner for costs incurred to plug an idle or orphaned well.

Current Status: 6/20/2017 - House Energy and Natural Resources, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-225

HCR4 **ELIMINATE E-CHECK REQUIREMENT** (YOUNG R) To urge Congress to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program, to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if Congress fails to act, and to encourage OEPA to explore alternatives to E-Check.

Current Status: 5/9/2017 - House Federalism and Interstate Relations, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HCR-4

SB2 **ENVIRONMENTAL PROTECTIONS LAWS** (HITE C) To revise specified laws relating to environmental protection.

Current Status: 7/7/2017 - **SIGNED BY GOVERNOR**; eff. 90 days

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-

summary?id=GA132-SB-2

SB50 **WELL INJECTION-PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.

Current Status: 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-50

SB53 **NATURAL GAS RESTRICTION** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.

Current Status: 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-53

SJR4 **CAPITAL IMPROVEMENTS FUNDING** (SCHIAVONI J) Proposing to enact Section 2t of Article VIII of the Constitution of the State of Ohio to permit the issuance of general obligation bonds to fund sewer and water capital improvements.

Current Status: 9/6/2017 - Senate Finance, (First Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SJR-4