



Environment Committee

September 29, 2021

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

Wednesday, September 29

Our Meeting Sponsor:





Environment Committee Agenda

September 29, 2021

Welcome & Roll Call	Chairman Julianne Kurdila, Cleveland-Cliffs Inc.
Discussion Issues <ul style="list-style-type: none">• Lake Erie TMDL• Industrial Storm Water• Ohio Water Partnership	Member Discussion
OMA Counsel's Report	Christy Schirra, Bricker & Eckler LLP
Guest Speaker	Laurie Stevenson, Director, Ohio EPA
Public Policy Report	Rob Brundrett, OMA Staff

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Name	Company	Location
Rees Alexander	Squire Patton Boggs	Columbus, OH United States
Rich Alonso	Lima Refining Company	Dublin, OH United States
Patricia Beaujon	Stellantis	Auburn Hills, MI United States
Ann Bedford	PPG	Pittsburgh, PA United States
David Bonistall	American Trim, LLC	Sidney, OH United States
Rob Brundrett	The Ohio Manufacturers' Association	Columbus, OH United States
Rachael Carl	The Ohio Manufacturers' Association	Columbus, OH United States
Barbara Cavalcanti, ASP	Maval Industries LLC	Twinsburg, OH United States
Mickey Croxton	Plaskolite	Columbus, OH United States
Ryan Dominak	H C Starck, Inc.	Euclid, OH United States
Joseph F. Dutt	Summitville Laboratories	Minerva, OH United States
Lisa Espinosa	Carmichael Machine Corporation	Springfield, OH United States
Shane A. Farolino	Roetzel & Andress	Akron, OH United States
Cory Gonya	Nutrien	Lima, OH United States
Jason Gonzalez	DuPont	Cleveland, OH United States
Marilyn A. Hansen	Hudson Extrusions, Inc.	Hudson, OH United States
Sandy L. Harper	ROKI AMERICA Co., Ltd.	Findlay, OH United States
Matthew F. Johnston	Worthington Industries, Inc.	Columbus, OH United States
Jamie Karl	The Ohio Manufacturers' Association	Columbus, OH United States
Stephen B. Kittredge	Owens Corning	Washington, DC United States
Julianne Kurdila	Cleveland-Cliffs, Inc. - Richfield	Richfield, OH United States
Jay Lawniczak	Charter Steel	Cleveland, OH United States
Timothy Ling	Plaskolite	Columbus, OH United States
Michael Lowe	Venture Products, Inc.	Orrville, OH United States
Tim W. McDaniel, CIH	Navistar, Inc.	Springfield, OH United States
Cheryl McDonald	FCA US LLC - Toledo Machining Plant	, United States
Lee McWain	Jefferson Industries Corporation	West Jefferson, OH United States
Frank Merrill	Bricker & Eckler LLP	Columbus, OH United States
John Meyer	Smithfield Foods	Cincinnati, OH United States
Alyssa Miller	Sugar Creek Packing Company	Cincinnati, OH United States
Beth Mullen	McWane Ductile-Ohio, A Division Of McWane, Inc.	Coshocton, OH United States
Dave Mustafaga	Hull & Associates LLC	Dublin, OH United States
Tom R. Nelson	Yoder Lumber Company, Inc.	Millersburg, OH United States
Cory Novak	Roetzel & Andress	Akron, OH United States
Michael O'Callaghan	Shumaker, Loop & Kendrick, LLP	Columbus, OH United States
Edward J. Pfau	Hull & Associates LLC	Dublin, OH United States
Tom Plute	Retriev Technologies Inc.	Lancaster, OH United States
Christy Rideout Schirra	Bricker & Eckler LLP	Columbus, OH United States
Rick Rose	Retriev Technologies Inc.	Lancaster, OH United States
Kevin Rossman	Universal Metal Products	Wickliffe, OH United States
Dennis Rowbotham	G R T Utilicorp, Inc.	Wooster, OH United States
Rob Schmude	INEOS Pigments PO 4501042734	Ashtabula, OH United States
Jennine Seebach	United Surface Finishing	Canton, OH United States
Brian M. Sernulka	O-I Glass, Inc.	Perrysburg, OH United States
John Shevlin	Midmark Corporation	Versailles, OH United States
Karen Sisson	3 M Company	Saint Paul, MN United States
Brent R. Smith, CPG,LPG,LRS	Civil & Environmental Consultants, Inc.	Worthington, OH United States
Jeff Smith	Nease Company, LLC	Harrison, OH United States
Michael A. Snyder	Shumaker, Loop & Kendrick, LLP	Columbus, OH United States
Jackie Spade	Rez-Tech Corporation	Kent, OH United States
Duane Steelman	Zaclon, LLC	Cleveland, OH United States
Michael Taylor	DuPont	Circleville, OH United States
Bennett Thayer	Scotts Miracle-Gro Company	Marysville, OH United States
Edward Trenn	Molded Fiber Glass Companies	Ashtabula, OH United States
Christopher Ward	Calfee, Halter & Griswold LLP	Columbus, OH United States
Lauren Winegardner	American Trim, LLC	Sidney, OH United States
Sherri Zeller	General Motors Corporation	Toledo, OH United States

OMA Environment Committee - Sept 2021

Name	Company	Location
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Total Participants 57

Laurie A. Stevenson, Director

In Jan. 2019, Governor Mike DeWine appointed Laurie A. Stevenson as director of the Ohio Environmental Protection Agency. She most recently served as Deputy Director for Business Relations where she served as a primary contact for regulated entities to help coordinate permitting activities within the Agency, particularly for complex projects requiring multiple permits. She also served as chief of Ohio EPA's Division of Environmental and Financial Assistance. DEFA provides financial and technical assistance to businesses and communities to help achieve compliance with the environmental regulations.

A public servant of 29 years, she previously served as the industrial liaison in the Director's Office and managed Ohio EPA's Small Business Assistance Office (SBAO). She held previous positions in Ohio EPA's Division of Hazardous Waste Management, starting in the Southeast District Office as a hazardous waste field inspector.

Laurie earned a B.S. in Environmental Health from Bowling Green State University and an M.S. in Public Health from The Ohio State University.





July 9, 2021

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

Ohio EPA Division of Surface Water
Attn: TMDL Unit
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

Re: Maumee River Watershed TMDL – Stages 1 and 2/Modules 1 and 2

Dear Ohio EPA:

Pursuant to Ohio EPA's Maumee Watershed Nutrient TMDL Outreach Module 2, The Ohio Manufacturers' Association (OMA) is hereby providing Ohio EPA with written comments regarding Ohio EPA's Module 2 notice of its development of the Maumee Watershed Nutrient TMDL, including the Study Plan (Stage One) and the Biological and Water Quality Report (Stage Two).

The OMA is dedicated to protecting and growing manufacturing in Ohio. 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. OMA appreciates the opportunity to comment on Ohio EPA's Maumee Watershed Nutrient TMDL Outreach Module 2. Ohio EPA's development of the Maumee Watershed Nutrient TMDL is of great interest to the OMA, as the TMDL has the potential to significantly impact OMA's members, some of whom are NPDES permit holders (whether direct or indirect dischargers) located within the Maumee watershed.

The OMA presents the following comments regarding Stage 2/Module 2 related to the Maumee Watershed Nutrient TMDL:

1. Nonpoint Source Contribution.

The Ohio Nutrient Mass Balance Report and the Ohio Domestic Action Plan document that 90% of the total phosphorus load in the Maumee Watershed is nonpoint source contribution. OMA agrees with Ohio EPA's determination that, to be effective, the Maumee Watershed Nutrient TMDL must focus primarily on the nonpoint sources of phosphorus, such as agricultural contributions. It would be unreasonable (and ineffective) for the TMDL to place tighter limits on point source dischargers where the

vast majority of the load originates with nonpoint sources – in fact, such an approach would not result in progress towards the TMDL goals.

Additionally, in many cases Ohio EPA has already required point source dischargers to reduce phosphorus loads. Because these dischargers have already made necessary reductions, they should receive credit for these actions in any future Loading Analysis Plan, modeling effort and TMDL. In particular, point source dischargers covered by an existing near-field phosphorus TMDL should generally not be targeted for additional reductions in the current far-field TMDL.

2. Total Phosphorus as Limiting Nutrient.

As detailed in the Great Lakes Water Quality Agreement reports and in Module 2, phosphorus is considered the growth-limiting nutrient in the Maumee watershed, meaning that the available quantity of this nutrient controls the pace at which algae and aquatic plants are produced. Accordingly, Ohio EPA is correctly targeting only phosphorus in the TMDL. If future studies suggest that other nutrients, such as nitrogen, merit further evaluation, Ohio EPA should provide opportunity for notice and comment on the proposed evaluation and on any further actions that are shown to be necessary to attain the designated uses.

3. Stakeholder Involvement.

The OMA looks forward to reviewing Ohio EPA's Loading Analysis Plan and to the opportunity to submit comments at that time. We also look forward to additional public comment periods as Ohio EPA undertakes Stages 4 and 5 of the TMDL process. Stakeholder involvement in the planning process will play a critical role in ensuring a fair, workable and informed TMDL that those most impacted can support and that does not unnecessarily impose significant financial burdens on the business community.

The OMA would like to thank Ohio EPA for the opportunity to comment and to participate in this rulemaking process. We look forward to working with Ohio EPA as these comments are taken under consideration, and at any future stages of this rulemaking.

Sincerely,



Rob Brundrett
Director, Public Policy Services

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

Fact Sheet: Loading Analysis Plan – Maumee Watershed Nutrient TMDL

The Ohio Environmental Protection Agency (Ohio EPA) is developing a single Total Maximum Daily Load (TMDL) report for the Maumee Watershed to address shoreline and open water impairments in the Western Basin of Lake Erie caused by cyanobacteria harmful algal blooms (HABs). The loading analysis plan is the third step in the new Total Maximum Daily Load development process.

What is a loading analysis plan?

A loading analysis plan (LAP) is a plan prepared by Ohio EPA that lists actions to be taken by the Agency for sampling sites found to be impaired for a beneficial use designation (aquatic life, recreation, and public water supply).

For those sites where the Agency is planning to develop a TMDL, the LAP contains the proposed modeling approach and water quality restoration targets for a watershed study area.

How is the analytical method determined?

Ohio EPA considers numerous factors when deciding how to address impairments in TMDLs. The primary origin of the pollutant, its delivery mechanisms and the water body kinetics involved are all essential in determining which model is most appropriate. The complexity of the model utilized is dependent upon the complexity of the impairment.

When choosing a method, Ohio EPA must also look at any ongoing efforts in the watershed, previous TMDL analyses, the questions to be answered by the model and the amount of effort required to complete it. Additional data may be necessary depending on the selected method and the modeling approach is subject to change based on findings.

The Maumee Watershed Nutrient LAP details the analytical methods that will be used to address recreation use (algae) and public drinking water supply use impairments. Figure 1, on the next page, depicts the assessment units included in this project.

Comments on Outreach Modules

No formal response to comments will be published for input received on the outreach videos posted this summer; however, all of these comments were reviewed and have been considered for this draft LAP and will also be considered and used to inform further steps in the TMDL development process.

Where can I learn more?

- The full loading analysis plan is available at epa.ohio.gov/dsw/wq
- More information on the Maumee Watershed Nutrient TMDL is available at: epa.ohio.gov/dsw/tmdl/MaumeeRiver#119945358-maumee-watershed-nutrient-tmdl

Stakeholder Input

The Agency is releasing the LAP for the Maumee Watershed Nutrient TMDL for review and comment and will accept feedback on any aspect of the plan. The LAP is the third step in the TMDL development process. The next step will be the preliminary modeling results, which will also be available for review and comment in early 2022.

Providing Feedback

Comments can be submitted by email to EPATMDL@epa.ohio.gov, faxed to (614) 644-2745 or sent by postal mail to:

TMDL Program
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Ohio EPA will hold a **virtual outreach event on October 5, 2021, at 2:00 p.m.** to explain the LAP and allow for questions and answers. Please see the following link for registration:

<https://attendee.gotowebinar.com/register/7185881750445379595>

All comments must be submitted to the Agency **no later than 5:00 p.m. on October 8, 2021.**

Stay Involved

Subscribe to updates on TMDL projects at: https://ohioepa.custhelp.com/app/utils/login_form/r edirect/account%252Fprofile.

Contact Information

For more information, contact Melinda Harris at Melinda.Harris@epa.ohio.gov or Paul Gledhill at Paul.Gledhill@epa.ohio.gov.

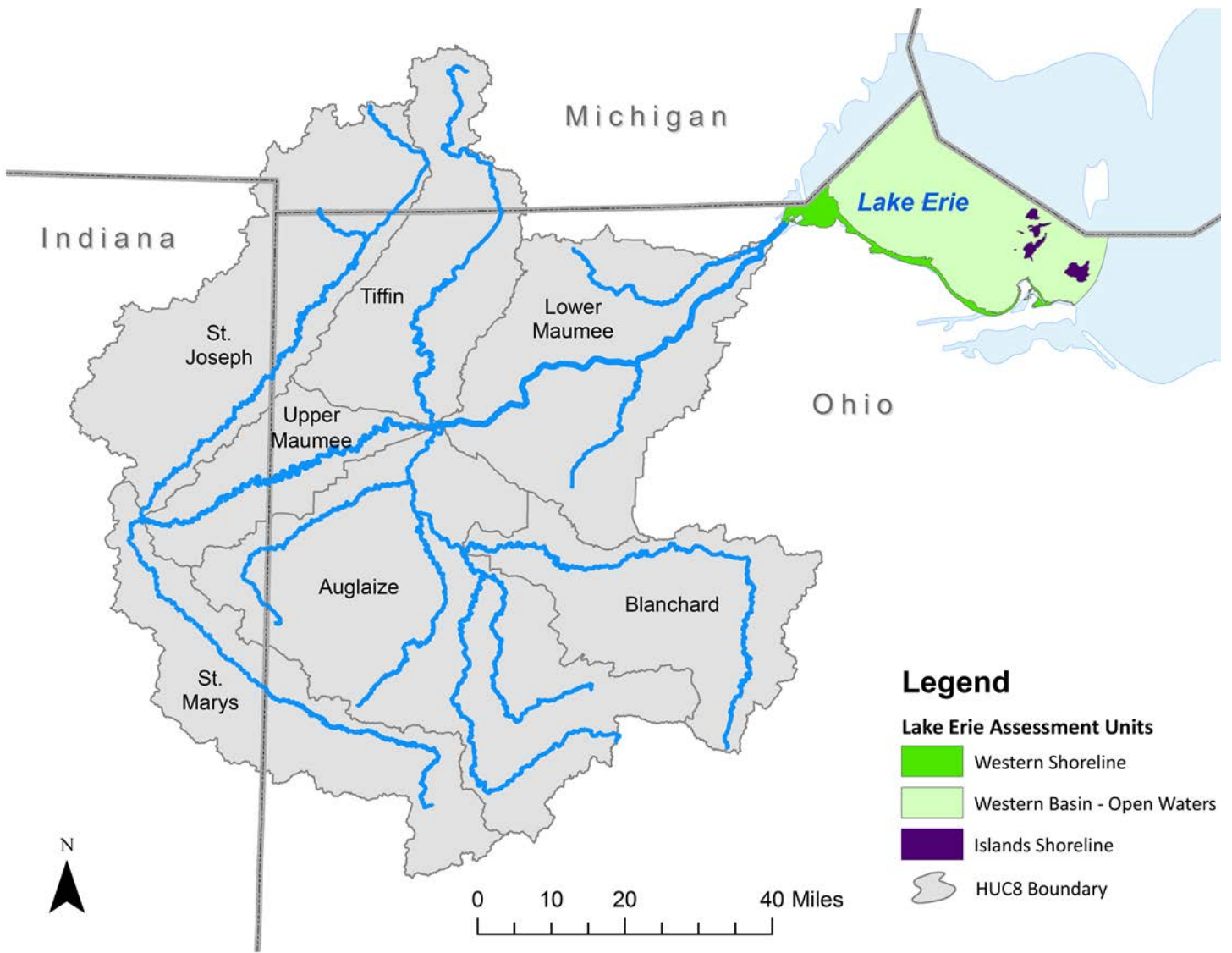



Figure 1 — Map of Ohio's Western Basin of Lake Erie assessment units and the Maume River watershed.



Landmark Lake Erie lawsuit headed toward settlement by Oct. 29



TOM HENRY ✓
The Blade
thentry@theblade.com 

SEP 21, 2021

5:55 PM

One of the most significant Lake Erie lawsuits ever to come before a federal judge appears to be headed for resolution on or before Oct. 29.

Lawyers for the Environmental Law & Policy Center, the Board of Lucas County Commissioners, and Advocates for a Clean Lake Erie have come to an agreement with the U.S. Environmental Protection Agency for a consent decree that will legally bind the state of Ohio to a more specific restoration plan aimed at reducing the frequency and intensity of western Lake Erie's summer algal blooms.

The agreement to settle via a consent decree came after a mediation hearing that lasted six hours and 15 minutes, according to the latest entry in the case's U.S. District Court docket. The hearing was before U.S. District Judge Dan Aaron Polster in Cleveland. Senior U.S. District Judge James Carr heard the case until the two sides agreed to go to mediation.

It is expected to go back to Judge Carr for final approval once both sides complete their work and put the document out for public review.

The likelihood of a court-approved consent decree means the two sides are moving toward what would become the largest Total Maximum Daily Load, or TMDL, program in America. TMDLs set more site-specific rules on what farms and other sources of nutrient pollution must control. The nation's largest currently is for the Chesapeake Bay and involves multiple states.

“The consent decree will then be subject to client and public official approval and must also be published for public comment,” the docket entry states. “Although not expected, if the attorneys encounter an impasse in preparing the consent decree, they may contact Judge Polster's law clerk, Carrie Roush, to seek further assistance from Judge Polster.”

On a parallel path, the Ohio Environmental Protection Agency — after years of resistance — is in the early stages of accepting public comment on a TMDL it said it will develop. It is not known how the two will differ.

The case centers on what's best for the world's 11th largest lake.

At stake is Ohio's western Lake Erie cleanup strategy during the rest of the DeWine administration and that of future governors.

The ultimate decision will likely affect hundreds of farmers and others in northwest Ohio's agriculture industry, including the large livestock facilities known as concentrated animal feeding operations.

To initiate the process, the ELPC and Lucas County commissioners filed suit in federal court a couple of years ago, seeking a court order that would compel the Ohio EPA's counterpart, the U.S. Environmental Protection Agency, to become more aggressive in enforcing the 1972 federal Clean Water Act.

Until now, the Clean Water Act has been mostly used to enforce sewage overflows and industry discharges from pipes. The act is harder to apply to nonpoint sources of pollution, such as farm runoff, because it is much more diffuse.

The state of Ohio reluctantly agreed to create a TMDL for Lake Erie's open waters after the lawsuit was filed.

But the plaintiffs were not convinced it would be tough enough unless the court intervened. Earlier, the state resisted efforts to have western Lake Erie declared an impaired body of water, then relented as a prior lawsuit filed by the ELPC heated up.

TMDLs are regulatory tools often used for smaller bodies of water, including several in Ohio.

One has never been written for western Lake Erie, which the plaintiffs argue is in dire need for one because of its long history of summertime algal blooms and other types of pollution that threaten its water quality, including the quality of tap water for nearly 500,000 people who live in the Toledo area.

Although not technically a defendant in the case, the Ohio EPA was required to attend. The city of Toledo, which has been recognized by the court as an interested party, was not required but was allowed to attend.

Fritz Byers, Lucas County board's attorney, issued the following statement on behalf of the plaintiffs:

"Yesterday, with the help of Judge Polster, Plaintiffs ELPC/ACLE and the Board of Lucas County Commissioners reached tentative agreement with the U.S. EPA and the Ohio EPA on the terms of a consent decree and associated documents. The agreement, if consummated, would resolve the pending litigation and advance our goal of ensuring a timely plan of action by the government that will reduce phosphorus pollution into western Lake Erie. The parties are working on language for potential settlement documents with a goal of finalizing them by October 29th."

U.S. Department of Justice attorneys serving as the federal EPA's defense team have said they will not comment outside of open court proceedings.

Lucas County Commission President Tina Skeldon Wozniak said that getting the two sides to agree on the need for a consent decree "is momentous in that it gets us one step closer to achieving the success we desired when we filed the lawsuit and that is to reduce the nutrient runoff that causes the harmful algal bloom in Lake Erie."

The lawsuit was originally filed by the ELPC on behalf of Advocates for a Clean Lake Erie. Lucas County followed that filing up with a similar lawsuit, and the two were combined by Judge Carr.

County commissioners “have remained vigilant to hold the [U.S.] Environmental Protection Agency accountable to fulfill its legal obligation to ensure water quality,” Commissioner Pete Gerken said. “When approved and entered by Judge Carr, the consent decree will put us in the right direction to allow that to happen.”

Commissioner Gary Byers said the consent decree “will be a major victory for the tens of thousands of people who rely on the lake for clean, safe drinking water, their livelihood, recreation, and fishing.”

Blooms have occurred almost annually since appearing in 1995 for the first time since the 1970s, after the federal Clean Water Act ushered in the modern era of sewage treatment.

The primary source for algae-forming nutrients now is farm runoff, according to Ohio EPA studies.

That state agency, though, has also been made aware of unregulated sewage releases over many years by cities such as Maumee and possibly others.

This summer’s bloom was not expected to be as intense as some in recent years.

But according to the National Oceanic and Atmospheric Administration’s latest bulletin, issued Monday, the bloom still extends from Stony Point, Mich., north of Monroe, to Sandusky.

Though mostly below the recreational limit, toxins in this summer’s bloom are highly concentrated in scums that form on the lake surface. People are urged to keep themselves and their pets away from such floating mats, the agency said.

Cloud cover and winds have obstructed efforts to delineate it more precisely, NOAA said.

Blooms in this area usually dissipate by mid to late-October, as fall temperatures cool the lake.

The modern era’s largest blooms have been in 2015 and 2011.

A dramatic background image featuring a sunset with a bright sun low on the horizon, casting a warm orange and red glow. A large, bright yellow lightning bolt strikes down from the top right corner, illuminating the dark, stormy clouds. The sky is filled with heavy, dark clouds, and the overall atmosphere is one of intense weather. The text is overlaid on this scene.

Into the Storm...Again

**Upcoming Renewal of Ohio EPA Industrial
Storm Water NPDES General Permit**

***Timothy W. Ling, P.E.
Corporate Environmental Director
PLASKOLITE, LLC.***

Industrial Storm Water General Permit (SWGP)

Estimated Schedule	Action
August 19, 2021	ESO Notification
August 23, 2021	Virtual ESO Meeting
September 17, 2021	ESO Input Due
November 1, 2021	Draft GP Public Noticed
December 16, 2021	Draft GP Public Hearing
December 23, 2021	Draft GP Comment Period Ends
March 18, 2022	Provide Proposed GP to USEPA
June 1, 2022	OHR000007 Issued/Effective

OMA ESO Comments

- **Proposal 1: Benchmark Schedule**
 - **Quarterly, but Years 1 & 4 if pass**
 - **Ohio EPA has concerns about current schedule**
 - **4 samples effective**
 - **Maybe sample first 2 years**
 - **Sampling as option, not mandate**

OMA ESO Comments

● Proposal 2: AIM *

- **DON'T DO IT!**
- “Sue-and-Settle” **NOT** Science
- Prescriptive, top-down approach
- Potential for “perpetual non-compliance”

* Additional Implementation Measures

OMA ESO Comments

● Proposal 3: PAHs** Monitoring

- **DON'T DO IT!**
- Indicator monitoring = “Fishing”
- PAHs **NOT** benchmark/effluent limit
- Precedent to add any chemical
- Coal-tar sealcoat not used in Ohio

** Polycyclic Aromatic Hydrocarbons

OMA ESO Comments

- **Proposal 4: Annual Report Submittal**
 - **Via Ohio EPA eBusiness Center**
 - **No objection**
- **Suggested workable “inspection-only” option for low-risk Ohio sites**
- **Suggest “credit” for progress towards meeting benchmark**



2021 USEPA MSGP

- **3/1/2021 – 2/28/2026**
- **Driven by:**
 - **2016 “Sue-and-Settle”**
(Waterkeeper Alliance v. USEPA)
 - **2019 Nat’l Academy of Sci. (NAS) study**
 (“Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges”)

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Sue-and-Settle, Part 2 ?

- **Lawsuit over 2021 USEPA MSGP**
 - **Center for Biological Diversity v. USEPA, et. al. (July 1, 2021)**
 - **9th Circuit Court of Appeals (SF)**
 - **“War on Plastics” through MSGP**
 - **Compel implementation of plaintiff’s June 1, 2020 MSGP joint comment letter (103 signatories)?**

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Sue-and-Settle, Part 2 ?

- **Another NAS storm water study?**
- **Future MSGP issues?**
 - **Escalation of PAHs issue**
 - **Addition of non-industrial sites**
 - **Universal benchmarks**
 - **Expansion of benchmarks (PFAS)**
 - **Expansion of AIM**
 - **NELs, TMDLs, WQBELs**
 - **Plastics “Zero Discharge”**

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3 States/Regions

CA

OH

MS



- **10–20 years experience**

- **Sites in:**

- **Ohio/Midwest**
- **Mississippi/South**
- **California/West**

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3 States, 3 Different SWGPs

	OH 2011 “MSGP-Lite”	CA 2011 “Bad & Ugly”	MS “1990s MSGP”
Sector BMs	Yes	Yes	No
Universal BMs	No	Yes	No
SW TMDLs	No	Yes	No
Corrective Levels (“AIM”)	No	Yes (2 Levels)	No
Oversight	State & Local	Citizen Lawsuits	State
Effectiveness	Good	Legal Jeopardy	Good

“Make America California Again”

- **Inadequate BMPs, SWPPPs, sampling & documentation, late submittals**
 - **Orange County Coastkeeper v. Aluminum Precision (\$258,000)**
 - **San Diego Coastkeeper v. Paloma Transfer Station (\$105,000)**
 - **Los Angeles Waterkeeper v. Aerodynamics Plating Co. (\$68,000)**
 - **San Diego Coastkeeper v. Republic Services & Tayman Industries (\$90,000)**



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Final Thoughts

- **Plan for OHR000007 in 2022**
 - **Keep same SWGP**
 - **Keep workable provisions (e.g., alt. benchmarks, “non-industrial” sources)**
 - **4 benchmark samples**
 - **New USEPA MSGP elements **BAD****
- **Keep California **OUT** of Ohio!**

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Burning Questions



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For Immediate Release, July 1, 2021

Contact: Julie Teel Simmonds, (619) 990-2999, jteelsimmonds@biologicaldiversity.org

Lawsuit Challenges Federal Industrial Stormwater Permit's Failure to Control U.S. Plastic Pollution, Protect Endangered Species

SAN FRANCISCO— The Center for Biological Diversity [sued](#) the Environmental Protection Agency and federal wildlife agencies today over their approval of a Clean Water Act [general permit](#) covering stormwater discharges for thousands of industrial facilities across the country.

Today's lawsuit faults the federal permit's failure to protect the aquatic environment, public health, endangered and threatened species, and critical habitat from plastic and other forms of pollution discharged through industrial stormwater.

"This permit lets industrial polluters keep releasing plastic and other pollutants into our waterways," said Julie Teel Simmonds, an attorney in the Center's Oceans program. "Rather than protecting wildlife and public health, the EPA just copied and pasted from its 2015 permit and ignored our [recommendations](#). We're suing to force federal officials to consider mounting evidence that plastics facilities harm essential habitats and frontline communities."

The permit covers stormwater discharges to U.S. waters from industrial facilities in 30 categories, including chemical and allied products manufacturing, rubber and miscellaneous plastic products, and many others.

Plastic production, transport and use in industrial facilities results in the loss of trillions of plastic pellets to the environment every year. These plastic pellets are often spilled in outdoor areas, picked up in stormwater runoff and discharged to surface waters. Once in the environment, plastic pellets are persistent and can be transported long distances from their source in flowing surface waters such as streams, rivers and oceans.

This plastic is ingested by fish, sea turtles, birds and marine mammals and becomes embedded in sediments and plant matter. It also introduces toxic plastic additives to the environment, such as Bisphenol-A and nonylphenol, and accumulates other toxic chemicals on pellet surfaces, such as PCBs and dioxin, which end up in the aquatic food chain.

Among the several hundred species covered by the federal permit are numerous threatened and endangered whales, sea turtles, birds and fish.

Tough controls are urgently needed in light of the current boom in U.S. plastic production, the Center says. According to the American Chemistry Council, the plastics and chemical industry is investing more than \$209 billion in the United States for an estimated 349 projects, including new facilities and expansions. The facilities are designed to convert an oversupply of fracked gas into petrochemical and plastic products. These new plastics are used to manufacture a variety of products, with single-use items accounting for approximately 40% of plastic use.

Today's lawsuit was filed by the Center for Biological Diversity in the Ninth Circuit Court of Appeals in San Francisco.

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 million members and online activists dedicated to the protection of endangered species and wild places.

Arizona • California • Colorado • Florida • N. Carolina • New York • Oregon • Virginia • Washington, D.C. • La Paz, Mexico

[BiologicalDiversity.org](https://www.BiologicalDiversity.org)

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September 17, 2021

VIA EMAIL

Jason Fyffe (Jason.Fyffe@epa.ohio.gov)
Supervisor, Stormwater
Ohio EPA - DSW
Lazarus Government Center
50 W. Town St., Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Early Stakeholder Outreach (ESO) Comments on the 2022 Renewal of Ohio EPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity

Dear Jason:

The Ohio Manufacturers' Association (OMA) is hereby providing Ohio EPA with written Early Stakeholder Outreach (ESO) comments on the renewal of Ohio's NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (SWGP).

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,300 manufacturers throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

The experience of our membership of Ohio manufacturers affected by the current SWGP is that it is an effective stormwater management tool to minimize and/or eliminate stormwater contamination. Our organization was very active in 2017 during the renewal of the current SWGP, and the final SWGP was a workable permit for our membership, while being protective of the environment. We hope that there will be a similar open and transparent process during this upcoming SWGP renewal cycle.

Although Ohio is a delegated state for stormwater NPDES permitting, our membership is concerned about the guidance that the recently renewed USEPA Stormwater NPDES Multi-Sector General Permit (MSGP) may provide to delegated states such as Ohio. Of note, the USEPA MSGP continues a recent trend towards a more top-down, command-and-control approach to stormwater regulation, with a highly prescriptive stormwater sampling/corrective action regime as its cornerstone. Prime examples of this trend in the USEPA MSGP include the Additional Implementation Measures (AIM) and the universal indicator monitoring requirements.

This is a most unfortunate trend that increases the regulatory burden on industry with no tie to a corresponding, quantifiable benefit to receiving waters. Worse yet, we note that the new MSGP requirements were significantly the result of a 2016 USEPA “sue-and-settle” case, in which the regulated community was not given adequate opportunity to provide input or to object.

The following are additional ESO comments on Ohio’s upcoming SWGP renewal, including the following Ohio EPA proposals:

Ohio EPA Proposal 1: Updating the benchmark monitoring schedule to be consistent with USEPA’s 2021 MSGP. See Part 4.2.2.3 of USEPA’s 2021 MSGP for potential permit language.

There has been over 20 years of stormwater sampling, with the data submitted to Ohio EPA. This existing stormwater dataset should be sufficient for Ohio EPA to make characterizations about industrial sites’ stormwater discharges in order to provide some stormwater sampling relief.

Unfortunately, it appears that the trend at USEPA is in the opposite direction, towards greater stormwater sampling to meet expanded, lowered benchmarks, coupled with more onerous, prescriptive corrective actions. This trend raises the enforcement liability for “non-compliance of process” on the regulated community, apart from any real stormwater quality benefit, and is characteristic of a top-down, command-and-control regulatory regime. We implore Ohio EPA to continue its compliance assistance priority in the area of storm water permitting and management, and not follow this unfortunate USEPA trend.

Our members have grave concerns about adopting the MSGP benchmark requirements for quarterly samples within the first year of the permit. This level of effort will be highly challenging and burdensome for our membership with limited staffing, multiple outfalls at each facility, and multiple sites within the same geographical area of Ohio all trying to capitalize off of the same rain event. This effort is made even more difficult by the requirement to collect the benchmark sample at each outfall within the first 30 minutes of a measurable storm event.

The feedback from our membership is that the current 4 benchmark samples, corresponding to the 4 quarters of the year, provide sufficient stormwater quality data to inform on stormwater compliance, without being overly burdensome. If desired, it should not be too burdensome to require these 4 benchmark samples to be collected in the first 2 years of the permit term, rather than the current first 3 years.

Another suggestion is to make collecting additional quarterly benchmark samples an option, and not a mandate, to get annual average(s) in subsequent years. If these subsequent annual average(s) is/are below the benchmark(s), then this shows that progress is being made with the corrective actions. Again, Ohio can mention additional benchmark samples, beyond the minimum 4 samples, as a corrective action option, but it should not be made a mandate.

Ohio EPA Proposal 2: Including Additional Implementation Measures (AIM) consistent with USEPA’s 2021 MSGP. See Part 5.2 of USEPA’s 2021 MSGP for potential permit language.

We strongly oppose the introduction of the Additional Implementation Measures (AIM) into Ohio’s SWGP. We note that this requirement was added to the USEPA MSGP solely as a result of a 2016 USEPA “sue-and-settle” case (now contrary to federal policy), in which the regulated community was not given adequate opportunity to provide input or to object.

The AIM structure is a highly prescriptive, top-down approach to the corrective action process for benchmark exceedances and attempts to impose definitive stormwater control measures (SCM) requirement on all facilities, irrespective of relevance or benefit, and without any link at all to in-stream water quality. This proposal simply goes far beyond the reach of the Clean Water Act (CWA).

We further object to the time frames for compliance with AIM triggers. The “hammers” of 45 and 90 days reflect the top-down, command and control regulatory approach that unnecessarily burdens businesses. A simple narrative time frame will achieve the same water quality goals without creating “noncompliance of process” issues.

If Ohio EPA intends to add these AIM provisions, over our objections, then the potential exists for many sites to be in “perpetual” “non-compliance of process”. We believe that complicating the stormwater compliance process in order to create “administrative non-compliances” is unhelpful to the goal of improving stormwater discharge quality and is contrary to Ohio EPA’s long-standing focus on compliance first, as opposed to an “enforcement-first” regime.

Ohio EPA Proposal 3: Including indicator monitoring for Polycyclic Aromatic Hydrocarbons (PAHs) for facilities which use coal-tar sealcoat to seal paved surfaces where industrial activities are located. Please see Part 4.2.1 (PAHs specifically) for potential permit language.

We are concerned about the precedent set by introducing (a) the concept of indicator monitoring, as well as (b) a new unproven chemical (PAHs), into the Ohio EPA SWGP. The NPDES sampling requirements have always been to meet established thresholds (effluent or benchmark limits), with a basis to compare the sampling results. It is most unfortunate that USEPA introduced indicator monitoring into the MSGP to gather data to ostensibly establish benchmark limits in a future MSGP (“fishing expedition”). We implore Ohio EPA not to collude with USEPA in this matter, by introducing indicator monitoring into the SWGP.

We note that PAHs are NOT a benchmark limit in the current USEPA MSGP, as USEPA is still trying to evaluate the impact of PAHs in stormwater discharges. Therefore, we implore Ohio EPA to NOT add this chemical, or any other chemical that doesn’t have established effluent or benchmark limits, to the Ohio SWGP as it could set the precedent for the premature addition of chemicals on a “policy wish-list” (e.g., PFAS), before any scientific support has been established.

We are not aware of the broad use of coal-tar sealcoat in pavements, so if this coal-tar sealcoat issue is of serious concern to Ohio EPA, then outreach to the sealcoating industry

with alternatives should resolve this matter. The Ohio SWGP could also have a single sentence providing alternatives to coal-tar sealcoat (as listed in the proposed USEPA MSGP): “Substitutes for coal-tar sealcoats are available, such as asphalt emulsion sealants and acrylic sealants.”

Ohio EPA Proposal 4: Require the permit’s annual report to be completed and submitted via Ohio EPA’s eBusiness Center.

We do not object if Ohio EPA desires the SWGP annual report to be completed and submitted annually via Ohio EPA’s eBusiness Center. The permittees are already maintaining these annual reports on-site, and available upon request of Ohio EPA.

In addition to the four (4) items above that Ohio EPA solicited input on, we would also like to provide the following additional feedback for Ohio’s next SWGP:

Inspection-only Option for “Low-Risk” Facilities

USEPA had proposed an inspection-only option for “low-risk” facilities, in lieu of benchmark monitoring, but did not include this in the final MSGP, due to insufficient information to identify “low-risk” facilities. They did indicate that they would be open to re-consider this matter in the future.

We would like to suggest that Ohio EPA consider this “inspection-only” option in the upcoming SWGP, in lieu of benchmark monitoring. The “inspection-only” option should be available to facilities that have historically met benchmarks, with the inspection protocol providing the basis for continued compliance. This would entail defining elements of what constitutes a “low-risk” facility, such as (a) meeting the benchmarks in the last permit cycle, or (b) benchmark chemical(s) is/are not associated with the permittee’s industrial activities (e.g., not in product, from facility structures).

For this “inspection-only” option to work, it should not end up involving more resources on the regulated community than what is required for benchmark monitoring. We would suggest that the quarterly facility inspections (Part 4.1 of the Ohio SWGP) be the basis for this inspection-only option, perhaps at increased frequency (e.g., monthly).

Addressing Benchmark Exceedances

The USEPA MSGP established an exception to AIM for “discharges not resulting in any exceedance of water quality standards”, which appears to “mirror” the existing Ohio SWGP provision in Part 6.2.1.2 - *“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.”* We commend Ohio EPA for being forward thinking, even ahead of the USEPA, in this stormwater policy.

One suggestion for the implementation of corrective actions, to deal with benchmark exceedances, would be to provide “credit” for showing a downward trend in subsequent stormwater monitoring, rather than just hitting the benchmark value for compliance. In many

settings, “getting-to-zero” may be very difficult, even with extensive corrective actions and expenditures, so continuous improvements in stormwater quality should also be a policy consideration. This will be key if the benchmarks get lowered in future USEPA MSGPs.

The OMA appreciates the opportunity to provide these ESO comments for the Ohio SWGP. We look forward to Ohio EPA’s incorporation of these ESO comments in the proposed SWGP. We also look forward to the opportunity to (and reserve the right to) review and submit further comments on the draft permit during future comment periods. If Ohio EPA has any questions regarding the foregoing, please do not hesitate to contact me (614-629-6814) or OMA’s environmental counsel, Christy Schirra at Bricker & Eckler LLP (614-227-8810).

Regards,

A handwritten signature in blue ink that reads "Rob Brundrett". The signature is written in a cursive, slightly slanted style.

Rob Brundrett
Managing Director, Public Policy Services

cc: Christy Schirra, Esq.
Julianne Kurdila, Chair

Storm Water Program

Ohio EPA implements the federal storm water program to ensure compliance with the Clean Water Act and National Pollutant Discharge Elimination System (NPDES) requirements.

Storm water discharges are generated by runoff from land and impervious areas such as paved streets, parking lots, and building rooftops during rainfall and snow events. Storm water often contains pollutants in quantities that could adversely affect water quality. Most storm water discharges are considered point sources and require coverage by an NPDES permit. The primary method to control storm water discharges is through the use of best management practices (BMPs).

There are two storm water permit application options for industrial and construction activities in Ohio. The first is to submit an individual NPDES permit application. The second is to file a Notice of Intent (NOI) form requesting coverage under a general permit. The general permit process is usually easier and faster than the individual permit process. Some industrial activities, such as active landfills, metal mining, coal surface mining and bulk terminals (SIC 5171) are not eligible for industrial storm water general permit coverage.

U.S. EPA's Phase I regulations (40 C.F.R. 122.26) outline permit application requirements and deadlines for certain categories of storm water discharges associated with industrial activity, and discharges from municipal separate storm sewer systems (MS4s) serving populations of 100,000 or more. Phase II, which amended 40 C.F.R. 122.26 and created 40 C.F.R. 122.30 through 122.37, created requirements for some MS4s serving populations fewer than 100,000, ended an exemption for publicly owned industrial facilities and revised the industrial program (which includes construction).

Municipal

An MS4 is a conveyance or system of conveyances (including roads, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by a public body that is designed and used for collecting storm water but is not a combined sewer or part of a publicly owned treatment works (POTW).

The Phase I regulations cover storm water discharges from large and medium MS4s. Large municipalities, with a separate storm sewer system serving populations of 250,000 or more, and medium municipalities, serving populations between 100,000 and 250,000, must obtain NPDES permits.

As part of their individual NPDES permit applications, large and medium MS4s must develop a storm water management program (SWMP). The Phase II regulations require small MS4s in urbanized areas, as defined by the U.S. Census Bureau, to develop SWMPs and apply for permit coverage.

Industrial

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to storm water. The runoff from these activities discharges industrial pollutants into nearby storm sewer systems and water bodies. This may adversely impact water quality.

The list of storm water discharges associated with industrial activity is extensive. All storm water discharges associated with industrial activity that discharge to waters of the state or through an MS4 must obtain NPDES permit coverage. Storm water discharges to a combined sewer system or to a sewage treatment plant (POTW) are excluded. In depth information about standard industrial classification codes can be found at [osha.gov/pls/imis/sicsearch.html](https://www.osha.gov/pls/imis/sicsearch.html).



A brief description of the industrial activity categories covered under the storm water program includes:

- facilities covered by effluent limitation guidelines;
- facilities covered by standard industrial classification (SIC) 24 (except 2434), 26 (Except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441 and 373;
- facilities covered by SIC 10-14;
- hazardous waste treatment, storage and disposal facilities;
- landfills, land application and open dump sites;
- steam electric power generating facilities including coal-handling sites;
- recycling facilities including scrap yards, battery reclaimers, salvage yards and automobile junkyards, including those classified as SIC 5015 and 5093;
- transportation facilities classified as SIC 40, 41, 42 (except 4221-25), 43, 44, 45 and 5171, that have vehicle maintenance shops, equipment cleaning operations or airport deicing operations;
- treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system for facilities with a design flow greater than one million gallons per day or required to have a pretreatment program;
- construction activity disturbing one or more acres of land (the original Phase I threshold was five acres, but as of March 10, 2003, it was lowered to one acre); and
- facilities classified as SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 373), 38, 39 and 4221-25.



Facilities in these categories that do not have materials exposed to storm water are not required to file an application, but must file a No Exposure Certification form. If you qualify for no exposure certification, you are exempt from permit requirements until your facility no longer qualifies. If your facility changes and can no longer claim no exposure to storm water, you must submit the appropriate permit application for storm water discharge. The No Exposure Certification form must be submitted to Ohio EPA at least once every five years.



Construction

Construction sites impact Ohio's waters by adding pollutants, especially sediment, to rainwater running off of construction sites during construction and making long-term land use changes that alter the hydrology and pollutant loading of local streams.

To limit the negative impacts of construction projects on Ohio's waters, Ohio EPA administers a permitting program designed to document construction activity in the state and require practices that keep pollutants out of the streams. The permitting program is mandated in the Clean Water Act and is part of the NPDES program.

If your project disturbs one or more acres of ground, you must get a permit to discharge storm water from your site. If your project disturbs less than one acre but is part of a larger plan of development or sale, you also need a permit to discharge storm water from the site.

More Information

For details, permits and associated regulations, please visit epa.ohio.gov/dsw/storm/index.aspx.

The Ohio Water Partnership

is a broad-based and diverse coalition of businesses and business organizations that support improved water quality policy in the state of Ohio.

Our mission: ensuring a consistent, effective, and equitable approach to protecting and preserving Ohio's natural water resources with focus on promoting Ohio's competitive advantage in clean, safe, affordable water in all its forms across the state.

To discuss your business' opportunity to join the Ohio Water Partnership, contact:

JIM SAMUEL
Executive Director

(614) 354-8458
jim@OhioWaterPartnership.com

SHAWN KASYCH
Member Relations

(216) 299-0901
shawn@OhioWaterPartnership.com



Join the Ohio Water Partnership

Ohio Water is Advantage.

Economic growth is water dependent and compared to other states and to other nations, Ohio is water rich. Ohio's industries are driven by an abundant supply of fresh water from Lake Erie, Ohio's rivers, and a robust system of underground aquifers. While droughts, pollution and depleted groundwater blight other regions of the United States and the globe, Ohio has a plentiful supply of water for industry, irrigation, consumption, and recreation. Water is our advantage — and our goal is to protect it.

Ohio Water is Connection.

From Ohio's small businesses to the Fortune 500, the Ohio Water Partnership includes companies of all sizes that recognize the quality and affordability of Ohio's water impacts the bottom line.

Our members represent all of Ohio's key industry sectors including:

- Healthcare
- Construction
- Energy
- Food & Beverage
- Agriculture
- Travel & Leisure
- Natural Resources
- Professional Services
- Retail
- Manufacturing

Ohio Water is Policy.

We raise awareness and educate Ohio's leaders regarding the importance of:

- **Eliminating** harmful algae blooms
- **Increasing** Ohioans' access to clean, affordable drinking water
- **Encouraging** funding for Ohio's water infrastructure, wastewater treatment & water supply systems, stormwater and sanitary collection, storage and treatment

Ohio Water is Action.

Get engaged, become connected — and join the Ohio Water Partnership! There is no cost to become a member, just a commitment to support the quality of Ohio water, from Lake Erie to the Ohio River and every inland lake, stream and river in between.

The Ohio Water Partnership is a 501(c)(3) non-profit, presented through the generous funding of the Cleveland Foundation, The George Gund Foundation and The Joyce Foundation.

COUNSEL'S REPORT

Frank Merrill & Christine Rideout Schirra, Bricker & Eckler LLP
Counsel to the OMA
September 29, 2021

A. Ohio EPA Activities of Note

1. NPDES Industrial Stormwater General Permit Renewal

Ohio EPA has initiated its early stakeholder outreach process to invite public input in anticipation of changes to the Ohio NPDES Industrial Stormwater General Permit. The current general permit expires on May 31, 2022. Ohio EPA plans to issue its official draft general permit renewal for public comment following the early stakeholder input process. The following potential changes have been specifically highlighted by Ohio EPA for public comment: updating the benchmark monitoring schedule and including additional implementation measures for consistency with U.S. EPA's 2021 Multi-Sector General Permit; adding indicator monitoring for polycyclic aromatic hydrocarbons for facilities that use coal-tar sealcoat to seal paved surfaces where industrial activities are located; and requiring the permit's annual report to be completed and submitted via Ohio EPA's online eBusiness Center. The OMA submitted written comments to Ohio EPA regarding its permit renewal, and intends to be active in the upcoming permit renewal process.

2. Ohio EPA Issuance of Draft Loading Analysis Plan for Maumee Watershed

Ohio EPA has determined that the western basin of Lake Erie has impaired public drinking water supply and recreation uses due to harmful algae. To address these impairments, Ohio EPA is developing a Maumee Watershed Nutrient Total Maximum Daily Loads (TMDL). On August 31, 2021, Ohio EPA issued its Maumee Watershed Nutrient TMDL Project draft Loading Analysis Plan (LAP) for public review and comment. The LAP is the third stage in Ohio EPA's process for developing a TMDL. Following issuance of the final LAP, Ohio EPA's preliminary modeling results will follow, to culminate in Ohio EPA's issuance of the TMDL report.

The LAP lists assessment units that Ohio EPA found to be impaired for the beneficial use designations that the TMDL will address (e.g., aquatic life, recreation, and public water supply). It also addresses how Ohio EPA will set water quality restoration targets to directly address impairments impacting recreation uses or public water supply uses due to harmful algae blooms, and how the TMDL will be protective of aquatic life use impairments caused by nutrients. Lastly, the LAP proposes a modeling method for the TMDL loading calculations.

Ohio EPA's draft LAP and fact sheet are available for review and comment through October 8, 2021. Ohio EPA plans to hold a virtual outreach event on October 5, 2021 to explain its draft LAP and allow for questions and answers.

3. Regional Haze State Implementation Plan

Ohio EPA announced that it submitted its Regional Haze State Implementation Plan ("SIP") for the second implementation period to U.S. EPA on July 30, 2021, in accordance with U.S. EPA's Regional Haze Rule requirements. The Regional Haze Rule's purpose is to restore national parks and wilderness areas ("Class I areas") to the natural visibility condition of atmospheric clarity that would prevail in the absence of human impacts by the year 2064. It requires states to determine if their emissions may impact other states' Class I areas, and if they may, to work cooperatively to develop a long-term strategy for achieving the goal.

Ohio EPA determined in its SIP that potential additional controls in Ohio would not be cost-effective or affordable, and would provide minimal estimated visibility benefit. Ohio EPA concluded that existing controls are more than sufficient to achieve reasonable progress goals and that no additional measures are necessary to make reasonable progress in the second implementation period.

On August 5, 2021, Ohio EPA held a stakeholder outreach meeting to notify stakeholders that ongoing discussions between Ohio EPA and U.S. EPA are occurring, following a memo issued by U.S. EPA on July 8, 2021 in which U.S. EPA set forth several new interpretations of portions of the Regional Haze Rule. Ohio and other states had previously relied on 2017 guidance from U.S. EPA that offered states broad authority to determine whether additional controls are needed. The new July 8, 2021 memo from U.S. EPA suggests that U.S. EPA's interpretation going forward may disfavor SIPs that do not impose new control requirements. Ohio EPA is currently reaching out to potentially affected facilities and industry representatives to discuss the potential impacts of U.S. EPA's new guidance on Ohio's SIP and potentially impacted facilities. Ohio EPA has indicated that it does not anticipate submitting a revised SIP unless it receives and until it assesses specific feedback from U.S. EPA.

4. Ohio's Water Quality Certification for Nationwide Permits

On August 19, 2021, Ohio EPA public noticed its draft 401 Water Quality Certification ("WQC") for 41 Nationwide Permits that were not previously renewed in March 2021. On September 23, 2021, Ohio EPA notified that it will have a public hearing on its draft 401 WQC, to be held on October 6, 2021 at 2:30 pm.

Earlier this year, on March 15, 2021, the U.S. Army Corps of Engineers modified and reissued 12 existing Nationwide Permits, and issued four entirely new Nationwide Permits. The Corps deemed Ohio EPA's 401 Water Quality Certification for those 16 Nationwide Permits to have been waived. Consequently, currently there is no corresponding 401 permitting obligation for those 16 Nationwide Permits.

B. U.S. EPA Activities of Note

1. Notice of Public Meetings Regarding Federal Wetlands Regulations

On June 9, 2021, U.S. EPA and the U.S. Army Corps of Engineers announced their intent to revise the definition of "waters of the United States" in order to restore and build upon the definition that was in place until 2015, when the rule was updated under the Obama Administration (and subsequently updated again, in 2019, under the Trump Administration). "Waters of the United States" is the defined term under the Clean Water Act that establishes the reach of the Clean Water Act regulatory and permitting scheme. On July 30, 2021, the agencies announced their plans for upcoming community engagement meetings for stakeholders to share their perspectives on how the agencies should best define "waters of the United States." In addition to holding meetings with the public and state and Tribal co-regulators, the agencies are also accepting written comments.

The June 30, 2021 announcement further discussed the agencies' anticipated rulemaking process, which is to include two rulemakings: issuance of a foundational rule to restore the regulations defining waters of the United States that were in place for decades until 2015, with updates to be consistent with relevant Supreme Court decisions; and issuance of a separate, second rulemaking process would refine this regulatory foundation and establish an updated and durable definition of "waters of the United States."

Following the U.S. District Court for the District of Arizona's August 30, 2021, order vacating and remanding the Navigable Waters Protection Rule (discussed in Part C below), the agencies have re-affirmed

their commitment to “working expeditiously to move forward with the rulemakings announced on June 9, 2021.”

2. PFAS Reporting under TSCA

On June 10, 2021, U.S. EPA announced a proposed rulemaking under the Toxic Substances Control Act (“TSCA”) that would impose recordkeeping and reporting requirements for PFAS chemicals. The rule would require any entity who currently or previously, since 2011, manufactured or imported PFAS as a “chemical substance,” including as a byproduct, to provide information to EPA on the types, amounts, and environmental and health effects of the PFAS chemicals they produce. The proposed reporting requirement would include information such as chemical identity, categories of use, volume of production, byproducts, environmental impacts, health effects, exposure impacts, and disposal information. To the extent that entities already report this information to U.S. EPA under existing TSCA rules, they would not be required to duplicate reporting efforts.

The proposed rule covers approximately 1,300 types of PFAS identified by U.S. EPA. U.S. EPA has stated that it anticipates that the list of reportable PFAS will be revised in response to public comment and further investigation by U.S. EPA prior to publication of the final rule. U.S. EPA’s proposed time frame for compliance with the rule is within one year of publication of the final rule.

C. Judicial

1. Federal Court Strikes Down Trump Era Federal Wetlands Rule

On August 30, 2021, the U.S. District Court for the District of Arizona issued an order vacating the Navigable Waters Protection Rule and remanding the rule back to U.S. EPA and the U.S. Army Corps of Engineers, in the case of *Pascua Yaqui Tribe v. U.S. Environmental Protection Agency*. The Navigable Waters Protection Rule is the Trump Administration’s regulation that defines “waters of the United States,” thereby establishing the reach of the Clean Water Act regulatory and permitting scheme. The Biden Administration had previously announced that it intends to repeal and replace the Navigable Waters Protection Rule, but did not vacate the rule.

In its decision, the court noted that the Navigable Waters Protection Rule was promulgated despite feedback from the U.S. EPA Science Advisory Board that the rule “conflicts with established science, disregards key aspects of the 2015 Connectivity Report, and weakens protection of the nation’s waters in contravention of the [Clean Water Act’s] objectives.” The court found that the seriousness of the federal agencies’ errors in enacting the rule, the likelihood that the agencies will alter the definition of “waters of the United States” set forth in the rule, and the possibility of serious environmental harm if the rule remains in place upon remand all weighed in favor of vacating and remanding the rule back to the agencies.

In the wake of the District of Arizona decision, the earlier 1986 waters of the United States rulemaking, as interpreted by the U.S. Supreme Court in its 2006 *Rapanos v. United States* decision (the “significant nexus” test), is now the rule in effect. Future litigation may complicate the question of whether the District of Arizona decision applies nationwide (as previously seen with the Obama-era waters of the United States rulemaking in 2015, when the country was split in terms of which iteration of the rule was in effect as a result of court challenges to the Obama-era rule). Meanwhile, U.S. EPA and the Corps have announced that approved jurisdictional determinations (“AJD”) (determinations by the Corps stating the presence or absence of “waters of the United States” and setting forth the boundaries of any such waters) completed prior to the court’s decision will generally remain valid until their expiration date. Conversely, AJDs that were pending on, or received after the court’s decision will be completed consistent with the pre-2015 regulatory regime.

2. Air Pollution Nuisance Rule 6th Circuit Appeal – Update

On January 19, 2021, Sierra Club, Ohio Environmental Council, and two individual citizens filed a petition for review of U.S. EPA’s final rule removing the air pollution nuisance rule from Ohio’s State Implementation Plan (“SIP”) with the Sixth Circuit Court of Appeals. In its final rule, U.S. EPA determined that Ohio did not rely upon the rule to demonstrate attainment or maintenance of any National Ambient Air Quality Standards (“NAAQS”). The removal of the air pollution nuisance rule from Ohio’s SIP allowed Ohio EPA to discontinue its practice of including a nuisance provision as a standard term and condition within each air permit that it issues, which in practice opened up the opportunity for the filing of a citizen suit alleging that a facility is in violation of the nuisance provision, even in instances where Ohio EPA states the facility does not operate as a nuisance.

The State of Ohio moved to intervene in the appeal on February 9, 2021, on behalf of Ohio EPA. On February 18, 2021, The OMA, the Ohio Chamber of Commerce, and the Ohio Chemistry Technology Council also filed a motion to intervene in the appeal. However, U.S. EPA moved to hold the appeal in abeyance on February 12, 2021, to allow U.S. EPA time to conduct a review of the rulemaking under President Biden’s Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (issued January 25, 2021), which the Sixth Circuit granted. U.S. EPA is required to file status updates with the court every 30 days until such time as the abeyance period concludes (which is currently set to conclude on October 13, 2021).

TO: OMA Environment Committee
FROM: Rob Brundrett
RE: Environment Public Policy Report
DATE: September 29, 2021

Overview

Ohio EPA remains on the sidelines at the Ohio statehouse. The agency's priority is on rulemaking and its regulatory agenda. Top regulatory issues are regional haze, Lake Erie TMDL, H2Ohio, and the ozone standard.

Staff has been returning to the office over the past several months. Members should anticipate more onsite inspections.

General Assembly News and Legislation

Senate Bill 9 – Regulatory Reform

SB 9 is the regulatory reform bill. Portions of the bill were passed in the 133rd GA's operating budget bill. The current bill requires an inventory of all regulatory restrictions from agencies in Ohio. The agencies then must reduce these rules by 30% by 2025. The OMA continues to try and work with the bill sponsors on an amendment that would make federal program requirements exempt from the rule inventory. The concern is if Ohio eliminates the program requirements, Ohio manufacturers would then be regulated by the federal agencies as opposed to the local Ohio agencies. The chairman of the House committee hearing the bill is aware of the issues brought up by the OMA. The House had its second hearing this week.

Senate Bill 84 – Clean Ohio Revitalization Program

SB 84 expands the list of applicants eligible to apply for Clean Ohio Revitalization Fund grants to include a county land reutilization corporation. It also directs deferred payments the state receives from JobsOhio to the Clean Ohio Revitalization Fund. The bill has gotten some press and has had two hearings in the Senate.

House Bill 110 - State Operating Budget

The House and Senate agreed to continue to fund H2Ohio operations in the operating budget.

A larger legislative win was extending the state's preemption laws on packaging. There was some concern that the governor may veto the provision, but ultimately it made it through the process and it goes into effect in October.

House Bill 143 – Clean Ohio Program

HB 143 is the companion bill to SB 84. It has not had any hearings yet in the House.

Senate Bill 143 – Adopt Aluminum MCL

SB 143 would require Ohio EPA to adopt a maximum contaminant level (MCL) for aluminum in drinking water of 0.2 milligrams per liter. The agency would need to consider factors such as other state MCLs and studies. The bill has had three hearings in the Senate.

House Bill 155 – Land Reutilization Nuisance Abatement Program

HB 155 creates the Land Reutilization Nuisance Abatement Program to fund the abatement of nuisance structures on blighted property. It provides \$100 million over the biennium. The bill has had four hearing in House committee.

House Bill 158 – Prohibit Use of Certain Firefighting Foam

SB 158 supported by the chemical industry would prohibit the use of Class B firefighting foam containing intentionally added PFAS chemicals for testing purposes (unless certain measures are implemented) or for training purposes. Ohio has seen a surge in PFAS interest including a statewide drinking water assessment. This bill is one way help alleviate the release of PFAS chemicals, when they are not needed. The bill was passed by the full House and has had two hearings in the Senate.

House Bill 175 – Deregulate Certain Ephemeral Water Features

HB 175 is set for its third hearing this week. The bill excludes ephemeral features from water pollution control programs, including the section 401 water quality certification program. It also specifies that an ephemeral feature is a surface water flowing or pooling only in direct response to precipitation, such as rain or snow. Finally, the bill eliminates the section 401 water quality certification review fee that applies to ephemeral streams (currently \$5 per linear foot of stream to be impacted, or \$200, whichever is greater). These types of water issues continue to spring up in the General Assembly and are garnering more national attention.

In a rare step, Ohio EPA Director Laurie Stevenson testified in opposition to the bill. The bill is poised for a House committee vote this week. Several lawsuits and change in federal priorities may make this bill moot.

House Bill 365 – Drinking Water Safety Rules – PFAS

The bill establishes maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants related to the PFAS family. This bill was introduced in the prior General Assembly and did not pass. OMA is watching this bill closely due to the related PFAS work the association has done in the past.

House Bill 385 – Prohibit Ohio Cities to Discharge Waste in Water

The bill would prohibit a municipal corporation located within the Western Basin of Lake Erie from discharging any amount of waste into Ohio waters. It is up for its first hearing this week.

Senate Joint Resolution 2 – Clean Water Bonds

SJR2 proposes to submit to the Ohio voters for approval at the November general election, a constitutional amendment authorizing the state to issue up to \$1 billion in general obligation bonds for clean water improvements; up to \$100 million in bonds may be issued per year, in addition to amounts previously authorized but unissued. It has had no hearings.

Regulations

OMA Comments on Consumer Product VOCs

Earlier this month, the OMA sent comments to Ohio EPA in response to its early stakeholder outreach regarding potential rule changes affecting manufacturers of consumer products that contain volatile organic compounds (VOCs). Ohio EPA is considering updating these rules to incorporate more recent versions of the Ozone Transport Commission's model rule for consumer products.

OMA Provides Comments on Industrial Storm Water

The OMA provided early stakeholder outreach comments on the renewal of Ohio's National Pollutant Discharge Elimination System (NPDES) multi-sector general permit for stormwater discharges associated with industrial activity. The OMA highlighted significant areas of new concern with the federal guidance, and pointed out that the current Ohio permit is very workable for manufacturers.

The OMA has been heavily involved with similar efforts in the past and will remain engaged to ensure the best outcome possible for manufacturers.

Ohio Submits Regional Haze Plan

Ohio EPA submitted to the U.S. EPA the final Regional Haze State Implementation Plan (SIP) for the second implementation period. The purpose of the regional haze rule is to restore the natural visibility in national parks and wilderness areas. OMA submitted comments in support of Ohio's Regional Haze State Implementation Plan (SIP) for the second implementation period, as well as Ohio EPA's stated intention to request that the U.S. EPA review and approve Ohio's long-term strategy and the other elements of the SIP.

OMA is participating in a stakeholder process formed by Ohio EPA in response to U.S. EPA's guidance memo on regional haze.

OMA Submits Comments in Response to Ohio EPA Seeking Input on Maumee TMDL

Ohio EPA asked interested parties for comments for the Maumee Watershed Nutrient TMDL Project. The comments were to cover the information included in Steps 1 and 2 of the TMDL development process. The OMA provided comments regarding the TMDL.

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

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

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

Ohio EPA / U.S. EPA Agency News

OMA Intervenes in Appeal of U.S. EPA's Removal of Air Nuisance Rule

On Jan. 19, 2021, the Sierra Club, the Ohio Environmental Council, and two individuals filed a petition for review with the Sixth Circuit Court of Appeals, seeking review of U.S. EPA's final rule removing the air pollution nuisance rule from Ohio's State Implementation Plan (SIP).

The removal of the air pollution nuisance rule from Ohio's SIP allows Ohio EPA to discontinue its practice of including a nuisance provision as a standard term and condition within each air permit it issues. In practice, the inclusion of the nuisance provision within Ohio EPA's air permits allows for the filing of a citizen suit alleging that a facility is in violation of the nuisance provision, even if Ohio EPA determines the facility does not operate as a nuisance.

On Feb. 18, the OMA moved to intervene in the Sixth Circuit appeal in support of the EPA's removal of the nuisance rule from Ohio's SIP. The State of Ohio has also moved to intervene in support of the agency's action.

On April 14, the court granted a motion to hold the petition in abeyance while U.S. EPA reconsidered its decision to remove the nuisance rule from Ohio's SIP.

On August 12, U.S. EPA filed a status update stating the agency was still reviewing the rule and expects to complete its review at the end of the abeyance period.

OMA Files Brief in PFAS Litigation

Last month the OMA led an amicus effort in the Travis Abbott, et al. v. E. I. du Pont de Nemours and Company case at the U.S. Court of Appeals for the Sixth Circuit. The plaintiff in the case claimed that the chemical C8 which was used as a processing aid to manufacture Teflon caused testicular cancers. The amicus brief led by the OMA was focused on a statute of limitations issue. The crux of the brief's argument was that the court erred by taking the statute of limitations issue away from the jury under the objective test for inquiry notice and, instead, ruled as a matter of law that the plaintiff's claims were timely.

State AGs Sue Biden Administration Over 'Social Costs' of Greenhouse Gases

A dozen attorneys general — including Ohio AG Dave Yost — are suing the Biden administration for increasing the cost of greenhouse gas emissions. The group says only Congress has authority to boost the price tag, which has been raised from \$7 per metric ton to the Obama-era level of \$50 until the administration figures out what it considers the “social costs” of carbon dioxide, methane, and nitrous oxide emissions, according to TheHill.com.

The administration's working group has established preliminary cost figures at about \$9.5 trillion a year. The lawsuit says the higher costs will cause serious harm to U.S. industry.

ENVIRONMENTAL PROTECTION AGENCY

Fees

- Extends all of the following for two years:
 - The sunset of the annual emissions fees for synthetic minor facilities;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works;
 - The sunset of the annual discharge fees for holders of National Pollutant Discharge Elimination System (NPDES) permits under the Water Pollution Control Law;
 - The sunset of license fees for public water system licenses;
 - A higher cap on the total fee due for plan approval for a public water supply system and the decrease of that cap at the end of the two years;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control and Safe Drinking Water Laws;
 - The sunset of the fees levied on the transfer or disposal of solid wastes; and
 - The sunset of the fees levied on the sale of tires.
- Eliminates the following fees:
 - A \$15 application fee for a registration certificate necessary for certain scrap tire collection facilities;
 - A \$15 application fee for a permit, or variance, or plan approval under the Solid and Hazardous Waste Law; and
 - The \$100 fee for renewal of coverage under an NPDES general permit for a household sewage treatment system.
- Eliminates a non-Title V air contaminant source fee schedule that only applied from January 1, 1994, to December 31, 2003.
- Reduces, from \$1,800 to \$500, the additional survey fee that laboratories must pay to the Ohio Environmental Protection Agency (OEPA) to add analysts or additional accepted analytical techniques between triennial renewal surveys.

- Corrects the definition of “MF” that is associated with lab fees by changing it from “microfiltration” to “membrane filtration.”

Scrap tires removed from “no fault” sites

- Increases, from 5,000 to 10,000, the number of scrap tires that can be removed from a person’s property by OEPA at no cost to the property owner if certain conditions apply (i.e., placement of scrap tires was not the fault of the property owner).
- Allows the OEPA Director to increase the 10,000 scrap tire threshold.

Lead and copper notification rules

- Eliminates a requirement that the Director adopt rules setting specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results.
- Authorizes the Director instead to assess the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.
- Generally shifts reporting and other requirements regarding lead and copper contamination from statute to a rules-based system administered by the Director.
- Increases the timeframe (from two business days to not more than 30 business days after the receipt of lab results) within which the owner or operator of a community or nontransient noncommunity water system must notify residents when a tap sample does not exceed the applicable lead threshold.
- Requires the owner or operator of those systems to update and resubmit maps according to a schedule determined by the Director but no less frequently than required under the federal Safe Drinking Water Act, rather than every five years as in prior law.
- Eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

Certified and accredited laboratories under the VAP

- Eliminates the Director’s authority to certify laboratories for purposes of performing analyses under the Voluntary Action Program (VAP).
- Instead, specifies that a laboratory must hold a valid accreditation from a specified outside accreditation body to perform analyses under the VAP.
- Generally requires a person participating in the VAP to use the services of an accredited laboratory to perform analyses, but specifies that data analyzed by a certified laboratory before the act’s effective date may still be used.
- Retains the Director’s authority to enter the property of a certified laboratory and conduct audits for purposes of investigation and extends this authority to accredited laboratories.

- Prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit.
- Eliminates outdated provisions governing the VAP.

Water pollution control: practical qualification level

- Specifies that for purposes of determining compliance with a pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL constitutes compliance (instead of any level “at or below”).

Isolated wetland mitigation ratio table reference

- Corrects an incorrect division reference to the Ohio Administrative Code.

Fees

(R.C. 3745.11, 3734.57, and 3734.901)

The act extends the period of validity for various OEPA-administered fees under the laws governing air pollution control, water pollution control, safe drinking water, and solid waste. The following table sets forth each fee, its purposes, and the time period OEPA is authorized to charge the fee under prior law and the act:

Type of fee	Description	Fee under prior law	Fee under the act
Synthetic minor facility: emission fee	Each person who owns or operates a synthetic minor facility must pay an annual fee in accordance with a fee schedule that is based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant source at the facility that include terms and conditions that lower the facility’s potential to emit air contaminants below the major source thresholds established in rules.	The fee was required to be paid through June 30, 2022.	The act extends the fee through June 30, 2024.

Type of fee	Description	Fee under prior law	Fee under the act
Wastewater treatment works: plan approval application fee	<p>A person applying for a plan approval for a wastewater treatment works is required to pay one of the following fees depending on the date:</p> <p>--A tier one fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000; or</p> <p>--A tier two fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000.</p>	An applicant is required to pay the tier one fee through June 30, 2022, and the tier two fee on and after July 1, 2022.	The act extends the tier one fee through June 30, 2024; the tier two fee begins on or after July 1, 2024.
Discharge fees for holders of NPDES permits	Each NPDES permit holder that is a public discharger or an industrial discharger with an average daily discharge flow of 5,000 or more gallons per day must pay an annual discharge fee based on the average daily discharge flow. There is a separate fee schedule for public and industrial dischargers.	The fees were due by January 30, 2020, and January 30, 2021.	The act extends the fees and the fee schedules to January 30, 2022, and January 30, 2023.
Surcharge for major industrial dischargers	A holder of an NPDES permit that is a major industrial discharger must pay an annual surcharge of \$7,500.	The surcharge was required to be paid by January 30, 2020, and January 30, 2021.	The act extends the fee to January 30, 2022, and January 30, 2023.
Discharge fee for specified exempt dischargers	One category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180.	The fee was due by January 30, 2020, and January 30, 2021.	The act extends the fee to January 30, 2022, and January 30, 2023.
License fee for public water system license	A person is prohibited from operating or maintaining a public water system without an annual license from OEPA. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems.	The fee for an initial license or a license renewal applied through June 30, 2022, and is required to be paid annually in January.	The act extends the initial license and license renewal fee through June 30, 2024.

Type of fee	Description	Fee under prior law	Fee under the act
Fee for plan approval to construct, install, or modify a public water system	Anyone who intends to construct, install, or modify a public water supply system must obtain approval of the plans from OEPA. The fee for the plan approval is \$150 plus 0.35% of the estimated project cost. However, continuing law sets a cap on the fee.	The cap on the fee was \$20,000 through June 30, 2022, and \$15,000 on and after July 1, 2022.	The act extends the cap of \$20,000 through June 30, 2024; the cap of \$15,000 applies on and after July 1, 2024.
Fee on state certification of laboratories and laboratory personnel	<p>In accordance with two schedules, OEPA charges a fee for evaluating certain laboratories and laboratory personnel.</p> <p>An additional provision states that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.</p>	<p>The schedule with higher fees applied through June 30, 2022, and the schedule with lower fees applied on and after July 1, 2022.</p> <p>The \$1,800 additional fee applied through June 30, 2022.</p>	<p>The act extends the higher fee schedule through June 30, 2024; the lower fee schedule applies on and after July 1, 2024.</p> <p>The act extends the additional fee through June 30, 2024.</p>
Fee for examination for certification as an operator of a water supply system or wastewater system	A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system (class A and classes I-IV) must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.	A schedule with higher fees applied through November 30, 2022, and a schedule with lower fees applied on and after December 1, 2022.	The act extends the higher fee schedule through November 30, 2024; the lower fee schedule applies on and after December 1, 2024.
Application fee for a permit (other than an NPDES permit), variance, or plan approval	A person applying for a permit (other than an NPDES permit), a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law must pay a nonrefundable fee.	If the application was submitted through June 30, 2022, the fee was \$100. The fee was \$15 for an application submitted on or after July 1, 2022.	The act extends the \$100 fee through June 30, 2024; the \$15 fee applies on and after July 1, 2024.
Application fee for an NPDES permit	A person applying for an NPDES permit must pay a nonrefundable application fee.	If the application was submitted through June 30,	The act extends the \$200 fee through June 30,

Type of fee	Description	Fee under prior law	Fee under the act
		2022, the fee was \$100. The fee was \$15 for an application submitted on or after July 1, 2022.	2024; the \$15 fee applies on and after July 1, 2024.
Fees on the transfer or disposal of solid wastes	A total of \$4.75 in state fees is levied on each ton of solid waste disposed of or transferred in Ohio. The fees are used for administering the hazardous waste (90¢), solid waste (75¢), and other OEPA programs (\$2.85), and for soil and water conservation districts (25¢).	The fees applied through June 30, 2022.	The act extends the fees through June 30, 2024.
Fees on the sale of tires	A base fee of 50¢ per tire is levied on the sale of tires to assist in the cleanup of scrap tires. An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.	Both fees were scheduled to sunset on June 30, 2022.	The act extends the fees through June 30, 2024.

The act also eliminates all of the following:

1. A \$15 application fee for registration certificate necessary for certain scrap tire collection;
2. A \$15 application fee for a permit, or variance, or plan approval under the Solid and Hazardous Waste Law;
3. An obsolete non-Title V air contaminant source fee schedule that applied from 1994 to 2003; and
4. The \$100 fee for renewal of coverage under an NPDES general permit for a household sewage treatment system.

Additionally, it reduces, from \$1,800 to \$500, the additional survey fee that laboratories must pay to the OEPA to add analysts or additional accepted analytical techniques between triennial renewal surveys.

Finally, the act corrects the definition of “MF” that is associated with lab fees by changing it from “microfiltration” to “membrane filtration.”

Scrap tires removed from “no fault” sites

(R.C. 3734.85)

The act increases, from 5,000 to 10,000 (or more if the OEPA Director approves a larger amount), the number of scrap tires that can be removed from a person’s property by OEPA at no cost to the property owner. The act maintains the stipulation that all of the following conditions apply:

1. The tires were placed on the property *after* the property owner acquired title to the property, or the tires were placed on the property *before* the owner acquired title to the property by bequest or devise;
2. The property owner did not have knowledge that the tires were being placed on the property, or the property owner posted the property signs prohibiting dumping or took other action to prevent the placing of tires on the property;
3. The property owner did not participate in or consent to the placing of the tires on the property;
4. The property owner received no financial benefit from the placing of the tires on the property or otherwise having the tires on the property;
5. Title to the property was not transferred to the property owner for evading scrap tire abatement liability; and
6. The person responsible for placing the tires on the property, in doing so, was not acting as an agent for the property owner.

Lead and copper notification rules

(R.C. 6109.121; R.C. 6109.01 and 6109.23, not in the act)

The act eliminates a requirement that the Director adopt rules establishing specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results. Instead, it authorizes the Director to establish the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.

In general, the act shifts reporting and other requirements that the owner or operator of these water systems must follow regarding lead and copper contamination from statute to rule. This shift includes requirements concerning the following subjects:

1. Administrative penalties, as discussed above;
2. Laboratory sampling and reporting requirements;
3. Notification requirements that the owner or operator of a community or nontransient noncommunity water system must follow regarding laboratory results;
4. Certification requirements concerning the notifications;
5. OEPA Director notifications where a system fails to make required notices; and

6. System mapping requirements that show areas of a system that are known or likely to contain lead service lines and lead fixtures.

Specifically, the act requires the rules to include requirements that the owner or operator of a community or nontransient noncommunity water system do both of the following:

1. When a tap sample for lead or copper is *below* the applicable lead threshold, provide notice of the results to residents within a time period specified in rules that is not more than 30 days after the receipt of lab results, rather than within two business days as in prior law; and

2. Under rules concerning mapping requirements, update and resubmit the maps according to a schedule determined by the Director, but no less frequently than required under the Safe Drinking Water Act, rather than every five years as in prior law.

The act eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

A community water system is a public water system that has at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A nontransient noncommunity water system is a public water system that regularly serves at least 25 of the same persons over six months per year and is not a community water system.

Certified and accredited laboratories under the VAP

(R.C. 3746.01, 3746.04, 122.65, 3746.07, repealed; R.C. 3746.071 (3746.07), 3746.09, 3746.10, 3746.11, 3746.12, 3746.13, 3746.17, 3746.18, 3746.19, 3746.20, 3746.21, 3746.31, and 3746.35)

The Voluntary Action Program (VAP) is a cleanup program administered by OEPA. Under the VAP, a person may undertake cleanup of a contaminated property to specific standards. When those standards are met, a certified professional (a person certified by OEPA to assess the cleanup) may issue a “no further action letter.” This letter verifies that the property, in the view of the certified professional and based on an analysis performed by a certified laboratory, has been remediated and meets appropriate standards. After the issuance of a no further action letter, the Director may issue a covenant not to sue. This covenant releases the person who undertook a voluntary action from all civil liability to the state to:

1. Perform investigational activities at the property that was the subject of the voluntary action; and

2. Perform remedial activities to address a release of hazardous substances or petroleum at the property (with certain conditions).

The act eliminates a requirement that OEPA certify laboratories for purposes of the VAP. Instead, it requires each laboratory to hold a valid accreditation from an outside accreditation body, as follows:

1. For analysis of asbestos, accreditation by one of the following:

- a. The American Industrial Hygiene Association, Asbestos Analysts Registry;
 - b. The National Institute of Standards Technology, National Voluntary Laboratory Accreditation Program (NELAP) for asbestos fiber analysis; or
 - c. An accreditation body recognized by the National Environmental Laboratory Accreditation Conference (NELAC).
2. For analysis of any constituents other than asbestos, accreditation by one of the following:
 - a. An accreditation body recognized by NELAC;
 - b. A NELAP accreditation from an accreditation body recognized by NELAC.

The act generally requires a person participating in a voluntary action to use the services of an accredited laboratory to perform analyses. But, it specifies that data analyzed by a laboratory certified by OEPA before the act's effective date may still be used for a voluntary action. Because this data may still be used, the act retains the Director's authority to audit any work performed by a certified laboratory before the act's effective date. For these purposes, the Director may do any of the following:

1. Enter the property of a certified laboratory for purposes of investigation;
2. Conduct a special audit when a no further action letter was issued under the VAP but the analyses were performed by a certified laboratory for which certification was suspended or revoked before the act's effective date; and
3. Audit work performed by a certified laboratory to determine if the laboratory's performance of its duties has resulted in the issuance of a no further action letter that is not consistent with cleanup standards.

The act extends the Director's investigation and auditing authority to accredited laboratories. It also prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit. This prohibition is a continuation of a prohibition that applies to certified laboratories. Finally, the act eliminates outdated provisions governing the VAP that applied before the Director adopted the rules governing the VAP.

Water pollution control: practical qualification level

(R.C. 6111.13)

The act specifies that, for purposes of determining compliance with a water pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL (instead of any level "at or below" PQL) constitutes compliance. A PQL is the minimum concentration of an analyte (substance whose chemical constituents are being measured) that can be measured with a high degree of confidence that the analyte is present at the reported concentration.

Isolated wetland mitigation ratio table reference

(R.C. 6111.027)

The act corrects an incorrect division reference to the Ohio Administrative Code in the law governing isolated wetlands. Prior law referenced mitigation ratios established under division (F) of rule 3745-1-54 of the Administrative Code. However, after the most recent revision to that rule, that reference is no longer accurate. The act corrects this by instead only referring to rule 3745-1-54.

Version: As Introduced

Primary Sponsor: Rep. Hillyer

Helena Volzer, Attorney

SUMMARY

- Excludes ephemeral features from water pollution control programs, including the section 401 water quality certification program.
- Specifies that an ephemeral feature is a surface water flowing or pooling only in direct response to precipitation, such as rain or snow.
- Eliminates the section 401 water quality certification review fee that applies to ephemeral streams (currently \$5 per linear foot of stream to be impacted, or \$200, whichever is greater).

DETAILED ANALYSIS

Deregulation of ephemeral features

Background

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into “navigable waters,” which the statute defines as “waters of the United States, including the territorial seas.”¹ The terms “navigable waters” and “waters of the United States” (WOTUS) are used for purposes of several CWA programs, including:

- Statutory schemes governing discharges of dredged or fill material under CWA Section 404, administered jointly by the U.S. Corps of Army Engineers and U.S. Environmental Protection Agency (USEPA);

¹ 33 United States Code (U.S.C.) § 1362(7).

- Discharges of pollutants from “point sources” under CWA Section 402, delegated to most states for permitting under the National Pollution Discharge Elimination System (NPDES); and
- Spills of oil and hazardous substances under Section 311.

Over time, the USEPA has adopted rules defining the types of water bodies that are encompassed within the term “navigable waters.” In 1985, the U.S. Supreme Court held that “navigable waters” includes more than only those waters that would be deemed “navigable” in the “classical” or traditional sense.² However, the scope of these terms remained somewhat unclear, and the Court revisited the issue in 2006.

In *Rapanos v. United States*, the Court offered a plurality decision, posing two possible interpretations of the term:

1. Justice Scalia and three other Justices found that these waters are “relatively permanent” waters that hold a “continuous surface connection” to a traditionally navigable water.
2. Justice Kennedy, in a concurring opinion, wrote that to be a navigable water, a WOTUS must have a “significant nexus” to a traditionally navigable water.³

Attempting to clarify the rule, in 2015, the USEPA adopted the second approach, evaluating waters on a case-by-case basis under the “significant nexus” test. However, In 2017, President Trump signed an executive order directing USEPA to rescind the 2015 rule and instead adopt a new WOTUS rule reflecting the first approach offered by Justice Scalia in *Rapanos*.⁴ That rule took effect on June 22, 2020.⁵ Shortly thereafter, twenty states and the District of Columbia filed a lawsuit challenging it. That litigation is still pending.⁶

Ephemeral features

The bill applies the current 2020 WOTUS rule to exclude ephemeral features from regulation under Ohio’s law governing water pollution control.⁷ An ephemeral feature is a surface water that flows or pools only in response to precipitation, such as rain or snow. The bill effectuates this change by specifying that ephemeral features are not “waters of the state.” Thus, under the bill, Ohio EPA is not required to issue permits for impacts to ephemeral

² *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 133 (1985).

³ *Rapanos v. United States*, 547 U.S. 715 (2006).

⁴ Executive Order 13778 of February 28, 2017.

⁵ 33 Code of Federal Regulations (CFR) § 328.3 (April 21, 2020).

⁶ See *California v. Andrew Wheeler*, Civil Action No. 3:20-cv-03005.

⁷ R.C. 3745.114(A) and (G), 6111.01(H) and (V), and 33 CFR § 328.3 (April 21, 2020).

features.⁸ And, discharging sewage or other pollutants into an ephemeral stream is not a prohibited act.⁹

Under current law, “ephemeral streams” are subject to regulation by Ohio EPA and any impacts to them require a permit, most notably a section 401 water quality certification for dredge and fill operations. The bill replaces the term ephemeral stream with ephemeral feature and changes the definition of this type of water as follows:

Current law	The bill
An ephemeral stream is a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and that has channel bottom that is always above the local water table.	An ephemeral feature is surface water flowing or pooling only in direct response to precipitation, such as rain or snow.

As a result of the bill’s changes, the current review fee for a section 401 water quality certification that applies to an ephemeral stream is eliminated. That fee is \$5 per linear foot of stream to be impacted, or \$200, whichever is greater.¹⁰

Impacts to other statutes

To exclude ephemeral features from regulation under Ohio’s Water Pollution Control Law, the bill alters the definition of “waters of the state.” However, other chapters of the Revised Code that do not appear in the bill utilize this definition. Thus, the bill has the effect of excluding ephemeral features for purposes of regulation under the following programs:

Citation	Heading
R.C. 903.01	Concentrated Animal Feeding Facilities (CAFFs)
R.C. 1503.50	Forest management
R.C. 3746.07	Voluntary Action Program (VAP)

In addition, many other provisions of the Revised Code refer to “waters of the state” with similar or slightly varying definitions than that used in the Water Pollution Control Law. In these provisions, the term “waters of the state” does not exclude ephemeral features. The table below indicates all references to a defined term “waters of the state” that does not exclude ephemeral features, but that bears some relation to the Water Pollution Control Law.

⁸ R.C. 6111.01(H) and (V); see 6111.03(J), not in the bill.

⁹ See R.C. 6111.04, not in the bill.

¹⁰ R.C. 3745.114.

Revised Code sections containing "waters of the state"	Subject
6119.011	Regional water and sewer districts
1513.01 and 1513.07(A)(5)	Coal surface mining
1509.01 and 1509.22(C)(2)	Brine disposal
6121.01	Ohio Water Development Authority
6112.01	Private sewer systems
939.01 and 939.10	Soil and water conservation
940.01 (F) and (G); see 940.02(G)	Soil and Water Conservation Commission

HISTORY

Action	Date
Introduced	03-03-21

Version: As Introduced

Primary Sponsor: Rep. Cross

Amanda George Goodman, Attorney

SUMMARY

- Requires the Director of Environmental Protection to revoke all water pollution discharge permits (NPDES permits) issued to municipal corporations in the Lake Erie western basin for their treatment works and sewerage systems.
- Prohibits the Director from issuing an NPDES permit to such a municipal corporation.
- Prohibits any such municipal corporation from polluting the waters of the western basin.
- Specifies that a municipal corporation that knowingly violates the prohibition must be fined \$250,000 on a first offense and \$100,000 on each subsequent offense.
- Specifies that if the violation involves pollution that exceeds 100 million gallons or more within a 12-month period, the municipal corporation must pay an additional fine of \$1 million.
- Specifies that each day of violation is a separate offense.
- Requires a municipal corporation that is convicted of or found guilty of violating the bill's prohibition to also reimburse any state agency or a political subdivision for any actual costs that it incurred in responding to the violation, excluding prosecution costs.

DETAILED ANALYSIS

Background: municipal waste discharging with an NPDES permit

Currently, Ohio law prohibits a municipal corporation (or any other person) from causing pollution or placing or causing to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes ("waste") in a location where they cause pollution of any Ohio

waters. However, a person may discharge such wastes in accordance with a valid discharge permit issued by the Ohio Environmental Protection Agency (OEPA).¹ These permits are called National Pollutant Discharge Elimination System (NPDES) permits. OEPA issues them to municipal corporations, industry, publicly owned sewerage systems, or other entities that seek to discharge wastewater to a surface water of the state. According to OEPA, NPDES permits regulate wastewater discharges by limiting the quantities of pollutants to be discharged and imposing monitoring requirements and other conditions.²

The Director of Environmental Protection, in accordance with Ohio law,³ has established total maximum daily loads (TMDLs) for Ohio waters, which effectively sets maximum pollutant levels for pollutants that can be disposed of in each body of water. NPDES permit holders also must meet TMDL-based limits or conditions as a term of their permit.⁴ The Director must consider various conditions prior to issuing an NPDES permit for discharges from a publicly owned sewerage system, including an evaluation of the effectiveness and cost of a long-term control plan.⁵

NPDES permit violations

Currently, if a person, including a municipal corporation, *purposely* disposes of waste into Ohio waters in a manner that is not allowed under their NPDES permit, the municipal corporation is guilty of a felony and fined up to \$25,000. If the municipal corporation *knowingly* does so, it is guilty of a misdemeanor and fined up to \$10,000. Each day of violation is a separate offense.⁶ The municipal corporation also must reimburse any state agency or a political subdivision for any actual costs that it incurred in responding to the violation, excluding prosecution costs. After notice and opportunity for a hearing, the Director may revoke an NPDES permit for cause including the violation of any terms or conditions of the permit. Further, OEPA may bring an action for civil penalties (up to \$10,000 per day of violation) against the municipal corporation.⁷

Municipalities prohibited against discharging waste

The bill prohibits any municipal corporation located within the western basin of Lake Erie (watersheds located around Lake Erie) from causing pollution of any Ohio waters. It also prohibits a municipal corporation from keeping or obtaining an NPDES permit.⁸ Effectively, this

¹ R.C. 6111.04(A) and (G).

² <https://www.epa.ohio.gov/dsw/permits/gpfact>.

³ See R.C. 6111.561, not in the bill.

⁴ R.C. 6111.563(F), not in the bill.

⁵ R.C. 6111.60, not in the bill.

⁶ R.C. 6111.99(A) and (B).

⁷ R.C. 6111.07 and 6111.09; Ohio Administrative Code 3745-33-04(G).

⁸ R.C. 6111.61(D).

bill eliminates a municipal corporation’s ability to operate a treatment works or sewerage system that disposes of waste into or around Lake Erie.

As a result of the new prohibition, the bill requires the Director to revoke any NPDES permit issued to a municipal corporation located within the western basin that owns or operates a treatment works or sewerage system. It also prohibits the Director from issuing any new NPDES permit or other permit to a municipal corporation located within the western basin that owns or operates a treatment works or sewerage system.⁹

Penalties

A municipal corporation that knowingly disposes of waste into Ohio waters in violation of the bill must be fined \$250,000 on a first offense and \$100,000 on each subsequent offense. Each day of violation is a separate offense. If the violation involves pollution that exceeds 100 million gallons or more within a 12-month period, the municipal corporation must pay an additional fine of \$1 million.¹⁰

If a municipal corporation is convicted of or pleads guilty to this violation, in addition to financial sanctions, the court imposing the sentence may order the municipal corporation to reimburse the state agency or a political subdivision for any actual costs that it incurred in responding to the violation. Those costs include the cost of restoring affected aquatic resources and compensating the state for adverse impacts to those resources. The state may not recover costs related to the prosecution of the offense. The bill does not impose any civil penalties for a violation.¹¹

HISTORY

Action	Date
Introduced	08-06-21

H0385-I-134/ts

⁹ R.C. 6111.61(B) and (C).

¹⁰ R.C. 6111.99(F).

¹¹ R.C. 6111.99(G).



September 8, 2021

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

Mr. Paul Braun
Ohio EPA Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216-1049

Re: Ohio EPA Early Stakeholder Outreach – OAC Chapter 3745-112

Dear Mr. Braun:

Pursuant to Ohio EPA's public notice of its early stakeholder outreach regarding potential rule changes to Ohio Administrative Code (OAC) 3745-112, The Ohio Manufacturers' Association (OMA) is hereby providing Ohio EPA with written comments.

The OMA is dedicated to protecting and growing manufacturing in Ohio. 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. The OMA appreciates the opportunity to comment on OAC Chapter 3745-112.

Ohio EPA has indicated that changes are forthcoming to OAC Chapter 3745-112, which applies to manufacturers of consumer products that contain VOCs. More specifically, The OMA understands that Ohio EPA is considering updating these rules to incorporate more recent versions of the Ozone Transport Commission's model rule for Consumer Products.

The OMA's members are impacted by Ohio EPA's rules governing consumer products set forth within OAC Chapter 3745-112. The OMA looks forward to reviewing Ohio EPA's draft rule language when it becomes available for public comment, and respectfully requests to be included in meetings or future discussions pertaining to amendments to these rules.

The OMA would like to thank Ohio EPA for the opportunity to comment and to participate in this rulemaking process. We look forward to working with Ohio EPA on this and any future stages of this rulemaking.

Sincerely,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett
Director, Public Policy Services

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

July 30, 2021

Ms. Cheryl Newton
Acting Regional Administrator
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Re: Ohio's Regional Haze State Implementation Plan (SIP) for the Second Implementation Period

Dear Administrator Newton:

I am writing to submit Ohio's Regional Haze State Implementation Plan (SIP) for the Second Implementation Period. This SIP demonstrates satisfactory progress toward the long-term visibility goals contained in the Regional Haze Rule, as revised in 2017, and the Clean Air Act. Ohio EPA has addressed all required elements of 40 CFR 51.308(f) in this Plan, including consultation with the Federal Land Managers (FLMs) and other states.

The public comment period for the draft SIP was held from May 10, 2021 through June 28, 2021. Ohio EPA has made revisions based on comments received during the comment period and a response to comments is included in the appendices.

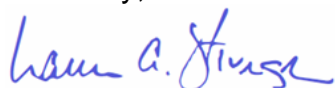
U.S. EPA's Memorandum "Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period", issued July 8, 2021, is not addressed in this submittal. The SIP was developed using all regulations and guidance provided by U.S. EPA available during the extensive planning process, which involved multiple years of planning and consultation with affected parties. U.S. EPA's issuance of a clarification memorandum of this significance so late in the planning process – just over three weeks from the deadline for submittal of the SIP, and after the conclusion of the public comment period – is very concerning and leaves the states in a difficult position. In order to meet our mandatory Clean Air Act requirements, Ohio had no choice but to submit our SIP without taking into consideration this ill-timed clarification memo, which is described as non-binding. Ohio is continuing to review the July 8, 2021 clarification memo and anticipates further discussion and engagement with U.S. EPA and other affected parties on this issue.

This SIP does not include the relaxation of any existing requirements and therefore will not interfere with the attainment or maintenance of the NAAQS in accordance with section 110(l) of the CAA.

Ohio EPA requests U.S. EPA approve Ohio's Regional Haze SIP for the Second Implementation Period.

If you have questions, please contact Jennifer Van Vlerah in our Division of Air Pollution Control at (614) 644-3696.

Sincerely,



Laurie A. Stevenson
Director

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

Enclosures



June 25, 2021

VIA Electronic Mail (holly.kaloz@epa.ohio.gov)

Ms. Holly Kaloz
Ohio EPA Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

Re: Ohio EPA Public Notice – Ohio’s Regional Haze State Implementation Plan

Dear Ms. Kaloz:

Pursuant to Ohio EPA’s public notice of its intended submittal of Ohio’s Regional Haze State Implementation Plan (SIP) for the Second Implementation Period to U.S. EPA, The Ohio Manufacturers’ Association (OMA) is hereby providing Ohio EPA with written comments to Ohio Regional Haze SIP for the Second Implementation Period.

The OMA is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,300 manufacturers in every industry throughout Ohio. For more than 100 years, the OMA has supported reasonable, necessary and transparent environmental regulations that promote the health and well-being of Ohio’s citizens. The OMA appreciates the opportunity to comment on Ohio EPA’s Regional Haze SIP for the Second Implementation Period.

The OMA supports Ohio’s Regional Haze SIP for the Second Implementation Period, and Ohio EPA’s stated intention to request that U.S. EPA review and approve Ohio’s long-term strategy and the other elements of the SIP.

The OMA would like to thank Ohio EPA for the opportunity to comment and to participate in this public notice and comment process. We look forward to working with Ohio EPA as these comments are taken under consideration.

Sincerely,

A handwritten signature in blue ink that reads "Rob Brundrett".

Rob Brundrett
Director, Public Policy Services

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

FOR RELEASE: September 22, 2021

CONTACT: Mary McCarron, mary.mccarron@epa.ohio.gov

**Ohio EPA Meeting Set to Discuss Water Quality Certification for
Nationwide Permits**

Public Hearing Scheduled Oct. 6

Ohio EPA will hold a public hearing with in-person and virtual options on Oct. 6, 2021, at 2:30 p.m. to discuss the [proposed re-issuance of 41 nationwide permits](#) and the state's certification of those activities.

The in-person hearing will take place at Ohio EPA, Conference Room A (Autumn), 50 West Town Street, Suite 700, Columbus. Interested persons may attend the hearing in-person (or virtually) to be represented and give written or verbal comments on the proposed project. If planning on attending in-person, please pre-register by emailing mary.mccarron@epa.ohio.gov. Visitors in the building must present a photo I.D. and are expected to follow the rules of the building, which has mask and social distancing requirements. Due to meeting room capacity, participants are encouraged participate virtually. Those who wish to attend virtually should [register](#) at least 15 minutes in advance to ensure connectivity.

Nationwide permits are federal actions designed to reduce the regulatory and administrative burdens for projects that will result in minimal water quality impacts. Each state must certify each nationwide permit and may include terms specific to the needs of the state. Examples of these permits that Ohio certifies include temporary construction, access and dewatering, utility line activities, maintenance activities, bank stabilization, linear transportation projects, and aquatic habitat restoration. Ohio EPA water quality certifications typically remain in place for five years.

The U.S. Army Corps of Engineers originally proposed 59 nationwide permits, published in September 2020, but ultimately only issued 16 activity-based permits. On June 11, 2021, the Army Corps of Engineers submitted a draft final rule for 41 remaining activities and has requested the state certify those nationwide permits.

Nationwide permits included are:

- aids to navigation;
- structures in artificial canals;

- maintenance;
- fish and wildlife harvesting, enhancement, and attraction devices and activities;
- scientific measurement devices;
- survey activities;
- outfall structures and associated intake structures;
- oil and gas structures on the outer continental shelf;
- structures in fleeting and anchorage areas;
- mooring buoys;
- temporary recreation structures;
- bank stabilization;
- linear transportation projects;
- U.S. Coast Guard approved bridges;
- return water from upland contained disposal areas;
- hydropower projects;
- minor discharges;
- minor dredging;
- response operations for oil or hazardous substances;
- removal of vessels;
- approved categorical exclusions;
- Indian tribe or state administered section 404 programs;
- structural discharges;
- aquatic habitat restoration, establishment, and enhancement activities;
- modifications of existing marinas;
- moist soil management for wildlife;
- maintenance of existing flood control facilities;
- completed enforcement actions;
- temporary construction, access, and dewatering;
- cranberry production activities;
- maintenance dredging of existing basins;
- boat ramps;
- emergency watershed protection and rehabilitation;
- cleanup of hazardous and toxic waste;
- reshaping existing drainage or irrigation ditches;
- repair of uplands damaged by discrete events;
- discharges in ditches;
- coal remining activities;
- removal of low-head dams;
- living shorelines; and
- water reclamation and reuse facilities.

Discharges from the activity, if approved, would result in degradation to, or lowering of the water quality of surface waters of the state, including lakes, wetlands, and streams. In order to receive a nationwide permit, the applicant must demonstrate activities will not violate Ohio's water quality standards or create adverse impacts to water quality as required in the federal Clean Water Act. Anyone who discharges dredged or fill material into Ohio waters is required to obtain a water quality certification from Ohio EPA and then a water quality permit from the U.S. Army Corps of Engineers.

Participants who want handouts for the meeting should email Paula.Payne@epa.ohio.gov so electronic copies may be emailed on the day of the public meeting.

Ohio EPA will accept written comments on the application and draft water quality certifications through 5 p.m. on Oct. 13. Comments may be emailed to epa.dswcomments@epa.ohio.gov. Copies of Ohio EPA's draft certification and technical support information may be inspected on Ohio EPA-DSW website: <http://www.epa.ohio.gov/dsw/401/permitting.aspx>.

-30-

epa.ohio.gov

Environment

OMA Comments on Consumer Product VOCs

September 24, 2021

Earlier this month, the OMA **sent comments** to Ohio EPA in response to its early stakeholder outreach regarding potential rule changes affecting manufacturers of consumer products that contain volatile organic compounds (VOCs). Ohio EPA is considering updating these rules to incorporate more recent versions of the Ozone Transport Commission's model rule for consumer products.

The OMA will remain engaged on this issue and its impact on ozone regulations since parts of Ohio are **currently in non-attainment**. *9/23/2021*

OMA Provides Comments on Industrial Storm Water

September 24, 2021

Last week, the OMA **provided** early stakeholder outreach comments on the renewal of Ohio's National Pollutant Discharge Elimination System (NPDES) multi-sector general permit for stormwater discharges associated with industrial activity. The OMA highlighted significant areas of new concern with the federal guidance, and pointed out that the current Ohio permit is very workable for manufacturers.

The OMA has been heavily involved with similar efforts in the past and will remain engaged to ensure the best outcome possible for manufacturers. *9/23/2021*

Ohio EPA Will Hold Oct. 6 Meeting to Discuss WOTUS Permits

September 24, 2021

Ohio EPA has announced it will hold a public meeting at 2:30 p.m. Oct. 6 to discuss the proposed re-issuance of 41 **nationwide permits** and the state's certification of those activities. Anyone who wishes to discharge dredged or fill material into the waters of the U.S. (WOTUS) — regardless of whether on private or public property — must obtain a Section 404 permit from the U.S. Army Corps of Engineers and a Section 401 Water Quality Certification from the state. More details are **available here**. *9/23/2021*

China's Commitment to Stop Building Coal Plants Overseas Raises Questions

September 24, 2021

China this week announced it would stop building overseas coal projects. But according to **reports**, China's pledge is "vague and incomplete." Meanwhile, experts say China's focus on international coal finance suggests Beijing is not ready to curb its own use, as China is easily the world's top consumer of coal and **largest greenhouse gas emitter**. *9/23/2021*

Ohio EPA Seeks Artwork for National Recycling Day

September 10, 2021

National Recycling Day is Nov. 15. The Ohio EPA seeks artwork created by Ohio K-12 students and Ohio artists — and made with recycled materials. Selected art projects will be featured in a video that will be exhibited virtually on Ohio EPA's website. Email **Marie Barnett** for more information. (The deadline to submit is Oct. 29.) *9/8/2021*

Ohio EPA Releases Latest Lake Erie / Maumee TMDL Module

September 10, 2021

Ohio EPA's final outreach module regarding the Maumee Watershed Nutrient TMDL Project is now **available for viewing**. This module highlights nutrient reduction activities and research in the Maumee watershed, and is the third outreach module the agency has developed for the TMDL Project.

The first module provided background on TMDLs and this project. The second module provided details on the TMDL development process. For more information, **click here**. *9/9/2021*

Biden Administration Undoes Trump WOTUS Reform

September 10, 2021

One of the regulatory accomplishments of the Trump administration was the **rollback** of the Obama-era Waters of the United States (WOTUS) rule, which **threatened**

manufacturing and other sectors of the economy.

But now, under the Biden administration, the U.S. EPA and the Army Corps of Engineers have formally dropped the Trump administration's definition of which streams and wetlands are protected by the Clean Water Act. *Politico* **reports** the EPA is instead relying on regulations used prior to 2015 to determine which waterways are protected — and that this could have “major repercussions” for some projects. *9/8/2021*

Maumee Watershed TMDL Plan Available for Review

September 3, 2021

This week, the **Maumee Watershed Nutrient TMDL Project** draft Loading Analysis Plan (LAP) was made available for review and comment by Ohio EPA. The draft LAP and fact sheet are **available here**. Ohio EPA will hold a **virtual outreach** event Oct. 5 at 2 p.m. Ohio EPA is accepting comments through Oct. 8. Contact **Rob Brundrett** with questions. *9/2/2021*

U.S. EPA Chief Previews Upcoming Emissions Activity

September 3, 2021

U.S. EPA Administrator Michael Regan this week discussed methane regulations his agency plans to issue affecting new and existing oil and gas sources. According to Regan, the new restrictions will be “something that’s never been done as aggressively as we plan to do it,” according to **reports**. Regan also says the EPA is taking a “fresh look” at imposing carbon emission regulations on power plants. *8/31/2021*

DOE Projects Aim to Reduce Manufacturing Emissions

August 20, 2021

The U.S. Department of Energy (DOE) recently **announced** it is spending more than \$42 million to fund new pilot projects for the manufacturing sector to reduce carbon emissions. DOE says the industrial sector contributed 23% of all U.S. greenhouse gas emissions in 2019. (**Here's a look** at Ohio's industrial CO2 emissions since 1980.)

DOE is also awarding \$24 million for **nine research projects** to explore new methods of capturing carbon emissions directly from the air. One project will be conducted at Case Western Reserve University in Cleveland. *8/19/2021*

Ohio EPA Wants Comments on River Water Quality Standards

August 20, 2021

Ohio EPA is soliciting input on its draft of Water Quality Standards Beneficial Use Designation rules. The revisions include changing the beneficial use designations for some water bodies, adding water bodies that are currently undesignated, and verifying existing beneficial use designations. **Learn more**. Comments are due by Sept. 15 and **can be sent via email**. *8/19/2021*

Ohio EPA Industrial Stormwater Stakeholder Meeting

August 20, 2021

On Monday, Aug. 23, from 11 a.m. to noon, Ohio EPA will hold an early stakeholder outreach meeting to discuss potential changes to the Ohio NPDES Industrial Stormwater General Permit. (You can **attend virtually**.) Ohio EPA requests input on all current permit conditions, but specifically wants input on the following potential changes:

- Updating the benchmark monitoring schedule to be consistent with U.S. EPA's 2021 Multi-Sector General Permit (MSGP);
- Including additional implementation measures consistent with U.S. EPA's 2021 MSGP;
- Including indicator monitoring for polycyclic aromatic hydrocarbons for facilities that use coal-tar to seal paved surfaces where industrial activities are located; and

- Requiring the permit's annual report to be completed and submitted via Ohio EPA's eBusiness Center.

Stakeholder input will be accepted through Sept. 17 and can be sent via **email**. *8/19/2021*

Biden Wants Half of All Vehicles Sold to Be Zero-Emissions By 2030

August 6, 2021

President Joe Biden this week **signed an executive order** that half of all automobiles sold in the U.S. be zero-emissions vehicles by 2030. While the goal is non-binding, it is part of the administration's broader agenda to address emissions and compete with China.

Meanwhile, the U.S. EPA announced it will reverse the Trump administration's rewrite of near-term fuel efficiency and emissions standards for gasoline vehicles. The EPA's analysis shows manufacturers will be able to comply with these stronger standards using technology that is already used in today's vehicles, according to the agency's **press release**. *8/5/2021*

DOE Moves to Repeal Trump Rule on Dishwashers

August 6, 2021

The U.S. Department of Energy (DOE) has **issued a proposal** to repeal a Trump administration rule creating a new class of dishwashers that wash and dry faster. According to **reports**, the agency says the Trump administration didn't follow a law requiring an analysis of whether the rule changes were designed to achieve the best efficiency improvement that is technologically feasible and economically justified. *8/4/2021*

Ohio Submits Regional Haze Plan

August 6, 2021

Last week, the Ohio EPA submitted to the U.S. EPA the final **Regional Haze State Implementation Plan** (SIP) for the second implementation period. The purpose of the regional haze rule is to restore the natural visibility in national parks and wilderness areas.

The SIP for the second implementation period discusses Ohio's impact on neighboring areas and the state's long-term strategy. *8/5/2021*

EPA to Propose Stronger Vehicle GHG Emissions Standards

July 30, 2021

According to **reports**, the U.S. EPA will issue a proposed rule intended to tighten passenger vehicle emissions standards beyond levels set during the Obama administration. The new proposal is expected to call for vehicles to meet California's 2019 framework agreement on emissions standards beginning with the 2023 model year. The new proposal is expected to accelerate mileage requirements by 6 or 7% annually beginning with model year 2026. *7/28/2021*

Ohio EPA Seeks Input on Maumee TMDL

July 16, 2021

Last week, Ohio EPA extended the comment deadline for the **Maumee Watershed Nutrient TMDL Project**. The deadline for public comment was extended until Monday, Aug. 9 on the information included in Steps 1 and 2 of the TMDL development process.

The OMA previously provided **these comments** regarding the TMDL. If members have further comments or potential comments for the OMA, contact **Rob Brundrett**. *7/15/2021*

U.S. Senate Dems Propose Carbon Tariffs, Clean Energy Mandate in Infrastructure Plan

July 16, 2021

On Capitol Hill, Senate Democrats have unveiled a \$3.5 trillion infrastructure plan that includes several climate-related provisions. The package includes tariffs on carbon-intensive imports, according to **reports**. Democrats call the proposed tariff a "polluter import fee." The framework agreement also calls for a nationwide clean electricity standard, which would mandate that utilities generate 80% "clean electricity" by 2030.

Major business organizations, including the National Association of Manufacturers, **continue to push** for a separate, bipartisan, \$1.2 trillion

infrastructure plan. Senate Majority Leader Chuck Schumer (D-N.Y.) **says** the Senate will conduct a key test vote on infrastructure next week. *7/15/2021*

OMA Supports Ohio's Regional Haze State Implementation Plan

July 9, 2021

Late last month, the OMA submitted **comments** in support of Ohio's **Regional Haze State Implementation Plan** (SIP) for the second implementation period, as well as Ohio EPA's stated intention to request that the U.S. EPA review and approve Ohio's long-term strategy and the other elements of the SIP. *7/8/2021*

H2Ohio Will Expand to Another 10 Counties

July 9, 2021

The DeWine administration **announced** this week that the H2Ohio water quality program is expanding to **10 additional counties** in the Western Lake Erie Basin. The program is currently operating in 10 counties, providing incentives to agricultural producers to reduce runoff. The expansion of H2Ohio will be funded by the new state budget (House Bill 110). *7/8/2021*

Local Governments Prohibited From Restricting Plastic Auxiliary Containers

July 1, 2021

Ohio's new state budget makes permanent a ban (**House Bill 242**) that lawmakers previously passed to prevent local jurisdictions from banning or taxing single-use plastic bags and other similar containers. Without further Statehouse action, the temporary, one-year prohibition under HB 242 would have expired Jan. 15, 2022. The budget extends the ban indefinitely, aligning with OMA policy that a statewide rule is preferable to a patchwork of local regulations. *6/30/2021*

Clean-Up Funds Included in Budget

July 1, 2021

The new state budget provides \$350 million to clean up brownfield sites, as well as \$150 million for demolition of blighted or nuisance buildings around the state. Meanwhile, continued funding for **H2Ohio** — the governor's program to reduce

nutrient runoff in surface waters — was approved through various agencies. *6/30/2021*

Report: Prospect of Carbon Tax Is Lowering Emissions

June 25, 2021

The prospect of a U.S. carbon tax being enacted is already impacting business decisions, according to new **research** by the Federal Reserve Bank of San Francisco. Researchers found that a 10% chance of the U.S. government adopting a \$45-per-ton carbon tax in the next year prompts one-tenth of the emissions reductions the bank would expect to see if the carbon fee were enacted, **reports** say.

OMA Connections Partner Jones Day says there is growing interest in carbon markets, in which emission credits are purchased and sold — and derivatives on those credits are traded. **Learn more.** *6/23/2021*

Wastewater Treatment Webinar, July 1

June 25, 2021

Ohio EPA will hold a **free webinar** Thursday, July 1 to examine the assistance offered to help businesses and others keep their wastewater treatment plant in compliance with environmental standards. The webinar will cover smaller wastewater plant issues faced by some manufacturers. *6/24/2021*

Federal Infrastructure Plan at Risk Due to Climate-Related Demands

June 18, 2021

On Capitol Hill this week, several Democratic senators announced they will oppose any infrastructure deal that doesn't guarantee aggressive climate action. According to **reports**, the announcement threatens a bipartisan infrastructure deal.

Meanwhile, the National Association of Manufacturers, U.S. Chamber, and Business Roundtable **have reiterated** their call for passage of an infrastructure plan that makes a "major investment in physical infrastructure." *6/17/2021*

DeWine Administration Dedicates More H2Ohio Projects

June 11, 2021

Adding to the dozens of **H2Ohio wetlands projects** already in progress, the DeWine administration this week dedicated three more to enhance the state's water quality. Two of the projects are **located in Williams County**; the third is along the Maumee State Scenic River in Antwerp. *6/10/2021*

Senate Budget Amendment Prevents Local Restrictions on Plastic Bags

June 4, 2021

Among the Ohio Senate's revisions to the state budget bill this week was a **new provision** that would permanently prevent local governments from restricting or taxing the use of auxiliary containers such as plastic bags. The OMA has supported prior temporary bans and supports the Senate amendment. A patchwork of local policies is never a good way to regulate. *6/3/2021*

Ohio EPA Comment Period Opens on Draft Revisions to RACT Requirements for VOC and NOx Emissions

May 28, 2021

OMA Connections Partner Vorys **posted that Ohio EPA has proposed rules** that will require additional Volatile Organic Compound (VOC) and Nitrogen Oxide (NOx) emission controls for certain manufacturing and industrial operations located in the Cincinnati and Cleveland 2015 ozone nonattainment areas.

Vorys wrote that both the Cleveland and Cincinnati nonattainment areas failed to meet the ozone standard during the 2018-2020 ozone monitoring seasons and, thus, are going to be subject to more stringent Reasonably Available Control Technology (RACT) requirements.

Ohio EPA's Public Notice, Business Impact Analysis, Synopsis of Changes, and revised rules are available on **Ohio EPA's website**. Comments on the draft revisions to OAC 3745-21 and OAC 3745-110 are due to Ohio EPA on or before June 18, 2021 and June 22, 2021, respectively. OMA expects to comment. Contact OMA's **Rob Brundrett**. *5/21/2021*

Webinar on Demand: U.S. EPA's New PFAS Reporting Requirement

May 28, 2021

Last week OMA Connections Partner Vorys presented a webinar to help affected manufacturers prepare to comply with U.S. EPA's new per- and polyfluoroalkyl substances (PFAS) reporting requirement under the U.S. Toxic Release Inventory (TRI) Reporting Program. Disclosure of annual chemical releases of nearly 200 PFAS substances is due on or before July 1, 2021 based on facilities' 2020 operations.

Access the **recorded webinar here** and the **PPT slides here**. *5/24/2021*

U.S. EPA Issues Proposed Rule for HFC Phasedown

May 28, 2021

OMA Connections Partner Thompson Hine **posts this news** about the AIM Act, passed by Congress in December 2020, and the U.S. EPA's subsequent proposed rule to phase down the production and consumption of 18 listed hydrofluorocarbons (HFCs) in a step-wise manner, concluding with an 85% phasedown from an established baseline by 2036.

The 45-day public comment period for the proposed rule began on May 19, 2021 and ends on July 6, 2021. EPA is holding a virtual public meeting on the proposed rule on June 3, 2021. *5/26/2021*

Ohio House Passes Bill to Ban PFAS in Firefighters' Training Foam

May 21, 2021

The Ohio House this week approved **House Bill 158**, which would restrict the use of firefighting foam that contains per- and polyfluoroalkyl substances (PFAS) for training purposes. The proposal still allows the foam to be used in emergencies and sold. *5/19/2021*

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on September 28, 2021

- HB143** **REGARDS THE CLEAN OHIO PROGRAM (HILLYER B)** Relating to the Clean Ohio Program and to make an appropriation.
Current Status: 2/24/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-143>
- HB152** **REVISE LAW GOVERNING UNIT OPERATION (STEWART B, GINTER T)** To revise the law governing unit operation.
Current Status: 6/24/2021 - **BILL AMENDED**, House Energy and Natural Resources, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-152>
- HB155** **LAND REUTILIZATION NUISANCE ABATEMENT PROGRAM (UPCHURCH T, SMITH M)** To create the Land Reutilization Nuisance Abatement Program and to make an appropriation.
Current Status: 6/16/2021 - House Economic and Workforce Development, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-155>
- HB158** **PROHIBIT USE OF CERTAIN FIREFIGHTING FOAM FOR TESTING/TRAINING (BALDRIDGE B)** To prohibit the use of class B firefighting foam containing intentionally added PFAS chemicals for testing and training purposes.
Current Status: 9/14/2021 - Senate Veterans and Public Safety, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-158>
- HB175** **DEREGULATE CERTAIN EPHEMERAL WATER FEATURES (HILLYER B)** To deregulate certain ephemeral water features under various water pollution control laws.
Current Status: 9/28/2021 - House Agriculture and Conservation, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-175>
- HB251** **CREATE INDOOR MOLD PROGRAM (MILLER J, RUSSO A)** To require the Director of Health to establish an indoor mold program.
Current Status: 4/14/2021 - Referred to Committee House Health
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-251>
- HB300** **BAN OIL/NATURAL GAS EXTRACTION FROM LAKE ERIE BED (SKINDELL M)** To to ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 5/20/2021 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-300>

- HB349** **PROHIBIT CONSTRUCTION OF CERTAIN ANIMAL FEEDING FACILITIES** (SHEEHY M, HICKS-HUDSON P) To prohibit the construction of a new or modification by expansion of an existing concentrated animal feeding facility under certain circumstances.
Current Status: 6/16/2021 - Referred to Committee House Agriculture and Conservation
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-349>
- HB365** **DRINKING WATER SAFETY RULES** (LIGHTBODY M, RUSSO A) To require the Director of Environmental Protection to adopt rules establishing maximum allowable contaminant levels in drinking water and water quality standards for certain contaminants.
Current Status: 9/16/2021 - Referred to Committee House Agriculture and Conservation
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-365>
- HB385** **PROHIBIT DISCHARGE OF WASTE INTO OHIO WATERS** (CROSS J) To prohibit a municipal corporation located within the Western Basin of Lake Erie from discharging any amount of waste into Ohio waters.
Current Status: 9/28/2021 - House Agriculture and Conservation, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-385>
- HR56** **URGE CONGRESS TO ELIMINATE E-CHECK PROGRAM** (PAVLIGA G, GRENDALL D) To respectfully urge the United States Congress and the President to amend the Federal Clean Air Act to eliminate the requirement to implement the E-Check Program and direct the Administrator of USEPA to begin new rule-making procedures under the Administrative Procedure Act to repeal and replace the 2015 National Ambient Air Quality Standards; to respectfully urge the United States Congress and the President to pass legislation to achieve improvements in air quality more efficiently while allowing companies to innovate and help the economy grow; to urge the Administrator of USEPA to alleviate burdensome requirements of the E-Check Program and the Clean Air Act if the United States Congress and the President fail to act; and to encourage OEPA to explore alternatives to E-Check in Ohio.
Current Status: 6/10/2021 - **ADOPTED BY HOUSE**; Vote 62-29
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HR-56>
- SB83** **BROWNFIELDS** (WILLIAMS S, RULLI M) To require the Ohio Environmental Protection Agency to conduct a study to determine where brownfield sites are located in this state and to make an appropriation.
Current Status: 9/28/2021 - House Agriculture and Conservation, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-83>
- SB84** **CLEAN OHIO REVITALIZATION FUND** (WILLIAMS S, RULLI M) To make changes to the law relating to the Clean Ohio Revitalization Fund.
Current Status: 3/23/2021 - Senate Agriculture and Natural Resources, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-84>

- SB143** **ADOPT MAXIMUM CONTAMINANT LEVEL-ALUMINUM (O'BRIEN S)** To require the Director of Environmental Protection to adopt a maximum contaminant level for aluminum in drinking water.
Current Status: 6/15/2021 - Senate Agriculture and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-143>
- SB171** **REGULATE SALE OF BRINE FROM OIL/GAS OPERATIONS (HOAGLAND F, RULLI M)** To establish conditions and requirements for the sale of brine from oil or gas operations as a commodity and to exempt that commodity from requirements otherwise applicable to brine.
Current Status: 6/22/2021 - Senate Agriculture and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-171>
- SJR2** **PERMIT BONDS-CLEAN WATER IMPROVEMENTS (GAVARONE T, YUKO K)** 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 clean water improvements.
Current Status: 4/21/2021 - Referred to Committee Senate Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SJR-2>