

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



# **Environment Committee**

**October 19, 2016**

## **Table of Contents**

<b>Agenda</b>	<b>2</b>
<b>Bios</b>	<b>3</b>
<b>Navistar Presentation</b>	<b>6</b>
<b>OMA Counsel's Report</b>	<b>36</b>
<b>OMA Public Policy Report</b>	<b>40</b>
• <b>Senate Bill 333 Fact Sheet</b>	<b>44</b>
• <b>Startup, Shutdown, or Malfunction       Comments</b>	<b>46</b>
• <b>Title V Comments</b>	<b>55</b>
<b>OMA Public Policy Framework for Action</b>	<b>60</b>
<b>MECC Conference Reminder / Agenda</b>	<b>70</b>
<b>OMA News and Analysis</b>	<b>77</b>
<b>OMA Environment Bill Tracker</b>	<b>81</b>

**I hope to see you here Nov. 1-3!**



**Midwest Environmental  
Compliance Conference**

**CROWNE PLAZA CHICAGO O'HARE**  
November 1-3, 2016



## OMA Environment Committee October 19, 2016

### Agenda

<b>Welcome &amp; Roll Call</b>	Chairman Julianne Kurdila, ArcelorMittal
<b>NAM Update</b>	Greg Bertelsen, Senior Director, Energy and Resources Policy, National Association of Manufacturers
<b>Guest Presentation</b>	Terri Sexton, Manager, Environmental & Energy Affairs, Navistar, Inc.
<b>Counsel's Report</b>	Frank Merrill, Bricker & Eckler
<b>Public Policy Report</b>	Rob Brundrett, OMA Staff
<b>Guest Speaker</b>	Craig Butler, Director, Ohio Environmental Protection Agency
<b>Lunch</b>	

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

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

**I hope to see you here Nov. 1-3!**



**Midwest Environmental  
Compliance Conference**

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**Craig W. Butler, Director**

On Feb. 21, 2014, Governor John Kasich appointed Craig W. Butler as director of the Ohio Environmental Protection Agency. Butler had served as interim director of the Agency since early January 2014. He previously served as the Assistant Policy Director for Energy, Agriculture and the Environment in Governor Kasich's administration.

A public servant of more than 24 years, Butler previously served as chief of Ohio EPA's Central District Office and Southeast District Office. He is a member of the Dangerous Wild Animal Board and is a past member of the Board of Directors for the Ohio Alliance for the Environment.

Butler graduated from Mansfield University in Pennsylvania with honors with a BA in Geography and Environmental Science. After receiving a scholarship from Ohio University, he graduated from Ohio University with a Master's in Environmental Science.

**Terri Sexton, Manager Environmental and Energy Affairs**  
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**Biographical Introduction:**

Terri is a corporate Manager of Environmental and Energy Affairs for Navistar, Inc. She manages various environmental and energy projects and programs across the corporation, most recently focused on significant energy conservation, reductions in greenhouse gases and waste, leading to cost reduction.

Terri is also currently responsible for EPA compliance in the air and solid waste media at the Springfield Truck assembly site. She has worked in the EHS field for 25 years including employment at corporate, manufacturing/industrial facilities, wastewater treatment operations, and EPA (RAPCA). Terri holds a masters degree in environmental management systems from Southern Methodist University and a bachelor's degree in biology and environmental sciences from Wright State University. She holds professional certifications as a Qualified Environmental Professional (QEP) and Certified Hazardous Materials Manger (CHMM), and an OEPA Class I Waste Water license.



## **Greg Bertelsen is the Senior Director of Energy and Resources Policy**

Greg Bertelsen is the Senior Director of Energy and Resources Policy at the National Association of Manufacturers, the largest industrial trade organization in the United States, representing over 14,000 small, medium and large manufacturers in all 50 states. Greg advocates on behalf of manufacturers for a variety of energy and environmental issues, including Environmental Protection Agency (EPA) regulations, greenhouse gas issues, sustainability and energy efficiency policies.

Greg has testified in front of the EPA on several occasions and on a variety of issues. Greg is also a member of the National Environmental Justice Advisory Council (NEJAC), the official advisory council that provides advice and recommendations to the EPA on environmental justice issues.

Prior to working at the NAM, Greg worked as a policy expert at Siemens Corporation in their energy consulting division where he advised energy companies and large industrials on environmental and energy policy issues impacting their investments and operations.

Greg received a B.A. in economics at Dickinson College and a J.D. at American University Washington College of Law.

## How to Prepare for an Environmental Audit

October 19, 2016

Terri Sexton  
Environmental and Energy Manager  
Navistar, Inc.

# Environmental Audit / Inspection Types

- Internal audits
  - Non-regulatory checks on operations
  - Regulatory checks: BMPs, Tier II, Equipment/Control PM
  - Compliance, ISO Standards, Safety, Energy, Other
- External Audits
  - Corporate office, Cross-Plant, Consultants, Certification, Awards
- 3<sup>rd</sup> party
  - ISO 14001, DOE, Fire or local building, customers
- EPA:
  - City, local, State, USEPA
  - Air, Water, Waste, Multi-media, Environmental Justice, regulatory, industry or pollutant specific (NSR, Cement or Coal, Lead)
- Regulatory Agency Environmental Compliance - Air

# RAPCA

Regional Air Pollution Control Agency  
Jenny Marsee, Supervisor

Air Quality & Permitting Workshop /  
Air & Waste Management Meeting  
May 25, 2016





# RAPCA Slides

- Next few slides are compliments of:
- Regional Air Pollution Control Agency (RAPCA), presentation to Air & Waste Management Association – Southwest Ohio Chapter, May 25, 2016.
- Direct from the source
- My added comments
- My added notes

# Staff Rotations

- Ohio EPA Directive
- In September 2014, Director Butler announced staff rotation
- Applies to all media
- Rotate inspector/permitter every 5 years

# Staff Rotations

- Goal is to provide:
- Best customer service
- Enhanced uniformity
- New perspectives and ideas
- Improve depth and breadth of knowledge
- Increase efficiency

➤ Increased Efficiency and customer service?

# Staff Rotations

- In February 2015, RAPCA embarked on a 9 month process
- Stephanie Madden was hired as new supervisor
- Cross trained 7 individuals on permitting and inspections
- Permit & Inspection Groups combined in May 2015
- 5 year facility reassignments made in October 2015

Page 12 of 84

# Responsiveness Guidance

- Permits are to be issued in a timely manner
- Keep the application review process moving
- Communication is key!
- When the process breaks down, applications may be returned

➤ Permit Shield

# Responsiveness Guidance

- Complaints investigated promptly
- DAPC-CO is to be notified of complaints for high profile facilities and issues which could lead to enforcement actions
- RAPCA may request that a facility take extra steps such as sampling particulate matter

➤ **Always split samples! Keep record of inspection items reviewed or needed.**

# Responsiveness Guidance

- Violations are to be dealt with promptly
- Facilities are to be notified immediately of violations and any pending enforcement action
- Enforcement actions are to be issued and resolved quickly
- Expectation is that both the agency and the facility will be responsive and cooperative

# Inspections and Complaints

- Minimum frequency
- Title V – once every other year
- Synthetic Minor – once every 5 years
- Minor – as needed

## ➤ Why inspect us?

- Complaints
- Odors or visible emissions
- Missing reports or applications
- Disgruntled employee, neighbor, other
- “In the area”
- New Agency inspector



# Inspections and Complaints

- Stage II GDFs – annually
  - Montgomery, Clark, Greene, Miami
  - Decommissioning began in January 2014
  - RAPCA has less than 52 left
  - All required to be decommissioned by January 2017
- Unless 1 yr extension is granted

# Inspections and Complaints (BEFORE)

- How to prepare for RAPCA
- Review your air permit
- **Understand your permit and obligations**
- Identify all record keeping that is required and gather
- Identify support documents and records
- SDS, technical data sheets
- Maintenance records

➤ **What records do you share?**

Page 18 of 84

# Inspections and Complaints (BEFORE)

- •How to prepare for RAPCA
- Notify your Plant Manger and staff
- Identify all areas on the inspection –  
mention to area supervision (No surprises)
- Pre-inspection and/or Safety tour route
- All Records available, organized, concise
- Key parties available to answer questions
- Compliance is baseline everyday!

# Inspections and Complaints (BEFORE)

- Perform quality checks on your records
- Make sure information is accurate and all records match
- Get up to date SDS
- Verify emissions calculations
- Check to make sure most up to date VOC/HAP contents are used

➤ Prepare for inspection or daily compliance activity?

# Inspections and Complaints (BEFORE)

- Review control device operating parameters
- Are you meeting the parameters from last emissions test
- Be prepared to discuss how control device and monitoring equipment operate
  - Thermocouple locations
  - Calibration dates for monitoring equipment
  - Data collection frequency and averaging times
  - Preventative Maintenance

# Inspections and Complaints (During)

- What to expect during the site visit
- An opening conference
  - Have you made a modification?
- Operational changes at the facility
  - **“Modification” NSR term or state of the business**
- Business/production cycles
- Reported deviations, emissions, complaints
- Answer your questions
- **Answer your questions too!**
- **Be attentive and involved in the inspection.**

# Inspections and Complaints (During)

- Visual inspection of each permitted emissions unit
  - See processes operating
  - Review of the required records and maintenance records
  - A discussion of any issues found
- Address any issues while inspector is onsite, if possible. Make attempt, good faith effort.
  - Ask! Everything look okay?
  - Don't force; any findings not yet formulated.
  - No gifts or meals please - Policy

# Inspections and Complaints (After)

- Inspection follow up
- Requests for additional records, supporting information
- If issues are found, a letter requesting a compliance plan
- We will ask for a response within a certain timeframe

- Timely follow-up to any requests.
- Perception of delays.



# Inspections and Complaints (After)

- What to do if RAPCA finds problems
- Answer our questions as best you can
- Mostly understanding process and EU. You know best.
- Involve the site SME (IT, Maintenance, Record keeping)
- Verbally - onsite resolution is the best understanding
- Written responses reviewed before submittal.  
Remember e-mail is also an official response and public document.

- Communication & Responsiveness!

# Inspections and Complaints (After)

- What to do if RAPCA finds problems
- Implement corrective measures as soon as possible, if warranted
  - While inspector is still onsite if possible.
- Ask questions if you don't understand or disagree
- Request that we send a follow up email
  - Request in writing and the rule or permit citation;
- Communication & Responsiveness!
  - Expected by both parties.

# Inspections and Complaints (After)

- If serious violations are found, RAPCA may issue a Notice of Violation
- RAPCA has authority to issue administrative Findings & Orders, including penalties
- RAPCA works with Ohio EPA on uniformity

# Inspections and Complaints (After)

## Inspections and Complaints

- Final resolutions
- Resolution of violation (ROV)
- No penalties
- Violation was quickly resolved
- Findings & Orders
- Penalties
- Enforcement Action Request

Page 28 of 84

# Common Inspection Pitfalls

- Not reviewing and understanding your permit
- Not having the correct people on site to answer questions
- Not being able to locate or provide records
- Being evasive
- Not being able to describe how the facility processes or control equipment operate
- Requesting a confidentiality agreement

# Common Inspection Pitfalls

## Industry Perspective Pitfalls:

- Didn't Notify your Plant Manger and staff
- Extending the tour into areas not needed
  - OSHA or Media specific: direct to the issue, walk or cart outside facility.
- Continued explanations.
  - Audit Rule: Answer the question only. Stop. More answers lead to more questions or digging deeper.
- “Not being able to locate or provide records”
- “Being evasive” ???
  - Described as not providing info', waiting, not knowing IT systems and “all your processes and equipment”
- Making promises you cannot or do not keep
- Not asking for a preliminary report – violations or concerns
- **SURPRISES!!**

# Common Inspection Pitfalls

## Industry Perspective Pitfalls:

- Not asking for assistance or understanding – learning opportunity.
- Providing entire file folders instead of record.
- Housekeeping
- Attitude
- General hospitality, safety and attention
- First impressions – welcome, transparency, interest.
- All areas know or expecting your visitor, “Told us you were coming, so we cleaned up.” Compliance always.
- **SURPRISES!!**

Page 31 of 84

# Common Reporting Pitfalls

- Reporting over allowable emissions
- Not providing supporting calculations (FER)
- Submitting late
- Ohio EPA may issue a NOV
- Not identifying known deviations in reports
- Late reports

➤ **Note – Late reports is on here twice! Annual Certification; Responsiveness Guidance is 2-way.**



# Common Testing Pitfalls

- Testing late
  - Title V can be federal violation; enforcement discretion.
- Not understanding how the processes should be operating during the testing
- Representative worst case
- Not monitoring production data during the test
- Not submitting a complete test report
- Not proving information in a timely manner
- Not changing operating parameters

# Other Inspection Tools or Tips

- EPA Inspector Checklists and Program Checklists
- Internet search – inspection tips, auditor & auditee
- EPA most cited violations, per media
- EPA initiatives – inspection focus
- Auditing experience or auditor training
- Conduct Internal audits
- Pictures – document conditions on that date
- Always accompany inspector
- Assume compliance and learning experience

Page 34 of 84

# Questions

Terri Sexton

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## COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP, Counsel to the OMA  
October 19, 2016

### ENVIRONMENTAL DEVELOPMENTS

#### A. Ohio EPA Activities of Note

##### 1. Ohio EPA General Industrial Storm Water Permit

Ohio EPA has been working on renewal of its Industrial Storm Water General Permit, the current version of which will expire on December 31, 2016. Ohio EPA is expected to public notice the draft general permit renewal for public comment this fall 2016. Issues anticipated to arise with the renewal permit include: wholesale adoption of the US EPA multi-sector storm water general permit; failure to take into account “non-natural background” levels; frequency of benchmark sampling; lowering of current benchmarks; and tightening of best management practices, resulting in less flexibility for manufacturers. OMA’s preliminary discussions with Ohio EPA have indicated that the permit conditions overall may not be significantly more stringent than those in the current General Permit. OMA will continue to be active in the renewal of this permit given its significance to members and will vigorously oppose any overreach by Ohio EPA in the renewal of this permit.

##### 2. Universal Waste Rules

Ohio EPA has indicated that it intends to release new universal waste rules in fall 2016, which will be public-noticed for a 30-day public comment period. Ohio’s universal waste rules, found in Ohio Administrative Code Chapter 3745-273, apply to handlers, transporters, and destination facilities for specific categories of hazardous waste streams, including lamps, pesticides, mercury-containing equipment, and discarded batteries. The new universal waste rules will include “paint wastes and paint-related wastes,” as proposed by OMA and some of its members.

##### 3. Early Stakeholder Outreach – OAC Rule 3745-31-01

Ohio EPA is seeking stakeholder input on its rulemaking modifying OAC Rule 3745-31-01. The modification is in response to a final rule from US EPA (81 FR 58010) pertaining to requirements for state implementation plans for attaining and maintaining the 2012 national ambient air quality standard for particulate matter less than 2.5 microns in diameter (PM 2.5). The modification to OAC 3745-31-01 is intended to reflect Ohio EPA’s finding that volatile organic compounds and ammonia are an insignificant

source of PM 2.5 for the purpose of new source review in nonattainment areas. Ohio EPA is accepting written comments through October 31, 2016.

4. Senate Bill 333

Ohio's Senate Bill 333, introduced on May 18, 2016, contains numerous provisions aimed at improving state water quality and protecting Lake Erie. These include: updating the statutes pertaining to the Lake Erie Commission to meet the goal of reducing phosphorus in the Lake Erie Western Basin by 2025; encouraging safe and beneficial reuse of dredged material from federal navigation channels; expanding the Director of Ohio EPA's authority to issue, deny, waive, transfer, revoke, or modify 401 water quality certifications; strengthening the new Certified Water Quality Professional Program provisions; and establishing greater regulatory oversight of construction and demolition debris disposal sites. OMA will monitor the progress of this bill and will become active if provisions are added that impact manufacturers.

B. US EPA Activities of Note

1. Proposed Removal of Title V Emergency Affirmative Defense Provisions from State and Federal Operating Permit Programs

On August 15, 2016, the OMA, along with the Ohio Chemistry Technology Council and the Ohio Chamber of Commerce, submitted comments to US EPA in regards to US EPA's proposed removal of Title V affirmative defense provisions for emergencies from the State Operating Permit Programs and Federal Operating Permit Program. (40 CFR Parts 70 and 71, 81 Fed. Reg. 38,645 (June 14, 2016)). The commenters requested that US EPA abandon its proposed rule changes or, at a minimum, narrow their scope, so as not to prevent federal, state, and local air agencies from retaining the Title V affirmative defense for violations during emergency situations.

2. US EPA Settlement of Industrial Stormwater Multi-Sector General Permit Challenge

Following US EPA's reissuance of the Industrial Stormwater Multi-Sector General Permit (MSGP) in June 2015, various public interest groups filed lawsuits challenging the permit as failing to adequately protect waterbodies. US EPA and the various plaintiffs reached a settlement of the litigation in August 2016 that may have long-term implications for industrial stormwater dischargers. The settlement obligates the US EPA to conduct certain activities prior to drafting the next version of the Industrial Stormwater MSGP for reissuance in June 2020. These activities include evaluating the effectiveness of the current benchmark monitoring provisions; evaluating the numeric retention standards; prioritizing industry sectors for the development of numeric effluent limitations or other stormwater control measures; and evaluating the need for additional monitoring requirements in specific instances. Additionally, permittees will be required to take more aggressive implementation measures when responding to benchmark monitoring exceedances. The effect of this may be that Ohio EPA will incorporate these new requirements in the next renewal of its industrial stormwater general permit in 2022.

### 3. US EPA Amendments to the Toxic Substances Control Act

On June 22, 2016, President Obama signed into law the Lautenberg Act, amending the Toxic Substances Control Act (TSCA) for the first time since it was initially passed in 1976 to regulate the manufacture, import, and processing of chemicals prior to entering the market. The Lautenberg Act sets new risk-based safety standards, directing US EPA to evaluate chemicals purely on the basis of health risks without consideration of cost or other non-risk factors, and to take steps to eliminate unreasonable risks. It eliminates the prior language that required US EPA to adopt the “least burdensome” means of regulating a chemical, and requires US EPA to assess numerous chemicals previously deemed “safe.” Included in the new rule are efforts to address the perceived risks associated with trichloroethylene (TCE), a degreaser widely used for metal parts and as spot cleaning solvent. US EPA plans to undertake various rulemakings by June 2017 in order to effectuate new or additional requirements.

#### C. Legislative

On September 28, 2016, the U.S. House of Representatives passed H.R. 5303, the Water Resources Development Act (WRDA) of 2016. The Senate passed its version of the bill on September 15, 2016, which is broader than the House bill and provides investment for aging drinking water and wastewater infrastructure, assists poor and disadvantaged communities in meeting public health standards under the Clean Water Act and Safe Drinking Water Act, and promotes innovative technologies to address drought and other critical water resource needs. The House WRDA bill provides for Great Lakes protection measures and authorizes \$170 million in funds to clean up Flint, Michigan’s contaminated drinking water. The House bill will also provide funds to other communities with lead contamination issues, such as the Village of Sebring in Ohio, and supports the Great Lakes Restoration Initiative cleanup projects in Ohio. Over \$6 million in funds will go toward a grant to Ohio EPA to pay for its effort to keep phosphorus from entering Lake Erie in the Maumee River watershed. Consolidation of the House and Senate bills is anticipated to be negotiated for lawmakers to consider when they return after the November elections.

#### D. Judicial

##### 1. DC Circuit Upholds US EPA’s Retroactive Veto of Clean Water Act Permit

On July 19, 2016, the DC Circuit issued a decision upholding US EPA’s retroactive veto of a Clean Water Act Section 404 permit issued to Mingo Logan Coal for its mine in West Virginia. The litigation began in 2011 after US EPA withdrew Mingo Logan’s 404 permit, issued four years previously. Mingo Logan brought suit, claiming that US EPA did not have authority under the Clean Water Act Section 404(c) to withdraw the permit after it had been issued, and that US EPA’s action was in violation of the Administrative Procedure Act. Mingo Logan argued that US EPA had failed to take into account the millions of dollars Mingo Logan had invested in reliance on the permit and its history of compliance with the permit.

The DC Circuit Court upheld the DC District Court in holding that US EPA did not violate the APA, and in fact has broad post-permit withdrawal authority under section 404(c).

The DC Circuit recognized that post-permit withdrawal pursuant to Clean Water Act 404(c) “is a mighty power and its exercise will perhaps inevitably leave a permittee feeling as if the rug has been pulled out from under it.”

2. Supreme Court Stay of the Clean Power Plan Oral Arguments

On February 9, 2016, the U.S. Supreme Court in a 5-4 decision issued a stay of the implementation of the Clean Power Plan, pending ongoing related litigation in the U.S. Court of Appeals, D.C. Circuit. The DC Circuit Court of Appeals heard oral arguments in the case before the en banc court on September 27, 2016. All ten of the active judges on the D.C. Circuit, except for Chief Judge Garland, who has been nominated to the US Supreme Court, heard the case. The oral argument included a morning session focusing on US EPA’s authority to promulgate the rule, as well as an afternoon session that focused on constitutional claims against the rule. The timing of the oral argument will place the court’s decision to come after the November election, which will impact any appeal to the Supreme Court. The stay will remain effective until the D.C. Circuit resolves the merits of the case and the Supreme Court resolves any appeals of the D.C. Circuit decision.

**TO: OMA Environment Committee**  
**FROM: Rob Brundrett**  
**RE: Environment Public Policy Report**  
**DATE: October 19, 2016**

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### **Overview**

The summer has remained a quiet time for environmental policy efforts. Ohio EPA continues to focus on passing the second part of its MBR package. The bill remains ripe to be a vehicle for any environment related policies in the lame duck session.

Ohio EPA continues to work on regulations including universal waste, which the agency noted will be released for stakeholder feedback in the near future.

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

#### **Senate Bill 51 - Multiple Chemical Sensitivity Month**

Senator Skindell (D-Lakewood) introduced SB 51, which would designate May as "Multiple Chemical Sensitivity Month."

Senator Skindell justified the bill citing research in 2003 indicating that more than 12% of the U.S. population was affected with severe multiple chemical sensitivity.

Manufacturers interested in this legislation are encouraged to participate in the OMA Environment Committee.

#### **Senate Bill 269 – Public Water System Lead Contamination**

Senate Minority Leader Schiavoni introduced SB 269 in response to the Sebring water crisis. The bill would require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may affect the system's drinking water, requires the Director of Environmental Protection to provide the notice if the public water system fails to provide it, requires employees of the Environmental Protection Agency to provide continuing assistance to a public water system that fails to provide the required notice of lead contamination, and requires the Director to adopt rules that increase the monitoring frequency for lead and copper under specified circumstances. The bill had its first hearing in mid-April.

#### **Senate Bill 333 – Water MBR II**

Senator Hite (R-Findlay) introduced the second Ohio EPA MBR late in May. The bill was recently referred to the Senate Energy and Natural Resources Committee. The agency wanted to get the bill introduced before the legislature left for the summer and campaign season. The bill builds on House Bill 512 and the state's combatting of lead and other water issues.

Ohio EPA has held numerous interested party meetings over the summer regarding this bill. They are trying to eliminate any opposition to the bill prior to the beginning of lame duck session in November. The bill is a target to become a vehicle for any environment related policy issues in lame duck.

#### **House Bill 349 – State Emissions Plan**

Representatives R. Smith (R-Bidwell) and Ginter (R-Salem) introduced HB 349 which requires the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency. There is a concern if this bill gets enacted that the



General Assembly may not approve the agency's plan. If that happens there is a real chance Ohio would be forced to comply with the federal plan. The bill had a third hearing in December. It did not receive any attention during the first half of 2016. With the litigation this bill is not expected to see action.

#### House bill 512 – Water MBR I

Representative Tim Ginter (R-Columbiana County) introduced HB 512 which established requirements governing lead and copper testing for community and nontransient noncommunity water systems, revised the law governing lead contamination from plumbing fixtures, made appropriations to the Facilities Construction Commission for purposes of providing grants for lead fixture replacement in eligible schools, and revised the laws governing the Water Pollution Control Loan and Drinking Water Assistance Funds. The bill which is considered Ohio EPA MBR I was heavily focused on combating the increased levels of lead in Ohio's drinking water. The bill was passed prior to the legislature leaving for the summer.

#### House Bill 541 – Clean Power Plan Implementation

Representative Landis (R-Dover) introduced HB 541. The bill would prohibit any state agency from implementing the federal "Clean Power Plan." This is a model bill that is being introduced around the country to prevent any state from implementing the federal CPP. While the bill has not had any hearings, it is mostly seen as a symbolic gesture. Currently the plan has been stayed by the Supreme Court until litigation is settled.

### **Regulations**

#### Ozone – U.S. EPA

Last fall the Obama administration and U.S. EPA announced the final ozone rule which established a new ground-level ozone standard for the country. The rule tightened the already stringent standard of 75 parts per billion (ppb) down to 70 ppb.

The National Association of Manufacturers has sued U.S. EPA over the regulations.

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

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

The rule proposes a national reduction in power plant carbon emissions by 2030, from a base year of 2012. This means a 37% reduction for Ohio.

EPA revised the building block model in response to legal uncertainties. The new "building blocks" are: reducing the carbon intensity of electricity generation by improving the heat rate of existing coal-fired power plants; substituting increased electricity generation from lower-emitting existing natural gas plants for reduced generation from higher-emitting coal-fired plants; and substituting increased electricity generation from renewable energy sources.

The original timetable for implementing these vast rules was aggressive: States were required to submit a final plan, or an initial submittal with an extension request, by September 6, 2016. Ohio EPA originally indicated it would seek an extension from the federal government, which would set Ohio's rulemaking a year behind the federal schedule as currently published.

The Supreme Court of the United States granted a stay of the Obama administration's Clean Power Plan (CPP) regulation of greenhouse gas (GHG) emissions from the electric utility sector.

That decision delays the implementation of the rule until the courts have the opportunity to determine the plan's legality.

The OMA joined more than 160 business groups throughout the country in filing an amicus brief in the U.S. Court of Appeals for the D.C. Circuit in support of a lawsuit by states and industry to overturn U.S. EPA's "Clean Power Plan."

The last week in September the Court of Appeals for the D.C. Circuit heard oral arguments on the federal Clean Power Plan (CPP) proposed by U.S. EPA.

Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers, commented: "... The Manufacturers' Center for Legal Action, joined by a manufacturing coalition of more than a dozen other national trade groups, argued that the Environmental Protection Agency (EPA) imposed regulations on electric utility companies that is not authorized by, and contradicts specific provisions of the Clean Air Act. Manufacturers' primary concerns with the CPP are its potential impacts to energy costs and the precedent the rule would have on the future regulation of other manufacturing sectors.

"While the D.C. Circuit Court's ultimate decision will be of great importance, it will likely not be the end of the litigation road for the CPP. As NAM Deputy General Counsel Quentin Riegel noted, "this case has all the earmarks of a major case that will wind up in the Supreme Court, probably in the fall of 2017." Stay tuned.

#### Waters of the U.S. Stay

A divided Sixth Circuit issued a nationwide stay against the enforcement the so-called "waters of the United States" regulation. The regulation was issued by the U.S. EPA and the U.S. Army Corps of Engineers. The regulations defined the scope of "waters of the U.S." to be subject to federal regulatory jurisdiction under the Clean Water Act.

#### Industrial Storm Water Permits

The OMA has been working with Ohio EPA regarding the next iteration of Ohio's multi-sector general permit for storm water. Ohio EPA has allowed OMA to comment on provisions prior to a draft release to all interested parties. A new permit will be finalized prior to the end of the year.

#### Universal Waste

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

The OMA was approached by Ohio EPA to see what sort of backing the expansion of universal waste would have among members. Last year the OMA put together a working group to work with Ohio EPA on this topic.

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

Director Butler told the OMA Board in March that he remains fully committed to getting the universal waste rules completed in 2016. The latest update from EPA indicates a draft will be circulated to interested parties in the very near future.

#### National Pollutant Discharge Elimination System (NPDES) permit program

Ohio EPA has announced its Early Stakeholder Outreach (ESO) process for Chapter 3745-33 of the Ohio Administrative Code which contains the administrative and technical requirements for writing and obtaining wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES) permit program.

Ohio EPA will begin drafting rules in the near future.

#### Beneficial Use Rules

In late July, Ohio EPA released its public notice of its proposed rulemaking governing beneficial use. This rule package was started in the summer of 2012. The purpose of the new rules is to establish a regulatory program pertaining to the beneficial use of solid wastes, and other wastes, regulated pursuant to Ohio Revised Code Chapters 3734 and 6111.

#### Startup, Shutdown, and Malfunction Emissions Comments

The OMA and other business allies submitted formal comments to Ohio EPA regarding the agency's rulemaking in the response to U.S. EPA's finding of "substantial inadequacy" and state implementation plan (SIP) call to amend provisions applying to excess emissions during startup, shutdown and malfunction (SSM) periods. The OMA and its allies originally filed comments in 2013 to U.S. EPA in opposition to its proposed SSM SIP Call.

#### OMA Files Comments with U.S. EPA to Preserve Title V Affirmative Defense

The OMA and business allies filed comments and recommendations with the U.S. EPA in response to the agency's proposed removal of the emergency affirmative defense provision in the Title V permit program rules.

In some cases properly designed and maintained equipment fails due to reasons beyond the control of a manufacturer. Previously U.S. EPA allowed for emergency malfunctions to fall in the affirmative defense category. U.S. EPA is now proposing to remove the affirmative defense for emergencies from the Title V operating program rules.

#### Ohio EPA Drafts Rules on Particulate Matter Standards

Ohio EPA issued notice of its review of Ohio Administrative Code Rules pertaining to "Particulate Matter Standards." Major revisions include removing regulation and emission limits for air pollution sources that are located at facilities that have been completely and permanently shut down. The rules also provide an additional compliance option for facilities that are required to use a continuous opacity monitor (COM) to determine compliance with visible emissions requirements.

In situations where a COM would not provide accurate visible emissions determinations, such as air contaminant sources that are controlled by wet scrubbers, operators may install a particulate matter continuous monitor (CEM).

The rule will also require the air contaminant source to comply with a particulate emissions limit of 0.030 pounds of particulate emissions per million British thermal units of heat input.



## TRANSFORMING OHIO FOR JOBS + GROWTH

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### 2016 MID-BIENNIUM REVIEW

### **IMPROVING WATER QUALITY IN OHIO**

#### ***Protecting Lake Erie and All Our Drinking Water Sources, Providing Community and Business Assistance and Streamlining Government***

Under the Kasich Administration, Ohio has invested more than \$3.5 billion to tackle key infrastructure issues in order to improve water quality statewide. Protecting Lake Erie and Ohio's other drinking water sources continues to be a priority. Provisions in Governor Kasich's 2016 Mid-Biennium Review will strengthen that commitment.

**Strengthening Efforts to Protect Lake Erie:** The Lake Erie Commission can be an effective catalyst in helping Ohio meet its commitments under the binational Great Lakes Water Quality Agreement to reduce phosphorus in Lake Erie's Western Basin 40 percent by 2025 and in efforts to identify and support programs to enable the beneficial use of dredged materials. MBR provisions update the Lake Erie Commission's existing statutes to achieve these goals, while refocusing the commission's efforts on its Lake Erie Protection and Restoration Strategy.

**Encouraging Better Use of Dredge Materials:** The MBR provides a straightforward regulatory framework for the safe and beneficial reuse of material dredged from federal navigation channels. Potential users and marketers of dredged material will have defined criteria for classifying this material.

**Requiring Financial Assurance for Privately Owned Water Systems:** When the owner of a private water system shows an unwillingness or inability to make repairs to ensure safe drinking water, the Ohio EPA will be provided tools to fix the problem, while requiring financial assurance from new or modified private water systems that ensures they have the ability to make needed repairs.

**Strengthening Ohio's Certified Water Quality Professional Program:** Based on consultation with stakeholders, the MBR will further strengthen the new Certified Water Quality Professional provisions that were established in last year's operating budget.

**Giving the Ohio EPA Director Authority to Address Water Quality Certification:** The MBR clarifies the Ohio EPA director's authority to waive, transfer, revoke or – at the request of the permit holder – to modify a 401 water quality certification. Currently, state statute allows only for approval and denial.

**Aligning State and Federal Laws for Approval of Certain Pretreatment Permits:** To make Ohio statutes consistent with federal law, MBR language will allow the state EPA director, in lieu of the U.S. EPA, to issue a permit to an entity discharging into a privately owned treatment works.

**Requiring Ongoing Asset Management Efforts by Public Water Systems:** The MBR addresses recurring asset management problems seen at some public water systems, including deferred maintenance, lack of management oversight and inadequate historical records of water lines or maps of service areas. These issues too often result in extended periods of water-use restrictions or having no water at all available for system users. MBR language requires public water systems to demonstrate ongoing technical, financial and managerial capability by implementing an asset management program. This is a priority to ensure safe and reliable drinking water for Ohio citizens.

## **PROTECTING OHIO'S ENVIRONMENT**

**Ensuring Responsible Disposal of Construction and Demolition Debris:** Over the past several years, a large number of illegal construction and demolition debris (C&DD) disposal sites have begun operating under the premise of “processing” C&DD materials to then be resold, an activity that is currently unregulated in Ohio. However, many times in these instances the material is being collected and then abandoned, leaving local communities and the state to bear the cost of cleanup and mitigation of potential hazards. Provisions in this MBR legislation will establish regulatory oversight of C&DD processing facilities to ensure these materials are properly managed and disposed of in an environmentally responsible manner.

**Strengthening the State's Ability to Clean Up Abandoned Landfills:** To strengthen the Ohio EPA's ability to evaluate and clean up abandoned landfills, this MBR language will clarify the agency's authority to – among other things – gain site access, conduct investigations, and take samples at these sites.

**BOTTOM LINE:** Government regulations should first protect Ohioans from acute threats to water quality, such as lead in drinking water supplies or private water system owners who do not provide a dependable or safe water supply. At the same time, a common sense approach is needed to provide balance between helping communities and businesses address water quality issues and streamlining burdensome rules while protecting public health and the environment.



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July 28, 2016

VIA E-MAIL AND HAND DELIVERY

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

RE: Early Stakeholder Outreach --  
Startup, Shutdown or Malfunction and  
Scheduled Maintenance Rules

Dear Paul:

Attached please find the Early Stakeholder Input Comments of The Ohio Chemistry Technology Council, The Ohio Chamber of Commerce, and The Ohio Manufacturers' Association regarding Ohio EPA's rulemaking in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods (80 Fed. Reg. 33,840 (June 12, 2015)).

Please direct to the undersigned counsel any questions regarding the attached comments.

Very truly yours,

*Robert L. Brubaker*

Robert L. Brubaker

*Eric B. Gallon*

Eric B. Gallon

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

*Frank L. Merrill, per auth. by RL3*

Frank L. Merrill

Environmental Counsel for The Ohio Manufacturers' Association

cc: Bob Hodanbosi  
Mike Hopkins  
Jennifer VanVlerah  
Drew Bergman

**Comments of  
The Ohio Chemistry Technology Council,  
The Ohio Chamber of Commerce,  
and  
The Ohio Manufacturers' Association**

**In response to Ohio EPA's solicitation of Early Stakeholder Input  
for Ohio EPA's response to U.S. EPA's SSM SIP Call**

**July 28, 2016**

**I. Introduction**

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association (the "Commenters") respectfully submit the following recommendations in response to Ohio EPA's invitation for Early Stakeholder Input on potential amendments to Ohio's startup, shutdown, and malfunction (SSM) rules in response to U.S. EPA's finding of "substantial inadequacy" and SIP Call to amend provisions applying to excess emissions during SSM periods (80 Fed. Reg. 33,840 (June 12, 2015)).

The Ohio Chemistry Technology Council represents the interests of over 80 chemistry industry-related companies that do business in Ohio. The Ohio Chamber of Commerce represents the interests of over 6,000 member companies, including manufacturers, utilities, and small businesses, in addition to hosting the Ohio Small Business Council. The Ohio Manufacturers' Association represents the interests of over 1,400 member companies to protect and grow Ohio manufacturing. The Commenters are subject to regulation by Ohio's Clean Air Act State Implementation Plan (SIP) and have a direct and substantial interest in the Ohio SIP's SSM provisions.

**II. Preliminary Observations on U.S. EPA's SSM SIP Call**

As an initial matter, we note that U.S. EPA's SSM SIP Call is arbitrary and unlawful. Ohio EPA and others are rightfully challenging the SSM SIP Call's facial invalidity before the D.C. Circuit. Any challenges to the SSM SIP Call as specifically applied to Ohio must await potential appeals to the Sixth Circuit after final action by U.S. EPA specific to Ohio in response to the SIP Call. Ohio should respond to the SIP Call in a manner that does not undermine Ohio's recourse to judicial review of U.S. EPA's actions. Ohio should also try to minimize the harm and disruption resulting from U.S. EPA's improvident action.

The Commenters submitted comments in opposition to U.S. EPA's Proposed SSM SIP Call in May 2013. Those comments, which we incorporate here (and attach hereto), place the SIP Call in useful context. Although we understand that the current rulemaking necessarily assumes the SSM SIP Call's legality (unless and until the D.C. Circuit rules otherwise), it is worthwhile to reemphasize a few fundamental facts and principles:

- U.S. EPA approved each of the Ohio SIP provisions in question, in some cases repeatedly and recently.
- There has been no change in facts or law that justifies reversing U.S. EPA's prior final approval actions.
- Ohio's existing SIP, with its current SSM provisions, has successfully attained and maintained the NAAQS.
- U.S. EPA's new interpretation of "emission limitation" is fundamentally misguided. Congress's addition in 1977 of the phrase "on a continuous basis" to the definition of "emission limitation" in Clean Air Act §302(k) was meant to disallow intermittent control systems, not to foreclose SSM provisions that existed in virtually all SIPs and in the federal New Source Performance Standard program at that time. In its D.C. Circuit brief in defense of the Clean Power Plan, U.S. EPA acknowledged this reading of §302(k) and Congress's intent of Congress. See U.S. EPA's March 28, 2016 Initial Brief in *State of West Virginia v. EPA*, No. 15-1363, at p. 67.
- The SSM SIP Call unlawfully attempts to overrule the States' primary responsibility for air pollution prevention and control at its source, in conflict with the bedrock premise in the first section of the Clean Air Act.
- Ohio EPA should take no action that would either undermine the relief being sought in the pending D.C. Circuit appeals of the SSM SIP Call or impair the relief available from the Sixth Circuit once petitioners seek judicial review of the SSM SIP Call as applied to Ohio.

### **III. General Principles for Ohio EPA's Response to the SSM SIP Call**

Putting aside the legal invalidity of the SSM SIP Call, the Commenters respectfully submit that Ohio EPA should apply the following basic principles when revising the agency's rules in response to the SSM SIP Call:

1. Ohio EPA should not make malfunction reporting contingent upon a legal conclusion or an admission that the reporting source has "violated" applicable law.
2. Ohio's response to the SSM SIP Call should not make existing SIP compliance obligations more stringent and should not impose any new infeasible or unduly stringent compliance obligations. At a minimum, any prejudicial or unwarranted rule changes in response to the SSM SIP Call should take effect only upon full approval by U.S. EPA. Moreover, those rule changes should cease to be effective if any court, future Congress, or future U.S. EPA negates the SSM SIP Call's requirements.
3. SIP requirements applicable during SSM conditions should never compromise or take precedence over safety.
4. The provisions in OAC 3745-15-06(A) for scheduled maintenance of air pollution control equipment reflect sound environmental policy. The types of infrequent and brief scheduled maintenance activities that the current rule authorizes are environmentally beneficial. They are necessary and appropriate for maintaining and improving the effectiveness of air pollution control equipment. In many cases, they result in fewer emissions than shutting down and restarting in order to do such



maintenance. And in some cases, the maintenance is needed to avert significant safety risks. Accordingly, Ohio EPA should not and cannot discard those provisions entirely.

Instead, Ohio EPA can resolve U.S. EPA's stated objections to those provisions by simply converting the existing criteria for approving scheduled maintenance into mandatory work practices. Work practices meet the definition of "emission limitation" in Clean Air Act §302(k) and are consistent with the States' option for "other control measures" (in addition to "emission limitations") in Clean Air Act § 110(a)(2)(A).

Similarly, and for the same reasons, Ohio EPA can resolve U.S. EPA's objections to the criteria in OAC 3745-15-06(C) governing the Director's exercise of discretion in response to malfunction events by simply converting those criteria into mandatory work practices. But where an applicable New Source Performance Standard or NESHAP already provides work practice or performance standards for malfunction events, the rule should provide the option to follow those federal standards.

5. For numerous reasons, U.S. EPA's objections to OAC 3745-17-07(A)(3)(c) and 3745-17-07(B)(11)(f) (which exclude SSM periods from the opacity provisions applicable to normal source operations) have no rational basis. U.S. EPA's New Source Performance Standards have contained the same exclusions since 1971. Ohio has successfully attained and maintained the NAAQS for PM with these exclusions in place. There is no correlation between the level of opacity from an individual stack and the concentration of regulated particulate matter in the ambient air. There is no ambient air quality standard for opacity. And opacity is not a regulated air pollutant. For all of these reasons, there is no justification for changing the Ohio SIP's SSM exclusion from opacity standards. Moreover, any such change would require a demonstration of compliance with the criteria set forth in Clean Air Act §110 and R.C. 3704.03(E) and (D). In the absence of any such demonstration, Ohio EPA should make no changes to OAC 3745-17-07(A)(3)(c) or 3745-17(B)(11)(f).
6. Rule changes in response to U.S. EPA's SSM SIP Call must fully comply with Executive Order 2011-01K and the directives of the Common Sense Initiative Office. In particular, the Agency must "choose the regulation that accomplishes the regulatory objective and is least burdensome on small businesses." The Agency must also identify the nature and cost of the adverse impacts of its rulemaking, and quantify the expected adverse impacts of its rule changes (including employer time required for compliance and increased exposure to fines).
7. Ohio EPA should take the opportunity provided by the SSM SIP Call to streamline the existing rules and remove ambiguous, undefined, redundant, and unnecessary language.

#### IV. Specific Rule Text Suggestions for Responding to the SSM SIP Call

Given the principles outlined above, the Commenters respectfully recommend that Ohio EPA's next draft rule changes in response to the SSM SIP Call include the following revisions to the existing rules in question (the recommended changes are highlighted in track change):

##### 3745-15-01 Definitions.

(P) "Malfunction" means a sudden, infrequent, and not reasonably preventable failure of a source or related air pollution control equipment to operate in a manner that results, or in the judgment of the operator may result, in a level of mass emissions greater than those permitted during normal operations or otherwise authorized by a permit.

##### 3745-15-06 Malfunction of equipment; scheduled maintenance; reporting.

(A) Scheduled maintenance of air pollution control equipment shall be conducted according to the following work practice and notification requirements:

(1) ~~For the purposes of this rule, maintenance of air pollution control equipment which is scheduled to prevent a malfunction which that would occur within two weeks if the maintenance were not performed shall be considered to be a malfunction and shall be subject to the provisions of paragraph (B) of this rule.~~

(2) Except as otherwise indicated in ~~paragraph paragraphs~~ (A)(3) and (A)(5) of this rule, scheduled maintenance of air pollution control equipment, ~~that requires the shutdown shutting down or bypassing of said the equipment,~~ must be accompanied by the shutdown of the associated ~~air pollution source or sources.~~

(3) In cases where a complete source shutdown may result in damage to the ~~air pollution source or sources~~ or is otherwise impossible or impractical, the owner or operator ~~may request authorization to continue operating the sources during the scheduled maintenance of air pollution control equipment. Any such request shall be made in a written report shall notify the Director at least two weeks prior to the planned shutdown of the air pollution control equipment. The director shall authorize the shutdown of the air pollution control equipment if, in his judgment, the situation justifies continued operation of the sources. Any written report submitted pursuant to this paragraph notification shall contain the following information:~~

(a) ~~Identification~~ The identification (including the Ohio environmental protection agency permit application number) and location of the specific associated source or sources for which air pollution control equipment will be taken out of service. The identification shall include the Ohio environmental protection agency permit application number.

(b) ~~The expected length of time that the air pollution control equipment will be taken out of service.~~

(c) The nature and estimated quantity of emissions of air contaminants which are regulated air pollutants likely to occur during the shutdown period from all emission units at the facility during scheduled maintenance, compared to the maximum authorized

emissions of the same air pollutants from all emission units at the facility during normal operations.

(d) Measures, such as the use of off-shift labor and equipment, that will be taken to minimize the length of the shutdown period.

(e) The reasons that why it will be impossible or impractical to shut down the source operation during the scheduled maintenance period.

(f) A demonstration that all feasible. A description of interim control measures will that will be taken to reduce emissions from the source during the scheduled maintenance.

(4) The director shall post the receipt of the scheduled maintenance notification described in paragraph (A)(3) of this rule on the Ohio EPA website.

(5) In cases where a complete source shutdown during the scheduled maintenance of air pollution control equipment may result in damage to the source or sources or is otherwise impossible or impractical, the owner or operator shall comply with the following work practices:

(a) All practicable measures shall be taken to minimize the duration of the shutdown period.

(b) All feasible interim control measures shall be taken to reduce emissions from the source during the shutdown period.

(B) Malfunctions of air pollution control equipment shall be responded to and reported as follows:

(1) In the event that any emission of a malfunction, the owner or operator of the source, or related air pollution control equipment, or related facility breaks down in such a manner as to cause the emission of air contaminants in violation of any applicable law, the person responsible for such equipment shall immediately that experienced the malfunction shall notify the Ohio environmental protection agency district office or delegate agency of such failure or breakdown as soon as practicable by telephone or electronic mail. If the malfunction continues for more than seventy-two twenty-four hours, the source owner or operator shall provide a written statement to the director within two weeks of after the date the malfunction occurred. The immediate director may extend the deadline for providing the written statement for good cause. The initial notification and written statement shall include the following data, to the extent the data is available:

(a) Identification and location of such equipment. The identification (including the Ohio environmental protection agency permit application number) and location for each air contaminant source.

(b) The estimated or actual duration of breakdown the malfunction.

(c) The nature and estimated quantity of air contaminants which have been or may be emitted into the ambient air emissions during the breakdown period malfunction.

(d) Statements demonstrating the following:

(i) Shutdown or reduction of source operation during the breakdown period will be or (d) If the source did not initiate shut-down within one hour after the malfunction was detected, the

reasons why it would have been impossible or impractical-impracticable to shut down the source during or after the malfunction.

(2) Except as otherwise authorized in paragraph (B)(3) of this rule, the owner or operator shall implement the following work practices during the malfunction:

(ii) The estimated breakdown period will be or was reasonable (a) The malfunction shall be minimized in duration based on to the extent practicable, taking into consideration good safety practices; installation or repair time; delivery dates of equipment, replacement parts, or materials; or; and current unavailability of essential equipment, parts, or materials.

(iii) Available alternative operating procedures and interim control measures will be or have been shall be implemented during the breakdown period-malfunction to reduce adverse effects on public health or welfare.

(iv) All actions necessary and required by any applicable preventive maintenance and malfunction abatement plan will be or have been shall be implemented.

(3) Sources within a source category for which work practice or performance standards have been established pursuant to 40 CFR Parts 60, 61, 62, or 63 for malfunction events may elect to implement those work practices or performance standards in lieu of paragraph (2) of this rule.

(2)(4) The owner or operator shall notify the Ohio environmental protection agency district office or delegate agency shall be notified when the condition causing the failure or breakdown malfunction has been corrected and the equipment is again in operation. Notification of the correction of the condition causing the failure or breakdown. This notification may be given verbally if the duration of the malfunction is seventy-two twenty-four hours or less. Otherwise, such notification shall be in writing.

(3)(5) Within two months following a failure or breakdown-malfunction which exceeded seventy-two twenty-four hours in duration, the owner or operator of such equipment shall prepare and submit a detailed report which that identifies a program to prevent, detect, and correct, as expeditiously as practicable, similar future failures or breakdowns of such-malfunctions of the source or related air pollution control equipment.

(C) The director retains the responsibility to evaluate any report submitted pursuant to this rule. The director shall take appropriate action upon a determination that the shall evaluate each initial notification and written report that is filed and any other relevant information and may take appropriate action based on the magnitude and duration of the emissions as a result of the malfunction, if it is determined that this rule's work practice standards or reporting requirements of this rule have not been satisfied, that the source or associated air pollution control equipment was not properly operated and maintained prior to breakdown, that shutdown of the source or operation during the period of maintenance or breakdown was or has become practicable, that the shutdown or breakdown was or has become avoidable, or the malfunction, that shutting down the source during the malfunction was initially or subsequently became practicable, that the malfunction was avoidable, that the malfunction was induced or prolonged in bad faith, or that the-excess emissions endanger during the malfunction endangered or tend to endanger the health or safety of the public.

(D) The initial notification and written report required by this rule do not constitute an admission of a violation of any applicable law. Any malfunction that is determined to be a deviation from an

applicable permit term and condition shall be properly reported under paragraph (D) of rule 3745-15-03 or Chapter 3745-77 of the Administrative Code.

(E) If, in the director's judgment of the director, any source or air pollution control equipment has had excessive or unduly prolonged malfunctions of any emission source, air pollution control equipment or related facility have occurred, the director may require the owner or operator of said that source, or equipment or related facility to prepare, submit, and implement a preventive maintenance and malfunction abatement plan which is acceptable to the director. Such The plan shall be designed to prevent, detect, and correct malfunctions or equipment failures which that could result in emissions exceeding any applicable law malfunctions.

(1) Each preventive maintenance and malfunction abatement plan shall be in writing and specify the following:

(a) A comprehensive preventive maintenance program, including a description of the items or conditions that will be inspected, the frequency of these inspections or and repairs, and an identification of the types and quantities of the replacement parts which that will be maintained in inventory for quick replacement.

(b) An identification of the source and the operating outlet variables of the air pollution control equipment that will be monitored in order to detect a malfunction or failure, and the normal operating range of these variables, and a description of the.

(c) The monitoring or surveillance procedures and of the method of informing operating personnel of any malfunction, including alarm systems, lights or other indicators.

(ed) A description of the The corrective procedures that will be taken in the event of a malfunction or failure in order to achieve compliance with any applicable law return to normal operations as expeditiously as practicable.

(2) Any acceptable If the director finds the preventive maintenance and malfunction abatement plan acceptable, that plan shall be specified in the terms and conditions of any permit or variance issued for a source covered by such plan. If the director does not find the preventive maintenance and malfunction abatement plan acceptable, the owner or operator shall revise and resubmit the plan.

(3) Operation The source owner or operator shall maintain operation and maintenance records shall be maintained by the owner or operator of the source to demonstrate that any preventive maintenance and malfunction abatement plan is fully implemented. All such records shall be maintained for a minimum of two years and shall be subject to inspection by the director or his representative upon request.

(E) During routine maintenance of add-on pollution controls, an owner or operator of a glass melting furnace is deemed in compliance with applicable air pollution control requirements if:

(1) Routine maintenance in each calendar year does not exceed 6 days.

(2) Routine maintenance is conducted in a manner consistent with good air pollution control practices.

(3) A report is submitted to the director ten days before the start of the routine maintenance (or, if ten days is impracticable, as soon as practicable) explaining the maintenance schedule.

(F) During malfunction events, a coke oven battery shall be subject to the work practice standards set forth at 40 CFR 63.310.

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August 15, 2016

VIA E-MAIL: <http://www.regulations.gov>

Mr. Matthew Spangler  
U.S. Environmental Protection Agency  
Office of Air Quality Planning & Standards  
Air Quality Planning Division (C504-05)  
Research Triangle Park, NC 27711

RE: **Proposed Removal of Title V Emergency Affirmative  
Defense Provisions from State Operating Permit Programs  
and Federal Operating Permit Program  
81 Fed. Reg. 38645 (June 14, 2016)  
Docket ID No. EPA-HQ-OAR-2016-0186**

Dear Mr. Spangler:

Attached please find the Comments of The Ohio Chemistry Technology Council, The Ohio Chamber of Commerce, and The Ohio Manufacturers' Association on U.S. EPA's Proposed Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and Federal Operating Permit Program, 81 Fed. Reg. 38645 (June 14, 2016), Docket ID No. EPA-HQ-OAR-2016-0186.

Please direct to the undersigned counsel any questions regarding the attached comments.

Very truly yours,

*Robert L. Brubaker*

Robert L. Brubaker

*Eric B. Gallon*

Eric B. Gallon

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

*Frank L. Merrill, by RLB*

Frank L. Merrill

Environmental Counsel for The Ohio Manufacturers' Association

RLB/EBG:mkd  
Attachment

**Comments of  
The Ohio Chemistry Technology Council,  
The Ohio Chamber of Commerce,  
and  
The Ohio Manufacturers' Association**

**Comments on EPA's proposed removal of  
Title V affirmative defense provisions for emergencies  
81 Fed. Reg. 38,645 (June 14, 2016)**

**August 15, 2016**

**Introduction**

The Ohio Chemistry Technology Council, the Ohio Chamber of Commerce, and the Ohio Manufacturers' Association (the "Commenters") respectfully submit the following recommendations in response to EPA's proposed removal of the emergency affirmative defense provisions in the Title V permit program rules in 40 CFR Parts 70 and 71 (81 Fed. Reg. 38,645 (June 14, 2016)).

The Ohio Chemistry Technology Council represents the interests of over 80 chemistry industry related companies that do business in Ohio. The Ohio Chamber of Commerce represents the interests of over 8,000 member companies, including manufacturers, utilities, and small businesses, in addition to hosting the Ohio Small Business Council. The Ohio Manufacturers' Association represents the interests of over 1,400 member companies to protect and grow Ohio manufacturing. The Commenters members are subject to regulation by Ohio's Clean Air Act State Implementation Plan (SIP) and fully-approved Title V operating permit program, and have a direct and substantial interest in the action proposed by EPA.

Properly designed and maintained equipment sometimes fails. This is especially true of increasingly ambitious, cutting-edge technology "forced" as a matter of Clean Air Act policy. It is also true of equipment exposed to extreme temperatures or pressures, abrasion, or other exceptionally harsh operating conditions. Lightning strikes can disable air pollution controls. A squirrel can knock out a transformer that supplies power to an electrostatic precipitator or baghouse. Computerized control systems crash from time to time. Sabotage or criminal mischief can create life-threatening danger that elevates safety considerations above all other priorities. Yet EPA has proposed to remove the affirmative defense for emergencies from the Title V operating program rules.

EPA has given two reasons for removing the "emergency" defense rules:



- 1) EPA deems the rules “inconsistent with the enforcement structure of the Clean Air Act”; and
- 2) EPA deems the rules inconsistent with two D.C. Circuit decisions involving rules promulgated under section 112 of the Clean Air Act: *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014) and *Sierra Club v. Johnson*, 551 F.3d 1019 (D.C. Cir. 2008).

Neither rationale justifies the proposed rule change. For the reasons provided below, the commenters respectfully request that EPA abandon its proposed rule changes or, at a minimum, narrow their scope so as not to prevent federal, state, and local air agencies from retaining the Title V affirmative defense for violations during emergency situations.

**I. EPA’s newly-discovered “enforcement structure” of the Clean Air Act does not justify an abrupt departure from the historical interpretation and administration of the Act**

Congress never aimed the Clean Air Act’s “enforcement structure” at prohibiting or punishing unavoidable, unwanted, and expensive emergencies and upsets. And it never required unattainable, absolute perfection for command-and-control technology. Instead, the structure and context of the Act as a whole emphasizes balance and nuance when promulgating technology-based standards. And neither *NRDC* nor *Sierra Club* justifies EPA’s proposed rulemaking. Indeed, EPA’s proposed rule change would go well beyond anything decided in those two D.C. Circuit cases. EPA’s broad and vague new notions of the “enforcement structure” of the Clean Air Act cannot be reconciled with congressional directives for standards that are “achievable” and “adequately demonstrated,” taking into account costs, and with EPA’s recognition throughout the history of the Clean Air Act, until now, that enforcement and penalties are not appropriate for unavoidable upsets or breakdowns.

**II. The interests in finality and repose of 20-year-old approvals of State Title V permit programs outweigh any justification for a late-maturing policy preference to renege on those approvals**

Title V permit holders have a compelling interest in predictability, finality, and repose with respect to EPA approval of state Title V permit programs. EPA approved Ohio’s Title V permit program, with the emergency circumstances provisions EPA invited in its Part 70 rules, more than 20 years ago. No one challenged those provisions when EPA adopted them (even though there were, at the time, myriad challenges to other parts of those rules) or when EPA gave final approval to those provisions in the Title V rules for Ohio and some forty-two other states.

Nothing in Title V or elsewhere in the Clean Air Act empowers or authorizes EPA to renege on its final approval of a state Title V permit program because EPA prefers a supposed “improvement” to what was already approved. Such instability would be inimical to the congressional design and purpose of Title V. It would also be highly disruptive to state and local governments and to entities subject to Title V permitting, both public and private.

State rulemakings to revise Title V permit program rules involve considerable costs and human resources. They are not to be undertaken lightly, on the basis of whimsical changes in policy preferences. The deluge of EPA's recent Clean Air Act rulemakings is already straining limited state resources; EPA should not further burden and divert those limited resources from much more important regulatory imperatives and priorities.

### **III. The proposal goes far beyond anything decided in the two D.C. Circuit cases relied upon for it**

The case most relied upon for the proposed removal of the Title V emergency provisions is *NRDC*. That case is inapposite to the proposal in three significant ways. First, it involves private party citizen suit enforcement, not U.S. EPA or state environmental agency enforcement. Second, it involves rulemaking under section 112 of the Act, not section 110, 111, or Title V. And third, it involves a *timely* appeal of EPA rulemaking, not a reopening of settled law finalized over two decades ago.

*NRDC*'s unremarkable holding is that, in the context of a challenge to a promulgated emission standard rule that establishes an enforceable compliance obligation, EPA cannot displace the exclusive jurisdiction of district courts to decide in a Clean Air Act citizen suit what, if any, remedy to provide for proven violations of that enforceable compliance obligation. *NRDC* does not prohibit any and all affirmative defenses under the Clean Air Act. Nor does it impair the inherent enforcement discretion vested in EPA and state agencies. It therefore provides no basis for changing the rules for *government* decisions to allow an affirmative defense in emergency situations, as opposed to private citizen suits. Second, *NRDC* arises in the context of CAA § 112; it did not involve the statutory or constitutional issues implicated by a strict anti-emergency interpretation of other parts of the Clean Air Act. Third, the case was a timely appeal under CAA § 307 from EPA's final rulemaking action. The Court did not opine on whether other citizen suit plaintiffs might have waived their rights to make similar arguments that were not raised in timely § 307 appeals of other Clean Air Act final actions.

The proposal uses, as an "alternative but additional justification," a stretched and strained over-reading of *Sierra Club*. EPA asserts that *Sierra Club* stands for the proposition that "the CAA requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise." However, the rationale in *Sierra Club* is anchored to the unique language of Clean Air Act § 112, and does not exist for the very different language and context applicable to Clean Air Act § 110 SIPs or § 111 NSPSs. Existing emission limitations in the Ohio SIP apply "continuously" to the performance criteria and operating modes to which they were designed and intended to apply. Even if *Sierra Club* "requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise," the word "continuously" does not mean constantly, every moment, in real time, during any and all operating modes, with or without a duly promulgated, reliable and reproducible method for testing compliance or non-compliance. Such an extreme, out-of-context interpretation of the word "continuously" is at odds with its origin in Clean Air Act § 302(k), where it was intended to prohibit "supplementary control systems." See 40 CFR 51.119; see also EPA's March 28,

2016 Initial Brief in *State of West Virginia v. EPA*, No. 15-1363, at p. 67. It certainly was not Ohio's legal interpretation when it promulgated technology-based SIP rules, or EPA's legal interpretation when it approved Ohio's SIP rules over the past 45 years.

**IV. Any change to the Part 70/Part 71 affirmative defense provisions should be confined to private citizen suits**

According to EPA, this rulemaking is primarily necessitated by the D.C. Circuit's ruling in *NRDC*. But *NRDC* concerns *private* (not government) suits, where a "violation" of an enforceable compliance obligation has been proven in an Article III court. *NRDC* stands for the proposition that when EPA promulgates an enforceable emission standard, EPA cannot remove an Article III court's jurisdiction to decide whether civil penalties are appropriate in a citizen suit to enforce that standard. If EPA decides it must make a revision to the affirmative defense provision for emergencies in the Title V permit program rules, despite the absence of any compelling need or deadline to do so, that change should be no more broad than the scope of the court's holding in *NRDC*. *NRDC* provides absolutely no basis for changing the criteria under which EPA or state agencies would grant an affirmative defense due to qualifying emergency circumstances. *NRDC* does not undermine the sound policy and common sense reasons for promulgating the Title V emergency provisions in the Part 70 and 71 rules in the first place, and for approving emergency defense provisions in Ohio's and other states' Title V permit programs two decades ago. EPA should withdraw its proposal altogether, or at the very least withdraw it and replace it with a proposal that only removes the affirmative defense in citizen suits.



# **OMA** PUBLIC POLICY FRAMEWORK FOR ACTION

**The Ohio Manufacturers' Association**



[ohiomfg.com](http://ohiomfg.com)

Page 60 of 84

## Public Policy Framework for Action

Manufacturing is responsible for 17% - \$99 billion - of Ohio's Gross Domestic Product; this is greater than the contribution of any other Ohio industry sector. Manufacturing is the engine that drives Ohio's economy.

In the competitive domestic and global economies, every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness. In turn, Ohio's manufacturing competitiveness determines the ability of the state to grow its economy and create jobs.

Ohio manufacturers require public policies that attract investment and protect the state's manufacturing legacy and advantage. These policies apply to a wide variety of issues that shape the business environment within which manufacturers operate.

### **MAJOR POLICY GOALS INCLUDE THE FOLLOWING:**

- **An Efficient, Competitive Tax System**
- **A Lean, Productive Workers' Compensation System**
- **Access to Reliable, Economical, Diverse Energy Resources**
- **A Fair, Stable, Predictable Civil Justice System**
- **Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations**
- **A Modern, Job-Supporting Infrastructure**
- **An Educated, Highly Skilled Workforce**

# PolicyGoal:

## An Efficient, Competitive Ohio Tax System

For Ohio to be successful in a global economy, the state's tax system must encourage investment and growth. It must be competitive nationally and internationally. A globally competitive tax system is characterized by (a) certainty, (b) equity, (c) simplicity and (d) transparency. Economy of collections and convenience of payment also are important attributes.

Generally, manufacturers support efforts to broaden the tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. Where needed, government incentives are best structured as grants rather than as tax credits. And, in general, earmarking and dedicating tax revenues should be discouraged.

Good tax policy also generates necessary revenues to support the essential functions of government. Good budgeting and spending restraint at all levels of government are vital to a competitive tax environment.

Major tax reforms approved by the Ohio General Assembly in 2005 and additional reforms in 2011 through 2015 have led to significant improvements to a tax system that was for many years widely regarded as uncompetitive and obsolete. These reforms reduced overall tax rates, eliminated tax on investment, and broadened the tax base, all of which provide more stable and predictable revenues, and simplify compliance.

The elimination of the tangible personal property tax, the corporate franchise tax, and the estate tax has strengthened the competitiveness of Ohio's tax system. So has the reduction of the personal income tax rate, as well as the creation of a broad-based, low-rate commercial activity tax.

Going forward, these tax policy gains must be protected. Tax bases should be protected against erosion caused by granting credits and carve-outs to narrow special interests, in order to protect the productivity of the taxes. Where possible and reasonable, tax bases should be expanded, and tax rates reduced.

In addition, the state should continue work with Ohio municipalities to continue to streamline the collection of municipal income taxes making it administratively simpler and less costly to conduct business in Ohio.

The state's tax system would also benefit from a reduction of the number and type of taxing jurisdictions. Because of its complex layering of local and state taxes, Ohio's tax system is at a competitive disadvantage compared to other states.

# PolicyGoal:

## A Lean, Productive Workers' Compensation System

An efficient and effective workers' compensation system benefits workers, employers, and the economy of the state and is built on the following principles:

- Injured workers receive prompt benefits that are adequate for returning to work quickly and safely.
- Rates are established by sound actuarial principles, so that employers pay workers' compensation rates commensurate with the risk they bring to the system.
- The system is financed with well-functioning insurance mechanisms, including reserving and investment practices that assure fund solvency and stability.
- The benefit delivery system deploys best-in-class disability management practices that drive down costs for employers and improve service and outcomes for injured parties.
- The system consistently roots out fraud, whether by employers, workers or providers.

### Fundamental priorities for future action are three:

The Bureau of Workers' Compensation (BWC) should continue to reform its medical management system to lower cost and improve medical quality through better coordination of care and development of a payment system that creates incentives for best clinical practices. In doing this, the BWC should build on emerging best practices in the private sector health care system.

The Ohio General Assembly should enact statutory reforms of benefit definitions, so that the claims adjudication process is more predictable, less susceptible to fraud and manipulation, and less costly, both for workers and employers.

The Industrial Commission should record hearings, so that the hearing process is more transparent and any appeals have a record on which to build.

# PolicyGoal:

## Access to Reliable, Economical, Diverse Energy Resources

Energy policy can enhance—or hinder—Ohio’s ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing. State and federal energy policies must (a) ensure access to reliable, economical sources of energy, (b) support the development of a diverse energy resource mix, and (c) conserve energy to preserve our natural resources, while lowering cost.

The Ohio Manufacturers’ Association’s energy policy advocacy efforts are guided by these principles:

- Energy markets free from market manipulation allow consumers to access the cost and innovation benefits of competition.
- Ohio’s traditional industrial capabilities enable global leadership in energy product innovation and manufacturing.
- Sustainable energy systems support the long-term viability of Ohio manufacturing.
- Effective government regulation recognizes technical and economic realities.

Shaping energy policy in Ohio that aligns with these principles will support manufacturing competitiveness, stimulate economic expansion and job creation, and foster environmental stewardship.

### Energy policy priorities are:

Assure an open and fair electricity generation marketplace, in which competition enables consumer choice, which in turn drives innovation.

Design an economically sound policy framework for discounted rates for energy-intensive manufacturers that makes Ohio competitive with other states.

Protect energy consumers from above-market generation charges.

Support deployment of customer-sited generation technologies, such as cogeneration, energy efficiency and demand-side management, in order to achieve least-cost and sustainable energy resources.



# PolicyGoal:

## A Fair, Stable, Predictable Civil Justice System

For manufacturers to invest and grow in Ohio, and to compete globally, Ohio's civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

The Ohio Manufacturers' Association supports policy reforms that protect consumers without overly burdening businesses, while also positioning Ohio advantageously relative to other states. The association encourages policymakers to evaluate all proposed civil justice reforms by considering these questions:

- Will the policy fairly and appropriately protect and compensate injured parties without creating a "lottery mentality"?
- Will the policy increase—or decrease—litigation burdens and costs?
- Will the policy promote—or reduce—innovation?
- Will the policy attract—or discourage—investment?
- Will the policy stimulate—or stifle—growth and job creation?

Ohio has made great strides in reforming its civil justice system over the past decade, and longer. The primary aim of the state should be to preserve those tort reform gains, in areas such as punitive damages, successor liability, collateral sources and statute of repose, which are protecting consumers without unduly burdening businesses, while positioning Ohio as an attractive state for business investment.

# PolicyGoal:

## Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations

### Effective environmental standards and regulations:

- Provide clarity, predictability and consistency
- Are based on scientific consensus
- Provide for common sense enforcement
- Incorporate careful cost-benefit analysis as part of the policymaking process

Manufacturers urge policymakers to exercise restraint in establishing state environmental regulations that exceed federal standards, and to avoid doing so altogether without clear and convincing evidence that more stringent regulations are necessary. At the same time, manufacturers understand that fair and reasonable regulations must be balanced with responsible stewardship of our natural resources.

Manufacturing leads the way in innovation in solid waste reduction and recycling. Industry is an enormous consumer of recycled materials, such as metals, glass, paper and plastics; manufacturers thus are strong advocates for improving recycling systems in Ohio and the nation.

The state should expand opportunities for industry to reuse non-harmful waste streams. Beneficial reuse policies can result in less waste and more recycling of industrial byproducts. Likewise, Ohio should continue to expand recycling programs that provide feedstock for the state's industrial processes.

The Ohio Environment Protection Agency, in designing state implementation plans for new federal regulations (such as Clean Power Plan, Ozone regulation and Waters of the U.S.), should use a transparent process of stakeholder involvement, supplemented by investment in independent research to determine least cost, scientifically sound and technologically feasible implementation plans.

# PolicyGoal:

## A Modern, Job-Supporting Infrastructure

Modern infrastructure is critical for today's advanced manufacturing economy. To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the state must invest in updating and expanding Ohio's multi-modal transportation infrastructure, including roads, bridges, rails and ports. Continued investment in these resources is critical to providing Ohio manufacturers with flexible, efficient, cost-effective shipping options.

The state also must support the development of a pipeline infrastructure that delivers the abundant energy resources from the Utica and Marcellus shale formations to Ohio manufacturers in all parts of the state. This infrastructure produces a job-creating competitive advantage for Ohio.

### Infrastructure policy priorities include the following:

Modify Ohio's rules and regulations to allow greater flexibility and efficiency in the truck permitting process and to ensure Ohio's truck permitting standards and processes are competitive with other states with regard to requirements, fees and responsiveness.

Enhance shipping flexibility by supporting the federal Safe and Efficient Transportation Act. This legislation would allow states to tailor regulations to meet state-level transportation needs linked to a state's particular economic assets and strengths.

Ensure Ohio's freshwater ports remain competitive and state of the art in functionality. Advocate for appropriate facility maintenance including dredging to ensure navigability.

Preserve access to and provide responsible management of Ohio's sources of water.

Protect cyber infrastructure to safeguard data used by manufacturers and their customers and suppliers.

# PolicyGoal:

## An Educated, Highly Skilled Workforce

A robust economy requires a reliable supply of workers who have the technical knowledge and skills required to meet global standards for quality and productivity, and who are able to think critically and work collaboratively. Sustained growth in manufacturing productivity will require not only a new generation of globally competent workers, but also workers willing to embrace lifelong learning to keep pace with technological advancements and global competition.

### **Workforce development policy priorities include the following:**

Expand the use of the National Association of Manufacturers' "Manufacturing Skills Certification System." This system of nationally portable, industry recognized, "stackable" credentials is applicable to all sectors in the manufacturing industry. The credentials validate foundational skills and competencies needed to be productive and successful in entry-level positions in any manufacturing environment. Credentials can be earned from both secondary and postsecondary educational programs.

Expand the use of cooperative education, internships and apprenticeships. These experiential learning programs enhance talent recruitment and retention because participating students are exposed to company-specific, real-world job expectations and experiences. Students develop strong leadership and management skills by working closely with company staff who serve as their mentors/supervisors, and participating companies benefit from reduced recruitment and training costs.

Continue the work of the Governor's Office of Workforce Transformation in reforming the workforce development system. The system has been fragmented (over multiple programs and agencies) and misaligned with employer knowledge and skill needs. Common goals, measures, and talent pipeline development through industry workforce alliances will benefit both job-seekers and talent seeking businesses.

The mission of  
The Ohio Manufacturers' Association  
is to protect and grow  
Ohio manufacturing

For more information about the services and activities of the OMA, contact us at (800) 662-4463 or [oma@ohiomfg.com](mailto:oma@ohiomfg.com) or visit [ohiomfg.com](http://ohiomfg.com).



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SECOND ANNUAL



# Midwest Environmental Compliance Conference

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## Conference Day 1

Tuesday, November 1

2:00 pm Registration and Check-In

### Track One

3:00 pm EHS Training Topics

3:00 pm 1. Common NPDES Mistakes

Understanding what will be in your NPDES permit is critical prior to submitting the application. Learn about permitting and compliance mistakes

associated with planning for and preparing your NPDES permit application, including tips to set your facility up for compliance on Day 1.

STEVE J. KAPPELLER, Barr Engineering

3:25 pm 2. Standards for Hazardous Waste Management

Attendees will learn about the various Generator requirements they may be subject to if they generate and manage hazardous waste. From waste characterization requirements, storage, labeling, manifesting, to contingency plans and RCRA training. This course will provide you with the tools to ensure you are in compliance with your generator

obligations.

SEAN K. GRADY, CHMM, GHD

**3:50 pm 3. New Generation of Generator Rules is On the Horizon: HazWaste Generator Improvements Rule, E-Manifest, and other active RCRA rulemakings.**

Learn about imminent changes to the generator regulations that may affect your operations and your generator obligations.

LIANE HETHERINGTON-WARD, Schreiber, Yonley & Associates / Trinity Consultants

**4:15 pm 4. Spill Plans Made Simple: Avoiding Noncompliance and Common Finding**

JENNIFER VAN THOMME, GHD Services, Inc.

**4:40 pm 5. Antidegradation: A Practical Guide**

Get an overview of antidegradation requirements under Federal and Region V state laws, outline the types of activities that trigger the need to conduct an antidegradation evaluation, and discuss the core components of antidegradation evaluations. You'll hear practical guidance on preparing and drafting an antidegradation evaluation, including determining existing water quality and uses, quantifying impacts to high quality waters, developing economic/social-development justification for degradation, and successfully working with regulators.

JEREMY GREENHOUSE, Environmental Law Group, Ltd.

MELISA POLLAK, Barr Engineering

**5:05 pm 6. PFASs Impact on the Environment**

Polyfluoroalkyl and perfluoroalkyl substances (PFASs) present key challenges for those industries that will be required to deal with this suite of emerging contaminants. We will provide an overview of the industries likely affected, discuss potential sources, summarize regulatory status, describe fate and transport models, and discuss remedial options.

BRYAN HOYE, Burns & McDonnell

**5:30 pm Welcome Reception (Open to all attendees)**

Please join us for cocktails and hors d'oeuvres hosted by MECC Silver sponsors

**6:30 pm End of Day 1**

**Track Two**

**3:00 pm Inspection Essentials—Traps for the**

**Unwary**

Best practices and how to effectively prepare for state and Federal inspections. Safe communications.

DAVID GILLAY, Barnes & Thornburg

**3:35 pm Latest Developments in Vapor Intrusion:**

**Why these Changes Matter and What you Need to Know**

Identifying and managing risks associated with vapor intrusion has been mainstreamed, but still holds traps and surprises for unwary property owners, developers

and risk managers. Competing approaches and standards between the various states and the Federal authorities don't make it easier. Learn what you need to know to be current in this hot topics session.

LAWRENCE FALBE, Miller Canfield

**4:00 pm Next Generation Compliance: A Training**

An introductory course on the fundamentals of Next Generation Compliance. Basic concepts, new technologies, and what it means for the regulated community.

DAVID HINDIN, US EPA, OECA

CHRISNA BAPTISTA, US EPA, OECA

**5:30 pm Welcome Reception (Open to all attendees)**

Please join us for cocktails and hors d'oeuvres hosted by MECC Silver Sponsors

**6:30 pm End of Day 1**

## Conference Day 2

### Wednesday, November 2

**7:00 am Registration and Continental Breakfast**

**7:50 am Welcome**

ROGER WALKER, Chair, MECC

**8:00 am Flint Fallout**

How Flint is impacting business, government, consultants, and the public who are far removed from the event itself in terms of how we manage risk, real and perceived, and set priorities.

ROBERT KAPLAN, Acting Regional Administrator, US EPA Region 5

ANDREW BERGER, Indiana Manufacturers Assoc.

LEANNE TIPPETT MOSBY, Director, DEQ, MO DNR

DAN DEEB, Schiff Hardin (Moderator)

**9:00 am Next Generation Compliance: New Developments**

A review of the ongoing efforts of USEPA to reinvent compliance utilizing new technologies, data collection/analysis, smarter permits, advanced emissions testing and reporting, and greater transparency.

DAVID HINDIN, US EPA, OECA

DEL EHRICH, Faegre Baker Daniels

(Introduction)

**9:30 am Next Generation Compliance Discussion Panel**

DEL EHRICH, Faegre Baker Daniels

TBD

DAVID HINDIN, US EPA, OECA

## 9:55 am Networking Break

BLOCK ANDREWS, Burns & McDonnell

KATHY ROBERTSON, Exelon

TBD

TBD (Moderator)

## 10:15 am Regional Water Roundtable

Issues include: nutrients, WOTUS, Water Quality Standards, infrastructure, TMDL update, climate change and other water resource and water quality issues

PATRICK KUEFLER, Branch Chief, Water

Enforcement & Compliance Assurance, US EPA Region 7

BRIAN HALL, Asst. Chief, Division of Surface Water, OEPA

JEFF LONGSWORTH, Barnes & Thornburg (Moderator)

## 11:00 am Environmental Justice: The Path Ahead

EPA's five-year strategic plan for environmental justice focuses on enforcement and compliance assurance. States like Minnesota have developed their own policies on environmental equity and EJ. Hear the latest on this topic.

ALAN WALTZ, US EPA Region 5

JOHN LINC STINE, Commissioner, Minnesota Pollution Control Agency

WILLIAM HEFNER, Environmental Law Group, Ltd. (Moderator)

## 12:00 pm Lunch

Hosted by MECC Gold sponsors, Schiff Hardin and Faegre Baker Daniels

## Outcome-Based Metrics for Environmental Protection and Human Health

JOHN LINC STINE, Commissioner, Minnesota Pollution Control Agency

## AFTERNOON BREAKOUT SESSIONS 1:15 - 2:45 pm (Two Tracks)

### Track One

## 1:15 pm What EHS Professionals Should Know about Emerging Energy Issues: Electric Utility Carbon Future in Region 5

The federal Clean Power Plan is stayed. The D.C. Circuit Court of Appeals will likely rule this fall. In the meantime, electricity providers in Region VII face a host of regulatory drivers that affect future plans, including state renewable portfolio standards, state energy efficiency programs, interstate NOx transport rules for the 2008 and 2015 ozone standards, and SO<sub>2</sub> nonattainment designations. This session will address new uncertainties for the CPP, compare State plans, and address non-regulatory drivers.

## 2:10 pm The Nexus Between Sustainability and Environmental Management

LOREN POLAK, Bunge North America

## 2:45 pm Networking Break

### Track Two

## 1:15 pm The Lautenberg Act

TSCA reform has arrived! What have we learned so far? And what should we prepare for now?

ALLEN KACENJAR, Squire Patton Boggs LLC

## 1:45 pm Strategic Permitting in the Great Lakes Region

Issues and tips for permitting and undergoing environmental review in the Great Lakes Region.

GREG FONTAINE, Stinson Leonard Street LLP

ALEAVA SAYRE, Stinson Leonard Street LLP

## 2:15 pm Legal Update

Our panel of experienced environmental attorneys will provide an update on recent and emerging legal developments in environmental law, and how these developments can potentially impact how businesses are regulated, and result in changing compliance strategies. These recent legal developments will be of interest to a wide range of businesses and environmental professionals.

MICHAEL SHOWALTER, Schiff Hardin

JOSHUA MORE, Schiff Hardin

## 2:45 pm Networking Break

## CONCURRENT STATE AGENCY BREAKOUT SESSIONS 3:00 - 5:30 pm (Three Tracks)

### Track One

## 3:00 pm Illinois Environmental Protection Agency

A conversation on emerging issues in Illinois.

JOHN KIM, Illinois EPA

JIM ROSS, Illinois EPA

MARK DENZLER, IL Manuf. Assoc. (Moderator)

## 4:15 pm Latest Developments at IDEM

A conversation on emerging issues in Indiana.

DAVID GILLAY, Barnes & Thornburg

FRED ANDES, Barnes & Thornburg

ANDREW BERGER, IN Manuf. Asso. (Moderator)

### Track Two

## 3:00 pm Ohio Environmental Protection Agency

A conversation on emerging issues in Ohio.

BOB HODANBOSI, Chief, Air Pollution Control, OEPA



LAURA FACTOR, Asst. Director, OEPA  
ROB BRUNDRETT, OH Manuf. Assoc.  
(Moderator)

DAVID WALL, Trinity Consultants  
GREG BERTELSEN, National Association of  
Manufacturers (Moderator)

#### 4:15 pm Michigan Department of Environmental Quality

A conversation on emerging issues in Michigan.  
STEVE SLIVER, Acting Chief, Office of Waste Management & Radiological Protection, MDEQ  
ROBERT WAGNER, Program Deputy Director, Michigan DEQ  
ANDY SUCH, MI Manuf. Assoc. (Moderator)

### Track Three

#### 3:00 pm Minnesota Pollution Control Agency

A conversation on emerging issues in Minnesota.  
**Air Permitting Update**  
DON SMITH, Manager, Air Quality Permits Section, MPCA  
**Alternative Inspection Strategies**  
SARAH KILGRIFF, Manager, Land and Air Compliance Section, MPCA  
**Industrial Stormwater**  
AARON LUCKSTEIN, Supervisor, Water Quality Compliance, MPCA  
KEN PODPESKAR, Environmental Law Group, Ltd. (Moderator)

#### 4:15 pm Wisconsin Department of Natural Resources

A conversation on emerging issues in Wisconsin.  
BART SPONSELLER, Wisconsin DNR  
JIM ZELLMER, Wisconsin DNR  
LUCAS VEBBER, WI Manuf. & Commerce (Moderator)

#### 5:30 pm Networking Reception (Open to all attendees)

Please join us for cocktails and hors d'oeuvres

#### 6:30 pm End of Day 2

## Conference Day 3

Thursday, November 3

#### 7:00 am Breakfast

#### 7:45 am Welcome

DEL EHRICH, Faegre Baker Daniels

#### 7:50 am Regional Air Issues Roundtable

This session will address regional and national priorities for Ozone, SO<sub>2</sub>, PM<sub>2.5</sub>, Clean Power Plan, modeling, transport issues, and more.  
ED NAM, Acting Director, Air & Radiation, US EPA Region 5  
LYNN FIEDLER, Chief, Air Quality Div, Michigan DEQ  
DAVID BLOOMBERG, Illinois EPA

#### 8:40 am What Regulatory Reform Means in the Electronic Age

This session will address regulatory reform, E-enterprise and E-permitting/e-reporting and what this means for public notice and comment, FOIA and Sunshine requests, and stakeholder engagement.  
COURTNEY ARANGO, IDEM  
ANWAR (AJ) JOHNSON, Illinois EPA  
ROBERT WAGNER, Program Deputy Director, Michigan DEQ  
BRIAN HALL, Ohio EPA  
ANDY SUCH, Michigan Manufacturers Association (Moderator)

#### 9:10 am Regional and State Enforcement Priorities

This session will address the interaction between state and federal enforcement, highlight key areas of regional concern, and address both EPA and state priorities in air, waste and water.  
RETT NELSON, Regional Counsel, US EPA Region 5  
JEFF SMITH, Minnesota Pollution Control Agency  
JOHN KIM, General Counsel, Illinois EPA  
SANDY STEIN, Miller Canfield (Moderator)

#### 10:00 am Networking Break

### BREAKOUT SESSIONS (Three Tracks)

#### 10:15 am – 12:00 pm

#### Track One – Emerging Waste Issues

##### 10:15 am Managing Pharmaceutical Waste

Learn about recent developments related to pharmaceutical waste management, including enforcement activity under RCRA and state implementing programs, in addition to emerging federal and state regulatory initiatives that affect hospitals, pharmacies, clinics, and all other facilities that manage pharmaceutical products and wastes.  
LYNN KORNFELD, Faegre Baker Daniels  
MAX KELLN, Faegre Baker Daniels

#### 11:05 am RCRA Regulatory Developments

US EPA published recent revisions to the definition of solid waste, including substantial changes to the exemptions for hazardous secondary materials recycled by being reclaimed. We will focus on those revisions, as well as US EPA's proposed revisions to the hazardous waste generator rules and the rules for the import and export of hazardous waste.  
KAREN A. WINTERS, Squire Patton Boggs

### Track Two

**10:15 am Assessing Risk: Top Ten Tips for  
Conducting an Environmental Audit**

There are many tools for assessing risk, but one of the most effective is conducting routine, regularly scheduled environmental audits.

LISA FUNDERBURG, Stinson Leonard Street LLP  
EVAN FITZGERALD, Kestrel Management

**11:00 am Fuel System Planning, Replacements, and  
Release**

FRANK CAPIC, Burns & McDonnell

**11:30 am Industry Perspective—Let's Get Practical  
About Metals in Stormwater**

Learn what various industrial sites are doing to incrementally reduce metals in their stormwater to comply with the industrial stormwater permit.

Pamela will share some project examples from various industrial sites located in MN, WI and NE.  
PAMELA MASSARO, P.E., Wenck Associates Inc.

**Track Three**

**10:15 am Simplifying the EHS Document and Data  
Management Burden**

JOSEPH TELL, Tellevate

**11:00 am Diving Deeper Into PSD Applicability—The  
RMRR Exemption and the Demand for  
Growth Exclusion**

A refresher on recent determinations involving use of the routine maintenance, repair and replacement (RMRR) exclusion and the use of the demand growth provision when calculating projected actual emissions.

JOHN IWANSKI, Trinity Consultants

**11:30 am The Use of Dispersion Modeling to  
Enhance Operational Flexibility**

We will focus on atmospheric dispersion modeling methods sources may employ to optimize operational flexibility at their facilities, in light of upcoming changes to Federal modeling guidelines, increasingly stringent national ambient air quality standards, anticipated ozone attainment designations, and state air program requirements. We will discuss approved modeling methods that may be considered when addressing unanticipated impacts from an existing source.

BRIAN LEAHY, Barr Engineering

JEFF BENNETT, Barr Engineering

**12:00 pm End of Conference**

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Check in is 3:00 pm. Check out is 12:00 pm.  
No late checkout is available.

You get free Wi-Fi in your sleeping room, reduced rate parking (\$13/day), and free shuttle service from O'Hare.

**QUESTIONS? NEED ASSISTANCE? Contact Kevin Perry (573) 680-5069, [kevinperry@gmail.com](mailto:kevinperry@gmail.com)**

Continuing legal education credits are pending for The Minnesota Board of Continuing Legal Education, The Missouri Bar, The Ohio Commission on Continuing Legal Education, The Indiana Commission for Legal Education, The Wisconsin Board of Bar Examiners, and The MCLE Board of the Supreme Court of Illinois.

## Environment

### [OMA Environment Committee Meeting/Call Next Week](#)

October 14, 2016

The last scheduled OMA Environment Committee meeting for 2016 is on Wednesday, October 19, from 10:00 a.m. until 1:00 p.m. at the OMA offices (with a nice lunch provided by OMA).

A call in option is also available. All members are welcome!

- We will be joined by Ohio EPA Director Craig Butler.
- OMA member, Navistar, Inc., will present "how to prepare for an environmental audit."
- We'll preview the post-election lame duck session.
- And we'll have updates on Ohio EPA Industrial Storm Water permitting and the federal Clean Power Plan.

REGISTER NOW! ▶

### [D.C. Circuit Court of Appeals Hears Arguments on Clean Power Plan](#)

September 30, 2016

This week the Court of Appeals for the D.C. Circuit heard oral arguments on the federal Clean Power Plan (CPP) proposed by U.S. EPA.

Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers, commented: "... The [Manufacturers' Center for Legal Action](#), joined by a manufacturing coalition of more than a dozen other national trade groups, argued that the Environmental Protection Agency (EPA) imposed regulations on electric utility companies that is not authorized by, and contradicts specific provisions of the Clean Air Act. Manufacturers' primary concerns with the CPP are its potential impacts to energy costs and the precedent the rule would have on the future regulation of other manufacturing sectors.

"While the D.C. Circuit Court's ultimate decision will be of great importance, it will likely not be the end of the litigation road for the CPP. As NAM Deputy

General Counsel Quentin Riegel noted, "this case has all the earmarks of a major case that will wind up in the Supreme Court, probably in the fall of 2017." Stay tuned. 9/29/2016

### [OMA Members Win Ohio EPA E3 Awards](#)

September 30, 2016

The latest round of Ohio EPA's Encouraging Environmental Excellence (E3) award winners [announced August 31](#) included OMA members: JLG Industries, Orrville; PPG Industries, Delaware; Scotts Miracle-Gro Co., Marysville; and 3M Company, Elyria. The E3 program recognizes an organization's exceptional achievements in environmental stewardship. Congratulations!

The 2017 award applications are requested by October 14, 2016. [More here](#). 9/29/2016

### [Ohio EPA Webinars on NPDES Permits](#)

September 30, 2016

On October 4, Ohio EPA will hold a [series of webinars](#) regarding National Pollutant Discharge Elimination System (NPDES) permits. The webinars will focus on General Permit Notice of Intent/Notice of Termination, indirect discharge permit applications, and individual permit applications. [Register here](#). 9/29/2016

### [Comprehensive Environmental Compliance Conference for Region 5](#)

September 9, 2016



#### Midwest Environmental Compliance Conference

CROWNE PLAZA CHICAGO O'HARE  
November 1-3, 2016

The second annual Midwest Environmental Compliance Conference, Chicago has another [great agenda of speakers and topics](#).

The keynote address is Next Generation Compliance by David Hindin, U.S. EPA, Office of Enforcement and

Compliance Assurance. Sessions include the following and much more:

- Flint Fallout — Beyond Drinking Water
- Environmental Justice at Federal and State Levels
- Regional Panels on Air, Water, and Enforcement
- RCRA Recent Developments
- Nexus Between EHS and Sustainability
- TSCA Legislative and Regulatory Update
- What Regulatory Reform Means in the new Electronic Age

The registration deadline for early bird pricing is September 30. Also, use code “OMA” to secure your \$50 member discount. [Learn more here.](#) 9/8/2016

### [Enter Your Environmental Stewardship Success in Ohio EPA's Award Program](#)

August 26, 2016

Each year Ohio EPA recognizes organizations in the Buckeye State for exceptional achievements in environmental stewardship through the Ohio EPA's Encouraging Environmental Excellence (E3) Program. Any business can be recognized for its commitment to environmental excellence.

EPA's Division of Environmental & Financial Assistance is [offering a free webinar](#) on September 21, 2016, about the 2017 E3 application process. The application deadline for the 2017 awards is October 14, 2016.

[Here's more information about the E3 program.](#) 8/19/2016

### [OMA Files Comments with U.S. EPA to Preserve Title V Affirmative Defense](#)

August 19, 2016

This week the OMA and business allies [filed comments and recommendations](#) with the U.S. EPA in response to the agency's proposed removal of the emergency affirmative defense provision in the Title V permit program rules.

In some cases properly designed and maintained equipment fails due to reasons beyond the control of a manufacturer. Previously U.S. EPA allowed for emergency malfunctions to fall in the affirmative defense category. U.S. EPA is now proposing to remove the affirmative defense for emergencies from the Title V operating program rules.

### [Ohio EPA to Hold Beneficial Use Rules Webinar](#)

August 12, 2016

Ohio EPA has scheduled a webinar about the [beneficial use rules](#) to give stakeholders an opportunity to ask questions and receive clarification prior to the public hearing. This webinar will be held on August 23, 2016, from 2:00 – 3:00 p.m. EST. The WebEx meeting number is 633 506 035. [Click this link to join the meeting.](#) To call in, dial 1-614-230-0229 or 1-877-372-2917, then enter the meeting ID: 46467#.

### [OMA Comments to Ohio EPA re. Startup, Shutdown, and Malfunction Emissions](#)

August 12, 2016

Last week the OMA and other business allies submitted [formal comments](#) to Ohio EPA regarding the agency's rulemaking in the response to U.S. EPA's finding of “substantial inadequacy” and state implementation plan (SIP) call to amend provisions applying to excess emissions during startup, shutdown and malfunction (SSM) periods. The OMA and its allies filed comments in 2013 to U.S. EPA in opposition to its proposed SSM SIP Call (combined at above link).

### [At last! Ohio EPA Announces New Beneficial Use Rules](#)

July 29, 2016

This week Ohio EPA released its [public notice](#) of its proposed rulemaking governing beneficial use. This [rule package](#) was started in the summer of 2012. The purpose of the new rules is to establish a regulatory program pertaining to the beneficial use of solid wastes, and other wastes, regulated pursuant to Ohio Revised Code Chapters 3734 and 6111.

The public comment period will run until August 29, 2016. A public hearing on the proposed rules will be held on August 29, 2016 at 10:30 a.m. at Ohio EPA, Lazarus Government Center, 50 W. Town Street, Suite 700, Columbus, Ohio. If you have questions or comments please contact OMA's [Rob Brundrett](#).

### [Registration open: Midwest Environmental Compliance Conference 2016](#)

July 29, 2016



## Midwest Environmental Compliance Conference

CROWNE PLAZA CHICAGO O'HARE  
November 1-3, 2016

Registration is open for the second annual [Midwest Environmental Compliance Conference](#) (MECC), sponsored by OMA, to be held November 1-3 at the Crowne Plaza Chicago O'Hare, Chicago, IL. Early bird pricing for the regulated community is \$450 through September 30.

This is the most comprehensive environmental compliance conference for the Midwest regulated community.

Please use code "OMA" when registering.

### [Contact Your Senator on Ozone!](#)

July 8, 2016

The OMA continues to work with our national allies fighting the Obama administration's onerous new ozone standards. In this, we urge all manufacturers to sign [this petition](#) asking the U.S. Senate to consider and support S. 2882, the Ozone Standards Implementation Act.

The bill provides states and manufacturers more flexibility in implementing the U.S. EPA's 2015 ozone rule, while ensuring continued improvements in air quality and more regulatory certainty to promote investments and economic growth.

### [Options for Completing RCRA C Site Identification Forms](#)

June 24, 2016

Facilities now have two additional options for completing the RCRA Subtitle C Site Identification (ID) form that is used for certain waste activity notification required by hazardous waste regulations. The new options are Site ID Form Wizard (Wizard) or U.S. EPA's myRCRAid service via its Central Data Exchange (CDX).

The Wizard is a web-based alternative geared to users who are new to the hazardous waste program and may not understand the terminology (however, anyone can use it). References to rule requirements and explanations are on each screen. Using the Wizard should produce fewer form errors and omissions, thereby decreasing Ohio EPA processing

time. Once users have entered all the required information, they can print, sign, and mail the form to Ohio EPA.

The myRCRAid service requires a CDX account and can only be used for updating existing ID numbers, although U.S. EPA plans to allow new IDs to be requested via myRCRAid. Once approved, the user selects the ID Number to update and make changes to a pre-populated Site ID Form. The form is electronically signed and submitted for Ohio EPA processing.

To access these options and get more information, go to the [Notification of Regulated Waste Activity web page](#). Questions can be answered by [Notification Coordinator Alexis Andrews](#) at (614) 644-2621.

### [Maybe You Don't Need an Air Permit!](#)

June 17, 2016

The Division of Environmental and Financial Assistance's Office of Compliance Assistance and Pollution Prevention within Ohio EPA offered this [handy advice](#) to manufacturers and businesses regarding emissions permits. The department outlines three different scenarios under which an air emission source could be exempt from permitting.

### [U.S. EPA Responds to Summit Petroleum Corp. Decision](#)

June 17, 2016

On June 3, the U.S. EPA issued a final rule, with a revision to the regulations applicable to permitting of stationary sources of air pollution under the New Source Review and title V programs in the Clean Air Act.

The final rule is in response to *Summit Petroleum Corp. v. EPA* decision, which caused the meaning of the term "adjacent" to be in flux since 2012.

For more on this important rule [see this article](#) from OMA environmental counsel Bricker and Eckler.

### [Ohio EPA Drafts Rules on Particulate Matter Standards](#)

June 17, 2016

Ohio EPA issued notice of its review of Ohio Administrative Code Rules pertaining to "Particulate Matter Standards." Major revisions include removing regulation and emission limits for air pollution sources

that are located at facilities that have been completely and permanently shut down. The rules also provide an additional compliance option for facilities that are required to use a continuous opacity monitor (COM) to determine compliance with visible emissions requirements.

In situations where a COM would not provide accurate visible emissions determinations, such as air contaminant sources that are controlled by wet scrubbers, operators may install a particulate matter continuous monitor (CEM).

The rule will also require the air contaminant source to comply with a particulate emissions limit of 0.030 pounds of particulate emissions per million British thermal units of heat input.

For more information please [review the drafts at the Ohio EPA rule website](#).

### [Ohio EPA Calls for Comments on Lead Particulates](#)

June 17, 2016

Ohio EPA has made available a draft for comment of amended rules in Ohio Administrative Code (OAC) chapter 3745-71, "Lead Emissions." This chapter includes standards for ascertaining, defining, and measuring ambient air quality for lead particulates.

Specifically, the Division of Air Pollution Control (DAPC) has requested comments on the draft rules and the draft business impact analysis (BIA) before DAPC proposes the rules to the Joint Committee on Agency Rule Review (JCARR).

DAPC will accept comments through Monday, July 18, 2016. Please see the [public notice](#), [draft business impact analysis](#), [synopsis of changes](#) and other documents at these links. Contact OMA's [Rob Brundrett](#) with questions.

### [Ohio EPA Announces Permit to Install and NPDES Revisions](#)

June 17, 2016

Ohio EPA is [soliciting input](#) on draft rule revisions for its Permit to Install (PTI) program rules and one existing National Pollutant Discharge Elimination System (NPDES) program rule.

For more information you can review the rules and supporting documents at the [Ohio EPA rule website](#). Please contact OMA's [Rob Brundrett](#) for more information about the stakeholder feedback process.

### [Breathe Easy Central Ohio?](#)

June 3, 2016

This week, the State of Ohio [held a public hearing](#) to take comments on a proposal whereby the state would ask U.S. EPA to recognize that air quality in the Columbus region meets the federal air quality standard for ozone.

Data collected from 2012-2014 demonstrates that the region's air quality meets the former 75 parts per billion (ppb) standard, the standard until U.S. EPA lowered it to 70 ppb last fall. The region includes Delaware, Fairfield, Franklin, Knox, Licking and Madison counties.

This action would erase central Ohio's "nonattainment" designation. In nonattainment areas Ohio EPA has a duty to ensure that air quality is improving when issuing new permits. The permitting process is more stringent in nonattainment areas.

If U.S. EPA moves central Ohio into the attainment category, the region's manufacturers will benefit in the permitting process



**Environment Legislation**  
Prepared by: The Ohio Manufacturers' Association  
Report created on October 17, 2016

- HB61**      **LAKE ERIE FERTILIZER-DREDGING** (BUCHY J, HALL D) To generally prohibit the application of fertilizer or manure in Lake Erie's western basin on frozen ground or saturated soil and during certain weather conditions, and to prohibit a person, beginning July 1, 2020, from depositing dredged material in Ohio's portion of Lake Erie and its direct tributaries.  
*Current Status:* 3/17/2015 - Referred to Committee Senate Agriculture  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-61>
- HB64**      **OPERATING BUDGET** (SMITH R) To make operating appropriations for the biennium beginning July 1, 2015, and ending June 30, 2017, and to provide authorization and conditions for the operation of state programs.  
*Current Status:* 6/30/2015 - **SIGNED BY GOVERNOR**; eff. 6/30/15; certain provisions effective 9/29/15, other dates  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-64>
- HB101**      **HAB MITIGATION** (HALL D) To establish requirements governing the training of employees of publicly owned treatment works and public water systems to monitor and test for harmful algae, the development of emergency plans by certain public water systems to respond to harmful algal blooms, and the development of an early warning system for harmful algal blooms.  
*Current Status:* 3/24/2015 - House Agriculture and Rural Development, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-101>
- HB214**      **PUBLIC IMPROVEMENT-PIPING MATERIAL** (THOMPSON A) To restrict when a public authority may preference a particular type of piping material for certain public improvements.  
*Current Status:* 5/24/2016 - House Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-214>
- HB349**      **STATE EMISSIONS PLAN** (SMITH R, GINTER T) To require the Environmental Protection Agency to submit a state plan governing carbon dioxide emissions to the General Assembly prior to submitting it to the United States Environmental Protection Agency, and to declare an emergency.  
*Current Status:* 12/8/2015 - House Energy and Natural Resources, (Third Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-349>
- HB377**      **PRIVATE EMPLOYEES-REQUIRED DUES** (BRINKMAN T) To prohibit any requirement that employees of private employers join or pay dues to any employee organization and to establish civil and criminal penalties against employers who violate that prohibition.  
*Current Status:* 12/1/2015 - House Commerce and Labor, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-HB-377](#)

- HB512**      **MBR-WATER SYSTEM TESTING** (GINTER T) To establish requirements governing lead and copper testing for community and nontransient noncommunity water systems.  
*Current Status:* 6/9/2016 - **SIGNED BY GOVERNOR**; eff. 9/9/16  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-512>
- HB522**      **INJECTION WELLS** (PHILLIPS D) To prohibit injection of brine and other waste substances except in class I injection wells, to prohibit the conversion of oil and gas wells, to require municipal or township approval prior to the issuance of an oil or gas well permit, and to levy a fee on the injection of brine and other waste substances into a class I injection well.  
*Current Status:* 4/26/2016 - Referred to Committee House Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-522>
- HB541**      **STATE AGENCY-CLEAN POWER PLAN** (LANDIS A) To prohibit any state agency from implementing the federal "Clean Power Plan."  
*Current Status:* 5/4/2016 - Referred to Committee House Energy and Natural Resources  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-541>
- HB551**      **SANITARIANS-FOOD INSPECTIONS** (HILL B) To require the Director of Agriculture and the Director of Health to adopt rules governing reviews of registered sanitarians and sanitarians-in-training who conduct inspections of retail food establishments and food service operations.  
*Current Status:* 5/17/2016 - Referred to Committee House State Government  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-551>
- HCR11**      **GOVERNOR-WATER QUALITY EFFORTS** (HALL D) To commend Governor John Kasich on his efforts to improve the water quality of Lake Erie and to affirm the Governor's ability to form an interstate compact with other states in furtherance of this objective.  
*Current Status:* 1/26/2016 - Senate Agriculture, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-11>
- HCR27**      **WATER QUALITY IMPROVEMENT** (PATTERSON J, HILL B) To commend Ohio's agriculture community, educational institutions, and environmental advocacy organizations on their efforts to improve the water quality of Lake Erie and its tributaries and to encourage them as well as state, county, and municipal leaders to continue to work towards continued water quality improvement.  
*Current Status:* 9/30/2015 - Referred to Committee House Agriculture and Rural Development  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HCR-27>
- SB1**      **GREAT LAKES-HARMFUL ALGAE** (GARDNER R, PETERSON B) To transfer the administration and enforcement of the Agricultural Pollution Abatement Program from the

Department of Natural Resources to the Department of Agriculture.

**Current Status:** 4/2/2015 - **SIGNED BY GOVERNOR**; eff. 7/3/15

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-1>

- SB16**      **WATERSHEDS-FERTILIZER APPLICATION** (BROWN E) To require applicators of fertilizer or manure to comply with specified requirements and to authorize the Director of Environmental Protection to study and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.  
**Current Status:** 2/10/2015 - Senate Agriculture, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-16>
- SB46**      **LAKE ERIE DRILLING BAN** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.  
**Current Status:** 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-46>
- SB47**      **DEEP WELL BRINE INJECTION PROHIBITION** (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.  
**Current Status:** 5/11/2016 - Senate Energy and Natural Resources, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-47>
- SB114**      **MICROCYSTIN LEVELS-PUBLIC WATER** (SKINDELL M) To establish requirements and procedures pertaining to levels of microcystin in public water systems.  
**Current Status:** 4/13/2016 - Senate Health and Human Services, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-114>
- SB150**      **MOTOR FUEL DISPOSAL** (HITE C) To create a qualified immunity for the dispensing of incompatible motor fuel.  
**Current Status:** 6/24/2015 - Senate Civil Justice, (Second Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-150>
- SB269**      **PUBLIC WATER SYSTEM-LEAD CONTAMINATION** (SCHIAVONI J) To require a public water system to provide notice of lead contamination not later than thirty days after becoming aware that lead contamination may effect the system's drinking water.  
**Current Status:** 4/12/2016 - Senate Energy and Natural Resources, (First Hearing)  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SB-269>
- SB293**      **MBR-NATURAL RESOURCES** (BALDERSON T) To revise specified laws relating to natural resources.  
**Current Status:** 6/14/2016 - **SIGNED BY GOVERNOR**; eff. 9/14/16  
**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA131-SB-293](#)

**SCR18**      **U.S. EPA-RACE COMPETITION VEHICLES** (LAROSE F) To urge the Administrator of the United States Environmental Protection Agency to retract proposed regulations concerning competitive race vehicles that are used solely for competition.

**Current Status:** 4/12/2016 - Referred to Committee Senate Energy and Natural Resources

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-SCR-18>