



Environment Committee

October 23, 2014

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2014 Environment
Committee Calendar

Thurs., Oct. 23, 2014

OMA Environment Committee Meeting Sponsor:



One Firm WorldwideSM



OMA Environment Committee

October 23, 2014

Agenda

Welcome & Roll Call	Chairman Joe Bulzan, RockTenn
Guest Presentation	Tonja Rammel, EHS Manager, Crown Equipment Corporation
Counsel's Report	Frank Merrill, Bricker & Eckler
Guest Speaker	Craig Butler, Director, Ohio EPA
Public Policy Report	Rob Brundrett, OMA Staff
Lunch	

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

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

Thanks To Today's Meeting Sponsor:



Craig W. Butler, Director

On Feb. 21, Governor Kasich appointed Craig Butler as director of the Ohio Environmental Protection Agency. Butler has served as interim director of the Agency since early January. 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 board 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 also graduated from Ohio University with a Masters in Environmental Science.



Participant Biography

Demographic Information:

Tonja Rammel, EHS Manager

Crown Equipment Corporation

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Professional Background and Experience:

Tonja Rammel is the EH&S Manager for Crown Equipment Corporation in New Bremen, Ohio, the largest manufacturer of electric lift trucks in the world. Her job responsibilities include environmental reporting, permitting, employee and contractor safety, industrial hygiene monitoring, environmental sustainability activities, implementing and maintaining safety programs and ISO 14001. She has been working in the environmental and safety field for over 20 years and has been employed by Crown for 9 years. She has recently been responsible for Crown's New Knoxville facility receipt of the Ohio EPA first ever Gold Award for Encouraging Environmental Excellence (E3) Award. As a result of this award Crown subsequently received the 2014 Most Valuable Pollution Prevention (MVP2) Award from the National Pollution Prevention Roundtable (NPPR), in Washington DC. She has been a speaker at the Sustainable Manufacturing Conference, Ohio EPA Compliance Seminar and the Zero Waste to Landfill Workshop sponsored by Crown. She serves as a board member for the Society of Ohio Safety Engineers (SOSE) and Sustainable Manufacturing Network.



Crown- Ohio EPA E3 Award

E3 Award



Director Butler Honors Crown Equipment with First E3 Gold Recognition

Crown Equipment Corporation

- **Largest Manufacturer of Electric Lift Trucks**
- **5th Largest Manufacturer of all Lift Trucks Worldwide**
- **Headquartered in New Bremen, OH**
- **Privately Held Company, 3rd Generation Owners**
- **Manufacturing Facilities:**
 - Ohio (7)
 - Indiana (2)
 - North Carolina (1)
 - International operations
 - Germany, Australia, Mexico, China



Crown: What We Do

Vertically Integrated Manufacturing

- Heavy Fabrication
- Welding
- Motor Manufacturing
- Machining
- Plating
- Electronics
- Wire Harnesses
- Painting
- Assembly



Crown Sustainable History

Our history as a sustainable company has been proven throughout the years

1993: State of Ohio's Pollution Prevention Award

2003: USEPA National Waste Minimization Partner

2008: Ohio Award for Outstanding Achievement in Environmental Stewardship

2009: Zero Landfill Achievement

2010: ISO 14001 Achieved

2010: Ohio Award for Outstanding Achievement in Environmental Stewardship

2011: Zero Landfill Achievement

2012: ISO 14001 Achieved

2014: E3 Gold Status Award

2014: Most Valuable Pollution Prevention Award (MVP2)

Award Criteria

E3 Award Criteria

- Pass a comprehensive compliance check
- Implement and maintain an environmental management system
- Commit to continuous environmental improvement
- Commit to submitting an annual compliance report

Management Commitment

- **Senior Management Commitment**
- **Regulatory and third party registrar support**
 - Ohio EPA – Office of Compliance Assistance and Pollution Prevention
- **Life Cycle Analyst**
 - Evaluator of the ecological and human health impact of our product over its life cycle



Return on Investment

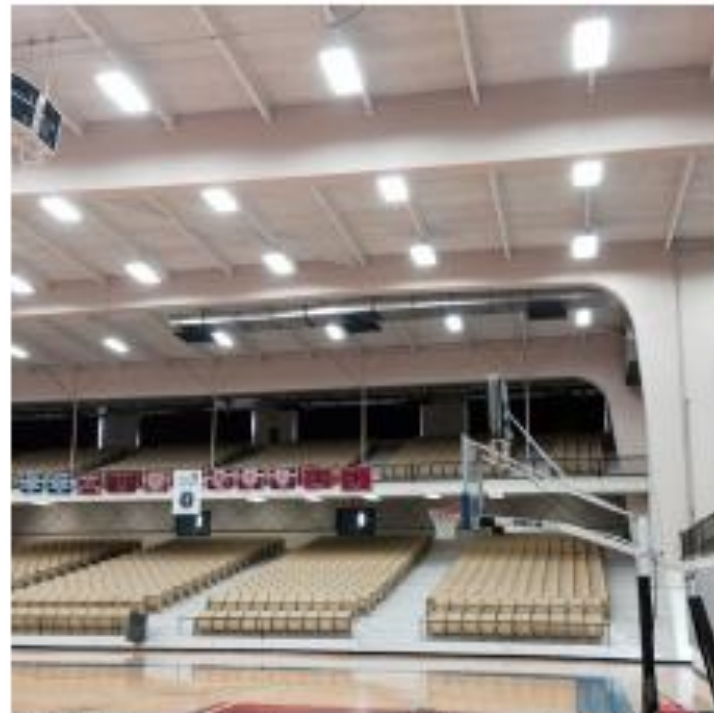
- Zero Landfill Implementation
- Lighting Upgrades

Before



HID lighting (Metal Halide & Mercury Vapor)

After



T5 fixtures (48 8-Lamp, 22 4-Lamp, 32 3-Lamp)

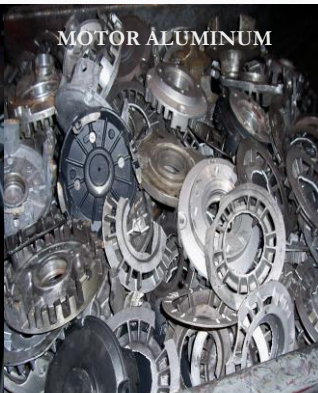
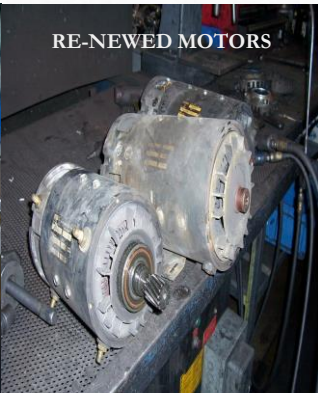
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Benefits of E3 Award

- **Regulatory flexibility**
- **Enhance relations with community and regulators**
- **Bring visibility of environmental effort into our business and state-wide recognition**
- **Certificate of Recognition signed by the Director of the Ohio EPA and E3 Flag**
- **Annual members meeting with the Director of the Ohio EPA**



Challenges







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COUNSEL'S REPORT

Frank L. Merrill, Bricker & Eckler LLP, Counsel to the OMA
October 23, 2014

A. ADMINISTRATIVE

1. Rotation of Ohio EPA Inspectors

On September 30, 2014, Director Butler announced that Ohio EPA will be rotating facility inspectors and permit writers to provide a more uniform approach to inspections and to enhance customer service. According to Bob Hodanbosi, DAPC Chief, the purpose of rotating staff is to make sure Ohio EPA is doing its job in a fair and responsible way and to provide the regulated community with the best customer service. For DAPC, the inspectors and permit writers will be on a five-year rotation cycle.

OMA has a meeting with Director Butler on October 31, 2014 to discuss this change and its impact on OMA members.

2. Draft Revisions to Air Toxics Rule (OAC 3745-11)

As a result of an ERAC and Tenth District Court of Appeals decision, Ohio EPA's "toxic air contaminant" rule was remanded to Ohio EPA to re-examine decisions relating to compounds demonstrated toxic through non-inhalation routes of exposure and compounds not used or produced in Ohio. Ohio EPA reviewed all 329 compounds that were not included in the original rule because they were listed as "remove." Seventy-five of these 329 compounds were selected for further review because they were removed from the original list for one of the reasons rejected by the court (i.e., inhalation only toxicity information or no longer used in the U.S.). As a result, Ohio EPA has proposed to add the following five (5) compounds to the rule:

- Chlorine trifluoride;
- Lithium hydride;
- Subtilisins;
- 2,4,6-trinitrotoluene; and
- Triorthocresyl phosphate.

Comments on the proposed additions were accepted until September 28, 2014.

3. Proposed Changes to ORC 6111.99

In HB490 (Rep. Hall), which is an ODNR bill known as the "brine disposal bill", Ohio EPA has proposed revisions to ORC 6111.99 to incorporate a felony provision for certain "knowing" violations of Ohio Rev. Code Chapter 6111 (Ohio's Water Pollution Control Act). HB490 would also make certain "reckless" violations misdemeanors. Currently, there is no identified *mens rea* in ORC 6111.99, unlike the criminal violation sections of

other environmental statutes, and Ohio EPA currently cannot bring a felony action against an intentional violator. Such cases are now referred to the Department of Justice to be prosecuted under the federal Clean Water Act.

4. Universal Waste

On April 9, 2014, OMA representatives met with Ohio EPA to re-activate discussions on the possible expansion of the scope of Ohio's universal waste rule, which is an exception from the hazardous waste rules. OMA had petitioned Ohio EPA approximately two years ago to add paint residue waste to the list of universal waste, as is the practice in Texas. Ohio EPA never formally acted on OMA's request and never responded in writing. We were told informally by then Director Nally that it would not happen in Ohio, just because they did it in Texas.

Ohio EPA is now re-evaluating this request and has asked OMA to provide additional information on this request, including industries that could possibly benefit from such a listing and to explain the benefit. OMA representatives and members had a conference call on September 10, 2014 with Pam Allen of Ohio EPA regarding this issue, and OMA will be drafting language for Ohio EPA's review to implement a regulatory change to add paint and paint waste to the designation of universal waste.

5. Ohio EPA's GHG Permitting Post-UARG

Ohio EPA is interpreting the situation that the Ohio GHG rule has been effectively rescinded by the US Supreme Court decision in *UARG*. For non-"anyway" sources there are no GHG emission limits or requirements. If you have an existing Title V permit with GHG terms and conditions and GHG is the only pollutant that triggered Title V permit, you can submit a request to Ohio EPA to have your Title V permit converted to an Ohio EPA air permit to install and operate (PTIO). Also, Ohio's GHG rule is not part of the SIP and approved Title V program so no need to go through an approximately one year process to have the GHG emission limits/rules removed. On August 26, 2014, Ohio EPA issued a guidance document (Engineering Guide #85) covering this issue (see copy attached).

6. Ohio EPA Early Stakeholder Outreach Proposals

a. Beneficial Use Rules

On May 18, 2014, Ohio EPA issued an Early Stakeholder Outreach (ESO) proposal titled "Beneficial Use: The 'Co-Product' Concept". Ohio EPA is proposing to segregate certain wastes (e.g., steel slag, foundry sand, etc.) into categories of "co-products" and "by-products" for regulation of further disposition involving land application or burning.

Tennessee and Nebraska have recently amended their statutes to exclude "slag" from the definition of solid waste. Michigan has amended its solid waste statute to exclude "beneficial reuses" of numerous industrial by-products (e.g., coal ash, cement kiln dust, foundry sand).

b. Nutrient Water Quality Rules (OAC 3745-1).

In March 2013, Ohio EPA issued an Early Stakeholder Outreach (ESO) notice regarding potential rulemaking that will address the need and the most appropriate means to protect beneficial uses of water from adverse impacts due to cultural eutrophication, which is the result of releasing large amounts of nutrients into rivers and lakes. Left unchecked cultural eutrophication can result in harmful algae blooms, the depletion of dissolved oxygen and fish kills.

Ohio EPA has established a Nutrient Technical Advisory Group (TAG) to discuss possible regulation of nutrient loadings and discharges. OMA has a representative on this nutrient TAG. U.S. EPA is also active in this space and is encouraging all states to address nutrient pollution through multiple lines of work, including the adoption of state strategies and effective regulations. If not addressed on the state level, U.S. EPA may step in to fill the void.

The Nutrient TAG has proposed a Stream Nutrient Assessment Procedure (SNAP) that is much more flexible than the original trophic index criterion (TIC) proposal. There are no set in-stream numerical standards for loading and permitting limits (such as phosphorus). The SNAP process allows companies to evaluate the watershed and any contaminants causing problems before going to the next step.

c. Ohio EPA 401 Water Quality Certifications (WQC) for Nationwide Permits (NWPs)

Ohio EPA has proposed to revise the 401 WQCs for NWPs to include a qualitative assessment of the physical and biological characteristics for each undesignated perennial and intermittent stream with more than sixty linear feet of projected impact. Ohio EPA has not determined what type of "qualitative assessment" will be required but could include a primary headwater habitat evaluation form (HHEI), which Ohio EPA previously proposed in its water quality rule package.

A stakeholder forum on this issue was convened on October 20, 2014.

B. U.S. EPA ACTIVITIES OF NOTE

1. Ozone Standards

By court order, U.S. EPA has until the end of this year to issue a draft ozone rule. In 2008 the Bush Administration set a new ozone limit at 75 ppb, which was more stringent than the previous limit, but weaker than the 60 to 70 ppb limit recommended by U.S. EPA's scientific advisory panel. OMA and NAM issued a study showing that a tighter ozone limit could reduce Ohio's gross state product by \$240 billion and cost more than 218,000 jobs through 2040.

2. Startup, Shutdown and Malfunction (SSM) Rule

On September 5, 2014, U.S. EPA proposed to eliminate the allowance of excess emissions during periods of startup, shutdown and malfunctions based on a recent federal court decision invalidating an affirmative defense provision in the Portland cement NESHAP. The Court ruled that the affirmative defense for excessive emissions during SSM inappropriately vested U.S. EPA, and not the courts, with authority to adjudicate violations under the Clean Air Act. Comments on the proposed rule are due by November 6, 2014.

3. U.S. EPA's "Clean Power Plan"

On June 2, 2014, U.S. EPA proposed limits on carbon dioxide emissions from coal-fired power plants. The plan would cut carbon emissions from existing coal-fired power plants by up to 30% by 2030 compared with 2005 levels. Under the proposal, power plants in Ohio would need to achieve a 28% reduction in carbon emissions per megawatt hour of electricity by 2030.

Under the draft rule, the EPA would let states and utilities meet the new standard with different approaches mixing four options including energy efficiency, shifting from coal to natural gas, investing in renewable energy and making power plant upgrades. Other compliance methods could include offering discounts to encourage consumers to shift electricity use to off-peak hours.

The timeline for the rulemaking is as follows:

- U.S. EPA adopts state guidelines – June 2, 2015
- Ohio required to submit plan – July 1, 2016
- Ohio must develop rules to implement the plan – July 1, 2017

U.S. EPA has extended the comment period of the proposed rules to December 1, 2014. OMA met with officials from Ohio EPA on October 1, 2014 to discuss Ohio EPA's proposed comments.

C. JUDICIAL

I. State Cases

1. *Board of Commissioners of Fairfield County v. Nally*

(Ohio Supreme Court, Case No. 2013-1085). This case involves Ohio EPA's use of "total maximum daily load" (TMDL) limits as a basis for a limit in a wastewater discharge permit (commonly referred to as "NPDES permits"). The TMDLs are established by Ohio EPA for stream segments and watersheds and then sent to U.S. EPA for approval under the federal Clean Water Act. There is no public comment period or public input process for the establishment of a TMDL.

Oral argument on the appeal was heard by the Ohio Supreme Court on June 25, 2014. A decision has not yet been issued.

II. Federal Cases

1. *Utility Air Regulatory Group v EPA* (U.S. Supreme Court, June 23, 2014).

On June 23, 2014, the U.S. Supreme Court decided *Utility Air Regulatory Group v. Environmental Protection Agency* ("*UARG v. EPA*"), in which the U.S. Supreme Court struck down the U.S. Environmental Protection Agency's ("EPA") "tailoring rule," but otherwise reaffirmed the EPA's authority to regulate greenhouse gases ("GHGs") under the Clean Air Act ("*CAA*"). The decision marked the first review of EPA's efforts to regulate GHGs since a 2007 Supreme Court decision allowing EPA to regulate GHGs.

The regulations at issue in *UARG v. EPA* stemmed from the Supreme Court's 2007 decision in *Massachusetts v. Environmental Protection Agency*, which allowed EPA to regulate emissions of GHGs from new motor vehicles if it found that they endangered public health or welfare. EPA made such a finding and set limits on emissions from new vehicles. Subsequently, EPA determined, in the regulations at issue in *UARG v. EPA*, that its regulation of GHGs from motor vehicles also triggered mandatory regulation of GHGs from large stationary sources under the Prevention of Significant Deterioration ("PSD") and Title V programs of the CAA.

Under the CAA, the PSD and Title V programs cover all sources that can annually emit 100 or 250 tons of an air pollutant. However, these statutory thresholds were designed for "conventional" pollutants, while GHGs are typically emitted in much greater amounts. Thus, if the statutory thresholds were applied literally to GHG emissions, millions of small sources, such as schools, hospitals, and churches would be subject to the PSD and Title V program permitting requirements. The EPA deemed this outcome as an "absurd result" and modified the statutory

emission thresholds as they applied to GHGs, so that only large industrial sources would be subject to the permitting requirements, known as the “tailoring rule.”

In a 5-4 part of the decision, the Court rejected EPA’s rulemaking as impermissible, holding that the CAA’s PSD and Title V permitting requirements could not be applied to sources based solely on their GHG emissions. Additionally, the Court rejected the EPA’s “tailoring rule” as at odds with the clear statutory text. However, in a 7-2 part of the decision, the Court determined that EPA may nonetheless regulate GHG emissions from sources *already* subject to regulation under the PSD and Title V programs (also known as “anyway” sources).

In practice, large stationary sources that are already regulated under the PSD and Title V programs will have their GHG emissions regulated. However, sources that emit *only* GHGs, and not other pollutants triggering the PSD and Title V requirements, will not become subject to EPA’s regulatory authority under these provisions. As Justice Scalia noted in announcing this decision, the ruling allows EPA to regulate sources responsible for 83% of GHG emissions from stationary sources, which is just short of the 86% that would have been regulated under EPA’s “tailoring rule”.

Finally, it is important to note that this decision only applies to the PSD and Title V provisions of the CAA. It does not bar the EPA from regulating GHGs from new or existing sources under Section 111 of the CAA, as the EPA recently proposed to do.



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

September 30, 2014

Dear Stakeholder:

Making sure we are doing our job in a fair and responsible way is important to us at Ohio EPA. In fact, being clear and consistent about Agency standards is our highest priority. In our ongoing effort to provide you with the best customer service we can at Ohio EPA, we will start rotating staff throughout our districts and divisions this fall.

We believe staff rotation will enhance the uniformity of our inspections while also providing new perspectives and ideas – greatly improving the effectiveness of our efforts. And while some of our staff will be rotating, management in each division and district should remain the same so you should always have someone familiar with whom to discuss issues if they arise.

As many of you know, creating professional development opportunities in any area of business is essential to maintaining a well-rounded organization. Many of you in the private sector offer your employees these opportunities and we are implementing a similar strategy in an effort to streamline our operations and improve the depth and breadth of our employees' knowledge.

By providing a wider range of experiences to our inspectors, we believe you will benefit from a more well-rounded customer service experience.

An Agency division or district representative will be in contact with you to provide additional details on how staff rotation will be occurring for individual facilities. If you have any questions about our staff rotation initiative, please contact the appropriate division program chief.

Sincerely,

A handwritten signature in black ink that reads "Craig W. Butler". The signature is fluid and cursive, with the first name "Craig" and last name "Butler" clearly legible.

Craig W. Butler
Director

Engineering Guide #85

July 2014 GHG Air Pollution Permitting Changes

Question:

On June 23, 2014, the U.S. Supreme Court issued a decision addressing stationary source permitting requirements for greenhouse gases (GHGs). See: http://www.supremecourt.gov/opinions/13pdf/12-1146_4q18.pdf. Subsequently, on July 24, 2014, Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation, U.S. EPA issued preliminary guidance concerning the impact of the decision on various aspects of the court decision. See: <http://www.epa.gov/nsr/documents/20140724memo.pdf>. How does the decision and guidance impact Ohio EPA's permitting program as it relates to GHGs?

Answers:

The Ohio EPA, Division of Air Pollution Control has completed a review of the U.S. Supreme Court decision and U.S. EPA's subsequent guidance. This review has resulted in decisions being made concerning how these documents impact Ohio EPA's GHG permitting program. This guidance document is designed to provide answers to common questions concerning the changes to the GHG permitting program.

In order to provide answers without rewriting U.S. EPA's guidance, DAPC decided to include, in this document below, the text from U.S. EPA's July 24th guidance followed by Ohio EPA's comments. Due to the conversion of U.S. EPA's PDF document to this Word document, there may be some errors in the conversion. If there are any questions about the text of U.S. EPA's document, please refer to an original copy of that document. Ohio EPA's comments are imbedded within U.S. EPA's document via text boxes following U.S. EPA's discussion on each issue.

----- Beginning of U.S. EPA's Guidance Document -----

SUBJECT: Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court's Decision in *Utility Air Regulatory Group v. Environmental Protection Agency*

FROM: Janet G. McCabe, Acting Assistant Administrator
Office of Air and Radiation

Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Regional Administrators, Regions 1-10

EG #85 - July 2014 GHG Air Pollution Permitting Changes

On June 13, 2014, the United States Supreme Court issued a decision addressing the application of stationary source permitting requirements to greenhouse gases (GHG). *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)* (No. 12-1146). The EPA actions at issue in the case included those generally known as the “Tailoring Rule” and the “Timing Decision.” In very brief summary, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for purposes of determining whether a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) or title V permit. The Supreme Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of conventional pollutants, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). The EPA is continuing to examine the implications of the Supreme Court’s decision, including how the EPA will need to revise its permitting regulations and related impacts to state programs.

There will be further federal court action to apply the decision, but we know that you, as well as our partner agencies in state, local and tribal governments, have questions regarding how the decision affects PSD and title V permitting requirements in the meantime. Some of these questions have near term implications, in particular those related to pending PSD and title V permitting actions. The EPA intends to actively engage with stakeholders on time-sensitive actions, such as permit applications, state program submissions, and stationary source construction that may no longer need to meet certain permitting requirements. The EPA is likely to take other steps in the longer term and to respond to further court action in this case as needed.

Pending further EPA engagement in the ongoing judicial process before the District of Columbia Circuit Court of Appeals (D.C. Circuit), the EPA plans to act consistent with its understanding of the Supreme Court's decision. This memorandum has two parts. First, it explains how the EPA intends to proceed at this point with respect to permit applications for Tailoring Rule "Step 2" sources and PSD modifications that were previously classified as major based solely on GHG emissions (thus requiring that the sources get permits). Second, this memorandum provides preliminary guidance in response to several questions regarding ongoing permitting requirements for “anyway sources” and some additional issues pertaining to permitting requirements for step 2" sources. We believe that the status of pending permit applications and whether certain projects need to apply for PSD and title V permits in light of the Supreme Court decision may be the most immediate questions.

1. Permit Applications for Sources and Modifications Previously Classified as "Major" Based Solely on Greenhouse Gas Emissions ("Step 2" Sources)

In order to act consistent with its understanding of the Supreme Court's decision pending judicial action to effectuate the final decision, the EPA will no longer require PSD or title V permits for Step 2 sources. More specifically, the EPA will no longer apply or enforce federal regulatory provisions or the EPA-approved PSD State Implementation Plan (SIP) provisions that require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g., 40 CFR 52.21(b)(49)(v)). Nor does the EPA intend to continue applying regulations that would require that states include in their SIP a requirement that such sources obtain PSD permits.



Ohio EPA will apply this guidance and will no longer require PSD or Title V permits for Step 2 sources.

EG #85 - July 2014 GHG Air Pollution Permitting Changes

Similarly, the EPA will no longer apply or enforce federal regulatory provisions or provisions of the EPA-approved title V programs that require a stationary source to obtain a title V permit solely because the source emits or has the potential to emit greenhouse gases above the major source thresholds (e.g., the regulatory provision relating to GHG under the definition of “subject to regulation” in 40 CFR 71.2). The EPA also does not intend to continue applying regulations that would require title V programs submitted for approval by the EPA to require that such sources obtain title V permits.

Thus, the EPA does not intend to continue processing PSD or Title V permit applications for Step 2 sources or require new applications for such permits in cases where the EPA is the permitting authority.



Ohio EPA will no longer require stationary sources to obtain a Title V permit due solely to their GHG emissions. The rule requirement (part of OAC rule 3745-77-11) to obtain Title V permits for these sources ceased to be effective due to the Supreme Court decision. See OAC paragraph 3745-77-11(D).

In summary, in order to act consistently with its understanding of the Supreme Court’s decision pending judicial action to effectuate the final decision, the EPA will not apply or enforce the following regulatory requirements:

- Federal regulations or the EPA-approved PSD SIP provisions that require a stationary source to obtain a PSD permit if GHG are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g., 40 CFR 52.21 (b)(49)(v)).
- Federal regulations or provisions in the EPA-approved title V programs that require a stationary source to obtain a title V permit solely because the source emits or has the potential to emit GHG above the major source thresholds.

As discussed further below, we recommend that Regional Offices confer with state, local and tribal permitting authorities and permit applicants to discuss how to handle permit applications pending with those agencies.

2. Preliminary EPA Views Regarding Other Questions Raised by Supreme Court Decision

The remainder of this memorandum is intended simply to provide a clear statement of the EPA's present understanding of the implications of the Supreme Court's decision on additional subjects regarding permitting requirements. The following is not intended to represent a definitive or final statement by the agency on these issues. In fact, the EPA expects that some changes or refinements to the following guidance may result as the

EG #85 - July 2014 GHG Air Pollution Permitting Changes

EPA examines these matters further in the course of judicial proceedings, discussions with stakeholders, and forthcoming action with respect to permit applications, issued permits, and approval of state programs.¹

Next Steps in the Legal Process Following the Supreme Court's Decision

Additional steps have yet to occur in the U.S. Courts to implement the Supreme Court decision. Since no party requested reconsideration of the Supreme Court decision by the applicable deadline under Supreme Court rules, the EPA expects that the Supreme Court's decision will become final shortly. This will be the case as soon as the Supreme Court sends its decision down to the D.C. Circuit for further proceedings. After this occurs, we expect that the D.C. Circuit will issue an order that leads to a process that identifies particular parts of the regulations adopted in the Tailoring Rule and earlier EPA regulations that the EPA must revise (remanding the regulations) or that are struck down (vacating the regulations). The EPA and the Department of Justice expect to soon begin a process of consulting with the parties to the litigation regarding this step of the court process.

PSD Construction Permit Requirements

Sources Triggering PSD Based on Pollutants Other Than GHG

The Supreme Court upheld application of the BACT requirement to greenhouse gas emissions from new and modified sources that trigger PSD permitting obligations on the basis of their emissions of air pollutants other than GHG (also known as "Step 1" or "anyway sources"). In the EPA's current view, Step 1 sources remain subject to the PSD BACT requirement for GHG, as well as other pollutants, if they emit those pollutants at or above certain thresholds. With respect to new "anyway sources," the EPA intends to continue applying the PSD BACT requirement to GHG emissions if the source emits or has the potential to emit 75,000 tons per year (tpy) or more of GHG on a carbon dioxide equivalent (CO₂e) basis. With respect to modified "anyway sources," the EPA intends to continue applying the PSD BACT requirements to GHG if both of the following circumstances are present: (1) the modification is otherwise subject to PSD for a pollutant other than GHG; (2) the modification results in a GHG emissions increase and a net GHG emissions increase equal to or greater than 75,000 tpy CO₂e and greater than zero on a mass basis.



Ohio EPA will utilize the 75,000 tpy modification threshold to determine when BACT applies to GHGs for "anyway" sources. Both netting and synthetic minors can be used to avoid GHG BACT.

¹ Since it provides general guidance on these issues, the remainder of this memorandum does not itself create any rights or impose any new obligations or prohibitions, and is not intended to be a basis for enforcement actions. The guidance that follows from this point may not be appropriate for all situations, and EPA retains the discretion to approach issues differently than recommended here in specific situations that may arise.



Ohio EPA believes that “anyway” sources that obtained a PSD permit because of non GHG emissions and received BACT requirements for GHG will need to continue to comply with those requirements. The GHG BACT requirements, in this case, will be incorporated into the permittee’s Title V permit.

The part of the Supreme Court opinion that affirmed application of BACT to greenhouse gases at "anyway sources" also noted that the EPA may limit application of BACT to greenhouse gases to those situations where a permit applicant's source has the potential to emit GHG above a specified threshold (or *de minimis*) level. The Supreme Court explained that the EPA would need to justify its *de minimis* threshold on proper grounds. In the meantime, to ensure compliance with the Clean Air Act at present, the EPA intends to continue applying BACT to GHG at "anyway sources" and processing PSD permit applications for "anyway sources" using a 75,000 tpy CO₂e threshold to determine whether a permit must include a BACT limitation for greenhouse gases, pending further developments. Such further developments may include action by the D.C. Circuit input received by the EPA from stakeholders in connection with the court process, experience applying this approach in individual permitting actions, and further EPA action to consider whether to promulgate a *de minimis* level and what level would be appropriate. Thus, for now, the EPA believes the best course of action with respect to "anyway sources" is to continue applying existing regulations.

Ohio EPA will continue to require new or modified “Step 1” or “anyway sources” to employ BACT for GHG sources. Ohio EPA will continue to use the 75,000 tpy CO₂e threshold to determine if the permits need to include BACT for GHGs until such time as U.S. EPA issues a revised threshold.

Sources Triggering PSD Solely Based on GHG Emissions

Subject to the considerations discussed below, headquarters recommends that Regional Offices confer with state, local, and tribal permitting authorities and permit applicants to explore their plans to respond to the Supreme Court’s decision. These conversations should examine whether, in light of the Supreme Court decision, there is flexibility under state, local and tribal laws to determine that Step 2 sources no longer are required to obtain PSD permits prior to the completion of any actions to repeal or revise such

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regulations to in light of the Supreme Court decision. The EPA understands that some states have provisions in their laws that may automatically modify state-law permitting requirements based on the Supreme Court's decision. To the extent such provisions were approved by the EPA as part of a SIP, Regional Offices should encourage such states to contact the EPA to discuss implementation of those provisions. We do not read the Supreme Court decision to preclude states from retaining permitting requirements for sources of GHG emissions that apply independently under state law even where those requirements are no longer required under federal law.

Regional Offices should be mindful that even if the EPA is not requiring Step 2 sources to obtain a PSD permit under federal law, such sources likely have a continuing obligation to obtain minor source construction permits under the applicable SIP as a result of their emissions of non-GHG pollutants. Thus, we recommend discussing with state, local, and tribal permitting authorities and permit applicants, the feasibility of converting pending permit applications into minor source permit applications and proceeding on that basis where appropriate.

We plan to provide additional views in the future with respect to Step 2 sources that have already obtained a PSD permit, but our general thinking at this time is that it may be appropriate to ultimately remove GHG BACT limitations from such permits and to convert such permits into minor source permits where this is feasible and minor source requirements remain applicable. We encourage Regional Offices to contact states to discuss their ability to proceed consistent with the outcome of the Supreme Court decision on individual permitting matters.



During the time when PSD was triggered due solely to GHG emissions, Ohio EPA issued three of these PSD permits. Ohio EPA believes that the GHG BACT limitations and supporting terms and conditions in these permits have ceased to be effective due to OAC paragraph 3745-31-34(C). Ohio EPA will not enforce against the GHG BACT limitations and supporting terms and conditions in these permits. Permittees may apply to have these permits modified to remove the BACT requirements. If the GHG changes are the only changes, Ohio EPA will process these permits as administrative modifications. Permits will continue to be needed because of the non GHG emissions.

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Title V Operating Permits

While the EPA will no longer apply or enforce the requirement that a source obtain a title V permit solely because it emits or has the potential to emit greenhouse gases above major source thresholds, the agency does not read the Supreme Court decision to affect other grounds on which a title V permit may be required or the applicable requirements that must be addressed in title V permits. For example, the EPA currently believes it is still appropriate for a title V permit to incorporate and assure compliance with greenhouse gas BACT limits that remain applicable requirements under a PSD permit issued to a Step 1 "anyway source."

We recommend that Regional Offices confer with state, local, and tribal permitting authorities and permit applicants regarding their plans to respond to the Supreme Court's decision. These conversations should examine whether, in light of the Supreme Court decision, there is flexibility under state, local, and tribal laws to determine that Step 2 sources are no longer required to obtain title V permits prior to the completion of any actions to repeal or revise such regulations in light of the Supreme Court decision. To the extent that any approved state, local or tribal title V programs have provisions in their laws that may automatically modify state, local or tribal-law permitting requirements based on the Supreme Court's decision, Regional Offices should encourage such permitting authorities to contact the EPA to discuss implementation of those provisions. Similar to state-law construction permitting requirements, the Supreme Court decision does not preclude states from continuing to require that certain types of sources obtain operating permits meeting requirements that apply independently under state law. Thus, we recommend that Regional Offices advise sources to consult with their individual permitting authorities regarding operating permit requirements after the Supreme Court's decision.



Ohio EPA believes that any permittee that has a Title V permit due solely to the GHG emissions will not need to comply with any GHG limitations or GHG terms and conditions within that permit because any GHG terms or conditions are no longer effective pursuant to OAC 3745-77-11(D). Ohio EPA believes that, except for any GHG limits and terms, the Title V permit will remain effective until such time as a non-Title V permit (Permit to Install-and-Operate, PTIO) is issued. As such, permittees that wish to get out of Title V, may do so by submitting a PTIO application. When the PTIO is issued, it supersedes the Title V permit.

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With respect to title V permits that have already been issued to Step 2 sources, we recommend that such sources consult with their title V permitting authority to determine the appropriate next steps based on the source's specific permitting situation.

Federal PSD and Title V Rules, SIP and State Title V Programs

The Office of Air and Radiation (OAR) anticipates a need for the EPA to revise federal PSD and title V rules² in light of the Supreme Court opinion. In addition, OAR anticipates that many SIPs and approved title V programs will be revised to effectuate the Supreme Court's decision. The timing and content of the EPA's actions with respect to the EPA regulations and state program approvals are expected to be informed by the forthcoming legal process before the D.C. Circuit. The EPA plans to consult with permitting authorities to determine the most efficient and least burdensome ways to accomplish any such revisions to state or tribal programs.



Ohio EPA's current GHG new source review rules are not currently approved as part of the SIP. Ohio EPA's current GHG Title V rules are not currently approved as part of Ohio's Title V program.

We will need to modify the rules to take into account the U.S. Supreme Court decision. However, it is premature at this time to modify the rules because (1) various related court actions are still expected and (2) U.S. EPA is likely to issue additional guidance. For now, we believe our existing rules properly restrict GHG emissions consistent with U.S. EPA requirements and policy and the Supreme Court decision.

GHG 5-Year Study

In the Tailoring Rule, the EPA described next steps to include a study by April 2015, referred to as the "5-year study," and a possible further regulatory action, referred to as "Step 4." OAR believes the results of the Supreme Court decision eliminate the need for the 5-year study. Thus, at this time, OAR is no longer

² The EPA is still evaluating the implications of the Supreme Court's decision, if any on GHG Plantwide Applicability Limitations which were finalized under Step 3 of the Tailoring Rule

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working on the study, and we intend to inform states collecting data requested by the EPA for that study that this data collection is no longer necessary. In addition, the EPA does not intend to take further action on Step 4. The EPA is, however, continuing to evaluate GHG permitting data as appropriate with regard to the possible development and justification of an appropriate GHG significance (or '*de minimis*') level for determining the application of PSD BACT requirements to GHG in permitting of "anyway sources." We expect that the information that states have submitted for the 5-year study will be useful in that effort.



Ohio EPA may not see any applications for biogenic sources where PSD is triggered for non GHG emissions. Furthermore, various court actions could change Ohio EPA's approach for biogenic sources. Because of this fluid situation, Ohio EPA will evaluate any applications for biogenic sources on a case-by-case basis.

Assessment of Biogenic Carbon Dioxide (CO₂) Emissions

The Supreme Court's decision did not directly address the application of PSD and title V permitting requirements to biogenic CO₂ emissions. On July 12, 2013, the D.C. Circuit issued a decision (the Deferral decision) overturning the EPA regulation that deferred application of these permitting programs to biogenic CO₂ emissions (the Deferral Rule). *Center for Biological Diversity v. EPA*, 722 F.3d 421 (D.C. Cir. 2013). However, the Deferral decision has not yet taken effect because some parties have been waiting for the Supreme Court decision to determine whether to ask the D.C. Circuit to reconsider its ruling on the Deferral Rule. Furthermore, court actions against the Tailoring Rule remain pending by parties that contend that the Tailoring Rule caused PSD and title V programs to apply to biogenic greenhouse gas emissions. Notwithstanding these matters still pending in the courts, the Deferral Rule itself expired on its own terms on July 21, 2014. The EPA's work regarding the biogenic CO₂ assessment framework remains ongoing and is not directly impacted by the Supreme Court's decision. Nonetheless, the EPA's current view is that the Supreme Court's decision effectively narrows the scope of the biogenic CO₂ permitting issues that remain for the EPA to address. This is because, as described above, the EPA will no longer apply or enforce regulatory provisions requiring PSD or title V permits for sources solely on the basis of their GHG emissions. Continuing our current approach, OAR recommends that Regional Offices consult with sources and permitting authorities on biomass related permitting questions as they arise.

Conclusion

We trust this information will be helpful as the EPA pursues next steps and await further developments before the U.S. Courts. Should you have questions generally concerning this memorandum, please contact Juan Santiago, Associate Division Director of the Air Quality Policy Division, Office of Air Quality

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Planning and Standards at santiago.juan@epa.gov or 919-541-1084. Should you have questions generally concerning the enforcement specific aspects of this memorandum, please contact Apple Chapman, Associate Division Director, Air Enforcement Division, Office of Civil Enforcement at chapman.apple@epa.gov or 202-564-5666.

----- End of U.S. EPA's Guidance Document -----

Synthetic Minor Sources

In U.S. EPA's July 24, 2014 guidance, U.S. EPA did not discuss what to do with permits that obtained synthetic minor restrictions designed to avoid PSD for GHGs. Due to the Supreme Court decision, in some cases, permittees have the opportunity to remove or relax the synthetic minor restriction.

In order to remove or relax these synthetic minor restrictions, permittees are going to need to submit modification application(s) and have Ohio EPA issue the revised permits. The revised permits need to be issued before the permittees operate the restricted sources past the synthetic minor restrictions. Note that in the case of a Title V facility, the synthetic minor restriction may need to be removed or revised from both the underlying installation permit and the Title V permit.

In most cases, the synthetic minor restriction designed to avoid GHG PSD also restricted criteria pollutants. This means that when the synthetic minor restriction is removed or revised, criteria pollutant limits may also need to be revised. If the GHG synthetic minor was also helping avoid PSD for a criteria pollutant, or was being used for another purpose like avoiding modeling, then a synthetic minor restriction may still be needed. Permittees should discuss this issue with their District Office/Local Air Agency permit contact before submitting an application.

Disclaimer

Ohio EPA has created the above guidance in order to provide permittees and permit writers with our position concerning changes to the GHG permitting program due to the Supreme Court decision. This guidance is general in nature and may not be appropriate for all situations, and Ohio EPA retains the discretion to approach issues differently than recommended here in specific situations that may arise. This guidance does not change any applicable rule or law.

If you have any questions concerning this guidance document, please contact Mike Hopkins at 614-644-3611 or mike.hopkins@epa.ohio.gov.

MEH/

Ghgguidance03.docx

TO: OMA Environment Committee
FROM: Rob Brundrett
RE: Environment Public Policy Update
DATE: October 23, 2014

Overview

The General Assembly adjourned in June for the summer. During the break the legislators have focused on campaigning for the November elections.

Ohio EPA has a version of the MBR still pending and will be revisited by the General Assembly in the fall. The bill will become what is known as a Christmas tree and will be loaded down with random amendments, touching on a variety of policies.

U.S. EPA and its existing source and soon to be proposed ozone standards will be dominating subjects for Ohio moving through the next year. Other agency issues will be dealt with through the regulatory process where the agency remains very active.

General Assembly News and Legislation

House Bill 592 Review

Ohio EPA continues its internal work on a rewrite of the old House Bill 592, which created most of Ohio's current solid waste laws. Director Nally made it a priority to update this section of Ohio law and had a taskforce working on the rewrite. The agency appears stalled on phase II of the project.

The agency recently let the OMA know that they are scaling back some of their priorities in hopes of having some legislation in place for the fall. Considering the amount of time they have worked on the project, portions of the rewrite should be ready to be introduced. These portions that are ready may be introduced as separate legislation, but more likely will be included in the still pending HB 490.

Senate Bill 150

Senate Bill 150 was signed by Governor Kasich in May. The bill is geared toward the agriculture industry. It requires those who apply fertilizer on Ohio's farmlands to be certified to do so. The General Assembly is hoping the law will help educate on proper fertilizer application to prevent overuse which can result in heavy nutrient runoff. This is important as Ohio EPA continues to review its nutrient strategy that could negatively impact manufacturers.

This bill was back in the news recently because of the Lake Erie algae bloom and the drinking water ban in Toledo. New legislation can be expected aimed at reducing manure and fertilizer runoff from farms.

Senate Concurrent Resolution 25

Last year Senate Joe Uecker (R-Miami Township) introduced SCR 25. The resolution urges state agencies to adhere to green building standards that meet the American National Standards Institute voluntary consensus standard procedures instead of the most recent U.S. Green Building's Council's LEED standards. There has been controversy over the latest version of the LEED standards regarding process and the inclusion/exclusion of buildings materials that are regularly used. The resolution was passed from the Senate. The House announced it would refrain from holding any hearings on the issue until the fall.

Mid-Biennium Review – House Bill 490

The Governor's released his second mid-biennium review (MBR) bill this winter. The MBR bill is a comprehensive policy bill touching all aspects of state government, including Ohio EPA. The House promptly split the legislation into 14 different bills. EPA and Agriculture have their own MBR – House Bill 490. The bill had numerous hearings in the House. One issue of note concerns changes to 6111, the Water Pollution Control Law. The bill creates a knowing and reckless standard for violations of ORC 6111.99. Currently, all criminal violations of Ohio's Water Pollution Laws are misdemeanors, regardless of their severity or the intent of the violator. The suggested changes by Ohio EPA changes the way the agency would enforce violations. Director Butler has told stakeholders he would work with them to alleviate fears.

The bill is also being discussed as Christmas tree bill. This means all sorts of amendments will be attached to the bill and makes it a prime target for all sides to get legislation passed.

House Bill 506

Representatives Thompson (R-Marietta) and Cera (D-Bellaire) sponsored House Bill 506, which was developed in anticipation of the U.S. EPA's guidelines aimed at cutting carbon dioxide emissions from existing power plants. The bill's intent is to develop a framework on how Ohio EPA will comply with the new standards and guidelines revealed last week. The bill is an attempt to give Ohio more control over how its state plan would be able to implement the new federal standards. With a large amount of coal and gas fired generation, Ohio is particularly vulnerable to any new carbon rules from U.S. EPA. The bill was passed by the House prior to break.

Regulations

U.S. EPA 111(d)

In June the U.S. EPA proposed its 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 of 30% by 2030, from a base year of 2012.

The EPA says it built a formula for state-specific reductions: "EPA analyzed historical data about emissions and the power sector to create a consistent national formula for reductions that reflects the building blocks. The formula applies the building blocks to each state's specific information, yielding a carbon intensity rate for each state."

Those "building blocks" are: making fossil fuel plants more efficient, fuel switching from coal to natural gas, increased use of solar, wind and nuclear power, and reducing electricity demand by increased energy efficiency.

The timetable for implementing these vast rules is aggressive: These rules are to be finalized next summer; the states then have one year to establish their compliance plans; and, the U.S. EPA then has one year to act on the states' plans.

Ohio EPA held two interested party stakeholder meetings to discuss the proposed rule and possible comments. The OMA contributed study for the agency to review and incorporate in their comments.

Beneficial Use

This spring Ohio EPA released the much anticipated draft permits for foundry sand and alum sludge. They also released an Early Stakeholder Outreach document on “co-products” and “by-products”. The overall goal of these would be to eventually compliment a beneficial use system and make it clear certain products are not wastes subject to beneficial use regulation. OMA submitted comments on the ESO.

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. The OMA recently put together a working group to work with Ohio EPA on this topic. A working document is in development for Ohio EPA to use.

Water Nutrient Work Group

Ohio EPA has been working on reducing the amount of nutrients that enter Ohio’s waterways. The OMA has two members on the working group Ohio EPA created to review the issue. The group is meeting monthly to determine what is the best way to implement the state’s water nutrient strategy. This group remains focused on the water nutrient implementation process it was created to help implement. However new light may be focused on the group with the recent water issues in northwest Ohio.

U.S. EPA and Ozone

The EPA plans to tighten the National Ambient Air Quality Standards (NAAQS) for ground-level ozone from the current 75 parts per billion (ppb) to between 60 and 70 ppb, or even lower. This will have a major impact on Ohio.

In 2008, the U.S. EPA lowered the National Ambient Air Quality Standard for ground level ozone to 75 parts per billion (ppb). Now, the agency is proposing to lower the standard to 60 ppb.

A new study by NAM finds that imposition of a 60 ppb ozone standard could reduce U.S. Gross Domestic Product by as much as \$3.4 trillion through 2040 and dramatically increase energy costs across all sectors.

Agency Notes

Karl Gebhardt Named Ohio EPA Water Chief

Karl Gebhardt joined the Agency in April 2014 and will coordinate efforts addressing water quality resource issues related to harmful algae and other nutrient issues affecting Lake Erie and Ohio’s inland waters. Gebhardt comes to Ohio EPA from the Ohio Department of Natural Resources (ODNR), where he served as deputy director and as the agency’s point person for water quality and water resource issues. Prior to his role as a deputy, Gebhardt was Chief of the Division of Soil and Water Resources, where he provided leadership for the expansion of on-the-ground conservation practices, and developing legislation that would help in the efficient and effective delivery of conservation programs for nutrient management.

Other Notes

Bottle Bill Amendment

Ohio Attorney General Mike DeWine certified a petition so that the requisite signatures could be solicited for a proposed “bottle bill” amendment to the Ohio Constitution.

The amendment, if it made it to the ballot and passed, would require the General Assembly to enact laws that require a refundable deposit of 5-to-10 cents to be made on certain glass, metal and plastic containers.

Unlike previous so-called bottle bills, where the goal was to encourage recycling and increase reusable feedstock, 80% of the refunded deposits are directed to be used to reduce health and car insurances costs of Ohio residents. There are no specific details of how this would be accomplished.

OMA Signs onto National GHG Advocacy Effort

The U.S. Chamber of Commerce, National Association of Manufacturers, and other key stakeholders have established the Partnership for a Better Energy Future, in response to the Obama administration’s greenhouse gas (GHG) regulatory agenda. OMA has signed on as a member of the partnership.

The administration’s GHG agenda is just underway and will ultimately extend to nearly every sector of the industrial economy, from refining to manufacturing to agriculture and mining. Most recently they announced their rules for existing electricity generating units.

The partnership, formally launched on January 30, aims to mobilize the business community to educate and motivate elected and public officials to address widespread concerns with these forthcoming greenhouse gas rules. Its mission is to ensure the continued availability of reliable and affordable energy for American families and businesses.

House Bill 506 is supported by the Ohio delegation to this group.

Ohio EPA Staff Rotation Changing

The Ohio Environmental Protection Agency recently announced a new policy that would rotate personnel within its districts and divisions. The new policy applies to inspectors and staff.

In a letter to stakeholders, Director Craig Butler said, “We believe staff rotation will enhance the uniformity of our inspections while also providing new perspectives and ideas – greatly improving the effectiveness of our efforts. And while some of our staff will be rotating, management in each division and district should remain the same so you should always have someone familiar with whom to discuss issue if they arise.”

The Division of Air Pollution Control has announced that in the permitting area, the permit writer will be responsible for no more than one permit cycle for a five-year period for Title V sources. To improve continuity, the existing permit writer will hand off or assist the new permit writer with the renewal permit.



FREQUENTLY ASKED QUESTIONS

SENATE BILL 150 – AGRICULTURAL FERTILIZER APPLICATOR CERTIFICATION

Q. Who has to be certified? Do all my employees have to be certified?

A. Anybody who applies commercial fertilizer to 50 or more acres must be certified. The law also allows for an uncertified person to apply fertilizer if they are under the direct supervision of a person who is certified.

Q. How will the certification process work?

A. There are three steps in the certification process. You must: fill out an application form, pay an application fee, and attend a training session. A person that already has a valid commercial or private pesticide applicator license must apply for the certification but will not be required to pay the application fee. The fertilizer training session will also be included in the pesticide license training beginning in early 2015.

Q. Where do I get trained? When do I need to be certified?

A. Training will be offered throughout the state on both a county and regional basis. Persons intending to apply fertilizer on 50 or more acres are encouraged to become certified as soon as possible, no later than September 30th, 2017.

Q. How often do I have to renew my certification?

A. All certifications will be valid for three years, at which point the applicator will need to be recertified. The recertification procedure will be the same as the initial certification procedure.

Q. If I hire someone else to apply my fertilizer do I still have to be certified?

A. No, however the person hired to apply fertilizer must be certified or under the direct supervision of someone who is certified.

Q. Can I buy fertilizer without a certification?

A. Yes. The certification is only required if you are intending to apply fertilizer.

Q. What happens if I don't get certified?

A. Applying commercial fertilizer after September 30th, 2017 without a certification could result in fines and/or being charged with a misdemeanor offense.

Q. How much will it cost?

A. The initial application fee for fertilizer certification will be the same as the pesticide license fee: \$30. A person that already has a valid commercial or private applicator license will not be required to pay the application fee.

Q. Do I have to keep records of my fertilizer usage?

A. Yes, the bill requires certified applicators to maintain records including, but not limited to the date, place and rate of application of fertilizer, the type of fertilizer, and the name of the person applying the fertilizer. Records must be maintained for three years after.

Q. Is my fertilizer usage a public record now?

A. Generally no, the records must be kept by the certification holder so they can be audited, but are not considered public records because they will not be submitted to the state. However, ODA can take possession of records if conducting an investigation for enforcement action. Those records would then be considered public.

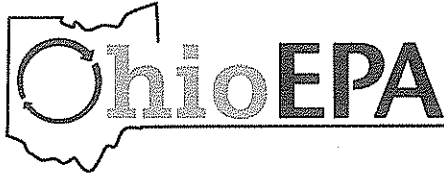
Q. Will I be inspected?

A. The department will conduct random record audits.

Q. Does this certification offer me any legal protections?

A. The bill does offer some legal protection against civil suits, certification being one of three components. Additionally, the certified applicator must maintain records and must have an approved nutrient management plan.





John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

June 10, 2014

Robert A. Brundrett, Dir., Public Policy Services
Ohio Manufacturers' Association
33 N. High St.
Columbus, OH 43215

Via Regular Mail and E Copy

RE: Proposed Changes to ORC Section 6111.99

Dear Rob,

I am writing to inform you of proposed changes in HB 490 to criminal penalties currently found in Ohio Revised Code (ORC) Section 6111.99. I'd like to clarify any potential confusion regarding the scope of changes to this section and the agency's intention in pursuing these changes to the existing criminal penalties in ORC Section 6111.99. The most significant change involves inserting mens rea provisions (the intent or mental state of the alleged violator that the State would have to prove) whereby a knowing violation will be a felony and a reckless violation will be a misdemeanor.

These changes are motivated by a significant gap in the existing criminal sanctions in ORC Section 6111.99. Presently, an intentional/knowing violation could only be charged as an unclassified misdemeanor. In the Hardrock Excavating/D&L Energy matter, this meant either charging the egregious, intentional conduct as a misdemeanor under state law or requesting federal prosecution under the federal Clean Water Act. We chose the latter and were thankful that the federal authorities chose to pursue the case. However, our preference would be to handle cases at the state level such that we can maintain control of the cases and their outcomes in the same manner that we do with our administrative and civil cases.

Additionally, inserting mens rea elements in the criminal provisions and fashioning appropriate sanctions based on the intent of the defendant is consistent with general provisions of the Ohio criminal code and also has precedent in other environmental statutes. (See for example ORC Section 6109.99 (drinking water law), ORC Section 3734.99 (solid/hazardous waste), and ORC Section 903.99 (Department of Agriculture PTI/CAFO NPDES provisions upon delegation)).

To be clear, we do not intend nor expect a shift from our typical enforcement paradigm, namely that the vast majority of violations that we encounter do not rise to the level of criminal conduct and thus the vast majority of our enforcement efforts will continue to be administrative/civil in nature. Our civil penalty provisions in ORC Section 6111.09 will not be altered by the changes in this bill.

I look forward to working with you, Chairman Hall, and other interested parties in moving these changes through the legislative process. Please use Annie van Blaricom as our main legislative contact on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig W. Butler', with a long horizontal flourish extending to the right.

Craig W. Butler
Director

cc: The Honorable Dave Hall
The Honorable Andy Thompson
Madison Lisotto, Legislative Liaison, Governor's Office
Fred Shimp, Assistant Director, ODNR
Laura Factor, Assistant Director, Ohio EPA
Jim Canepa, Assistant Director, Ohio EPA
Cindy Hafner, Chief Legal Counsel, Ohio EPA
Annie van Blaricom, Legislative Liaison, Ohio EPA
Bill Fischbein, Legal, Ohio EPA

Sec. 6111.99. (A) Whoever **knowingly willfully** violates section 6111.04, 6111.042, 6111.05, or division (A) or (C) of section 6111.07 of the Revised Code is guilty of a felony and shall be fined not more than twenty-five thousand dollars or imprisoned not more than ~~one year~~ four years, or both. Each day of violation is a separate offense.

(B) Whoever **recklessly knowingly** violates section 6111.04, 6111.042, 6111.045 or, 6111.047, 6111.05, 6111.45, or division (A) or (C) of section 6111.07 of the Revised Code is guilty of a misdemeanor and shall be fined not more than ten thousand dollars or imprisoned not more than ~~one~~ two years, or both. Each day of violation is a separate offense.

(C) Whoever violates section ~~6111.45 or~~ 6111.46 of the Revised Code shall be fined not more than five hundred dollars.

~~(D) Whoever violates division (C) of section 6111.07 of the Revised Code shall be fined not more than twenty-five thousand dollars.~~

~~(E)~~ Whoever violates section 6111.42 of the Revised Code shall be fined not more than one hundred dollars for a first offense; for each subsequent offense, the person shall be fined not more than one hundred fifty dollars.

~~(F)~~~~(E)~~ Whoever violates section 6111.44 of the Revised Code shall be fined not more than ~~one hundred~~ ten thousand dollars. Each day of violation is a separate offense.

(F) If a person is convicted of or pleads guilty to a violation of any section of this chapter, in addition to the financial sanctions authorized by this chapter or section 2929.18 or 2929.28 or any other section of the Revised Code, the court imposing the sentence on the person may order the person to reimburse the state agency or a political subdivision for any **actual response** costs that it incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by the violation.

BY THE NUMBERS

CUTTING CARBON POLLUTION FROM POWER PLANTS

On June 2, 2014, the U.S. Environmental Protection Agency, under President Obama's Climate Action Plan, proposed a commonsense plan to cut carbon pollution from power plants. The science shows that climate change is already posing risks to our health and our economy. The Clean Power Plan will maintain an affordable, reliable energy system, while cutting pollution and protecting our health and environment now and for future generations.

Cleaning Up Power Plants

- Power plants are the **largest source** of carbon dioxide emissions in the United States, making up roughly **one-third** of all domestic greenhouse gas emissions.
- All told—the Plan puts our nation on track to cut carbon pollution from the power sector by **30 percent** by 2030—that's about **730 million metric tonnes** of carbon pollution.
- That's equal to the annual emissions from more than **150 million cars**, or almost **2/3s of the nation's passenger vehicles** – or the annual emissions from powering **65 million homes, over half the homes in America.**

Big Public Health and Climate Benefits

- The Clean Power Plan has public health and climate benefits worth an estimated **\$55 billion to \$93 billion** per year in 2030, far outweighing the costs of **\$7.3 billion to \$8.8 billion.**
- Reducing exposure to particle pollution and ozone in 2030 will avoid a projected
 - **2,700 to 6,600** premature deaths
 - **140,000 to 150,000** asthma attacks in children
 - **340 to 3,300** heart attacks
 - **2,700 to 2,800** hospital admissions
 - **470,000 to 490,000** missed school and work days
- From the soot and smog reductions alone, for every dollar invested through the Clean Power Plan—American families will see **up to \$7** in health benefits.

- The Clean Power Plan will reduce pollutants that contribute to the soot and smog that make people sick by **over 25 percent** in 2030.
 - **54,000 to 56,000 tons** of PM_{2.5}
 - **424,000 to 471,000 tons** of sulfur dioxide
 - **407,000 to 428,000 tons** of nitrogen dioxide

Number of power plants covered by the Clean Power Plan

- In the U.S., there are **1,000 fossil fuel fired power plants** with **3,000 units** covered by this rule.
- Utility planners are already making plans to address an aging fleet. The average age of coal units is **42 years**. The average age of oil units is **36 years**. The average age of natural gas combined cycle units is **14 years**.

State climate, energy efficiency and renewable energy policy statistics

- States, cities and businesses have set energy efficiency targets, increased their use of renewable energy, and made agreements to cut carbon pollution. These are the kinds of programs that states will be able to use to cut carbon pollution under this proposal.
 - **47** states with utilities that run demand-side energy efficiency programs
 - **38** states with renewable portfolio standards or goals
 - **10** states with market-based greenhouse gas emissions programs
 - **27** states with energy efficiency standards or goals

Proposed State Plan Dates

June 30, 2016 – Initial plan or complete plan due

June 30, 2017 – Complete individual plan due if state is eligible for a one-year extension

June 30, 2018 – Complete multi-state plan due if state is eligible for two-year extension (with progress report due June 30, 2017)

OVERVIEW OF THE CLEAN POWER PLAN

CUTTING CARBON POLLUTION FROM POWER PLANTS

On June 2, 2014, the U.S. Environmental Protection Agency, under President Obama's Climate Action Plan, proposed a commonsense plan to cut carbon pollution from power plants. The science shows that climate change is already posing risks to our health and our economy. The Clean Power Plan will maintain an affordable, reliable energy system, while cutting pollution and protecting our health and environment now and for future generations.

Our climate is changing, and we're feeling the dangerous and costly effects right now.

- Average temperatures have risen in most states since 1901, with seven of the top 10 warmest years on record occurring since 1998.
- Climate and weather disasters in 2012 cost the American economy more than \$100 billion.

Although there are limits at power plants for other pollutants like arsenic and mercury, there are currently no national limits on carbon.

- Children, the elderly, and the poor are most vulnerable to a range of climate-related health effects, including those related to heat stress, air pollution, extreme weather events, and others.

Nationwide, the Clean Power Plan will help cut carbon pollution from the power sector by 30 percent from 2005 levels.

- Power plants are the largest source of carbon pollution in the U.S., accounting for roughly one-third of all domestic greenhouse gas emissions.
- The proposal will also cut pollution that leads to soot and smog by over 25 percent in 2030.

Americans will see billions of dollars in public health and climate benefits, now and for future generations.

- The Clean Power Plan will lead to climate and health benefits worth an estimated \$55 billion to \$93 billion in 2030, including avoiding 2,700 to 6,600 premature deaths and 140,000 to 150,000 asthma attacks in children.

States and businesses have already charted the path toward cleaner, more efficient power.

- States, cities and businesses are already taking action.
- The Clean Power Plan puts states in the driver's seat to a cleaner, more efficient power fleet of the future by giving them the flexibility to choose how to meet their goals.

With EPA's flexible proposal, we can cut wasted energy, improve efficiency, and reduce pollution – while still having all the power we need to grow our economy and maintain our competitive edge.

- The agency's proposal is flexible—reflecting the different needs of different states.
- The proposal will put Americans to work making the U.S. electricity system less polluting and our homes and businesses more efficient, shrinking electricity bills by roughly 8 percent in 2030.
- It will keep the United States—and more importantly our businesses—at the forefront of a global movement to produce and consume energy in a better, more sustainable way.

Join the conversation

- In the coming months, we'll be listening to feedback and seeking new ideas about the best ways to reduce carbon pollution from existing power plants: <http://www.epa.gov/cleanpowerplan>

THE ROLE OF STATES

STATES DECIDE HOW THEY WILL CUT CARBON POLLUTION

On June 2, 2014, the U.S. Environmental Protection Agency, under President Obama’s Climate Action Plan, proposed a commonsense plan to cut carbon pollution from power plants. States, cities and businesses across the country are already taking action to address the risks of climate change, and EPA’s proposal recognizes this progress. The Clean Air Act creates a partnership between EPA and the states—with EPA setting a goal and the states deciding how they will meet it. Each state will choose the best set of cost-effective strategies for its situation. The Clean Power Plan will help maintain an affordable, reliable energy system, while cutting pollution and protecting our health and environment now and for future generations.

STATES GET TO DECIDE

- Before issuing the Clean Power Plan, EPA heard from more than 300 stakeholder groups, including states, utilities, labor unions, nongovernmental organizations, consumer groups, industry and others to learn more about what programs are already working to reduce carbon pollution. We learned that states are leading the way—especially through programs that encourage energy efficiency and renewable energy.
- States can choose to rely on measures EPA used to calculate the goal to varying degrees, as well as on other measures that were not part of the goal-setting analysis.
- States can choose to participate in multi-state programs that already exist or may create new ones
- States that have already invested in energy efficiency programs will be able to build on these programs during the compliance period to help make progress toward meeting their target.
- States can choose how to meet the goals – they have up to two or three years to submit final plans depending on whether they work alone or in partnership with other states and up to 15 years for full implementation of all emission reduction measures, after the proposed Clean Power Plan is finalized.
- States get to decide when individual power plants must make reductions.
- EPA’s guidelines also provide flexibility and encourage states to look across their whole electric system to identify strategies to include in their plans that reduce carbon pollution from fossil fuel fired power plants.
- Some of the measures states can choose to rely on in their plans include, but are not limited to:
 - demand-side energy efficiency programs
 - renewable energy standards
 - efficiency improvements at plants
 - co-firing or switching to natural gas
 - construction of new Natural Gas Combined-Cycle plants

- transmission efficiency improvements
 - energy storage technology
 - retirements
 - expanding renewables like wind and solar
 - expanding nuclear
 - market-based trading programs
 - energy conservation programs
- States can choose to integrate plans with the long-term planning and investment processes already used in this sector, and design them in ways that address region- and state-specific needs.
 - The proposal gives states significant flexibility to develop a program that addresses the unique needs of generators within each state. It provides states the ability to craft requirements that vary the timing and magnitude of reductions to address individual challenges that municipal utilities and rural electric cooperatives may face.
 - States can decide how to treat plants nearing the end of their useful life and how to help plants avoid “stranded investments.”
 - Together, the choices that states can make about when power plants must make reductions and about how they can do so will allow states to work with sources, planners and regulators to address individualized issues that may arise. The states and EPA will rely on the continued discussions with a broad variety of stakeholders – including utilities, Regional Transmission Operators, and state public utility regulators – to make sure all issues are appropriately considered and addressed.
 - By setting a state-specific goal and giving states the choice about what to include in their plans, EPA is ensuring that states have the flexibility they need to drive investment in innovation, while ensuring reliability and affordability.

FOR MORE INFORMATION

EPA will accept comment on the proposal for 120 days after publication in the Federal Register and will hold four public hearings on the proposed Clean Power Plan during the week of July 28 in the following cities: Denver, Atlanta, Washington, DC and Pittsburgh. The proposed rule, information about how to comment and supporting technical information are available online at: <http://www.epa.gov/cleanpowerplan>

What Could New Ozone Regulations Cost Ohio?



\$204 Billion Gross State Product Loss from 2017 to 2040

218,415 Lost Jobs or Job Equivalents per Year

\$156 Billion in Total Compliance Costs

\$2,730 Drop in Average Household Consumption per Year

\$30 Billion More for Residents to Own/Operate Their Vehicles Statewide (2017 to 2040)

Up to a **15 Percent Increase** in Residential Electricity Prices (National Average)

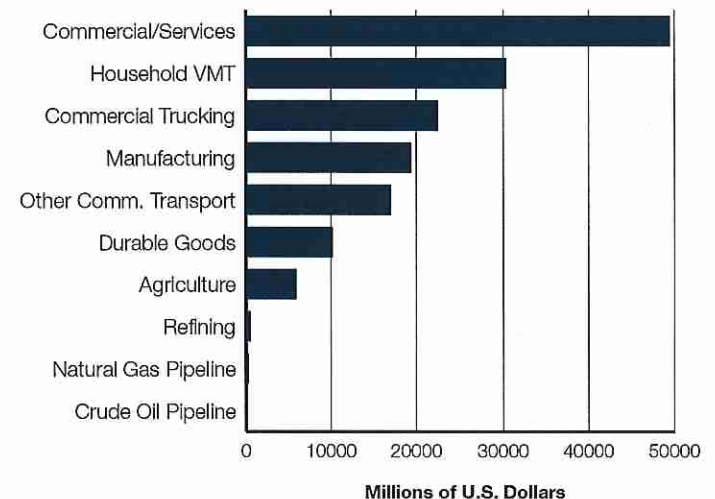
Up to a **32 Percent Increase** in Residential Natural Gas Prices (National Average)

Shutdown of **81 Percent** of **Ohio's** Coal-Fired Generating Capacity

Expensive New Ozone Regulation Will Put the Squeeze on Ohio

The Environmental Protection Agency's (EPA) new ozone regulation could be the most expensive ever issued on the American public, costing the nation \$270 billion to \$360 billion annually. This regulation would hurt manufacturers and could increase costs for households in Ohio while reducing workers' incomes by the equivalent of 218,415 lost jobs,¹ according to a new study by NERA Economic Consulting and commissioned by the National Association of Manufacturers.² Cities, towns and rural areas across the United States would see reduced economic growth as unachievable permitting requirements prevent businesses from expanding or opening up new operations. Local and state governments would have to revisit vehicle inspection programs. Manufacturers would need to make technical and formula changes to their products and pay for replacement equipment.

Figure 1: Total Compliance Costs by Sector to Meet a 60 ppb Ozone Standard



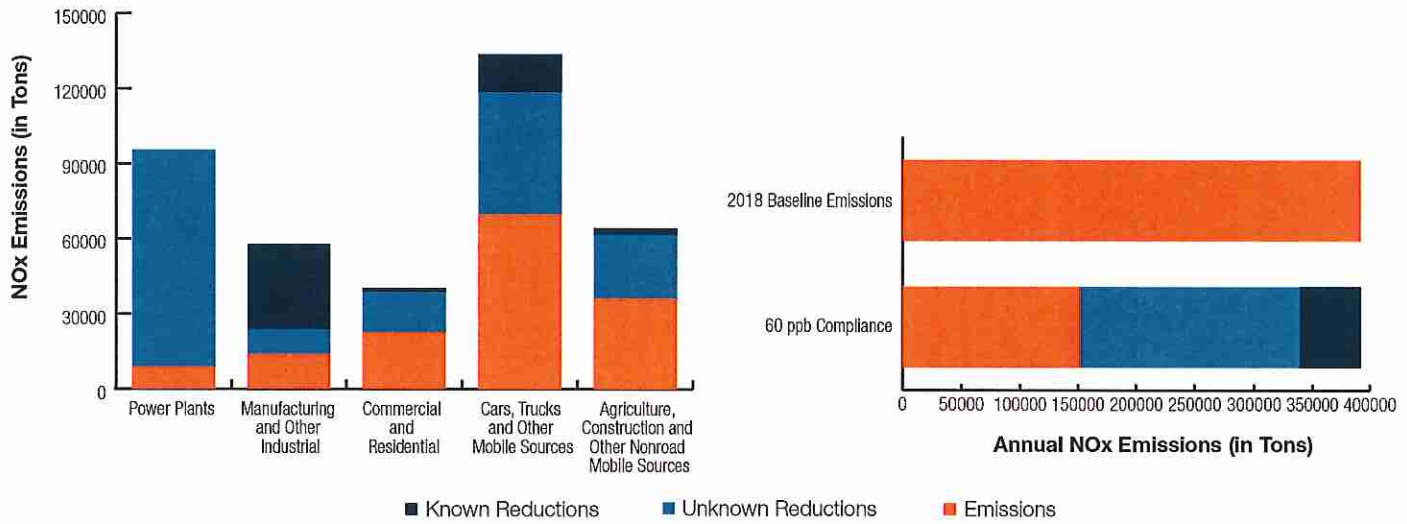
¹ Total job equivalents equal total labor income change divided by the average annual income per job. Job impact estimates represent the average annual impact from 2017 through 2040.

² NERA Economic Consulting analyzed the economic impact of tightening the National Ambient Air Quality Standard (NAAQS) for ground-level ozone to 60 parts per billion (ppb). In its Second Draft Policy Assessment for the Review of the Ozone NAAQS, the EPA indicated it is considering lowering the standard to 60 ppb.

Are These Regulations Even Attainable?

New ozone regulations could cost Ohio hundreds of billions of dollars to reduce emissions to federally required levels. The EPA has identified only **22 percent** of the controls needed to meet the standard. The remaining **78 percent** of reductions would have to be met with unknown controls that the EPA has not yet identified but which would likely have to include early shutdowns and scrapping of existing facilities, equipment and vehicles.

Figure 2: Ohio Nitrogen Oxide (NOx) Emissions and Known and Unknown Control Measures Necessary to Achieve a 60 ppb Ozone Standard

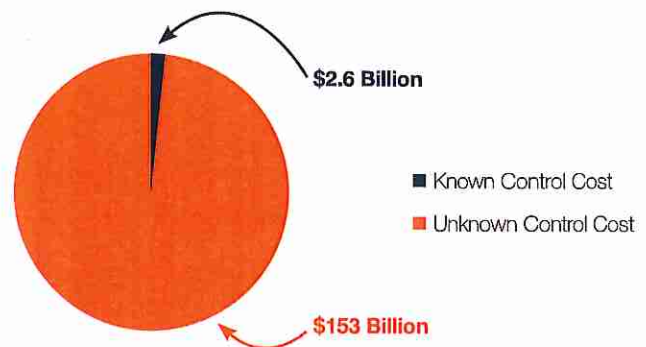


Early retirement and scrapping of power plants, industrial facilities, heavy-duty trucks and equipment and automobiles would be much more costly ways to remove each additional ton of emissions than the controls the EPA has identified. As a result, while unknown controls are responsible for a significant portion of the necessary reductions, they account for the vast majority of the total costs, as shown in the pie chart below. This reality helps explain the exorbitant costs that would come with a stricter ozone standard.

A Moving Regulatory Target

Air quality continues to improve, and NOx emissions are already down nearly 60 percent nationwide since 1980, which, after adjusting for economic growth, implies a 90 percent reduction in emission rates from the relatively uncontrolled 1990 rates for NOx-emitting sources. Meanwhile, the existing ozone standard that was tightened in 2008 hasn't even been implemented yet. With all the progress we've made and the further investments that will take place without new ozone regulations, now is not the time to move the regulatory target—not at these costs.

Figure 3: Total Ohio Compliance Costs: \$156 Billion





FOR IMMEDIATE RELEASE

July 31, 2014

CONTACT

Rob Brundrett, 614.224.5111

**National Association of Manufacturers' Study:
Ohio Faces Economic Harm from New EPA Ozone Standard**

New federal ozone rule would result in income losses equivalent to 218,000 Ohio jobs annually and cost the U.S. economy \$3.4 trillion

[WASHINGTON]: Ohio manufacturers and households could face significant economic harm if the Environmental Protection Agency (EPA) moves to lower its ground-level ozone (smog) standard later this year, according to a new [study](#) conducted by NERA Economic Consulting for the National Association of Manufacturers (NAM) and The Ohio Manufacturers' Association (OMA). The study finds that a new EPA ozone standard set at 60 parts per billion (ppb) –well below the current standard of 75 ppb that many states are still working to meet – could be the most costly regulation in the nation's history, costing the U.S. economy trillions of dollars while imposing burdensome new costs on Ohio businesses and consumers.

Imposition of a 60 ppb ozone standard could reduce U.S. Gross Domestic Product by as much as \$3.4 trillion through 2040 and dramatically increase energy costs across all sectors, according to the study. The harmful economic impact in Ohio would be substantial and include the following:

- \$204 billion reduction in Gross State Product through 2040
- 218,415 lost jobs (or job equivalents) in Ohio each year through 2040
- \$156 billion increase in compliance costs for Ohio businesses through 2040
- \$2,730 in additional costs paid by Ohio households annually in the form of higher prices for goods and services
- Up to 32 percent increase in household natural gas prices and up to 15 percent increase in household electricity prices (nationwide)
- Estimated shutdown of 81 percent of Ohio's coal-fired generating capacity

“Manufacturing in the United States is making a comeback, and we’re reducing emissions at the same time, but tightening the current ozone standard to near unachievable levels would serve as a self-inflicted wound to the U.S. economy at the worst possible time,” said NAM President and CEO Jay Timmons. “This rule would undermine our work to expand manufacturing in the United States, making it almost impossible to increase operations, create new jobs or keep pace internationally.”

-- more --

“We are rapidly approaching a point where we are requiring manufacturers to do the impossible,” added NAM Vice President of Energy and Resources Policy Ross Eisenberg. “The EPA is considering setting ozone levels below what exists at national parks, such as Yellowstone and Denali. It is vital that the Obama Administration allow existing ozone standards to be implemented rather than move the goalposts with another set of requirements for manufacturers. Trillions of dollars are at stake.”

“Ohio manufacturers have invested billions of dollars in environmental control technologies and more efficient processes, efforts that have significantly reduced harmful emissions,” said OMA President Eric Burkland. “We are making progress. New, more stringent standards will impose significant anti-competitive costs on manufacturers and their customers.”

“This study uses the most up-to-date available EPA information and a state-of-the-art model of the economy to assess the compliance costs and economic impacts of a stricter ozone standard, concluding, as the EPA did in 2010, that the costs would be enormous,” said NERA Economic Consulting Senior Vice President and Environment Practice Co-Chair Dr. David Harrison. “EPA needs to greatly expand the scope of its analyses if it is to thoroughly assess the cost and impacts of a revised ozone standard.”

President Obama halted EPA's previous proposal to modify the federal ozone standard in 2011, citing "regulatory burdens and uncertainty." With so much at stake for states, municipalities, manufacturers and American consumers, NAM also announced it will be mounting a broad education campaign in key states during Congressional recess and throughout the fall to increase understanding of the potential impact of new federal ozone requirements. As part of that campaign, NAM has produced a new [video](#) discussing the creation, transport and regulation of ground-level ozone.

For more information, visit www.nam.org/ozone.

#

About OMA: The mission of The Ohio Manufacturers' Association is to protect and grow Ohio manufacturing. Through the OMA, manufacturers and manufacturing stakeholders work directly with members of the Ohio General Assembly, state regulatory agencies, the judiciary community and statewide media with the sole focus of improving business conditions for manufacturers in Ohio.

About NAM: The National Association of Manufacturers is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for two-thirds of private-sector research and development.

About NERA: NERA Economic Consulting is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. NERA brings academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

Nutrient Management Initiatives in Ohio

Ohio is aggressively tackling issues of water quality, particularly harmful algal blooms (HABs). A multi-faceted, multi-year approach to reduce the discharges and runoff of nutrients is vital to protect public health, the environment and our valuable water resources. Ohio's approach uses both broad and targeted projects and partnerships on the local, state, national and international levels. Some of these are highlighted below.

On-the-Ground Practices

- The Ohio Department of Natural Resources (ODNR), Ohio Department of Agriculture (ODA) and Ohio Environmental Protection Agency (Ohio EPA) have worked collaboratively to improve the health of **Grand Lake St. Marys** and its watershed. With the assistance of numerous local, state and federal partners, Ohio has implemented multiple practices including: increased dredging to improve boater safety and water quality; rough fish removal; constructed wetland and treatment train installation; improved aeration efforts; alum treatments and the installation of more than 700 conservation practices in the watershed.
- Through the **Ohio Clean Lakes Initiative**, the Ohio Legislature -- led by State Sen. Randy Gardner -- appropriated more than \$3.55 million for the installation of best management practices (BMPs) to reduce nutrient runoff in the Western Lake Erie Basin. State and local partners worked with more than 350 farmers to implement BMPs on more than 40,000 acres. Additional stream monitoring stations have also been installed to measure the effectiveness of these practices.
- The Ohio Legislature appropriated \$10 million to the **Healthy Lake Erie Initiative** to be used to reduce the open lake placement of dredge material into Lake Erie. The funds will identify or develop alternate uses for this material and identify additional disposal locations.
- Ohio EPA used funds from the **Great Lakes Restoration Initiative** to award grants to local and state organizations for projects to protect or improve Lake Erie water quality, including storm water projects, home septic system replacement/improvements and stream restoration projects.
- The Ohio Natural Resources Conservation Service is part of the **National Water Quality Initiative**, an effort to improve conservation practice delivery. Ohio EPA is assisting in this effort to help farmers implement conservation systems.

Strategies, Research, Partnerships and Legislative Updates

- In 2011, the directors of Ohio EPA, ODNR and ODA called together the **Directors' Agricultural Nutrients and Water Quality Working Group** of research scientists, agribusiness leaders and environmentalists to discuss how agricultural practices may affect conditions in Lake Erie and develop recommendations on how the state can partner with the agricultural community to promote nutrient stewardship statewide. The agencies also reconvened the **Ohio Lake Erie Phosphorus Task Force**. The group issued a new report that further analyzed the latest research on how nutrients are entering our water systems and made recommendations for both private sector and public policy initiatives to reduce the amount of nutrient loading in Lake Erie.
- Ohio EPA, coordinating with ODA and ODNR, developed **Ohio's Nutrient Reduction Strategy**, a comprehensive plan to manage point and non-point sources of nutrients and reduce their impact on Ohio's surface waters. The strategy recommends regulatory initiatives and voluntary practices that can reduce nutrients throughout the state. The agencies are also working to implement the Great Lakes Water Quality Agreement, a binational effort to develop phosphorus targets and allocations for the near shore and open waters of Lake Erie by 2016 and domestic action plans for achieving those targets by 2018.
- Ohio EPA is developing Nutrient **Water Quality Standards** targeting phosphorus and nitrogen in response to U.S. EPA's national nutrient criteria recommendations and the Clean Water Act. In 2013, Ohio EPA asked for public comments from various stakeholder groups. A nutrient technical advisory group will advise Ohio EPA as it moves forward with the next steps in developing nutrient standards.

Nutrient Management Initiatives in Ohio

- In 2014, Governor John Kasich signed into law **Senate Bill 150**, an update of Ohio's regulatory structure specifically geared to improving water quality. The bill requires fertilizer applicators to undergo education and certification by ODA; encourages producers to adopt nutrient management plans; allows ODA to better track the sales and distribution of fertilizer throughout the state; and provides ODNR the authority to repurpose existing funding for additional BMP installation.
- Ohio EPA works with local communities to develop, implement and fund long-term control plans to reduce overflows of nutrient-rich sewage into streams and lakes following heavy storms and snow melt. Since 2010, Ohio EPA has awarded more than \$292 million in low-interest and interest-free loans from the Water Pollution Control Loan Fund for 138 projects in the Western Lake Erie watershed.

Monitoring

- Ohio EPA's **water quality monitoring programs** are nationally recognized and essential to the state's nutrient management efforts. Ohio EPA staff annually surveys several watersheds across the state for water and sediment chemistry, biological health, diversity and habitat. These monitoring and sampling efforts include the inland lakes and Lake Erie near shore monitoring programs. Ohio EPA has formed partnerships with universities and other organizations to create a Lake Erie-specific monitoring network.
- Ohio EPA, ODNR and the Ohio Department of Health developed protocol for **monitoring public waters** where HABs exist or are suspected. Ohio is one of the first states to establish protocols for issuing advisories when algal toxins are present at or above threshold levels. For more information, go to ohioalgaefinfo.com.
- Ohio EPA developed a **Public Water System Harmful Algal Bloom Response Strategy** to assist the agency and Ohio's public water systems prepare for and react to HABs in public water system source waters.
- Ohio EPA partnered with the National Oceanic and Atmospheric Administration (NOAA) to be the first state to use **NOAA satellite data** to remotely detect HABs on inland lakes and Lake Erie. This helped focus sampling efforts on areas where HABs had not been previously reported.

For More Information

- Ohio's Nutrient Strategy and Nutrient Water Quality Standards — epa.ohio.gov/dsw/wqs/NutrientReduction.aspx
- Ohio Clean Lakes Initiative — cleanlakes.ohiodnr.gov
- Directors' Agricultural Nutrients and Water Quality Working Group — <http://agri.ohio.gov/topnews/waterquality/>
- Point Source and Urban Runoff Nutrient Workgroup — epa.ohio.gov/portals/35/documents/point_source_workgroup_report.pdf
- Water Quality Trading Program — epa.ohio.gov/dsw/WQ_trading/index.aspx
- Great Lakes Restoration Initiative — greatlakesrestoration.us
- Public water systems — epa.ohio.gov/ddagw/HAB.aspx

Number Naomi A. Goolsby County Cuyahoga
Issued to Naomi A. Goolsby Date of Issuance 8/31/14
(Name of Solicitor)

INITIATIVE PETITION

To the Attorney General of Ohio:

Pursuant of the Revised Code 3519.01, the undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to you the full text of a proposed Amendment to the Ohio Constitution and a summary of the same.

TITLE

Bottle Bill for Ohio

SUMMARY

The Amendment would amend Art. XV, Section 2 of the Constitution to require the general assembly to enact laws within 90 days of passage to require: a refundable deposit of 5-10 cents be paid on closed glass, metal and plastic containers sold at retail with content in the container; marking such containers with "OH" and the refund value; designation of locations throughout the state where such containers can be returned and deposit refunds received; businesses that purchase such containers and consume the contents to return the containers to such locations and pay the state within 30 days 80% of the refunded deposits to be used to reduce health and car insurance costs for state residents; and impose a fine not to exceed \$100,000 for a violation of the amendment, taking into consideration the business size and extent of violation.

B) The director may enter into contracts or other agreements and may execute any instruments necessary or incidental to the discharge of the director's responsibilities under this chapter.

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as committee to represent the petitioners in all matters relating to the petition to the petition or its circulation:

Naomi Goolsby	10208 Adelaide Ave	Cleveland, Ohio 44111
Del-Marcus Goolsby	10208 Adelaide Ave	Cleveland, Ohio 44111
Kevin Goolsby	10208 Adelaide Ave	Cleveland, Ohio 44111
Precious Anderson	1969 W.48 Street	Cleveland, Ohio 44102

FULL TEXT

Be it Resolved by the People of the State of Ohio that Article XV, Section 2 of the Constitution be amended to read as follows:

Art. XV, Section 2. Retail Container Recycling

Within ninety days of the passage of this amendment, the general assembly shall enact laws to: require a refundable deposit of five to ten cents be paid at the retail level on all glass, metal and plastic closed containers with content in the container; require that the abbreviation "OH" and the refund value be clearly marked on each such container; provide that such containers may be returned to and immediate deposit refunds for such containers be received at designated recycling locations throughout the state; require businesses that purchase and consume the contents of such containers to return the containers to the designated recycling location(s) and receive the deposit refunds and pay to the state within thirty days of receipt eighty percent of the received refunds; require that the deposit refunds paid to the state by businesses be used to lower health insurance and car insurance costs for residents of the state; and impose a fine not to exceed one hundred thousand dollars on businesses for a violation of this amendment, taking into consideration the size of the business and the extent of the violation.

STATEMENT OF CIRCULATOR

I, Naomi A. Goolsby, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of 26 electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by

Ohio Petitioning Partners LLC

3909 Pensacola Ave Cleveland OHIO 44109

(Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

I further declare under penalty of election falsification that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Naomi Goolsby

(Signed)

10208 Adelaide Ave

(Address of circulator's permanent residence in this state) Number and Street, Road or Rural Route

Cleveland

City, Village or Township

Ohio

State

44111

Zip Code

**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY
OF A FELONY OF THE FIFTH DEGREE.**

October 8, 2014

Ohio Secretary of State Jon Husted
180 East Broad Street
Columbus, Ohio 43215

Re: Submitted Proposed Initiated Constitutional Amendment to Amend Article XV, Section 2
of the Ohio Constitution — The Bottle Bill for Ohio

Dear Mr. Husted,

On September 29, 2014, in accordance with Ohio Revised Code (“ORC”) Section 3519.01(A), I received a written petition containing (1) a copy of a proposed initiated constitutional amendment to amend Article XV, Section 2 of the Ohio Constitution, and (2) a summary of the same measure.

It is my statutory duty to determine whether the submitted summary “is a fair and truthful statement of the proposed law or constitutional amendment.” ORC 3519.01(A). If I conclude that the summary is fair and truthful, I am to certify it as such within ten days of receipt of the petition. In this instance, the tenth day falls on Thursday, October 9, 2014.

Having examined the submission, I conclude that the summary is a fair and truthful statement of the proposed constitutional amendment. I therefore submit the following certification to you:

Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General’s Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed law.

Very respectfully yours,



Mike DeWine
Ohio Attorney General

Enclosure: Signature Tally by County

cc: Jack Christopher, Elections Counsel (via email)

**Signatures by County
Bottle Bill for Ohio**

County	Part Petitions	Valid Signatures	Invalid Signatures
Cuyahoga County Board of Elections	48	1148	346
Lake County Board of Elections	2	20	4
Lorain County Board of Elections	4	25	3
Medina County Board of Elections	1	22	5
Portage County Board of Elections	1	4	0
Stark County Board of Elections	1	9	1
Summit County Board of Elections	1	25	7

TOTALS	1253	366
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4101:4-10-01 **Licensure and attendance requirements of operators.**

- (A) In accordance with section 4104.05 of the Revised Code, no person shall operate a low pressure steam boiler that has more than three hundred sixty square feet of heating surface, a power steam boiler that has more than three hundred sixty square feet of heating surface, or a stationary steam engine operating at more than thirty horsepower, unless one of the following applies to that person:
- (1) The person holds the required license as specified in section 4104.05 of the Revised Code, or
 - (2) The person is working under the direct supervision of a person holding the required license as specified in section 4104.05 of the Revised Code.
- (B) The operator described in paragraph (A) of this rule shall maintain continuous, manned attendance during all times of operation of a steam boiler that has more than three hundred sixty square feet of heating surface or a stationary steam engine operating at more than thirty horsepower, except as follows:
- (1) The continuous, manned attendance by the operator during all times of operation of such steam boiler or stationary steam engine may occur from a central control room on the premises when the steam boiler or stationary steam engine can be monitored, controlled, and shut down from that central control room by the operator and is equipped with manual operational resets.
 - (2) The steam boiler may be operated without continuous, manned attendance for a maximum length of time equal to the time it takes for the boiler to go into a low water condition when subjected to an annual evaporation test conducted in accordance with the "ASME Boiler and Pressure Vessel Code, Section VI, 7.05 (H)" referenced in rule 4101:4-3-01 of the Administrative Code.
 - (3) The continuous, manned attendance by the operator during all times of operation of a non-solid-fuel- fired steam boiler or stationary steam engine is not required when the superintendent of the division of industrial compliance has approved a site-specific, detailed written plan to provide for automated electronic monitoring of the steam boiler or stationary steam engine which utilizes controls that contain all operational functions, are equipped with manual operational resets, and are labeled for the intended operation, provided that all of the following apply:
 - (a) The control equipment must be located within the same complex or production facility premises;
 - (b) A person licensed under section 4104.19 of the Revised Code is present at all times within the same complex or production facility premises and is available to respond to an emergency condition when summoned by the automated electronic monitoring system;
 - (c) A secondary means of alerting such licensed person is within the same complex or production facility premises in the event of failure of the primary electronic monitoring system;
 - (d) A qualified individual as defined in rule 4101:4-1-01 of the Administrative Code performs annual operational tests on the automated electronic monitoring system to verify that the system is maintained in accordance with that original manufacturer specification; and
 - (e) A copy of such dated and signed service report or checklist, listing each control and safety device tested with the manufacturer's name, model number, set point, and actual operational test point is provided to the superintendent of the division of industrial compliance upon request. Failure to produce such service report may result in the issuance of an adjudication order within the meaning of Chapter 119. of the Revised Code.

- (4) The continuous, manned attendance by the operator during all times of operation of a non-solid-fuel-fired steam boiler having a fuel input rating of less than 12,500,000 BTU/hr is not required when an automated electronic control system meeting the requirements of "ASME CSD-1" referenced in rule 4101:4-3-01 of the Administrative Code is utilized, provided that all of the following requirements have also been met:
- (a) The boiler manufacturer and the installing contractor shall complete and sign a certification report (similar to the report shown in Appendix C of ASME CSD-1) for each boiler. The certification report shall meet the requirements of Section CG-510 of the ASME CSD-1 and shall identify the manufacturer, model number, and operational test date for each specific boiler control and safety device and certify that each control and safety device was installed and tested in accordance with the manufacturer's installation instructions and the ASME CSD-1.
- (b) The installing contractor, who shall be registered in accordance with rule 4101:4-7-01 of the Administrative Code, shall obtain and provide to the owner or user the operating, testing, servicing, and cleaning instructions for the controls and safety devices. Additionally, the installing contractor shall provide to the owner or user the complete wiring and piping diagrams and a written precaution that the annual operating, testing, and servicing of the controls and safety devices is to be performed only by a qualified individual. The contractor shall obtain a receipt from the owner or user for the delivery of these instructions.
- (c) The certification report and the receipt described in paragraphs (B)(4)(a) and (B)(4)(b) of this rule shall be submitted to the superintendent prior to the required inspection and issuance of the certificate of operation prescribed in rule 4101:4-8-01 of the Administrative Code. Failure to submit this documentation may result in the issuance of an adjudication order within the meaning of Chapter 119. of the Revised Code.
- (d) The owner or user shall develop, coordinate, and implement a preventative maintenance program and ensure that the employee responsible for maintaining the boiler is trained, knowledgeable, and competent to operate and maintain such boiler, controls, and safety devices. The maintenance program shall be consistent with the manufacturer's recommendations and shall include regular inspections and operational testing for the boiler controls and safety devices. Annual inspection and operational testing shall be performed and documented by a qualified individual as defined in rule 4101:4-1-01 of the Administrative Code. Daily, weekly, monthly, and semi-annual inspections and operational testing, as outlined by the manufacturer and as recommended in Appendix D of the ASME CSD-1, shall be performed and documented by an employee who has been trained, is knowledgeable, and is competent to operate and maintain such boiler, controls, and safety devices. The maintenance records shall identify the manufacturer, model number, set point, the operational tests performed, the operational test date, the inspection results, and who performed the tests or inspection for each specific boiler control and safety device. The maintenance records shall be made available to the inspector for review during the certificate inspection. Failure to provide the required maintenance records may result in the issuance of an adjudication order within the meaning of Chapter 119. of the Revised Code.

OMA PUBLIC POLICY FRAMEWORK FOR ACTION

The Ohio Manufacturers' Association

ohiomfg.com

Public Policy Framework for Action

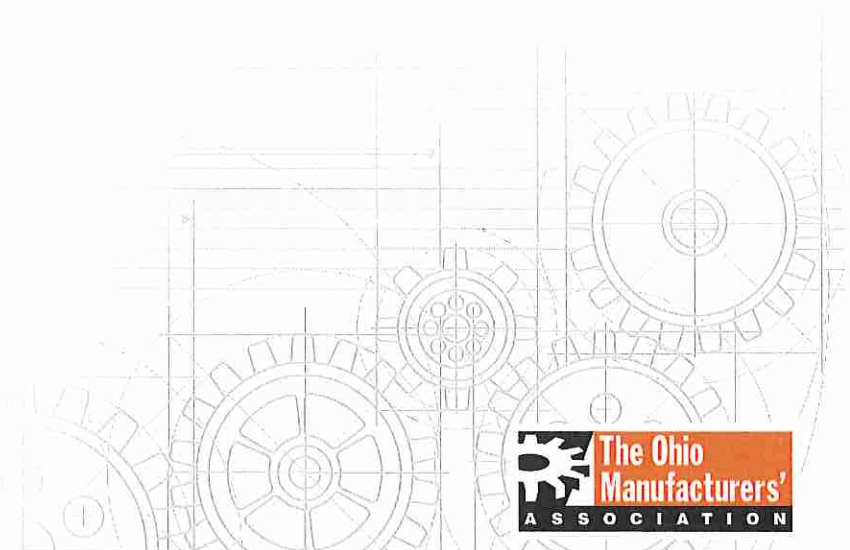
Manufacturing is responsible for 17% of Ohio's Gross Domestic Product; this is greater than the contribution of any other Ohio industry sector. Manufacturing is the engine that drives Ohio's economy.

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 Public Resource Infrastructure**
- **An Educated, Highly Skilled Workforce**



Policy Goal:

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

Effective 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 (and other) 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.

Industry leads the way in solid waste reduction and recycling. Reduction and recycling include source reduction activities, reuse, recycling, composting and incineration. 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.

In addition, industry works hard to ensure safe and healthy manufacturing environments, as well as to inform consumers through appropriate product labeling.

Looking forward, the state should resist calls for state level efforts that deviate from federal regulations, such as product composition mandates, extended producer liability policies, or product labeling mandates. Such requirements are best addressed at the federal level rather than through a patchwork of differing state-level requirements.

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, 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.



Environment

Ohio EPA Staff Rotation Changing

The Ohio Environmental Protection Agency recently announced a new policy that would rotate personnel within its districts and divisions. The new policy applies to inspectors and staff.

In a [letter](#) to stakeholders, Director Craig Butler said, "We believe staff rotation will enhance the uniformity of our inspections while also providing new perspectives and ideas – greatly improving the effectiveness of our efforts. And while some of our staff will be rotating, management in each division and district should remain the same so you should always have someone familiar with whom to discuss issue if they arise."

The Division of Air Pollution Control has announced that in the permitting area, the permit writer will be responsible for no more than one permit cycle for a five-year period for Title V sources. To improve continuity, the existing permit writer will hand off or assist the new permit writer with the renewal permit. *10/16/2014*

U.S. EPA Proposes to Eliminate Startup, Shutdown, and Malfunction Affirmative Defenses

More bad news from the U.S. Environmental Protection Agency (EPA). It is proposing to prohibit excess emissions during periods of startup, shutdown, or malfunction ("SSM") in State Implementation Plans (SIPs) under the Clean Air Act (CAA).

OMA Connections Partner Jones Day writes that, "EPA concluded that a recent court decision did not even allow EPA to approve the narrowly crafted provisions in SIPs allowing for excess emissions during malfunctions allowed by a previous EPA proposal. If finalized, this proposal means that governmental authorities implementing CAA provisions in 37 states and the District of Columbia would be required to revise existing regulations to remove SSM affirmative defenses."

Read more about this proposal [here](#). *10/16/2014*

What's in that Bottle Bill?

This week Ohio Attorney General [Mike DeWine](#) [certified](#) a [petition](#) so that the requisite signatures could be solicited for a proposed "bottle bill" amendment to the Ohio Constitution.

The amendment, if it made it to the ballot and passed, would require the General Assembly to enact laws that require a refundable deposit of 5-to-10 cents to be made on certain glass, metal and plastic containers.

Unlike previous so-called bottle bills, where the goal was to encourage recycling and increase reusable feedstock, 80% of the refunded deposits are directed to be used to reduce health and car insurances costs of Ohio residents. There are no specific details of how this would be accomplished. *10/9/2014*

Ohio EPA 2015 Recycling Grants to be Available

Ohio EPA's 2015 Recycling & Litter Prevention Grants provide opportunities for communities, local governments, businesses and nonprofit organizations to establish and implement recycling, recycling market development, litter prevention and scrap tire recycling programs.

Ohio EPA will host an informational meeting on the application process on Friday, October 31, 2014. The informational meeting will be held at 10:00 a.m. at the Ohio Department of Natural Resources, 2045 Morse Road, Columbus, OH 43229, Assembly Center (Building E). There is no registration required; however, those attending are required to bring a photo identification.

Here's [more information](#). *10/1/2014*

Ohio EPA Will Take Advantage of 111(d) Comment Period Extension

Last week, the U.S. EPA granted a 45-day extension to the 111(d) rule comment period, until December 1, 2014, the Monday following Thanksgiving. Ohio EPA has indicated that it will use the entire 45 day extension to work on and submit its comments to U.S. EPA.

Individuals or companies can [submit comments to Ohio EPA](#) regarding the federal 111(d) proposed rules.

More information about the rule and Ohio's process regarding the comment period can be found [here](#). *9/25/2014*

Review Proposed Boiler Rules

The Ohio Department of Commerce is holding a public hearing today regarding new boiler operator rules as required by [House Bill 12](#), sponsored by Representative Roegner (R - Hudson). House Bill 12

[requires](#) the Board of Building Standards to adopt rules to permit certain automatically operated low pressure steam boilers, power boilers, and stationary steam engines to be operated without the presence of a person licensed under the Boiler Law. The bill was supported by the OMA.

You can view the draft of the rule [here](#). If you have any thoughts or concerns about these rules please contact [Rob Brundrett](#), who is heading up this project. 9/18/2014

U.S. EPA Extends Comment Period for 111(d)

Last week, 53 U.S. Senators (9 Democrats and 44 Republicans) signed and sent this [letter](#) to U.S. EPA Administrator Gina McCarthy requesting a 60-day extension to the comment period for the proposed "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units," siting complexity and magnitude of the rule.

This week, the agency granted a 45-day extension to the comment period, until December 1, 2014.

The Senators' letter described this burden on states: "If the states want to adjust their statewide emission rate target assigned to them by EPA, the must provide their supporting documentation for the adjustment during the comment period." 9/12/2014

OMA Working with EPA to Increase Flexibility of Handling Wastes

This week OMA member companies met with Pam Allen, Chief, Division of Materials and Waste Management at Ohio EPA, to discuss expanding the definition of [universal waste](#) in Ohio to include paint and paint-related products.

Currently, Ohio has four categories of universal waste that may be managed under the less stringent and complex requirements of hazardous waste: lamps, suspended or recalled pesticides, mercury-containing devices, and batteries.

Expansion of universal waste categories would provide Ohio manufacturers with more options and flexibility when it comes to handling waste materials. To participate in the OMA universal waste working group, please contact [Rob Brundrett](#). 9/11/2014

U.S. EPA to Hold Clean Power Plan Webinars

U.S. EPA has announced two webinars aimed at industry and environmental stakeholders to discuss the agency's proposed Clean Power Plan. This is

part of the agency's effort to give interested stakeholders the information needed to learn about and provide public comment on the proposed rule.

The September 10, 2014, 1:00 – 2:30 EST, webinar is primarily for industry stakeholders; and the September 17, 2014, 1:00 – 2:30 EST, webinar is primarily for environmental stakeholders.

To register, please send an email to EPA's [Jean Walker](#) with your name and organization, the session you would like to join, and any questions you'd like answered.

EPA is in the midst of the public comment period for this proposed rule. As a result, these sessions are designed to clarify questions about the content of the Clean Power Plan, not to respond to substantive comment on the proposal itself. For instructions to submit public comment, go [here](#). The public comment period is open until October 16, 2014.

Here is a U.S. EPA [video](#) overview of the Clean Power Plan Rule and [recorded](#) EPA webinars from earlier this summer. 9/4/2014

The Legal Hurdle for 111(d)

The United States Supreme Court's recent decision in [UARG v. EPA](#) offers insight as to how future courts will evaluate the authority of the U.S. EPA under the Clean Air Act to regulate greenhouse gas emissions from power plants and other stationary sources.

From OMA Connections Partner Jones Day: "The question that EPA must address, and future courts will have to resolve, is whether § 111(d) provides "clear congressional authorization" to support the proposed guidelines for existing power plants. In *UARG*, the Supreme Court noted that it is skeptical "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy." Given the unusual scope and significance of the proposed guidelines, EPA will need to identify specific provisions of § 111(d) that justify its proposed approach."

Read [more](#) from Jones Day about U.S. regulatory developments. 8/13/2014

House Starts Work on Lake Erie Water Quality

Two weeks ago the city of Toledo enacted a drinking ban on its municipal water supply due to toxins from algae in Lake Erie. As a result, [Speaker Batchelder](#) (R-Medina) released this [statement](#): "Given the recent events in Toledo, it has become even more evident that we must thoughtfully continue to work

toward a solution to the water quality and algae conditions impacting Lake Erie. Based on his steadfast leadership and diverse knowledge on agricultural and environmental issues, I have tasked Chairman Dave Hall with studying this issue further through the House Agriculture and Natural Resources Committee."

Rep. [Dave Hall](#) (R-Millersburg) is now planning hearings on the issue. And, the Lake Erie caucus, which is made up of state lawmakers whose districts about Lake Erie, is holding an informal hearing this week.

For the past year the OMA staff and members have participated in the Ohio EPA's [Water Nutrient Technical Advisory Group](#) to advise the agency as it develops surface water quality standards for nutrients. Right now, the group is deliberating a proposed [stream nutrient assessment procedure](#). This matter has implications for all manufacturers with any discharges of phosphorus or nitrogen into streams or wastewater treatment facilities. Contact OMA's [Rob Brundrett](#) for more information. *8/14/2014*

Most Costly U.S. Regulations, Ever?

The OMA and the National Association of Manufacturers (NAM) yesterday [released](#) a study that finds the proposed U.S. EPA ozone regulations could be the most expensive regulations ever administered against American manufacturers.

In 2008, the U.S. EPA lowered the National Ambient Air Quality Standard for ground level ozone to 75 parts per billion (ppb). Now, the agency is proposing to lower the standard to 60 ppb.

The [study](#) finds that imposition of a 60 ppb ozone standard could reduce U.S. Gross Domestic Product by as much as \$3.4 trillion through 2040 and dramatically increase energy costs across all sectors.

The [potential effect](#) on Ohio: \$204 billion reduction in Gross State Product through 2040; 218,415 lost jobs (or job equivalents) in Ohio each year through 2040; \$156 billion increase in compliance costs for Ohio businesses through 2040; \$2,730 in additional costs paid by Ohio households annually in the form of higher prices for goods and services; Up to 32 percent increase in household natural gas prices and up to 15 percent increase in household electricity prices (nationwide), and; Estimated shutdown of 81 percent of Ohio's coal-fired generating capacity.

NAM is mounting a national campaign to increase understanding of the potential impact of the new federal ozone requirements. As part of that

campaign, NAM has produced a [video](#) discussing the creation, transport and regulation of ground-level ozone. Pass it on to help get the message out. *7/31/2014*

Supreme Court OK's EPA GHG Authority, but with a Rebuke

The U.S. Supreme Court this week upheld the right of the U.S. EPA to regulate greenhouse gas emissions from stationary sources under the Clean Air Act. The case, "[Utility Air Regulatory Group v. Environmental Protection Agency](#)," is the latest in a string of rulings endorsing the EPA's authority to regulate carbon as a pollutant under the Clean Air Act.

However, and in a victory for manufacturers, the court gave the EPA a tongue-lashing for essentially legislating policy with its "tailoring rule," which the court rejected. By striking down the "tailoring rule," the court ruled that EPA does not have the power to require burdensome new permits for greenhouse gas emissions for all stationary sources. With the "tailoring rule," the EPA had claimed an authority to "tailor" regulations to targets of its own determination, rather than those legislated by Congress. Essentially, EPA had claimed authority to regulate the entire U.S. economy.

"An agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms," Justice Scalia wrote. Chief Justice Roberts and Justices Kennedy, Clarence Thomas and Samuel A. Alito Jr. joined that part of the decision.

Here is an [analysis](#) of the decision by OMA counsel, [Frank Merrill](#), of Bricker & Eckler LLP. *6/25/2014*

Legality of U.S. EPA Carbon Rules Questioned

A [memorandum](#) authored by the law firm of Troutman Sanders, which is working with the Partnership for a Better Energy Future (PBEF), an organization co-lead by the National Association of Manufacturers and the U.S Chamber, and of which the OMA is a member, outlined the legal hurdles it says the U.S. EPA must overcome in order for its recently proposed carbon reduction standards to pass judicial scrutiny.

It states: "The proposal is the type of results-driven regulation – where an agency "creatively" interprets its statutory authority to achieve the agency's own policy agenda – that courts have routinely overturned."

And goes on to say: "Beyond these basic threshold flaws, the legal infirmities of EPA's 645-page proposal are too numerous to summarize here. One fault, however, predominates over all others. EPA is

requiring States to submit plans that essentially reengineer their electric utility systems. EPA does not remotely have the power to do so." 6/19/2014

OMA Members Receive Ohio EPA's E3 Silver Award

Ohio EPA recently [awarded](#) six companies including two OMA members the 2014 Encouraging Environmental Excellence (E3) Award at the silver level. The E3 program recognizes organizations committed to environmental excellence.

The recipients include OMA members MillerCoors, Trenton, and Sherwin Williams, Breen Technology Center, Cleveland.

Of the bronze, silver and gold levels, silver award recipients have demonstrated a commitment beyond compliance, having integrated outstanding environmental management into their core business functions, developed aggressive performance goals and created a process to communicate the company's environmental progress to the local community.

Nominations for the 2015 E3 Silver Level are being accepted through June 27, 2014. 6/19/2014

Environment Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on October 20, 2014

- HB12** **LICENSED OPERATOR REQUIREMENT (ROEGNER K)** To eliminate the licensed operator requirement for gaseous fuel and fuel oil fired boilers that comply with certain safety and engineering standards.
Current Status: 10/31/2013 - **SIGNED BY GOVERNOR**; Eff. 1/30/2014
Recent Status: 10/22/2013 - Sent to Governor for Signature
10/2/2013 - **PASSED BY SENATE**; Vote 30-1
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_12
- HB59** **BIENNIAL BUDGET (AMSTUTZ R)** To make operating appropriations for the biennium beginning July 1, 2013, and ending June 30, 2015; to provide authorization and conditions for the operation of state programs.
Current Status: 6/30/2013 - **SIGNED BY GOVERNOR**; Eff. 6/30/2013; Some Eff. 9/29/2013; Others Various Dates
Recent Status: 6/27/2013 - Consideration of Conference Committee Report; Vote 53-44
6/27/2013 - Consideration of Conference Committee Report; Approved Vote 21-11
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_59
- HB93** **OIL AND GAS LAW (HAGAN R)** To increase criminal penalties for violations of the Oil and Gas Law relating to improper disposal, transport, and management of brine, to establish a criminal penalty for a negligent violation of certain provisions of the Solid, Hazardous, and Infectious Wastes Law, and to require the revocation of a violator's permits and registration certificate and denial of future permit and registration certificate applications under the Oil and Gas Law.
Current Status: 6/25/2013 - House Agriculture and Natural Resources, (First Hearing)
Recent Status: 3/6/2013 - Referred to Committee House Agriculture and Natural Resources
3/5/2013 - Introduced
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_93
- HB148** **OIL AND GAS LAW (DRIEHAUS D, HAGAN R)** 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: 6/25/2013 - House Agriculture and Natural Resources, (First Hearing)
Recent Status: 5/7/2013 - Referred to Committee House Agriculture and Natural Resources
4/30/2013 - Introduced
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_148
- HB205** **BRINE RECYCLING FEE (GERBERRY R)** To authorize a fee on the recycling of brine from oil and gas operations to benefit local governments.
Current Status: 6/25/2013 - House Agriculture and Natural Resources, (First Hearing)
Recent Status: 6/18/2013 - Referred to Committee House Agriculture and Natural Resources
6/12/2013 - Introduced

State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_205

- HB282 SALES-USE TAX LICENSE (ROGERS J)** To authorize vendors and others required to hold a sales or use tax license whose business and home address is the same to apply to the Tax Commissioner to keep such address confidential.
Current Status: 2/26/2014 - **BILL AMENDED**, House Ways and Means, (Second Hearing)
Recent Status: 2/11/2014 - House Ways and Means, (First Hearing)
10/23/2013 - House Ways and Means, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_282
- HB417 WATER-WASTEWATER UTILITY SERVICE IMPROVEMENT PROJECTS (THOMPSON A)** To ensure that all proven and acceptable piping materials be included in bids for water and wastewater utility service improvement projects.
Current Status: 3/19/2014 - House Public Utilities, (Second Hearing)
Recent Status: 2/19/2014 - House Public Utilities, (First Hearing)
1/28/2014 - Referred to Committee House Public Utilities
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_417
- HB472 MBR-MID-BIENNIUM BUDGET REVIEW (MCCLAIN J)** To make operating and other appropriations and to provide authorization and conditions for the operation of state programs.
Current Status: 3/26/2014 - House Ways and Means, (Third Hearing)
Recent Status: 3/25/2014 - **SUBSTITUTE BILL ACCEPTED**, House Ways and Means, (Second Hearing)
3/12/2014 - House Ways and Means, (First Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_472
- HB490 MBR-AGRICULTURE-NATURAL RESOURCES-ENVIRONMENTAL PROTECTION LAWS (HALL D, THOMPSON A)** To revise certain laws governing agriculture, natural resources, and environmental protection.
Current Status: 5/20/2014 - House Agriculture and Natural Resources, (Fifth Hearing)
Recent Status: 5/13/2014 - House Agriculture and Natural Resources, (Fourth Hearing)
4/8/2014 - House Agriculture and Natural Resources, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_490
- HB625 MICROCYSTIN LEVELS-PROCEDURE (SHEEHY M, PATTERSON J)** To establish requirements and procedures pertaining to levels of microcystin in public water systems.
Current Status: 9/22/2014 - Introduced
Recent Status:
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_HB_625
- HCR29 EPA REGULATIONS (THOMPSON A)** To urge the President of the United States to halt the Environmental Protection Agency's costly and harmful pursuit of regulations that restrict fuel diversity for electricity generation and to pursue new fuel diversity policies.
Current Status: 11/19/2013 - Referred to Committee Senate Energy and Natural Resources
Recent Status: 11/13/2013 - **ADOPTED BY HOUSE**; Vote 66-22
11/13/2013 - Bills for Third Consideration

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_HCR_29

- HCR49** **GREAT LAKES-ASIAN CARP** (SHEEHY M) To urge the United States Congress to approve and fund a hydrological separation of the Great Lakes and Mississippi River watersheds to stop the spread of Asian carp.
Current Status: 3/11/2014 - Referred to Committee House Agriculture and Natural Resources
Recent Status: 3/11/2014 - Introduced
State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_HCR_49
- SB59** **EDUCATION ENERGY COUNCIL** (BEAGLE B) To authorize an eligible regional council of governments to establish itself as an education energy council for the purpose of issuing debt to pay for school district energy purchases.
Current Status: 2/19/2014 - Senate Public Utilities, (Fourth Hearing)
Recent Status: 9/25/2013 - Senate Public Utilities, (Third Hearing)
6/18/2013 - Senate Public Utilities, (Second Hearing)
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_59
- SB150** **AGRICULTURAL ADDITIVES, LIME AND FERTILIZER LAW** (HITE C, PETERSON B) To revise the law governing the abatement of agricultural pollution, to require a person that applies fertilizer for the purposes of agricultural production to be certified to do so by the Director of Agriculture, to provide for an agricultural pesticide-use category on commercial and private pesticide applicator licenses, and to make other changes to the Agricultural Additives, Lime, and Fertilizer Law.
Current Status: 5/22/2014 - **SIGNED BY GOVERNOR**; Eff. 8/21/2014
Recent Status: 5/16/2014 - Sent to Governor for Signature
5/7/2014 - Consideration of House Amendments
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_150
- SB178** **DEEP WELL BRINE INJECTION** (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: 10/29/2013 - Senate Energy and Natural Resources, (First Hearing)
Recent Status: 9/26/2013 - Referred to Committee Senate Energy and Natural Resources
8/14/2013 - Introduced
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_178
- SB356** **FERTILIZER APPLICATOR CERTIFICATION** (BROWN E) To include manure as fertilizer for purposes of fertilizer applicator certification, to revise the operation date of the fertilizer applicator certification requirements, and to declare an emergency.
Current Status: 8/14/2014 - Introduced
Recent Status:
State Bill Page: http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_356
- SCR9** **ASIAN CARP** (PATTON T) To urge the President of the United States and the Congress of the United States to take all actions necessary to prevent Asian carp from entering the Great Lakes, including Lake Erie.
Current Status: 11/19/2013 - Referred to Committee House Agriculture and Natural Resources
Recent Status: 11/13/2013 - **ADOPTED BY SENATE**; Vote 32-0

11/13/2013 - Bills for Third Consideration

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_SCR_9

SCR25 GREEN BUILDING RATING STANDARDS (UECKER J) To urge, for Ohio state agencies and other government entities, the use of green building rating systems, codes, or standards that are consistent with state energy efficiency and environmental performance objectives and policies and that meet American National Standards Institute voluntary consensus standard procedures.

Current Status: 3/11/2014 - Referred to Committee House Manufacturing and Workforce Development

Recent Status: 2/26/2014 - **ADOPTED BY SENATE**; Vote 22-10
2/26/2014 - Bills for Third Consideration

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_SCR_25

SCR34 U.S. EPA-STATES PRIMACY (GENTILE L) To urge the U.S. Environmental Protection Agency to recognize the primacy of states to rely on state utility and environmental regulators in developing guidelines for reductions of carbon dioxide emissions from existing power plants and to take other specified actions regarding greenhouse gas emissions.

Current Status: 2/19/2014 - Referred to Committee Senate Energy and Natural Resources

Recent Status: 2/18/2014 - Introduced

State Bill Page: http://www.legislature.state.oh.us/res.cfm?ID=130_SCR_34

OMA Committee Meeting Participant Survey Results

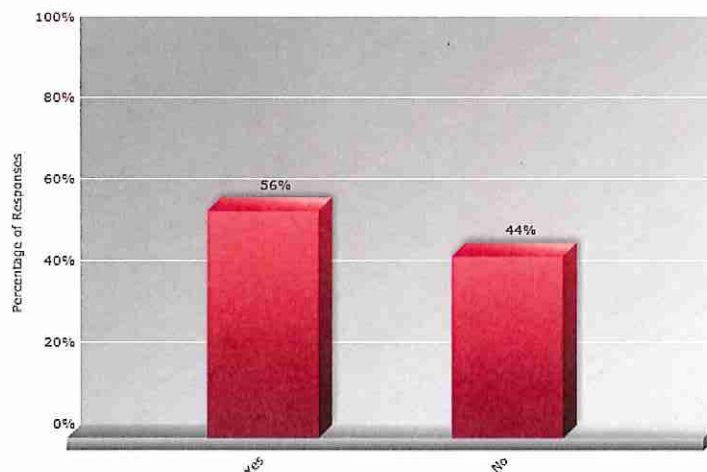
August 2014



Have you attended a committee meeting IN PERSON in the past year?

Answer	Percentage	Number
Yes	56 %	15
No	44 %	12

Number of Respondents: 27



What was the best part about attending an OMA policy committee meeting in person?

Themes:

- **Information** – “The information on how pending policies impact the economics of business in Ohio.”
- **Networking** - “I enjoy the personal interaction and the important sidebar conversations.”
- **Access to elected officials** – “Hearing directly from administration or legislative representatives.”
- **Meeting design** – “It is easier to ask questions of the guest speakers when you are in the room.”

What changes to policy committee meetings should OMA consider?

Time management –

“Sometimes there is not enough time to properly accomplish the business.”

“I'd like to figure out way to attend without losing the entire day from the office.”

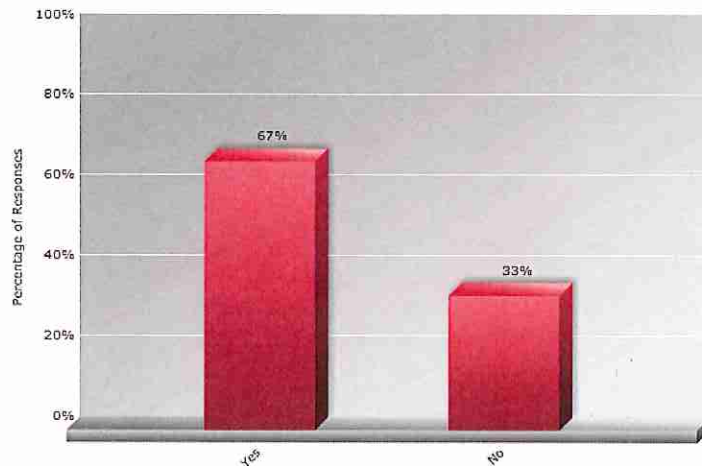
“More time for networking, shared perspectives, learning through interaction.”

“Lengthen them.”

“Shorten them.”

Have you participated in an OMA policy committee meeting VIA PHONE in the past year?

Answer	Percentage	Number
Yes	67 %	16
No	33 %	8
Number of Respondents: 24		



What would improve OMA policy committee meeting participation via phone?

Themes:

Interaction — “Ask people on the phone for their reactions more frequently.”

Technology

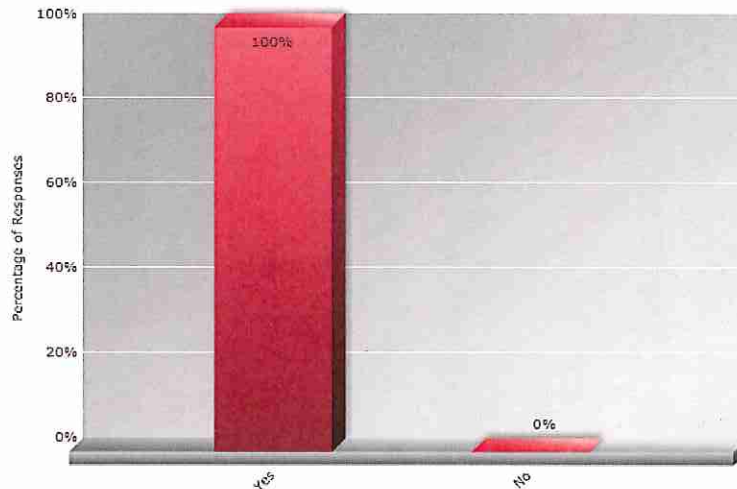
“Webinar or improved system that does not allow callers to interfere with the meeting.”

“It would be nice to be able to view the meetings by internet.”

“It is difficult to hear the speakers and attendees who have questions or comments.”

OMA emails the committee materials to you whether or not you register for the policy committee meeting(s). Is this of value to you?

Answer	Percentage	Number
Yes	100 %	20
Number of Respondents: 20		



Should OMA consider any changes to the meeting materials?

“Making sure they are as brief as possible while still being meaningful.”

“Adding an executive summary.”

“More detailed index.”

“Have archives online for reference.” (See ohiomfg.com footer)



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