



Ohio Environmental Council [Action Fund]

SB 1 Assessment **Peter Bucher, Water Resources Director** **June 5, 2018**

Good afternoon Chairman Hill, Chairman Hackett and members of the House and Senate agriculture committees. My name is Peter Bucher, Water Resources Director at the Ohio Environmental Council (OEC) Action Fund. Thank you for the opportunity to speak on Senate Bill 1 and the years since its passage.

Lake Erie's harmful algal bloom problem has long been at the forefront of discussion throughout Ohio and in different parts of the country. This is truly one of the most complex water quality issues facing our state. These annual algal blooms pose a public health risk, and hinder Lake Erie economies and recreation. The height of the problem came in 2014 when half-a-million northwest Ohioans were left without safe drinking water because of the toxin the algal bloom produces.

Following the Toledo water crisis, many of those in the room today took action in the form of Senate Bill 1. This multifaceted approach had the core goal of preventing nutrient applications during the riskiest time of the year in northwest Ohio. These restrictions were put in place to reduce phosphorus loading from entering the western Lake Erie basin watershed. Senate Bill 1 was a good step in the right direction but unfortunately we have not seen the reductions in phosphorus loading needed as a result of the bill.

Even with the actions taken 3 years ago, we have seen two of the largest algal blooms on record and the designation of western Lake Erie as impaired by the Ohio Environmental Protection Agency (OEPA). Additionally, the OEPA's nutrient mass balance study recently showed that total phosphorus entering the watershed has increased and it reaffirmed that it is overwhelming from nonpoint sources.

Nonpoint sources of any pollution are difficult to control and what is happening with Lake Erie is no different. All the while erratic weather patterns and heavy rain events make this problem even harder to solve. SB 1 was a good first step but Lake Erie's harmful algal blooms have gotten worse and excess phosphorus is still entering our waterways. Although great strides have been made in research, more agricultural practices and education must be done, as outlined in the attached "[white paper](#)," or Lake Erie will be plagued with harmful algal blooms for years to come.

The agricultural community has stepped up by investing in research, demonstration farms and educational outreach, but more resources are needed to create a watershed sized agricultural conservation program. Social research around this issue shows that only 1/3 of agricultural producers in the western Lake Erie basin (WLEB) use one or more best management practices (BMPs). Another 1/3 of producers are willing to use or are considering using BMPs and another 1/3 likely won't use BMPs. To continue to build upon SB 1 and take steps in the right direction more producers must implement BMPs and they will need help to do so.

Senate Bill 299 and House Bill 643 will supplement the Healthy Lake Erie Fund and Initiative, but a bigger, more long term investment will need to be made at the state level and SJR 6 and HJR 16 can serve that purpose.

Funding and voluntary programs alone, however, will not allow us to hit the 40% reduction commitment made by the state. While Senate Bill 1, as stated previously, was a step in the right direction and put into place some good programs, such as the beneficial reuse of dredged sediments, some improvements need to be made to the rain forecast provision in SB1. As a result of the multiple manure-related fishkills in August of 2017, it is clear the rain forecast provision is not protective of water quality and is a bit vague. Therefore we recommend amending the precipitation prohibitions to remove minimum precipitation amount, and clarify the 12/24 hour provision. Furthermore, since at least one of the August 2017 fish kills resulted from precipitation beyond the 24-hour parameters, we recommend extending the prohibition time frame to 48-hours after planned application.

We applaud the legislature for enacting SB 1 in 2015 and the agricultural industry for implementing the rules established but there is no one solution, one regulation or one incentive that can put us on track to clean up Lake Erie. Although no one action can get us to our phosphorus reduction goal of 40% by 2025, SB 1 was a good step in the right direction. We need to build upon what was done and form a plan that works for Lake Erie, those that rely on it and the agricultural industry.

Thank you Chairman Hill and Chairman Hackett for the opportunity to speak today, I would be happy to answer any questions at this time.

Peter Bucher
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Proposed Amendments

905.326 Application of fertilizer in western basin.

(A)

(1) Except as provided in division (B) of this section, no person in the western basin shall surface apply fertilizer under either of the following circumstances:

(a) On snow-covered or frozen soil;

(b) When the top two inches of soil are saturated from precipitation.

(2) Except as provided in division (B) of this section, no person in the western basin shall surface apply fertilizer in a granular form when the local weather forecast for the application area contains greater than a fifty percent chance of precipitation exceeding one inch in a twelve-hour twenty-four-hour period following planned application.

(B) Division (A) of this section does not apply if a person in the western basin applies fertilizer under any of the following circumstances:

(1) The fertilizer is injected into the ground.

(2) The fertilizer is incorporated within twenty-four hours of surface application.

(3) The fertilizer is applied onto a growing crop.

(C)

(1) Upon receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director or the director's designee may investigate or make inquiries into any alleged failure to comply with this section.

(2) After receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the director or the director's designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged failure to comply with this section.

(3) If an individual denies access to the director or the director's designee, the director may apply to a court of competent jurisdiction in the county in which the

premises is located for a search warrant authorizing access to the premises for the purposes of this section.

(4) The court shall issue the search warrant for the purposes requested if there is probable cause to believe that the person is not in compliance with this section. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.

(D) This section does not affect any restrictions established in Chapter 903. of the Revised Code or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that chapter.

(E) As used in this section , "western basin" means land in the state that is located in the following watersheds identified by the specified United States geological survey hydrologic unit code:

- (1) St. Marys watershed, hydrologic unit code 04100004;
- (2) Auglaize watershed, hydrologic unit code 04100007;
- (3) Blanchard watershed, hydrologic unit code 04100008;
- (4) Sandusky watershed, hydrologic unit code 04100011;
- (5) Cedar-Portage watershed, hydrologic unit code 04100010;
- (6) Lower Maumee watershed, hydrologic unit code 04100009;
- (7) Upper Maumee watershed, hydrologic unit code 04100005;
- (8) Tiffin watershed, hydrologic unit code 04100006;
- (9) St. Joseph watershed, hydrologic unit code 04100003;
- (10) Ottawa watershed, hydrologic unit code 04100001;
- (11) River Raisin watershed, hydrologic unit code 04100002.

(F) Notwithstanding section [905.31](#) of the Revised Code, as used in this section, "fertilizer" means nitrogen or phosphorus.

(G) As used in this section, "annual agronomic rate" means the rate at which fertilizer can be added to soil for optimum crop growth in a single year.

1511.10 Application of manure in the western basin.

(A) Except as provided in division (B) of this section, no person in the western basin shall surface apply manure under any of the following circumstances:

- (1) On snow-covered or frozen soil;
- (2) When the top two inches of soil are saturated from precipitation;
- (3) When the local weather forecast for the application area contains greater than a fifty percent chance of precipitation exceeding one-half inch in a twenty-four-hour forty-eight hour period following planned application.

(B) Division (A) of this section does not apply if a person in the western basin applies manure under any of the following circumstances:

- (1) The manure is injected into the ground.
- (2) The manure is incorporated within twenty-four hours of surface application.
- (3) The manure is applied onto a growing crop.
- (4) In the event of an emergency, the chief of the division of soil and water resources or the chief's designee provides written consent and the manure application is made in accordance with procedures established in the United States department of agriculture natural resources conservation service practice standard code 590 prepared for this state.

(C)

- (1) Upon receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the chief or the chief's designee may investigate or make inquiries into any alleged failure to comply with this section.
- (2) After receiving a complaint by any person or upon receiving information that would indicate a violation of this section, the chief or the chief's designee may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged failure to comply with this section.
- (3) If an individual denies access to the individual's property, the chief may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises for the purposes of this section.
- (4) The court shall issue the search warrant for the purposes requested if there is probable cause to believe that the person is not in compliance with this section. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.

(D) This section does not affect any restrictions established in Chapter 903. of the Revised Code or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that chapter.

(E) As used in this section, "western basin" has the same meaning as in section 905.326 of the Revised Code.

905.327 Penalty for unlawful application of fertilizer.

(A) The director of agriculture may assess a civil penalty against a person that violates section 905.326 of the Revised Code. The director may impose a civil penalty only if the director affords the person an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the director's determination that the person violated section 905.326 of the Revised Code. The person may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that a violation has occurred or is occurring, the director may issue an order requiring compliance with section 905.326 of the Revised Code and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section [119.12](#) of the Revised Code.

(C) A person that has violated section 905.326 of the Revised Code shall pay a civil penalty in an amount established in rules. Each day during which fertilizer is applied in violation of section 905.326 of the Revised Code constitutes a separate violation.

(D) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish the amount of the civil penalty assessed under this section. The civil penalty shall not be more than ten thousand dollars for each violation.

(E) For purposes of this section, "rule" means a rule adopted under division (D) of this section.

1511.11 Penalty for unlawful application of manure in the western basin.

(A) Except as provided in division (D) of this section, the chief of the division of soil and water resources may assess a civil penalty against a person that violates section 1511.10 of the Revised Code. The chief may impose a civil penalty only if the chief affords the person an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the chief's determination that the person violated section 1511.10 of the Revised Code. The person may waive the right to an adjudication hearing.

(B) If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the chief determines that a violation has occurred or is occurring, the chief may issue an order requiring compliance with section 1511.10 of the Revised Code and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section [119.12](#) of the Revised Code.

(C) A person that has violated section 1511.10 of the Revised Code shall pay a civil penalty in an amount established in rules. Each day during which manure is applied in violation of section 1511.10 of the Revised Code constitutes a separate violation.

(D)

(1) The owner or operator of a small agricultural operation or a medium agricultural operation may apply to the chief for an exemption from the prohibition established in division (A) of section 1511.10 of the Revised Code. If the chief or the chief's designee determines that it is appropriate, the chief or the chief's designee may issue such an exemption as follows:

(a) For a medium agricultural operation, for a period ending not later than one year after the effective date of this section;

(b) For a small agricultural operation, for a period ending not later than two years after the effective date of this section.

(2) The chief shall establish the form of the application for an exemption in rules adopted under division (E) of this section.

(3) The chief or the chief's designee shall approve or deny an application for an exemption submitted under division (D)(1) of this section not later than thirty days after an application has been submitted.

(4) The chief or the chief's designee may deny an application for an exemption or revoke an exemption approved under division (D)(3) of this section if the chief or the chief's designee determines that the owner or operator is not in substantial compliance with this chapter and rules adopted under it other than violating division (A) of section 1511.10 of the Revised Code.

(5) An owner or operator that has been issued an exemption under this section is not subject to civil penalties assessed for a violation of division (A) of section 1511.10 of the Revised Code during the exemption period.

(6) An owner or operator that has an initial application for an exemption that is pending the chief's review is not subject to civil penalties assessed for a violation of division (A) of section 1511.10 of the Revised Code.

(E) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that establish both of the following:

(1) The amount of the civil penalty assessed under this section. The civil penalty shall be not more than ten thousand dollars for each violation.

(2) Requirements governing the application form for an exemption submitted under division (D) of this section. The rules shall require the form to include all of the following:

(a) A statement from the applicant affirming that the applicant understands the provisions of sections 1511.10 and 1511.11 of the Revised Code;

(b) A statement from the applicant affirming that the applicant understands that the applicant must be in compliance with procedures established in the United States department of agriculture natural resources conservation service practice standard code 590 prepared for this state except procedures that are in conflict with this section and section 1511.10 of the Revised Code;

(c) A place for the applicant to explain the reasons for the necessity for the exemption;

(d) A place on the form that provides information on programs that may assist an applicant with methods to comply with division (A) of section 1511.10 of the Revised Code ;

(e) A place on the form that provides the applicant an opportunity to request technical assistance or information from the chief or the applicable soil and water conservation district to assist the applicant to comply with division (A) of section 1511.10 of the Revised Code.

(F) As used in this section :

(1) "Small agricultural operation" means an agricultural operation in the western basin that stables or confines fewer than any of the numbers of animals specified in divisions (Q)(1)(a) to (m) of section [903.01](#) of the Revised Code.

(2) "Medium agricultural operation" means an agricultural operation in the western basin that stables or confines any of the numbers of animals specified in divisions (Q)(1)(a) to (m) of section [903.01](#) of the Revised Code.

(3) "Western basin" has the same meaning as in section 905.326 of the Revised Code.