



[ UNLEASHING THE POWER OF GREEN ]

**TO: Ohio Senate Finance - Corrections Subcommittee**  
**FROM: Jack Shaner, OEC Interim Executive Director**  
**DATE: May 21, 2015**  
**SUBJECT: Interested Party Testimony - House Bill 64 - Biennial Operating Budget**

The Ohio Environmental Council respectfully presents the following comments and amendment recommendations to the Ohio Department of Natural Resources' proposed biennial operating budget for FY's 2016 + 2017. Our recommendations strive to help achieve 3 basic objectives:

- **Health and Safety:** Protect people, communities, and air, land, water, and wildlife resources, especially during environmental emergencies.
- **Stewardship:** Fulfill our shared stewardship responsibility to responsibly care for and conserve our air, land, water and wildlife resources.
- **Fairness and Responsibility:** Improve government transparency and accountability, especially regarding enforcement of environmental protections and natural resource conservation practices.

#### **Ohio Department of Natural Resources (ODNR) Budget**

With a few exceptions, the OEC generally supports the Governor's Budget for the ODNR.

#### **Oil and Gas Law Provisions Related to Chemical Information; Criminal Penalties; Criminal Background Checks; Notification of Emergencies; Compulsory Unitization**

**OEC SUPPORT:** The OEC is especially supportive of the following several Governor's Budget provisions, which the House rejected. We believe these provisions are necessary and appropriate to protect people's health, safety, and property as well as air and water quality, water supply, and wildlife. We respectfully ask the Subcommittee to maintain the following provisions as proposed in the Governor's Budget.



#### **DNRCD35 - Disclosure of chemical information under the Oil and Gas Law**

**OEC SUPPORT:** The provision requires the oil and gas industry to share proprietary chemical information in the event of an emergency with the ODNR Oil and Gas Chief. It also authorizes

the Chief to share that information with any state agency or emergency responder that is responding to a spill or release or that is participating in an investigation of a spill or release. The provision provides for protection from public disclosure of the trade-secreted information.

The provision is aimed at fixing a **profound hole in Ohio law (RC 1509.10J2)** which slowed the sharing of urgent chemical information with local firefighters, state first responders, and local water utility managers during the large chemical fire and resulting spill at an oil + gas well pad in Monroe County that ignited on June 28, 2014. This existing law states, in pertinent part:

"Upon the request of the chief, the owner or person, as applicable, shall disclose the records to the chief if the information is necessary to respond to a spill, release, or investigation. **However, the chief shall not disclose the information that is designated as a trade secret.**"

This chemical fire was a major incident that sparked investigations by the State Fire Marshall, Ohio DNR, Ohio EPA, and USEPA. (To our knowledge, final reports from those agencies have not yet been released.) According to a August 31, 2014 Columbus Dispatch [story](#), "Fracking fire points out failings": **"In the StatOil fire, both the Ohio and U.S. EPAs waited five days to learn what made up the proprietary chemicals that were on the well pad during the fire."**

**Bottom line:** Until ORC Sec. 1509.10-J is fixed, Ohio law may continue to obstruct the urgent sharing of critical information during an emergency event at an oil and gas well site. Until the law is fixed, residents, firefighters, other first responders, public water supplies, and air water and wildlife resources could be endangered yet again.

## **DNRCD9 - Registration of persons engaged in activities regulated under Oil and Gas Law**



**OEC SUPPORT:** The notorious "Youngstown Dumper" was convicted in federal court of ordering the unlawful dumping of 200,000 gallons of fracking waste down a storm sewer that drained to the Mahoning River. A \$3.1MM cleanup resulted. Without an official background check, a bad actor like this from another state could slip through the Ohio oil and gas permitting system and secure a permit to do business in Ohio. While Ohio law provides for such checks for landfill and CAFO owners/operators, there is no such check for the compliance history of persons who want to engage in oil and gas activity in Ohio. The Governor's Budget appropriately strengthens criminal penalties and establishes a criminal background check for felony violations of major state and federal clean water laws. **Solution:** Keep unscrupulous operators honest. And prevent bad actors like the "Youngstown Dumper" from ever doing business in Ohio. Accept the Governor's Budget provision.

### **DNRCD13 - Penalties under the Oil and Gas Law**

**OEC SUPPORT:** To help deter bad actors from acting out in the first place, the Governor's Budget strengthens penalties for violations of the Oil and Gas Law and authorizes the sentencing court to order any person convicted of or pleading guilty to violating the Oil and Gas Law to reimburse the state agency or a political subdivision for any actual response costs. The House accepted the proposed increase in civil penalties, but rejected the increased criminal penalties and reimbursement provision. **Solution:** Environmental crimes should not be tolerated. The Senate should maintain all parts of the Governor's provision.

### **DNRCD12 - Notification of emergencies under Oil and Gas Law**

**OEC SUPPORT:** The House Budget bests the Governor's Budget, here. The House provision requires oil and gas well owners, brine transporters, and surface applicators of brine to notify the ODNR Oil and Gas division by a designated toll-free telephone number or by electronic means within 30 minutes -- unless notification within that time is impracticable under the circumstances -- after becoming aware of an uncontrolled or unplanned release of specified amounts of oil; gas; brine, drilling cuttings, or other regulated drilling wastes; hydrogen sulfide; a liquid, solid, or semisolid substance or material associated with a production operation or other regulated activity; a fire or explosion, excluding authorized flaring or controlled burns; or emergency response by a fire department or emergency medical service. The House provision further prohibits a person from failing to comply with these provisions and is subject to a civil penalty. We respectfully ask the Senate to accept the House provision with one important revision: Amend the House provision to ensure that it does not supersede any other existing statutory duty to report incidents regarding human health and the environment, including, specifically, the requirement in existing ORC Sec. 3750.06 to notify local emergency responders and the Ohio EPA of a hazardous materials release.

### **DNRCD136 - Application procedures for compulsory unitization order**

### **DNRCD37 - Issuance of compulsory unitization order and requirements governing compulsory unitization**

### **DNRCD36 - Payment of royalties under a compulsory unitization order**

### **DNRCD39 - Prohibitions, liability, and enforcement under compulsory unitization orders**

### **DNRCD40 - Other provisions pertaining to compulsory unitization under oil and Gas Law**

**OEC SUPPORT:** The proposed modernization to the Oil and Gas Law governing compulsory unitization in the Governor's Budget is:

- far superior to those included in House Bill 8 (As Passed by the House)
- thoughtful, comprehensive, and sorely needed

The OEC acknowledges the efforts of the House to hold state nature preserves and state parks exempt from compulsory unitization and to protect state forests from surface impacts from any compulsory unitization. Even with that, the Governor's provisions are far superior to House Bill 8. We vigorously but respectfully ask the Senate to accept the Governor's provisions.

ODNR Director Zehringer has accurately testified that the unitization law was rarely if ever used over the first four-plus decades of the law. Since the permitting of horizontal shale wells has ramped up over the past few years, so have unitization orders. We agree with the underlying objective of modernizing the oil and gas unitization law. We believe that the modernization of this law must have the goal of protecting the rights of all landowners including those landowners who choose not to lease, those who have yet to come to an agreement with the driller, and the 11 million landowners of publicly-owned property.

Therefore, we support the Governor's proposed revisions to §1509.28 as a positive step, and specifically the provisions that:

- Eliminate unilateral ODNR unitization by eliminating the Chief's own motion for holding a unitization hearing;
- Require the Applicant to notify all un-leased mineral rights owners of the hearing by certified mail at least 30 days prior to the hearing date. The applicant also is required to provide newspaper notification and verification of both forms of notification are required at least 14 days prior to hearing.
- Require monthly cash payment of a 1/8th royalty calculated on gross proceed;
- Prohibits surface operations or surface disturbance on an un-leased mineral rights owner property unless written consent is obtained;
- Specifies that un-leased mineral rights owners shall not incur any liability for personal or property damage associated with the operations; and
- Makes violation of divisions (C)(2); (F)(5); (H)(2); and (L) strict liability offenses.

#### **DNRCD10 - Brine transportation**

**OEC SUPPORT:** The Governor's Budget includes several reasonable provisions to tighten controls over the transport of brine -- probably the single largest source, by liquid volume, of spills and accidents in the oil and gas lands of America. We respectfully ask the Senate to accept the Governor's provision.

#### **DNRCD8 - Emergency Planning and Community Right to Know Act (EPCRA) requirements applicable to oil and gas facilities**

**OEC OPPOSE:** The Governor's Budget directs the oil and gas industry to report chemical information to the ODNR Division of Oil + Gas to be housed in a database held by ODNR. Every other industry, however, reports its hazardous and extremely hazardous chemicals directly to the State Emergency Response Commission, local emergency planning committees, and local firefighters with jurisdiction over the facility/site. The oil +gas industry doesn't deserve special treatment. Further, several county Local Emergency Planning Committee (LEPC) chairs have expressed concerns with this proposed change to Ohio law, and special reporting requirements for the oil and gas industry. **Solution:** Reject the Executive Budget provision; instead, require all reporting through the SERC.

#### **DNRCD48 - Coal mining permit applications**

**OEC OPPOSE:** The House Budget would weaken existing law by:

- Allowing a coal mining applicant to submit a notarized statement describing the applicant's legal right to enter and commence mining; current law requires the submittal of copies of the documents on which the applicant's legal right to enter and commence coal mining operations is based.
- Providing that a coal mining permit application cannot be denied or considered incomplete if the applicant documents his/her right to enter at least 67% of the total area for which coal mining operations are proposed.

The provision runs roughshod over property owners' rights. We respectfully ask the Senate to reject the House provision.

#### **REQUESTED AMENDMENTS**

**1. Enhance the effectiveness of the Healthy Lake Erie Initiative by directing that a portion of its funding be used for more robust water quality monitoring.**

The House Budget doubles down on the Healthy Lake Erie Initiative, matching the Executive Budget's recommended \$0.5MM/FY with an additional \$0.5MM/FY. We heartily support the Substitute Bill provision. This additional appropriation could be maximized by directing that most of it be used to acquire and deploy additional water quality sampling equipment. This would enable a more robust sampling system with more continuous sampling of water quality. This, in turn, can help identify nutrient pollution areas of concern and guide more effective conservation practices. **Solution:** We respectfully ask the Subcommittee to accept the additional appropriation from the House and to specify that at least \$0.4MM/FY of the proposed additional appropriation shall be used for the acquisition and use of water quality sampling equipment.



**2. Help farmers keep soil + nutrients on their fields and to protect water quality**

**A. State matching funds for local Soil + Water Conservation Districts**

**Challenge:** The Executive Budget flat funds the state match for local SWCD funding at \$2.9MM per FY, the same level as in FY 2015.

**Solution:** Increased funding will enhance the efforts of local SWCDs to assist farmers to more effectively implement the "4R" practices and make other soil and water conservation improvements.

**B. Nutrient management plans for western Lake Erie watershed**

**Challenge:** The Kasich Administration and General Assembly are making steady progress in the effort to reduce nutrient pollution and resultant toxic algae in the western basin of Lake Erie. But more needs to be done to ensure that crop and livestock operations follow the "4Rs" -- right source of nutrients, at the right rate, right time, in the right place.

**Solution:** Follow the recommendation of the 2012 Directors' Report on Agricultural Nutrients and Water Quality (<http://goo.gl/gxZ1mF>) by designating the western basin of Lake Erie a Critical Natural Resource Area.

**C. Track manure exports from CAFOs**

**Challenge:** 1.7 million pounds of phosphorus in livestock manure was transported from the Grand Lake St. Marys watershed in 2013, according to state regulators. It is unknown how much was applied in the western Lake Erie watershed.

**Solution:** Require CAFO operators and Certified Livestock Managers to report to the ODAg director, by sub-watershed, the total amount of livestock manure that is applied by the owner or CLM or the ultimate recipient to which CAFO manure may be sold or transferred.

**D. Challenge:** Ohio has thousands of livestock facilities that operate without a plan to properly store, handle and utilize the manure they produce. Many of these livestock facilities purposefully fall just under the regulatory threshold that directs they obtain a permit from the Department of Agriculture. These "one-under" factory farms need to be held accountable for the manure they

produce because it threatens the air of nearby homeowners and flowing into ditches and streams.

**Solution:** Require medium confined animal feeding operations to develop and follow a manure management plan.

#### **E. Fund water quality monitoring and applied research**

**Challenge:** Additional and effective monitoring is necessary to better pinpoint where to emphasize nutrient management. Specific funding should be available for continuous monitoring stations to better track phosphorus and other pollutants in our rivers.

**Solution:** Increase funding to emphasize water quality monitoring by Ohio Sea Grant, Heidelberg University's National Center for Water Quality Research, and the Healthy Lake Erie Fund.

### **3. Protect stream and wetland wildlife by requiring greater evaluation of water withdrawals from headwater streams for oil and gas production.**

**Challenge:** Sensitive wildlife living in small, headwater streams can be harmed by large water withdrawals that draw down these small streams to dangerously low levels.

**Solution:** Require the ODNR Oil + Gas Division to consult with DNR wildlife and soil + water officials to consider any impact of water withdrawal on any rare, threatened, or endangered species and its any primary headwater habitat.

### **4. Conserving Ohio's forestland to save taxpayers money, promote local travel and tourism opportunities, and to offer tax incentives for private woodlot owners**

#### **A. Encouraging mature, old growth state forestland**

**Challenge:** ODNR continues to emphasize commercial logging over conservation. This deprives the public the full benefits of its state forests, including enhanced ecotourism opportunities for local travel and tourism business owners. See the comprehensive "Shawnee State Forest Economic Study" from October 2010 (<http://goo.gl/4Pcut4Q>).

**Solution:** Amend the mission of the Ohio Division of Forestry to place greater emphasis on the restoration of old-growth forest. Require the Division of Forestry to annually report to the General Assembly the full costs of its timber harvest program, including the cost of forest roads.

#### **B. Encouraging private woodlot owners to conserve mature woods + promote stream buffers**

**Challenge:** Ohio's Forest Tax Law rewards landowners for harvesting, but not conserving, their woodlots. In addition, both the Ohio Forest Tax Law and the CAUV are falling short in encouraging Ohio landowners to keep their woodlots forested instead of converting them to farmland.

**Solution:** Amend Ohio law to also offer property tax breaks for preserving woodlots for old growth and/or for maintaining forest buffers near streams. Increase the property tax reduction for both Ohio's Forest Tax Law and CAUV woodlots. See the Columbus Dispatch story, "Increased woodland taxes irk Ohio farmers." (<http://goo.gl/zvG2lq>)

**The OEC would be pleased to work with the Subcommittee on any of these recommendations. Draft language is available for each our amendment requests.**

**Thank you for considering our perspective.**



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