



**OEC [ Action Fund ]**

**Interested Party Testimony of Ohio Environmental Council Action Fund  
State Biennial Operating Budget - House Bill 49 (As Introduced)  
Presented to the Ohio House Subcommittee on Agriculture, Development, and  
Natural Resources  
March 16, 2017**

Chairman Thompson, Ranking Member Kelly, and Members of the Ohio House Subcommittee on Agriculture, Development, and Natural Resources, thank for the opportunity to testify before this committee today on the Governor's proposed budget for Fiscal Years 2018-2019, introduced as House Bill (HB) 49. My name is Trent Dougherty, General Counsel for the Ohio Environmental Council Action Fund (OECAF).

While this subcommittee has a broad and varied jurisdiction, my remarks today focus on the four agencies we interface with the most: the Ohio EPA, Department of Natural Resources, Department of Agriculture, and the Public Utilities Commission.

From an environmental protection and natural resource conservation perspective, these four departments have a mighty responsibility to ensure the public's safe use and enjoyment of modern life's most basic needs: air, water, land, food, and energy. Over the years and over successive administrations, we have continually supported robust budgets and staffing for the important role each play in the lives of Ohioans. The OECAF has deep respect for Director Zehringer, Director Daniels, Director Butler, and Chairman Haque and their expert staff who work hard everyday to protect and conserve Ohio's environment and natural resources. While we understand the need for fiscal restraint with General Revenue Funding, especially during FY18, we insist that the reductions and consolidations of funds for these agencies be done with a focus on the short and long term implications to each agency's ability to perform its functions, not just the Department's overall bottomline.

The most telling example of this can be found in the \$2 million GRF funding cut to ODNR Division of Forestry for FY18. This represents a 40% reduction from Forestry's FY17 GRF funding. In the face of such a large funding cut, Forestry will be forced to prioritize revenue generating activities. This will mean less attention devoted to vitally important items that do not necessarily generate revenue, but are essential to forest ecosystem health and maintaining the forests for those who live near and recreate in our 20 state forests. Examples include both support for outdoor recreation like Forestry's several campgrounds and horse camps, as well as hundreds of miles of bridle and hiking trails and for forest ecosystem health. For example Forestry's leading role in the control of the Hemlock Woolly Adelgid (HWA), which threatens places like Cantwell Cliffs in Hocking State Park, where the HWA has been identified.

Absent restoration of FY18 GRF funding, Forestry will be forced to draw more heavily from the State Forest Fund (Fund 5090). This would be bad policy. Fund 5090 has value as a standing fund and should not be raided to cover large GRF cuts. Instead, Fund 5090 should be left alone so that Forestry can safely draw on it as necessary to meet important obligations as they arise. Examples include: meeting federal match requirements, support of community projects, and emergency forest fire control efforts. We respectfully request that this Committee fully restore the \$2 million eliminated from Forestry's FY18 GRF funding.

With that backdrop, there are many policy provisions in this bill that are of great importance to how the state plans to administer essential protections for Ohio's environment, energy use, and human health. So, when analyzing and amending the Governor's proposal, we urge this Committee to prioritize four specific areas:

1. Stronger protections for Ohio communities from oil and gas operations;
2. Adequate funding to eradicate toxic algae in Lake Erie;
3. Zero tolerance against lead and toxins in Ohioans' drinking water; and
4. Ohioans' right to clean, efficient, and affordable energy choices.

### **1. Stronger protections for Ohio communities from oil and gas operations**

Recent major oil and gas incidents have exposed significant problems with Ohio's chemical disclosure laws. In Ohio, the Ohio DNR Division of Oil and Gas Chief may receive trade secret chemical information but not share it with anyone, even in the case of emergencies. Recently promulgated ODNR rules have addressed requirements for oil and gas operators to report releases to the chief and other authorities, but to address instances where trade secrets are involved, a law change is necessary.

The Executive Budget proposal in 2015 (HB 64) included an important strengthening of the law regarding the disclosure of trade-secret chemical information during emergency and discharges to the environment; however, that language was not a part of the final bill.

The OEC recommends restoring those provisions within this bill by: 1. requiring the Ohio DNR to share trade secret chemical information with first responders (firefighters, EMTs, etc.) and the state agencies during an emergency, incident, spill or release<sup>1</sup>; and 2. permitting the Ohio EPA to share trade secret chemical information with drinking water utilities during an emergency, incident, spill or release where they are called to action.<sup>2</sup>

On June 28, 2014, a fire broke out on a fracking well pad in Monroe County, Ohio engulfing 20 chemical trucks and triggering some 30 explosions at the site. The fire took

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<sup>1</sup> Amending oil and gas law in section 1509.10J(2)

<sup>2</sup> Amending drinking water/surface water law in sections 6109.34 and Sec. 6111.05(C)-(F).

nearly a week to extinguish and resulted in a 5-mile-long fish kill, poisoning over 70,000 fish and posing a risk to nearby residents' drinking water supplies.

Because of the chemical reporting loophole, firefighters and the drinking water utility downstream did not have a complete list of chemicals until several days later, long after they began responding to the incident.

In March 2016, a truck hauling drilling wastewater overturned in Belmont County, sending thousands of gallons of brine water laced with chemicals into a nearby creek and contaminating a reservoir used for drinking water in Barnesville, Ohio.

Since the full chemical composition of the spilled wastewater was not made available to first responders and the drinking water utility, Barnesville had to shut off service from the contaminated reservoir while the EPA tested for toxic chemicals. Had there not been two other reservoirs available to service the affected area, Barnesville may have been forced to depend on an external source of drinking water.

**We urge this Committee to amend the oil and gas and water related emergency chemical reporting law to ensure that first responders and drinking water utilities are able to get immediate access to complete chemical information, including trade secret chemicals, whenever emergency environmental releases and spills occur.** This law change is the best way to minimize negative effects and to ensure that the public, our drinking water and first responders are as protected as possible.

## **2. Adequately fund Ohio's efforts to eradicate toxic algae in Lake Erie**

The OECAF supports Governor Kasich's commitment to curb Lake Erie's toxic algae epidemic through actions that significantly cut phosphorus entering the western basin. Back in February, the Administration released its framework, which provides a blueprint for how to achieve a 40 percent reduction in phosphorus pollution by the year 2025. While the OECAF believes that additional actions will be necessary to reach this goal, we support much of what is in the administration's framework. To ensure the actions to fulfill the Governor's commitment are a success, however, the framework must be adequately funded in any final budget bill.

**Therefore, we urge this Committee to support and, in places, increase the budget for those agencies and programs responsible for ensuring Ohio meets its phosphorus reduction commitment: including the Ohio Environmental Protection Agency (OEPA), the Ohio Department of Health (ODH), the Ohio Department of Agriculture (ODA), and the Ohio Lake Erie Commission (OLEC), Ohio's Soil and Water Conservation Districts, Heidelberg Water Quality Lab, Sea Grant, and the Health Lake Erie Fund.**

The following are specific actions we believe additional funding would help ensure Ohio meets its commitment.

- ***Ohio Environmental Protection Agency***
  - Establish a comprehensive water quality monitoring network in key subwatersheds;
  - In cooperation with OLEC and ODA, institute a tracking program by county within the WLEB showing the total public dollars allocated for nutrient management/reduction;
  - In cooperation with Heidelberg National Water Quality Lab and USGS, continue to develop and implement a program to track and verify water quality improvements resulting from nutrient reduction practices;
  - In conjunction with ODA and ODH, coordinate in the development of a nutrient reduction BMP Implementation, Verification & Evaluation process.
  
- ***Ohio Lake Erie Commission***
  - Coordinate with the member agencies and federal partners on the establishment of a WLEB fiscal operations plan to serve as guide for identifying short-term and long-term funding needs and potential funding sources
  
- ***Ohio Department of Agriculture***
  - Continue the Ohio Clean Lake Initiative - Impaired Watershed Restoration Program aimed to reduce phosphorus loading.
  - Work with NRCS to establish a Western Lake Erie Basin Technical Advisory committee to provide technical assistance to nutrient management issues and agricultural practices in the basin.
  - Coordinate with the USDA Commodity Credit Corporation to strengthen and stimulate the Ohio Lake Erie Conservation Reserve Enhancement Program (LE-CREP) to achieve its 2004 goal of voluntarily establishing 67,000 acres of filter strips, riparian buffers, hardwood tree plantings, wildlife habitat and field windbreaks.
  - Provide additional funds to Division of Soil Water and Conservation for cost incentives to implement agriculture nonpoint BMPs, and to ensure successful implementation of the nutrient reduction BMP Implementation, Verification and Evaluation process being developed in coordination with OEPA.
  
- ***Ohio Department of Health***
  - Provide one-time funds to local health districts to support or reimburse efforts to ensure implementation of their Operation and Maintenance Tracking programs for home sewage treatment systems as required in the Ohio Administrative Code. Currently, local districts are completing or have finished inventories of HSTs with existing funding that does not account for the associated increase in administrative costs.

- ***Heidelberg Water Quality Lab and Ohio Sea Grant***

In order to effectively monitor water quality we must continue crucial research that will inform how agencies adapt their programs and actions. We, therefore, urge the subcommittee to increase funding for the Heidelberg Water Quality Lab and the Ohio Sea Grant. Heidelberg would use the expanded capacity to better monitor water quality in the Maumee River watershed, which is why we support their request of \$275,000 for FY 2018 and \$350,000 for FY 2019. With additional funding beyond the proposed allocations, the Ohio Sea Grant could expand monitoring in Lake Erie itself, upgrade its research and teaching facilities at Stone Laboratory, purchase analytical equipment and hire technicians for its water quality lab, and increase its outreach efforts. The additional capacity for both institutions would help support Ohio's efforts to achieve its phosphorus reduction goals.

- ***Healthy Lake Erie Fund***

The proposed budget cuts the Healthy Lake Erie fund by 20% or \$200,000 in FY 18 at a time when Ohio needs all its tools to achieve its phosphorus reduction goals. This fund was a key element of Senate Bill 1, or the Clean Lake Erie Act, that was the GA's primary response to Toledo's water crisis during the summer of 2014. It provides funding assistance for farmers to plant winter cover crops, conducting edge of field testing, supports tributary monitoring, and building manure storage facilities to better manage animal waste. It also supports other conservation measures in Lake Erie's western basin the Director of Natural Resources<sup>3</sup> determines beneficial. Cutting this crucial fund is a step backwards right at the precise time when we need more support for widespread adoption of these practices, and undermines the GA's response to Lake Erie's toxic algae problem. Additionally, Governor Kasich's phosphorus reduction commitment included an interim milestone of achieving a 20 percent reduction by the year 2020. State agencies will use this milestone as a measure of progress that could trigger further policy changes if Ohio is not on track to meet this interim goal. For these reasons, **the OECAF urges the subcommittee to not only restore this crucial funding source, but to provide a reasonable increase to help ensure adequate support for effective conservation practices.**

- ***Soil Water Conservation Districts***

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<sup>3</sup>When the Clean Lake Erie Act was signed into law, ODNR's Division of Soil and Water was the primary agency responsible for implementing agricultural pollution abatement program and utilization of the Healthy Lake Erie Fund. With the transfer of this program to the Ohio Dept. of Agriculture it makes sense to include direction in this budget bill to transfer the administration of the Healthy Lake Erie Fund to ODA's Division of Soil and Water Conservation. This aligns with the Ohio phosphorus reduction framework and our recommendation to bolster the division's cost incentive capacity.

Ohio's Soil and Water Conservation Districts offer crucial services to farmers, businesses and local residents looking for assistance enrolling in state and federal cost-incentive programs. Often they are also the first to receive complaints about potential rule violations, especially in regards to the safeguards put in place under the Clean Lake Erie Act. Whether located in rural or urban areas, Ohio's SWCDs have seen significant reductions in staffing but required to perform more and more duties, especially in the the western Lake Erie basin and Grand Lake St. Marys watersheds. For these reasons, **we support the Federation of Soil and Water Conservation Districts call for increased funding to local districts across Ohio.**

Specifically we support restoring the 1:1 match from state funding. Current state funding is matching 71 percent of local funding, which is \$14.3 million annually. State funding would need to increase by a modest \$3.5 million per year for a true 1:1 match. This would allow districts to assure proper employee training, hire the right staff members and increase our outreach efforts to support the new regulations set in place by the previous general assembly.

### **3. Zero tolerance against lead and toxins in Ohioans' drinking water**

Flint, Michigan; New York, New York; Sebring, Ohio; and Toledo, Ohio, both far and near, large and small, the cities are just some of the municipalities that are on what seems to be an ever-growing list of drinking water related crises. Generally, as time progresses, technology improves, societal conditions become better, and industries become more efficient; however, these things do not occur without the proper processes, systems, and controls in place. Increased investment is needed in Ohio's water infrastructure; and additional research is necessary in order to ensure Ohio's drinking water systems are maintained and at the vanguard of protecting existing and emerging waterborne threats.

However, the Governor's proposed budget for drinking water protection roughly remains unchanged in comparison to prior years. And while the bill includes some provisions that will hopefully increase compliance with drinking water laws, rules and regulations, HB 49 falls short on seizing the important opportunity to fill the several gaps in the Federal Safe Drinking Water Act and building on the framework of what we together passed in HB512 last session. Ohio is at a time when drinking water crises are rising and confidence in the nation's drinking water systems are declining. Therefore, **we urge thoughtful, yet immediate, action to prioritize:**

- **increased monitoring of otherwise unregulated contaminants that may be of local or regional concern or in close proximity to a recent environmental disaster;**
- **improves transparency and eases access to public water systems (PWSs) reporting data;**
- **promotes research into more efficient and sustainable water treatment processes and technologies;**

- **investigates, examines, and creates financing streams to provide for funding vital water infrastructure projects in a time of crumbling and aging infrastructure; and**
- **ensures equity and fairness in executing and enforcing environmental laws, rules, and regulations.**

#### **4. Ohioans' right to clean, efficient, and affordable energy choices**

Ohio's electric distribution networks are outdated, and require basic infrastructure upgrades to increase reliability, resiliency, and efficiency. Accordingly, we support Governor Kasich's and PUCO Chairman Haque's proposal to harness technology and innovation to transform the state's electricity grid.

The grid of the future is much more distributed and integrated with customer-sited generation systems, which provide multiple benefits to the grid in terms of reducing congestion on the grid, and in the case of solar power, produce the most power when the grid needs it the most. The most exciting innovations in technology and new business opportunities are happening at the edge of the distribution network, where customers' homes and businesses are becoming more connected. Through data collection and sharing, customers know a lot more about their energy usage habits, and they can control energy consumption in their home or business more intelligently than ever before.

The Governor's proposed budget includes implementing these new, modern-day technologies -- smart meters, automated circuits and sensors to provide consumers more control over their electric usage. These energy choices are important to Ohioans. By powering our homes and businesses with clean, efficient and modern grid, everyday Ohioans can save money and live healthier.

**Therefore, instead of using the budget bill to potentially roll back clean energy, we urge this Committee to fully fund and support the modernization of Ohio's electricity grid, and provide energy savings, cost savings, CO2 and other pollutant reductions, and give Ohioans greater control over how they use energy.**

In conclusion, Chairman Thompson and Members of the Subcommittee, thank you for considering our perspective and our recommendations. We look forward to working with the Committee during the upcoming weeks to craft a bill that protects Ohio's communities.