

Kristin Watt, Vorys Sater Seymour & Pease
Testimony on behalf of The Sherwin-Williams Company
Senate Agriculture & Natural Resources Committee
Wednesday, May 6, 2020

Chairman Hoagland, Ranking Minority Member O'Brien and members of the Committee.

Thank you for the opportunity to present and ask for your support of an amendment to HB 168. This testimony is confined to the amendment since you previously passed this bill out of committee unanimously on December 4 last year.

After your initial vote in committee, The Sherwin-Williams Company requested consideration of language, in the form of an amendment, that certain provisions in HB 168 would be clarified to ensure those provisions would be retroactive to January 2002 – consistent with federal protections for purchasers that have been in place since 2001

As you may be aware, Sherwin-Williams conducted a nationwide search to identify possible locations to construct a new global headquarters and a new research and development facility. Earlier this year, the company announced it was finalizing plans to construct both facilities in Ohio, pending resolution of some matters. The amendment under consideration would address a key item by reducing potential risk associated with proposed redevelopment of a several large surface parking lots in downtown Cleveland.

Looking at HB 168 as a whole, there are essentially two parts. First, there is the bona fide prospective purchaser (BFPP) provision noting that if a buyer performs “all appropriate inquiry” before buying contaminated real property, then Ohio EPA cannot seek any costs it may incur to address the contamination so long as the purchaser ensures any existing contamination is not causing any problems. This is similar to the bona fide prospective purchase provisions that have been in effect under federal law since 2002.

Second, the bill makes an important change to the current Ohio EPA Voluntary Action Program provision making a violation of a property “use restriction” contained within a Covenant Not to Sue (CNS) an automatic voidance of the CNS. Under the new provision, a CNS could still be voided, but not automatically and only after proper actions are not taken to fix the violation.

Although both parts of the bill are important, the proposed amendment to HB 168, making clear the bona fide prospective purchaser provision is retroactive to January 2002, following the lead of federal law, is particularly significant for Sherwin-Williams.

The Ohio EPA agrees with this amendment because their experts interpret the bona fide prospective purchaser provision as it is outlined in the amendment. Additionally, the Ohio EPA agrees it would be helpful to provide this additional clarity of retroactivity for the courts. Legal

counsel believes if HB 168 is passed without this amendment, it might NOT be retroactively applied by the courts.

The DeWine administration and local leaders in Cuyahoga County, Cleveland and Brecksville have collaborated to keep the company's headquarters and R&D facilities here, where the company has been for over 150 years.

Your support and consideration of this important amendment would help to ensure this legacy company remains in Ohio.

A letter from the Ohio EPA supporting this amendment is attached.

I would like to thank Frank Strigari, chief legal counsel for the Majority Caucus, for his assistance in getting us to this hearing today.

I would appreciate your support for including the proposed amendment to HB 168. Please let me know if you have any questions.