Ohio Environmental Council

TO: **Members of the House Energy and Natural Resources Committee**
FROM: **Trent Dougherty, Managing Director of Legal Affairs, Ohio Environmental Council**
DATE: **February 25, 2015**
SUBJECT: **Opponent Testimony on Substitute House Bill 8**

Chairman Landis, Vice Chair Hagan, Ranking Member O'Brien and Members of the House Energy and Natural Resources Committee, on behalf of the Ohio Environmental Council (OEC) I thank you for the opportunity to testify on Substitute House Bill (Sub HB) 8. While we testify today as opponents, we do so with a sincere hope that improvements to key provisions can be made through the Committee process.

We agree with the underlying spirit of this bill to modernize the oil and gas unitization law, and we further share the desire to secure proper protections for the rights of landowners. However, improvements that can and should be made to modernize the unitization law should not be done on the backs of un-leased landowners and public property.

And while this bill clearly addresses industry's concerns about its rights and the rights of leased landowners, the goal of protecting the rights of landowners also includes 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.

While there are a number of improvements that we could suggest to protect public and private landowners, at a minimum, the Committee should address changes to this bill that:

1. **Provide due process while also requiring timely administrative review**
2. **Provide reasonable limitations for unitization of publicly owned land.**

Provide due process while also requiring timely administrative review

We understand that the industry has had difficulty getting decisions from ODNR in a timely manner . . . at the speed of business. OEC is not opposed to encouraging increased bureaucratic efficiency. However, the absolute 45 day maximum timeframe to hold the hearing proposed in this bill, we feel, will create a hardship to those landowners opposed to a proposed unit. The driller has all the information and is ready to proceed with the hearing when they file their initial application, the hold-out landowner may, however, need a more time to protect his or her rights. Such a landowner is potentially being disadvantaged since he or she will need to engage counsel, find out the details of the

drilling unit and figure out how to defend a difficult process with formulas few can understand on capital allocation, return, interest, etc.

To facilitate due process, **OEC recommends providing in the law the option for the chief to suspend or extend the time period upon application of an affected landowner**. If the affected landowner demonstrates that additional time is needed to adequately prepare his or her case to defend property rights, due process requires that accommodations be made. Even with an extension of 30 days, the decision from ODNR would be made in less time than the Division's current 120 day timeframe, testified to last week.

Provide reasonable limitations for unitization of publicly owned land.

Ninety-nine days ago the 130th House passed an amendment to section 1509.28, stating that ". . . the chief shall issue an order for the operation of a pool or part of a pool that encompasses a unit area for which all of the mineral rights for oil and gas are owned by the department of transportation." That language was tailored to fix a problem with Highways and other Department of Transportation-owned land blocking otherwise viable units. This language also appeared in the *As Introduced* version of HB 8.

The Sub bill, however, greatly expands this provision to encompass all state land, and all land owned by a political subdivision. To support such greatly expanded language in the sub-bill, industry, in its testimony last week, identified the ODOT highways, along with Department of Administrative Services owned property, and ODNR owned property not currently in use, as problems to unitization. If these are "real world problems," as industry described them, then this legislation should look to fix those problems. However, instead of a tailored approach to fix specific problems, this bill creates potentially more problems:

1) The bill appears to circumvent the spirit (if not the letter) of 1509.73's state parcel nomination process.

2) This language could be read to retain the legal protection for state nature preserves (SNPs), as the prohibition on leasing SNPs is found in division (I) of 1509.73[1], a section of the code not referenced in the amended provision. However, the language in division (I) only protects SNPs from nomination and leasing that occurs under

[1] 1509.73(I) "Notwithstanding any other provision of this section to the contrary, a nature preserve as defined in section 1517.01 of the Revised Code that is owned or controlled by a state agency shall not be nominated or leased under this section for the purpose of exploring for and developing and producing oil and natural gas resources."

Section 1509.73. A unitization order for a SNP would occur under 1509.28 and not 1509.73. Technically, then, the proposed language could open SNPs to leasing.

3) Current and maintained paragraph (A) of 1509.28, in combination with the proposed language, gives the chief of DOGRM the power to *unilaterally* unitize any state-owned mineral rights.

4) Under the language of the sub-bill, the entire unit could be state-owned property.

5) Nothing in statute/regulation that would prevent a token (say, 1 acre) private parcel being unitized with 1,000 acres of state-owned mineral rights.

6) Unlike the *As Introduced* version of HB490, state parks are now fair game.

7) While a prohibition on surface impacts to compulsorily unitized property was *suggested* during the initial hearing of this bill, such a prohibition does not exist in the text of the bill.

The Substitute Bill opens broad and unnecessary concerns with public lands. At a minimum, the Committee should limit the reach of this proposed legislation by adopting the following amendments:

1. **Restore the Limitation the compulsory unitization of publicly owned property to ODOT property in the As Introduced version and the House Passed version of HB490 (130th GA).**

2. **Amend the bill to allow for no surface disturbance to unitized property.**

Chairman Landis and Members of the Committee, thank you for considering our recommendations and perspective.