

Before the House Finance Committee of the
Ohio General Assembly
Thursday, March 26, 2015
Testimony of Melissa English of Ohio Citizen Action on
HB 64, Main Operating Budget FY2016–FY2017

Chairman Smith, Vice Chair Schuring, Ranking Member Driehaus and members of the committee, my name is Melissa English and I'm the Development Director with Ohio Citizen Action, a member-funded, grassroots group celebrating 40 years of advocacy on environmental and consumer issues in Ohio. On behalf of our tens of thousands of members, I offer the following comments on a very small portion of the proposed 2016–2017 budget bill.

It's our concern that Ohio is preparing to make again a mistake it made in the past regarding exempting the oil and gas industry from basic chemical reporting under federal law.

Two years ago, my organization became aware that a section of Ohio's Revised Code had effectively exempted the oil and gas industry from doing basic chemical reporting required under the federal Emergency Planning and Community Right-to-Know Act, or EPCRA. I refer to ORC 3750.081 which currently reads - and I'm paraphrasing- that any driller submitting a well log and production report to the Ohio Department of Natural Resources is considered to have complied with EPCRA. This provision passed in 2001. Prior to that, oil and gas drillers were submitting more-detailed information to the State Emergency Response Commission, the local emergency planning committees and local fire departments, just like all other chemical-intensive industries in the state still do. The information submitted to ODNR was to be kept in an online chemical database and made available to the public and first responders via a website hosted by ODNR. In an application for an award for this system, a representative of ODNR stated that one of its benefits was to streamline reporting for the oil and gas industry, so that duplicate reporting to both SERC and ODNR was not required.

When we became aware of this exemption, we and others prepared a petition to U.S. EPA comparing Ohio statute to the federal EPCRA law and asking for a determination as to whether or not Ohio had violated EPCRA in exempting the oil and gas industry from this reporting. Word came back in May of 2013 that while Ohio was within its authority to create a parallel reporting system through ODNR, that reporting system does not supersede reporting done under EPCRA.

So Ohio EPA, ODNR, the authors of the oil and gas exemption language, the Legislative Services Commission and who knows who else failed to find and correct this problem from 2001 to 2013. In the meantime, fracking and the use of fracking chemicals increased exponentially. Once U.S. EPA replied to our petition, ONDR and the State Emergency Response Commission informed all Ohio drillers that in addition to reporting they were doing to ODNR, they must now also file Tier II reports to SERC, local emergency planning committees and local fire departments in order to

comply with EPCRA.

For the last two years, these reports have been filed. But ODNR has been working to make its online chemical database and emergency response website “EPCRA compliant”, with the intention of once more cutting the paperwork burden for drillers and rerouting all fracking chemical information through itself. What we now see in HB 64 is the fruit of that labor. Changes have been made to ORC section 3750.081, which once more confer EPCRA compliance upon any driller that reports chemical information to ODNR in the manner laid out in changes the budget bill makes to ORC section 1509.231. There are some very nice phrases in both sections I just mentioned about how ODNR will immediately make chemical information available to the agencies that should be getting the information directly and about how at a minimum the information provided must satisfy the requirements of EPCRA. Unfortunately, there are phrases in those same paragraphs which directly contradict those intentions.

For example, EPCRA clearly states that facilities subject to its jurisdiction must report chemical information to the State Emergency Response Commission, the local emergency planning committee and the nearest fire department - not to a third party which conveys information to these entities. EPCRA clearly defines what information is to be reported, whereas the proposed budget gives the head of the Division of Oil and Gas within ODNR the power to determine what information is reported. The budget also gives the head of the Division of Oil and Gas the power to determine if information will be shared with the public and what information is shared with them, whereas EPCRA so clearly recognized the public’s right to chemical information that the words “community right-to-know” are enshrined in the law’s title.

My point here is that Ohio erred in giving the oil and gas industry a chemical reporting exemption in the first place. The error is nearly corrected, except for repealing section 3750.081 from the revised code and related sections of ORC 1509. Rather than finishing the job, HB 64 proposes to make the same errors anew. If ODNR wants to create a parallel reporting system with its online chemical database and website, they should. But to circumvent the intent of federal emergency planning law by diverting information from drillers to emergency planners and first responders is not only illegal, it’s dangerous. Ohio missed the error back in 2001. We urge that the state repeal ORC 3750.081 and related sections of ORC 1509, or else risk repeating it’s earlier mistake at the expense of public safety, our natural resources and the safety of our first responders.

I appreciate the opportunity to speak and will be glad to answer any questions I may.