



[UNLEASHING THE POWER OF GREEN]

TO: Ohio Senate Finance Committee
FROM: Jack Shaner, OEC Interim Executive Director
DATE: June 9, 2015
SUBJECT: Interested Party Testimony - House Bill 64 - Biennial Operating Budget

NOTE: This testimony was drafted before today's introduction of the Substitute Bill.

The Ohio Environmental Council respectfully presents the following comments and amendment recommendations to the FY 2016 - FY 2017 operating budgets of the Environmental Protection Agency and Departments of Natural Resources, Agriculture, and Transportation. Our recommendations strive to help achieve 3 basic objectives:

- **Health and Safety:** Protect people, communities, and the natural environment, 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.

Here is a brief summary of our top concerns and recommendations:

1. Protect the Public + First Responders During Environmental Emergencies



SUPPORT: Emergency actions and confidentiality under Water Pollution Control and Safe Drinking Water Laws (EPACD8)

The Executive Budget proposes an important strengthening of the law regarding the disclosure of chemical information and emergency discharges to the environment. The provision requires the reporting of all chemical information to the Ohio EPA from such discharges (typically a spill, leak, or explosion) and authorizes the Ohio EPA to share this information to public and private

water systems, provided that the water system maintains the confidentiality of any information that a person (the industrial facility) may designate as a trade secret. The OEC strongly supports this provision and urges the Committee to maintain it. This Executive Budget provision is aimed to fix a serious glitch 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 at an oil + gas well pad in Monroe County that erupted on June 28, 2014. Public and private water system operators need this information -- without delay. The OEC respectfully asks that the Committee modify the provision to specify that the information shall be shared with both the Ohio EPA and the State Emergency Response Commission.

SUPPORT: Notification of emergencies under Oil and Gas Law (DNRCD12)

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.

SUPPORT: Disclosure of chemical information under the Oil and Gas Law (DNRCD35)

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. Support the Governor's Budget provision.

OPPOSE: Emergency Planning and Community Right to Know Act (EPCRA)

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 and EMA Directors have expressed concerns with this proposed change to Ohio law, and special reporting requirements for the oil and gas industry. Equally important is a needed repeal of current section 3750.081, which first opened the door for a reporting exemption by the oil and gas industry and is the underpinning for section 1509.231. Removing both proposed Sec. 1509.231 and existing Sec. 3750.081 would solidify the requirement for the oil and gas industry to follow federal chemical reporting requirements. **Solution:** Reject the Executive Budget provision; instead, require all reporting through the SERC.

AMENDMENT REQUEST - State Emergency Response Commission Study



A year ago, Charleston, WV experienced a week-long drinking water contamination crisis following the rupture of a chemical storage tank and chemical leak into Elk Creek. Ohio should take appropriate measures to ensure it is adequately protected from such a risk. The OEC respectfully asks the Committee to help protect local communities and businesses from the disruption caused by environmental emergencies by requiring the State Emergency Response Commission (SERC) to review and report to the General Assembly on the emergency response capabilities and best practices of local and state emergency planning and response agencies. Such a study could be completed in an efficient and timely manner. And its results could be priceless.

2. Protect the Public + Air, Land + Water Resources and Holding Violators of Oil + Gas Law Accountable by Strengthening the Law

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

The OEC is especially supportive of the Governor's Budget provisions to strengthen oil and gas law, 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 Committee to maintain the following provisions as proposed in the Governor's Budget.

SUPPORT: Registration of persons engaged in activities regulated under Oil and Gas Law (DNRCD9)



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.

SUPPORT: Penalties under the Oil and Gas Law (DNRCD13)

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.

SUPPORT: Brine transportation (DNRCD10)

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.

SUPPORT: Modernization to the Oil and Gas Law governing compulsory unitization

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

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.

3. Provide Adequate Resources for Oil and Gas Oversight + Enforcement, Geological Survey, Orphan Well Plugging, Emergency Response, and Community Protections + Local First Responder Training + Equipment

SUPPORT: The OEC generally supports Governor's proposed oil and gas severance tax provisions as the relate to funding ODNR operations, with certain requestimprovements.

**Transfer of funds for Oil and Gas Division and Geological Mapping Operations (DNRCD26)
Hydrocarbon severance taxes (TAXCD20)**

A. Funding mechanism for ODNR Division of Oil and Gas Resources

The OEC generally supports the funding mechanism for ODNR's oil and gas program as proposed by HB 64. The Governor's proposal responsibly "pays ODNR first" for related program activities before any other authorized program recipient of severance tax revenue may qualify for funding. As such, the bill keeps faith with the long-standing intent of the Ohio severance tax for extractive industries to fund the state's regulatory oversight of extractive industry activities.

Under the bill, the Oil and Gas Well Fund (Fund 5180) and the Geological Mapping Fund (Fund 5110) would receive monthly deposits from the Director of Budget and Management of revenue generated by the proposed new severance tax on horizontal wells in amounts that consider the resources available to DNR to carry out its oil and gas regulatory mission. The GRF would then receive 80% of any funds remaining after DNR's allotment has been made with counties in which drilled wells are located receiving 20% of the amounts unused by DNR.

B. Appropriation levels for ODNR Division of Oil and Gas Resources

The OEC generally supports the proposed appropriation levels for ODNR's oil and gas program in the Governor's Budget. The budget funds DNR's core regulatory and oversight functions, including reviewing and issuing permits for drilling wells, field inspections of wells, oversight of haulers of brine and drilling waste, handling complaint investigations and enforcing violations of the Oil and Gas Law, geological mapping, and idle and orphan well plugging. The Governor's Budget proposes:

Fund	Line Item	Program	FY 2016	FY 2017
5180	725843	Oil and Gas Regulatory Safety	\$19.2M (+46%)	\$19.4M (+1%)
5180	725977	Oil and Gas Well Plugging	\$3.0M (+17%)	\$3.0M (+29%)
5110	725646	Ohio Geological Mapping	\$1.4M (+100%)	\$1.8M (+/- 0%)

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e note that the House of Representatives' proposal from last session (HB 375 (130GA) offered substantially more funding for geological mapping -- \$3M per FYI, nearly double the Executive's proposed funding level for the new biennium. We strongly support the House level. And while not tax related, we strongly support the proposed reforms to increase the productivity and accountability of ODNR's Orphan Well Plugging Program proposed by Representative Scherer in HB 375 (130GA).

C. New funds and GRF

The OEC's primary interest in the oil and severance tax is that it produce sufficient funds for the responsible regulatory oversight and related activity. As such and with one important exception--described below--the OEC is generally neutral on the Governor's proposal to fund three new

non-ODNR funds (County Severance Tax Fund, Severance Tax Infrastructure Fund, and Severance Tax Endowment Fund) and the General Revenue Fund from severance tax revenue that remains after funding oil and gas related activities. Having said that, the OEC is supportive of Eastern Ohio receiving its fair share of revenue as it will be the beneficiary of both the rewards and the risks from this extractive activity. Also, while we have not taken a position on the Governor's proposed income tax reduction, we are concerned about the long-term impact of slow-growth budgets over successive administrations and General Assemblies for the most GRF-dependent divisions of ODNR and the long-term impact that yet another income tax cut are having on their ability to fulfill their mission to conserve our state parks, state nature preserves, and state forests.

D. Funding mechanism for emergency response and potential future impacts

We believe it is important and appropriate for the oil and gas severance tax to provide a source of revenue for the following needs that are directly related to oil and gas development and waste disposal--but for which the Governor's proposal offers no funding:

Ohio EPA Emergency Response and Other Activities Related to Oil and Gas

- Emergency response involving spills, releases, and other incidents that involve the Ohio EPA Division of Environmental Response and Remediation
- Oversight, inspection, enforcement, and remediation involving oil and gas pipelines by the Ohio EPA Division of Surface Water
- Oversight, inspection, enforcement, and remediation involving tank batteries and processing facilities by the Ohio EPA Division of Air Pollution Control

While it is true that the ODNR has primary authority over permitting and inspection for oil and gas production wells, it also is true that Ohio EPA has the primary role for investigation, containment, enforcement, and remediation for any spill, release, or incident that migrates off-site of a well pad or pipeline to a water body as well as air pollution control. Further, while it is true that Ohio EPA collects permit fees to defray the costs of permitting, we question whether this is sufficient to fund all of the Agency's oil + gas related operations. Further, we are not aware of any expansion of funding in the current operating budget to keep up with the growing demand the Ohio EPA surely must be experiencing from the growing shale gas development. As such, we ask that any revision to the oil and gas severance tax recognize this reality and provide a source of funding for these related activities, accordingly.

Local Community Expenses and Legacy Impacts Related to Oil + Gas

- Training and equipping local first responders for emergencies and incidents
- Local air and water monitoring and repairing, replacing, and upgrading infrastructure for drinking water and waste water systems
- Long-term, unforeseen, post-drilling and post-production impacts to local communities, the environment, and public health from future, unknown and unanticipated impacts that may require extensive remediation

We recognize that the Governor's proposal provides a new source of funding for local communities. We respectfully suggest that this funding source be expanded and authorized to dedicate additional funding to the state and local agency needs as described above.

CONCLUSION

The OEC acknowledges the proposed progress in the Governor's Budget to modify the Oil and Gas Severance Tax to provide a stable funding source for Ohio's oil and gas regulatory program. We respectfully ask the Committee to revise the proposal to:

- Match the House of Representatives' previous (HB 375-130 GA) funding level for geological mapping and previous reforms to the orphan well plugging program.
- Expand the portion of the severance tax revenue related to oil and gas activity to include relevant activities of the Ohio EPA.
- Expand the portion of the severance tax revenue related to oil and gas activity to include local expenses.

4. Protect Lake Erie and Rivers and Wetlands



A. Strengthen enforcement of Ohio's agricultural pollution abatement program

As you know, the Administration has proposed the proposed transfer of Ohio's agricultural abatement program from ODAg to ODNR; OEC is neutral on the program transfer. We are concerned, with enforcement language in sections 939.07(A)(3)(a) and (b) of the draft amendment. We believe these changes -- which mirror language that was proposed in HB61 -- will make enforcement problematic. It requires the director to send written notice of the “deficiencies” leading to a violation, actions to correct said deficiencies, establish a timeframe for the violations to cease, and then conduct an inspection to determine if the person is still violating the law. This will likely undermine any enforcement of violations, weakening the program. This is important because existing regulations prohibit spreading manure on frozen, snow-covered and saturated ground even outside of western Lake Erie basin; [see OAC 1501:15-5-05](#) This regulation also includes distressed watershed rules.

Require operation and management plans for most agricultural producers.

Recommended Changes to the Amendment 131HB64 – SC2684X2

The proposal to transfer the Agricultural Pollution Abatement Program from the Ohio Dept. of Natural Resources’ Division of Soil and Water to the Ohio Dept. of Agricultural was first

proposed in the Administration's MBR from the 130th GA (House Bill 490) and again in Senate Bill 1 from the current GA, as first introduced. Thus, an amendment to HB 64 to transfer the agricultural abatement program is expected.

What is surprising, though, is that the current amendment goes much further than transferring one program to a different department. It actually eliminates ODNR's Division of Soil and Water, replacing it with a new Division of Water Resources while transferring four programs total to other departments. A proposal of this scope certainly deserves a more deliberative process than what a budget bill amendment can provide.

Still, we view the transfer of the Agricultural Pollution Abatement Program as an opportunity to reduce agricultural nutrient pollution throughout the state. Toward that end we offer several recommendations that would ensure all major farms and concentrated animal feeding operations develop and follow plans to help ensure proper nutrient management. These operation and management plans, by definition, specify the best management practices each producer would follow to reduce the risk of pollution from manure and fertilizer applications. The need for such action is urgent; especially for livestock operations due to the enormous impact they have on local communities as well as to Ohio's water quality. These facilities fall under the threshold that would require a permit to operate from the Ohio Dept. of Agriculture, and therefore are exempt from developing and following manure management plans that would specify how manure produced at these facilities would be properly stored and utilized. Absent such plans, there is an increased risk of nutrient pollution from manure, and there have even been cases of rain washing livestock waste directly into neighbor's yards.

The OEC was at first encouraged by the original proposal to transfer the Ag. Pollution abatement program because it increased the ability of the state to hold lawbreakers accountable for the pollution they cause. This included creating stiff civil penalties for each day a person violates the law. Unfortunately, the current amendment creates serious barriers to effective enforcement so that it is unlikely lawbreakers would ever incur the new penalties. These are similar barriers we saw in House Bill 61 that drew so much attention when first proposed. Specifically, these barriers require the director to send written notice to the lawbreaker of the "deficiencies" leading to a violation, actions to correct said deficiencies, establishment of a timeframe to correct the deficiencies, and then the director must conduct an inspection to determine if the person is still violating the law. This will likely undermine any enforcement of violations that are time dependent or per occurrence. Furthermore, the amendment allows wide discretion for the director to even take action by making it optional to levy a penalty and require corrective action. We believe these should be required.

The following changes incorporate our recommendations.

Sec. ~~1511.024~~ 939.03. (A) ~~(1)~~ **(1)** Any ~~A~~ person who owns or operates **fifty or more acres of** agricultural land or ~~an~~ **a small or medium concentrated** animal feeding operation **as defined in sections 903.1(Q) and (FF) of the Revised Code** ~~may~~ **shall** develop and operate under an operation and management plan approved by the ~~chief of the division of soil and water~~

resources ~~director~~ of agriculture or the ~~director's~~ designee under section ~~1511.02~~ 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section ~~1515.08~~ 940.06 of the Revised Code.

2. A person who owns or operates less than fifty acres of agricultural land or an animal feeding operation that is not a concentrated animal feeding operation as defined in section 903.1(F) of the Revised Code may develop and operate under an operation and management plan approved by the director of agriculture or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code.

(B) ~~Any~~ A person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written, signed, and dated complaint to the ~~chief director~~ or to the ~~chief's~~ director's designee. After receiving an oral complaint, the ~~chief director~~ or the ~~chief's~~ director's designee may cause an investigation to be conducted to determine whether agricultural pollution has occurred or is imminent. After receiving a written, signed, and dated complaint, the ~~chief director~~ or the ~~chief's~~ director's designee shall cause such an investigation to be conducted.

© In a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or an animal feeding operation is operating under and in substantial compliance with an approved operation and management

Sec. 939.07. (A)(1) The director of agriculture may shall propose to require corrective actions and assess a civil penalty against the owner or operator of agricultural land or an animal feeding operation if the director or the director's designee determines that the owner or operator is doing one of the following:

- (a) Not complying with a standard established in rules adopted under division (E)(1) of section 939.02 of the Revised Code;
 - (b) Not operating in accordance with an approved operation and management plan that is developed under division (A) of section 939.03 of the Revised Code, with an operation and management plan developed by the director or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code, or with an operation and management plan required by the director under division (A)(2) of this section;
 - (c) Not complying with a standard established in rules adopted under division (E)(5)(a) of section 939.02 of the Revised Code;
 - (d) Not operating in accordance with a composting plan that is approved in accordance with rules adopted under division (E)(5)(b) of section 939.02 of the Revised Code or required by the director under division (A)(2) of this section.
2. The director may shall include in the corrective actions a requirement that an owner or operator do one of the following:

- (a) Operate under an operation and management plan approved by the director or the director's designee under section 939.02 of the Revised Code;
 - (b) If the owner or operator has failed to operate in accordance with an existing operation and management plan, operate in accordance with that plan;
 - (c) Prepare a composting plan in accordance with rules adopted under division (E)(5)(b) of section 939.02 of the Revised Code and operate in accordance with that plan;
 - (d) If the owner or operator has failed to operate in accordance with an existing composting plan, operate in accordance with that plan.
3. The director ~~may~~ shall impose a civil penalty only if all of the following occur:
- ~~(a) The owner or operator is notified in writing of the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct the deficiencies, and the time period within which the owner or operator must correct the deficiencies and attain compliance.~~
 - ~~(b) After the time period specified in the notice has elapsed, the director or the director's designee has inspected the agricultural land or animal feeding operation, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing.~~
 - (c) If the director affords the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the determination of the director or the director's designee that the owner or operator is not in compliance or the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.
4. If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the director determines that noncompliance has occurred or is occurring, the director ~~may~~ shall issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.
5. A person who has violated rules adopted under division (E) of section 939.02 of the Revised Code shall pay a civil penalty in an amount established in rules adopted under that section.
- (B) The attorney general, upon the written request of the director, shall bring an action for an injunction in any court of competent jurisdiction against a person violating or threatening to violate rules adopted under division (E) of section 939.02 of the Revised Code or an order issued under division (A)(4) of this section.
- (C) (1) In lieu of imposing a civil penalty under division (A) of this section, the director may request the attorney general, in writing, to bring an action for a civil penalty in a court of competent jurisdiction against a person that has violated or is violating a rule adopted under division (E) of section 939.02 of the Revised Code.
- (2) The civil penalty for which an action may be brought under division (C)(1) of this section shall not exceed ten thousand dollars per violation. Each day that a violation continues constitutes a separate violation.
- (D) In addition to any other penalties imposed under this section, the director may impose an administrative penalty against the owner or operator of agricultural land or an animal feeding

operation if the director or the director's designee determines that the owner or operator is not in compliance with best management practices that are established in rules adopted under division (E) of section 939.02 of the Revised Code. The administrative penalty shall not exceed five thousand dollars.

The director shall afford the owner or operator an opportunity for an adjudication hearing under Chapter 119. of the Revised Code to challenge the determination of the director or the director's designee under this division, the director's imposition of an administrative penalty under this division, or both. The determination and the imposition of the administrative penalty may be appealed in accordance with section 119.12 of the Revised Code.

- (E) Notwithstanding any other provision in this section, if the director determines that an emergency exists requiring immediate action to protect public health or safety or the environment, the director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to address the emergency. The order shall take effect immediately. A person to whom the order is issued shall comply immediately, but on application to the director shall be afforded an adjudication hearing in accordance with Chapter 119. of the Revised Code as soon as possible, but not later than thirty days after the director's receipt of the application. Following the hearing, the director shall continue the order in effect, revoke it, or modify it. The order may be appealed in accordance with section 119.12 of the Revised Code. An emergency order shall not remain in effect for more than one hundred twenty days after its issuance.

If a person to whom an order is issued does not comply with the order within a reasonable period of time as determined by the director, the director or the director's designee may enter on private or public lands to investigate and take action to mitigate, minimize, remove, or abate the conditions that are the subject of the order.

- (F) A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure or residual farm products is liable to the director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the director, the attorney general shall bring a civil action against the responsible person or persons to recover those costs.
- (G) Money recovered under division (F) of this section and money collected from civil penalties assessed under this section shall be paid into the state treasury to the credit of the agricultural pollution abatement fund created in section 939.10 of the Revised Code.
- (H) As used in this section, "noncompliance" means doing one of the actions specified in division (A)(1) of this section.

B. 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 Committee 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.

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

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.

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.

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.

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.

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.

D. 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.

5. Conserve Ohio's Old-Growth Forestland + Wooded Stream Buffers

A. Encourage 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. Encourage 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>)

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.

6. Give Commuters Better Transportation Choices: Increase GRF for Public Transit

AMENDMENT REQUEST - increase GRF funding for public transit

Ohio ranks near the bottom for state funding investment in public transit -- just 63 cents per capita, annually. Meanwhile, workers struggle to find affordable transportation options to get to work; Ohio's aging population is searching for alternative transportation options to get to medical and other important appointments; and the growing Millennial generation is gravitating to transit-connected communities. The OEC respectfully urges the Committee to follow the recommendations of ODOT's Statewide Public Transit Needs Study (<http://goo.gl/akTEZg>), which identified an additional \$96.7MM in operating funds (\$49.2MM for rural transit systems and \$47.5MM for urban transit systems) and \$192.4MM in capital investment to purchase new

vehicles and infrastructure to meet existing unmet demand. According to the ODOT study, if State funding covered 10% of transit spending, the state should invest \$37MM in capital and \$83MM in operating support for 2015. NOTE: The House rejected the Executive Budget proposal to add \$1MM in FY16 and FY17 in GRF; current GRF support is \$7.3MM per FY.



Other Provisions

Ohio EPA Budget

With a few exceptions, the OEC generally supports the Executive Budget for the Ohio EPA.

SUPPORT - The OEC is especially supportive of the following Executive Budget provisions -- provisions which the House rejected. We respectfully ask the Committee to maintain these provisions which we believe are necessary and appropriate to protect water quality and water supply:

EPACD5 - Escrow requirement for community water systems

EPACD1 - Lead contamination of drinking water from plumbing

EPACD13 - Public water system capability

AMENDMENT REQUEST - Certified Water Quality Professionals

EPACD14 - Section 401 water quality certification; certified water quality professionals

The OEC respectfully asks the Committee to amend this Executive Budget provision, which would authorize project developers such as real estate developers or coal mine operators that may impact a stream or wetland to utilize Certified Professionals (private consultants) in the characterization of waterways and mitigation of impacts. The provision appropriate provides for random audits by the Ohio EPA to confirm the integrity of a CP's work. We respectfully ask the Committee to amend this provision to authorize the Ohio EPA to utilize discretionary audits to help assure the integrity of each Certified Professionals' work. The Ohio EPA's Voluntary Action Program allows for discretionary audits of Certified Professionals under that program; so, too, should the Executive's new proposed program for waterways.

OPPOSE - Isolated Wetland Permits

EPACD22 - Isolated wetlands permits; Section 401 water quality certifications

The OEC respectfully opposes this provision added by the House to weaken the performance standard for isolated wetland mitigation projects; the House amendment would require only "long term" protection of ecologically important wetlands, not "in perpetuity" as provided in current law. The House provision disrespects the long-standing protocol of perpetually mitigating impacts to the public's water resources. We ask the Committee to reject the House provision.

CAUTION - Shale and Clay Products; Slag

We are concerned about the following provisions which were added in the House Budget. We ask the Committee to very carefully review these provisions

EPACD24 - Solid, Infectious, and Hazardous Waste Law and shale and clay products

EPACD21 - Water

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

Thank you for considering our perspective.



**Jack Shaner | Interim Executive Director and
Sr. Director of Legislative & Public Affairs**

Ohio Environmental Council

1145 Chesapeake Ave, Ste 1, Columbus, OH 43212

(614) 487-5822 desk

(614) 309-1169 cell

JShaner@theOEC.org