

Opponent Testimony of
Toledo Metropolitan Area Council of Governments
House Bill 385
Presented to the Ohio Agricultural and Conservation Committee
June 1, 2022

Chairman Koehler, Vice Chair Creech, Ranking Member Brent and Members of the House Agriculture and Conservation Committee, I am writing to express TMACOG's opposition to House Bill 385 that increases discharge fines for violations of NPDES permits and establishes \$250k - \$1 million in total criminal penalties for each offense of discharge.

As a Council of Governments, TMACOG's membership is composed of 5 counties, 14 cities, 28 villages, 14 townships, and 23 other governmental districts and educational institutions. TMACOG's members are the local governments responsible for providing safe and reliable drinking water for our region's 500,000 citizens and meeting Federal Clean Water Act requirements as they treat the wastewater produced by homes, businesses, and industries. Overwhelmingly, local governments are working responsibly and transparently to ensure safe drinking water and clean waterways through billions of dollars invested in advanced treatment processes, effluent sampling, and regular reporting to Ohio EPA. Unfortunately, there are exceptions, as seen in the illegal discharges made by the City of Maumee over several years. The TMACOG Wastewater Committee is working to update wastewater policy recommendations to ensure that no such event can go unreported in our region in the future.

Local governments in the TMACOG region are committed to the responsible treatment and discharge of municipal wastes and have made large capital investments to address overflows from wet weather events and treat municipal waste. For example, in 2020 the City of Toledo completed an eighteen-year \$527 million initiative to improve the city's wastewater treatment, eliminate all sanitary sewer discharges, and reduce combined sewer overflows by 80%. Smaller communities are also making large investments that are resulting in profound reduction to pollutants entering waterways. The City of Fremont has spent over \$70 million to drastically reduce combined sewer overflows (CSOs) by over 95% and to improve upon the treatment of nutrients with over a 40% reduction in Total Phosphorus discharged as compared to prior to the upgrades.

While we understand that the motivation of HB 385 is to eliminate wastes entering waterways by assessing large fines for any discharge, this bill will have the opposite impact. Penalizing POTWs with increased fines and criminal penalties will harm the very communities who need funding to maintain, repair, and expand their sewer infrastructure to minimize or eliminate the overflows. These fines will also result in the inability to pay the staff who operate wastewater plants at a time when many plants are already short-staffed. Clearly, the water quality impacts of this bill far outweigh any impacts that a typical effluent exceedance might have.

As the wastewater experts in northwest Ohio, we appreciate this bill's intent to protect our region's water resources, but we do not support HB 385 because the current penalty structure under Ohio's NPDES permitting system does this very effectively. However, we do agree that improvements to compliance and enforcement of NPDES permits would prevent another situation such as Maumee's from happening in the future. Below we offer non-legislative approaches to address non-compliant wastewater treatment within the current regulatory framework of the NPDES permitting system administered by Ohio EPA.

- Fines and penalties proposed in HB 385 are disproportional to the environmental impact. This punitive approach will prevent local governments from making the operational and infrastructure improvements needed to address permit violations. Ohio EPA should convene stakeholder groups to review the existing fine structure in ORC 6119.9 (A) and recommend changes that are appropriate to water quality impacts while still

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allowing local governments financial flexibility to make the improvements needed to prevent these permit violations.

- Examine and refine POTW record-keeping and reporting requirements and make data publicly available through a user-friendly online interface. POTWs enter all data online and submit to OEPA, so OEPA should make these results more easily available to the public via the agency website.
- Develop publicly accessible database of violations and enforcement actions taken. OEPA should make these public records readily available on the agency website.
- Examine and refine OEPA inspection, audit, and permit violation protocols
- Identify infrastructure in need of upgrades to target investment in wastewater infrastructure aimed at supporting pretreatment and holding of storm surge flows with a goal to meet current Ohio water quality standards
- Create a climate of collaborative efforts to identify, strategically reduce, and work toward the elimination of all discharges that do not meet the discharge limits established by OEPA
- Supplement the current system of accountability through peer-to-peer wastewater treatment mentoring and system audits

TMACOG appreciates the opportunity to provide comments on HB 385 and we look forward to any opportunity to participate in dialogue with lawmakers, Ohio EPA, and wastewater stakeholders to suggest improvements to the regulatory structure that will support local governments as they fulfill their responsibilities under the Clean Water Act.

Testimony provided by

Kari Gerwin, Vice President of Water Quality Planning

Toledo Metropolitan Area Council of Governments