



Environmental
Protection Agency

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Proponent Testimony S.B. 294

Senate Agriculture, Environment and Natural Resources Committee

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Good morning, Chairman Hite, Ranking Minority Member Gentile, and members of the committee. My name is Scott Nally and I am the Director of the Ohio Environmental Protection Agency. I am very pleased to testify before you today as a proponent of S.B. 294, sponsored by Senator Schaffer.

Before I speak to the legislation before you, I would very much like to thank Senator Schaffer for sponsoring this legislation which addresses a number of changes that the agency recognizes need to be made to our many revised code chapters. As Director of Ohio EPA, I am pleased to have this opportunity to explain the issues to you and the changes we are making to reform the current statute.

One of the more significant changes we have included in this bill is to expand the confidentiality offered to businesses seeking compliance assistance from Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP).

We have based our recommended language on other state environmental assistance programs, specifically Indiana's, which we believe is a good model. Their statute provides a good balance between providing the protection to businesses, but also includes safeguards against companies with egregious compliance problems trying to use the program as a shield.

OCAPP currently, under statute, offers confidentiality protection only for small businesses seeking assistance on air permitting. OCAPP is a result of blending/combining what were originally three separate offices/programs (Office of Pollution Prevention, the Small Business Assistance Office and the Small Business Assistance Program.) Because of this merger, we are working with businesses frequently on a variety of compliance issues, not just air related. The limited confidentiality protection has created a challenging situation (1) in explaining to small businesses why only certain information can be held as confidential and (2) for us in handling records. We feel the lack of full confidentiality is a barrier to

businesses in contacting OCAPP for help. I want to expand this confidentiality to all medium and all businesses.

We are also pursuing a number of changes that reflect common sense changes to our permitting processes at Ohio EPA.

- Granting me as the Director the authority to issue NPDES permit renewals to facilities in noncompliance.

Currently, the agency is precluded from issuing an NPDES permit renewal if the applicant is in noncompliance, even if progress is being made toward a resolution. This change would still provide the Ohio EPA director with discretion on renewal issuance for non-compliant applicants.

- Creating a mechanism to allow for an In-Lieu Fee program for wetland mitigation.

I have wanted to establish a process help facilitate wetland mitigation resulting from impacts to isolated wetlands, and modify ORC 6111.0381 to ensure that it can be used for the jurisdictional wetlands as well. I want to take advantage of opportunities to improve the likelihood of success of these mitigation projects and remove the burden of conducting the mitigation from the applicant.

- Allow temporary storage of Low-Level Radioactive Waste

We propose revising ORC 3734.027 to allow a solid waste landfill to be authorized by ODH to temporarily store low-level radioactive waste at solid waste landfills in such a manner that would remain protective of human health and the environment, and would no longer be in conflict with our statutory prohibition.

- Exempt Coal Combustion Waste from Solid Waste Management District generation fees

In the last biennial budget, we exempted coal combustion waste from disposal fees if that material is disposed of in a municipal solid waste landfill. Unfortunately, we failed to include an equivalent exclusion for Solid Waste Management District generation fees as we had intended to do in ORC 3734.573. The intent is to encourage this material to go to existing landfills rather than continue to leave the generators of the waste needing to create their own captive disposal sites that are engineered as municipal solid waste facilities and unnecessarily incur the cost of doing so.

- BUSTRVAP language to allow BUSTR sites with a responsible party to be VAP eligible

Ohio EPA and the Ohio Department of Commerce/BUSTR recently changed the statute to allow Class C (orphan) sites to proceed with corrective action through Ohio EPA's Voluntary Action Program (VAP). This modification affected sites such as old gas stations that do not have a responsible party liable for remediation. Allowing these sites to proceed through Ohio EPA's established VAP program will allow a third party to

remediate the site and potentially reuse the land or create a green space. This next step expands the availability of the program by allowing volunteers who are not BUSTR "responsible persons" to clean up UST releases through the VAP if two conditions are met: 1) the assessment and/or cleanup includes non-BUSTR regulated hazardous substances or petroleum; and 2) the property is not the subject of a BUSTR administrative order or referral to the Attorney General's Office. This change will eliminate the need for a Volunteer under the VAP to have to get an NFA from BUSTR before coming to OEPA with an NFA for the rest of the site. This change expedites potential cleanup.

We are also proposing changes that I would consider to be good government changes such as:

- Increasing the threshold for use of Scrap Tire Fund for small tire site clean-up

Current law allows the state to use Scrap Tire Funds to quickly and efficiently clean up tires on an innocent landowner's property at a threshold of 2,000 tires. We would like to increase the number of tire sites that would be eligible for this type of a cleanup by including those sites accumulating no more than 5,000 tires.

- Make certified operator testing more accessible

We proposed to revise the fee structure to allow for decentralized Operator Certification Testing for Drinking Water and Waste Water Operators to provide more convenient testing options to them. Part of this provides for an expansion of entities who can apply to be examination providers. The bill authorizes a fee structure for private providers who want to administer the test. Fees for those operators who want to continue to take the OEPA administered test will remain the same.

- Change construction and demolition debris (C&DD) fee language

We proposed two changes to the C&DD fees. The first would encourage the removal of recyclable C&DD from the waste stream before the material is disposed. Fees will only be applied to that material that is ultimately disposed. The other change would clarify the application of C&DD disposal fees on asbestos materials that go to either a C&DD or municipal solid waste landfill. The proposed revisions specify that when asbestos or asbestos-containing material is received at a C&DD or solid waste facility, the C&DD fees apply.

- Add Chapter 3714 to the Statute of Limitations law

This section was omitted when the statute was enacted over 8 years ago.

- Change the annual hazardous waste reporting requirement to biennial to be consistent with USEPA's requirement.
- Revise the Environmental Background check requirements

We propose to change the statute to distinguish between transfer of ownership of an operating site/facility vs. a closed site. The language will clarify that only operating facilities

are obligated to comply with the Environmental Background Investigation Unit (EBIU) requirements at the AGO when the property changes ownership.

- Clarify the term “modification” as used in ORC 3734.41(H) which defines the types of hazardous waste permits subject to the compliance history evaluation.

Ohio’s hazardous waste permitting process for revisions/modifications was changed in 1996 to generally mirror the federal permit modification process. However, while incorporating revisions into the modification process, the corresponding statute was not changed that clarified what types of modifications were subject to ORC 3734.44, compliance history. We propose to change ORC 3734.41 to make it clear that modifications subject to siting criteria are to be evaluated under ORC 3734.44 as originally enacted in 1988 when the Hazardous Waste Facility Board (HWFB) still existed, but not the other modification classifications.

- Allow OEPA to adopt federal rules promulgated under RCRA, as amended.

This statutory change would allow us to adopt rules pursuant to U.S. EPA’s requirements under RCRA without first having to seek specific legislative approval to do so for every new rule-making. As a condition of our delegation agreement with USEPA, we need to adopt those rules which are not optional.

- Eliminate “consent to service” requirements for solid waste transport

The “consent to service” requirement requires persons transporting out-of-state solid waste to an Ohio solid waste facility to complete a consent-to-service document that provides that person’s written irrevocable consent to the jurisdiction of Ohio courts. This paperwork must also be submitted to each individual Ohio solid waste facility prior to transport of the waste. Since the initial passage of the “consent to service” requirement in July 1988 to the present, Ohio EPA has not found need to refer to filed consent-to-service documents.

- Prohibit co-disposal of Secondary Aluminum Production Waste at Municipal Solid Waste Landfills

Secondary aluminum production wastes are chemically active and when exposed to water, can react and emit toxic, flammable and potentially explosive gases. These wastes include dross, salt cake, bag house dust, and shredder waste generated from aluminum smelting operations. Operational problems including significant odors, significant leachate generation, high internal landfill gas pressures, high internal landfill temperatures, and unusual subsidence attributed to reactions are known to occur when aluminum production wastes are co-disposed with municipal solid waste. We propose to statutorily prevent the co-disposal of aluminum production wastes and municipal solid waste.

- Modify the Infectious Waste statute to remove dual regulation

Infectious waste is now heavily regulated by federal agencies as well as OEPA, unlike when the statute was adopted in the late 1980’s. Given this change, we propose eliminating duplicative oversight, leaving transportation to USDOT/PUCO; minimizing

generator management requirements by eliminating the current registration process but retaining simply a notification of generators (excluding households) of infectious waste that includes location information. The statute would not change federal and state safety and transportation requirements such as permitting and licensing of treatment facilities and the prohibition for untreated infectious wastes in landfills.

- Create a criminal provision for tampering with Public Water Systems

We are seeking the adoption of statutory provisions similar to those that exist at the federal level (specifically Title 42 Chapter 6A subchapter XII, Part D 300i-1) making it a felony offense to tamper, alter or interfere with the operation of a public water system. Tampering with a public water system, regardless of intent, may present a significant threat to public health and safety. Even events perceived as "just vandalism" can disrupt the provision of water because of uncertainty as to whether water quality has been affected or not. Making this a criminal act provides a strong basis to engage law enforcement in these incidents.

Specifically, we propose adding criminal provisions for knowing and reckless violations of the safe drinking water regulations. Most other environmental programs have criminal provisions, but drinking water does not. This change would add misdemeanor and felony authorities to bring the drinking water program in line with other environmental programs.

In addition to these changes, I have submitted language to the sponsor to make two additional changes.

The first change would provide Ohio EPA with statutory authority to seek delegation of the Clean Water Act Section 404 permitting program. Currently the U.S. Army Corps of Engineers conducts that review and Ohio EPA carries out the separate 401 water quality certification process as a part of that permitting effort. I propose to streamline that process by seeking 404 assumption from the Corps allowing me to take the first steps towards that end.

An additional amendment clarifies the change I mentioned earlier regarding asbestos disposal. The amendment clarifies that as C&DD fees apply to those wastes, no solid waste fees, whether they be disposal, generation, or district fees, will apply to those materials.

Thank you again for this opportunity to testify before you. I would be happy to respond to any questions you have.