



Ohio Environmental Council

[ UNLEASHING THE POWER OF GREEN ]

**TO: Members, Ohio House of Representatives**  
**FROM: Jack Shaner, OEC Deputy Director**  
**DATE: November 19, 2014**  
**SUBJECT: Sub. HB 490 (As Reported by House Ag + Natural Resources Committee) - Ag, DNR, EPA**

Here is a brief summary of several important changes made by the House to HB 490, the Administration's MBR for ODAg, ODNR and OEPA. The OEC remains an Interested Party on Sub. HB 490, strongly supporting some provisions while strongly opposing others. We thank Chairman Hall and his Committee for the positive changes and urge the House to accept them. The OEC respectfully urges the House to reject the regressive provisions and, instead, revert to the As Introduced version of the bill for those respective provisions and also adopt the several good amendments offered by minority members. Thank you for your consideration.

### **1. Positive steps forward on protecting Lake Erie and other waters from nutrient pollution + toxic algae**

**SUPPORT Bans the spreading fertilizer + manure on frozen + snow-covered ground in western Lake Erie basin.** Prohibits the application of fertilizer and manure when the soil is frozen or snow-covered in the western basin of Lake Erie, when the top 2 inches are saturated, or when the forecast calls for better than a 50 percent chance of an inch or more of precipitation within 24 hours. Exceptions: farmers could still spread manure if they can inject it into the ground, when it's part of a 24-hour fertilization cycle, when it's applied to growing crops, and if it consists of potash and gypsum. In an emergency, a farmer may request permission from the state to proceed with the spreading.

**SUPPORT Bans the open-lake disposal of port and harbor dredged material.** Effective July 1, 2020, prohibits the placement of materials from ports and harbor dredging or navigation maintenance into the waters of Lake Erie or its direct tributaries. Exceptions: Dredged materials could still be placed with the permission of the OEPA if the dredged material is: placed in a confined disposal facility or used in a beneficial use project or a beach nourishment project; placed in the littoral drift; or is used in a habitat restoration project. Also exempted is the placement of up to 10,000 cubic yards of dredged materials, including from dewatering operations related to dredging. Also requires the OEPA director to "endeavor" to work with the US Army Corps of Engineers on a dredging plan that focuses on long term planning for the disposition of dredged material.

**SUPPORT Mandates regular monitoring and reporting of phosphorous levels by large, public water treatment systems.**

**SUPPORT Requires the state to define "watersheds in distress" and "nutrient management plan."**

**SUPPORT Requires the state to develop "technically feasible" and "economically reasonable" standards to abate water degradation from animal waste.**

Together, these and other provisions provide progress to protect Lake Erie and Ohio's inland lakes and rivers from nutrient pollution. While much more needs to be done, these provisions are positive and promising.

See the Toledo Blade [story](#), "Water quality bill progresses"

## 2. Negative step backward on protecting Lake Erie tributaries + wildlife from impacts of water withdrawals

**STRONGLY OPPOSE** Amends the Great Lakes Compact to limit the review of adverse impacts to Lake Erie tributaries.

OEC strongly opposes the new amendment to the Great Lakes St. Lawrence River Basin Water Resources Compact. We believe the amendment:

- violates the letter and spirit of the Great Lakes Compact and leaves Ohio vulnerable to litigation
- poses risks to water quantity and water quality and the wildlife of Lake Erie
- will harm the public's and sportsmen's enjoyment of Lake Erie and wildlife.

Section 4.11.2 of the Compact directs:

"The **Withdrawal** and Consumptive Use will be implemented so as to ensure that the [water use] Proposal will result in no significant individual or cumulative adverse impacts to the quantity **and quality** of the **Waters and Water Dependent Natural Resources** [wildlife] and the applicable Source Watershed."  
(emphasis added)

The House amendment, however, disregards consideration of impacts from water withdrawals where a facility uses, but then returns a like amount of water to the Lake Erie basin. Instead, and in violation of the Compact, the House amendment considers only the impacts of consumptive uses where a facility uses but does return water to the basin. Further, the House amendment neglects to consider impacts to the biological or chemical integrity to the waters or wildlife of the watershed. This also violates the clear directive of the Compact.

Here is an example of how the House amendment could have an adverse impact: Under the amendment language, a facility could obtain a permit from ODNR for a withdrawal of 100,000 gallons of water per day from the Grand River located upstream from a spawning area for prized sport fish. Because the facility's water use is legally a withdrawal and not a consumptive use, the water use would not need to be evaluated to determine whether it may have a significant adverse impact to the water quality or wildlife dependent on the tributary. This is a clear violation of the Compact and could put wildlife and the public's and sportsmen's enjoyment of the river and its wildlife at risk.

Language similar to the current amendment was previously approved by the General Assembly (HB 231 - 130GA) and ultimately vetoed by Governor John Kasich on July 15, 2011. In his veto [message](#), Governor Kasich stated:

"Ohio's legislation lacks clear standards for conservation and withdrawals and does not allow for sufficient evaluation and monitoring of withdrawals or usage."

**The House should reject this destructive amendment.**

See the Cleveland Plain Dealer [story](#), "Lake Erie water bill would set controversial environmental standards."  
See Akron Beacon Journal [editorial](#), "Don't break the compact"

## 3. Progress and regress on oil and gas oversight and enforcement

**STRONGLY SUPPORT** Significantly strengthens the penalty for a knowing ("bad actor") violation of brine and waste substance disposal laws. The House has upgraded to a felony and proposed substantial penalties (\$50,000 fine for first offense, \$200,000 fine for subsequent offense and/or prison sentence) for the knowing violation of the unlawful placement or disposal of brine or waste substances.

**SUPPORT** Strengthened penalties for injecting or transporting brine without a permit or transporting brine or other waste substances without a registration certificate.

**SUPPORT** Strengthened penalties for violations of the prohibition against the improper placement of brine.

**SUPPORT** Requires financial assurance and insurance requirement for brine storage. The House requires an applicant for a permit or order to store, recycle, treat, or process brine or other waste substances to file with the Chief a surety bond.

**STRONGLY OPPOSE** Repeals penalties for violation of Oil and Gas Law rules. Repeals fines provided in existing law for violation of any rules adopted under the Oil and Gas Law for which no specific penalty is provided and violations of rules adopted under that Law governing permitting requirements for the exploration for or extraction of minerals or energy other than oil or natural gas.

**STRONGLY OPPOSE** Repeals civil penalties for violations of rules adopted under the Oil and Gas Law specifically relating to a well owner's duty to restore disturbed land surface.

**STRONGLY OPPOSE** Revises compliance with Federal Emergency Planning and Community Right to Know Act - EPCRA. The bill requires specified information to be filed with the ODNR Oil + Gas chief on or before March 1 of each year rather than as part of an owner or operator's statement of production of oil, gas, and brine for a specified period of time as provided in current law. Comment: While the bill does specify that the State Emergency Response Commission, Local Emergency Response Commission, and local fire departments will "immediately" receive specified information from the ODNR chief, we believe it is legally questionable and practically clunky for the Chief to be empowered as the sole handler of this information under EPCRA. Federal law does not allow for a third party to be the receiver of the inventory information. Further, it seems highly impractical and improbable that emergency responders will have full and updated access to all specified chemical information for a permitted oil and gas site if the ODNR Chief receives such inventory from the permit holder only once annually (March 1). The list of chemicals stored or in use at a well site often changes. Further, the March 1 filing date apparently would exclude inventory reporting for facilities permitted after that date -- until the following March.

**SUPPORT** Unitization and forced pooling for state lands limited to ODOT-owned property, only. As promised, the House dramatically pared back this provision to apply only to ODOT-owned state property.

#### **4. War on Wind continues with separate and wholly unequal treatment of wind power and wildlife impact permits.**

**OPPOSE** Narrows the existing definition of "energy facility" for the purpose of incidental taking permits issued by the Division of Wildlife from any energy facility (current law) to wind turbines, only. Also broadens the definition of "incidental taking" to the killing or injuring of a wild animal occurring by chance or without intention. Comment: this amendment selectively targets wind power for broadened permit conditions even though other, traditional energy facilities have significantly greater impacts on wildlife and wildlife habitat.

**NOTE:** The OEC testified in support of many of the provisions of the As Introduced bill as proposed by the Kasich Administration, especially the many provisions that proposed to strengthen oil and gas laws and related penalties.