

TO: Ohio General Assembly
FROM: Jack Shaner, OEC Interim Executive Director
DATE: June 18, 2015
SUBJECT: Remaining Priorities - State Operating Budget - HB 64

The Ohio Environmental Council respectfully requests that you accept/reject the following Executive / House / Senate provisions from House Bill 64:

1. Protect drinking water from toxic contamination during environmental emergencies

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

Status: Proposed by Executive. Rejected by House. Accepted by Senate.

Issue: A loophole in current law (ORC 1509.10(J)(2) - SB 315-130GA) bars the ODNR oil + gas chief from sharing trade secret chemical information with other agencies during an emergency or investigation of a leak, spill, or explosion. This thwarted the rapid sharing of trade secret chemical information during a chemical fire at a Monroe County oil + gas well pad that erupted June 28, 2014. According to government documents, the fire threatened firefighters with explosive shrapnel, forced the evacuation of local homes, led to a confirmed kill of more than 70,000 fish, and threatened drinking water supplies. The Columbus Dispatch reported (<http://goo.gl/09aAqQ>, Aug. 31, 2014), "In the StatOil fire...the Ohio EPA waited five days to learn what made up the proprietary chemicals that were on the well pad during the fire." That lack of communication not only hindered EPA's response, but kept downstream drinking water suppliers from knowing what chemicals may have entered their drinking water supply. EPACD8 will go a long way to fix the problems made abundantly clear during the Monroe County fire, and to help OEPA and public + private water utilities to keep drinking water safe.

2. Protect firefighter + first responder safety during environmental emergencies

REQUEST: Accept DNRCD35 (Disclosure of chemical records and information under the Oil and Gas Law)

Status: Proposed by Executive. Rejected by House and Senate.

Issue: When responding to a emergency situation, firefighters need to know what secret chemicals and explosives are stored/used at an oil+gas well. The aforementioned loophole in current law (ORC 1509.10(J)(2) - SB 315-130GA) that bars the ODNR oil + gas chief from sharing trade secret chemical information with other agencies, also bars the chief from providing first responders this essential information. See the incident report (<http://goo.gl/Q9GDr6>) about the dangerous conditions including chemicals and exploding shrapnel at the Monroe County well pad and the expert testimony (<http://bit.ly/1C3tCgI>) of a Stark County emergency manager and retired firefighter. DNRCD35 will allow this trade secret information to be disclosed to first responders during emergencies for the protection of emergency personnel and protection of the local community.

3. Stand up for the public's + emergency responders' right to know about dangerous chemical inventories

REQUEST: Amend DNRCD8 (Emergency planning and community right to know requirements applicable to oil and gas facilities)

Status: Executive provision accepted by House and Senate.

Issue: Every industry in Ohio but one -- the oil + gas industry -- must share information about hazardous and extremely hazardous chemicals stored and used on-site directly with local fire departments, emergency planning committees, and the State Emergency Response Commission, as required by the federal EPCRA law. Under a special carve out for the oil +gas industry, Ohio law was amended in 2001 (R.C 3750.081) to allow the oil + gas industry to report information to the ODNR oil + gas chief. The chief was then to share this information with local authorities. Unfortunately, the ODNR stalled gathering the lists of hazardous and extremely hazardous chemicals, even when hydraulic fracturing activities began to ramp up at the end of 2011. The current language (R.C.1509.231) in the budget bill proposes to expand upon the 2001 reporting exemption by giving ODNR the ability to gather chemical information and to hold it in a database.

This ill-conceived plan is a double hit to communities as it 1) puts the onus on local emergency responders and firefighters to seek out chemical inventory information from the ODNR, instead of having the information immediately and automatically provided to them by the industry, and 2) allows the ODNR Oil + Gas chief to have the discretion to decide whether or not and to what extent ODNR will share hazardous chemical information with the public, despite the fact that federal EPCRA law requires that information about chemical inventories at facilities be made available to the public. Expert testimony from an Stark County emergency manager and retired firefighter raises serious concerns about ODNR's historically poor communication with emergency responders and planners and lack of "staffing or ability" to manage and enforce chemical reporting as required under federal law: <http://bit.ly/1C3tCgI>. We recommend amending DNRCD8 **and** repealing R.C 3750.081.

4. Tap the environmental and local economic benefits of wind energy

REQUEST: Accept the payment in lieu of taxes changes in TAXCD 14 (Property tax replacement payments to local taxing units). Replace the distance setback requirements for wind energy projects provided in PUCCD10 (Wind farm setback exception) with those proposed in HB 190 (131 GA).

Status: Added by the Senate.

Issue: The 1st Senate provision sensibly extends the existing wind energy PILOT (Payment In Lieu of Taxes) law in current law for another 5 years. The 2nd Senate provision is narrowly drafted to effectively enable a single permitted but not-yet-built wind energy project to power the prospective Facebook data storage facility in New Albany, OH. Without this amendment, Facebook may well withdraw from Ohio, taking their facility and its jobs and hundreds of millions in capital investment to another state. The Senate has wisely recognized the economic benefits of wind energy for this single project. The Conference Committee can double down and grow even more jobs and investment by accepting HB 190's proposal to empower local county commissioners with the option to apply the reasonable wind distance setbacks that existed prior to the overly restrictive setbacks abruptly adopted in SB 310 (130 GA).

5. Help keep water reservoirs clean and free of soil and nutrients

REQUEST: Reject DNRCD51 (Maintenance of buffer around drinking water reservoirs)

Status: Added by the Senate.

Issue: This careless amendment would enable any property owner adjacent to a water supply reservoir to mow or clear the property so they can see the water. This innocent-sounding change is threatening to water quality, as it could result in increased soil erosion and runoff of fertilizer and pesticides. It even could invite threatening projects, anywhere from earth-moving to installing structures next to a reservoir. Each summer, toxic algae invades many inland lakes. Currently, Columbus is under a drinking water advisory due to elevated nitrate levels. Both are caused by excessive nutrients. This provision should be removed from the bill.

6. Keep Lake Erie and local lakes free of toxic algae by controlling agricultural pollution

REQUEST: Amend AGRCD13 (Transfer of Soil and Water Conservation Program) as described, below.

Status: Added by the Senate,

Issue 1: Require plans to properly manage nutrients

REQUEST: Pass amendment SC4737, which requires operation and management plans

Ohio needs to ensure grain farmers and livestock producers keep nutrients in the soil where it's needed for crop production and out of the water where it can cause toxic algae. The proposal to transfer Ohio's agricultural pollution abatement program from ODNR to ODAg (upon which the OEC is neutral) offers an opportunity to require plans that specify proper nutrient management, including the best management practices tailored for each farm or livestock operation. Please see the attached letters, detailing residents' of Knox County experiences and concerns (<http://bit.ly/1cQQiKw>).

Issue 2: Remove enforcement barriers in the Ag Pollution Abatement Program Transfer

REQUEST: Pass amendment SC4737, which removes enforcement barriers

Plans and rules are only as good as they are followed, and there is very little incentive to do so when scofflaws know they won't be penalized for breaking the law. The proposed transfer includes barriers to effective enforcement to the point that the whole program may be weakened. These barriers require the director to jump through several bureaucratic hoops before ever requiring corrective action or levying a penalty.

Issue 3: Study, examine and calculate nutrient pollution point and nonpoint sources

REQUEST: Pass amendment SC4821X1, which directs a source ID + a mass balance

Everyone agrees we need less finger pointing when trying to identify the cause of nutrient pollution that feeds toxic algae in Lake Erie and so many of Ohio's inland lakes. A comprehensive study that identifies the sources of nutrients including their location, cause, and amounts can help resolve this challenge.

6. Grow (don't bury) Ohio's recycling industry + support rural recycling efforts

REQUEST: Reject EPACD25 (Source separated recyclable materials)

Status: Added by the Senate.

Issue: Waste materials are becoming a more attractive commodity as technology advances and higher-value products can be mined from municipal waste. To enable this, existing law wisely provides for "flow control" which enables a predictable, continuous stream of recyclable materials to designated locations. The Sub. Bill amendment would upend this, repealing Ohio's flow-control law for source separated recyclables. The amendment also will threaten rural recycling efforts by destroying the guaranteed minimum volume of recyclable materials that flow control guarantees. The Senate should set aside this amendment and consider it as a stand-alone bill.

Thank you for considering our perspective and recommendations. A further discussion of these and other budget priorities is available at <http://goo.gl/58unEQ>.