

Retooling OHIO

A bulletin for leaders on policy issues critical to Ohio manufacturers

THE POLICY POINT: *Environmental Regulations*

Where environmental regulations are concerned, manufacturers – and all businesses – have a critical need for clarity, predictability and consistency; for policies that reflect scientific consensus; for commonsense enforcement; and for careful cost-benefit analysis as part of the policymaking process. At the same time, Ohio manufacturers understand that fair and reasonable environmental regulations must be balanced with responsible stewardship of our natural resources.

Competition for talent, investment and customers is global and fierce. Public policy can be a major asset – or a major liability – for companies and states seeking to build competitive advantage. While certain improvements have been made to Ohio's air permitting process within the last five years, a number of other anti-competitive environmental policies and practices need to be addressed – and the OMA continues to work with state policymakers and regulators to resolve those issues.

This issue of *Retooling Ohio* reviews recent progress, persisting and imminent threats, and policy priorities in the arena of environmental regulations.

Defending SB 265's Air-Permitting Process Improvements

In 2006, the Ohio General Assembly approved Senate Bill 265, which made changes to Ohio's air-permitting process to provide greater clarity, consistency and predictability.

The improvements brought about by passage of SB 265 have made it easier for companies locating or expanding operations in Ohio to identify applicable emissions control and monitoring requirements without later having more

stringent requirements imposed on them by Ohio EPA in the permitting process. The changes not only have helped eliminate some measure of guesswork for companies seeking permits but also are helping to clear up some of the backlog of permit applications.

Major provisions of SB 265 include the following:

- **Requires Ohio EPA to be clear when imposing requirements that exceed federal law so regulated businesses can plan accordingly.** SB 265 prevents Ohio EPA from unilaterally imposing operational restrictions *in permits* that

would have the effect of lowering allowable emissions levels beneath those imposed by state or federal standards. This in no way prevents what Ohio EPA may require *in rules* – it simply prevents Ohio EPA from amending existing state or federal emissions regulations through a *permit condition*.

- **Requires Ohio EPA to establish regulations for additional regulated pollutants through the rule-making process rather than through individual permit conditions, and to provide scientific evidence that the targeted compound is harmful.**

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Ohio's Significant Emissions Reduction Data Progress

	1990 (tons)	2005 (tons)	Reduction
SO ₂	4,160,751.94	1,221,923.70	70%
NO _x	1,147,379.15	321,656.23	72%
Particulate Matter	121,159.21	56,494.21	54%
Organic Compounds	151,964.18	41,614.12	73%

Source: Ohio EPA Emissions Inventory

	1981 (ppb)	2009 (ppb)	Reduction
Average ozone concentration in Ohio cities	131.8	81.4	38%

Source: Ohio EPA Air Quality Data Analysis, 2002, 2008 and 2009

	1994 (ppm)	2008 (ppm)	Reduction
Peak carbon monoxide concentration in Ohio cities	6.3	2.6	59%

Source: Ohio EPA Air Quality Data Analysis, 2002, 2008 and 2009

	1999 (micrograms per cubic meter, on a 24-hour average basis)	2009 (micrograms per cubic meter, on a 24-hour average basis)	Reduction
Particulate matter (2.5 microns or smaller) concentrations	38.8	30.8	21%

Source: Ohio EPA Air Quality Data Analysis, 2002, 2008 and 2009

FACT: Manufacturers have invested billions of dollars in environmental control technologies and more efficient processes, which has significantly reduced emissions and improved air quality in our state.

This change provides greater transparency and consistency and allows for industry and public participation. Previously, Ohio EPA could simply add to or delete from the list of regulated pollutants without any industry or public comment.

- **Disallows the practice of amending an applicable Ohio EPA rule through conditions in a permit.** SB 265 states that if federal regulations or Ohio EPA regulations apply to an emissions source, and if the regulations specify monitoring, reporting and record-keeping for the source, Ohio EPA may not impose *additional* monitoring requirements in its permit for that source. Ohio EPA *may* amend such rules through the rule-making process, which gives source operators and the public an opportunity to comment on any proposed changes.
- **Modifies and more clearly defines Ohio's "best available technology" (BAT) requirements.** SB 265 (a) requires Ohio EPA to define BAT in rules rather than on a case-by-case basis through the permitting process; (b) exempts new or modified sources that emit less than 10 tons per year from BAT requirements (but not from regulation or from the permitting process); and (c) streamlines the number of ways Ohio EPA may define the state's BAT requirements. These changes provide clarity and flexibility without weakening environmental protection or precluding the use of the most advanced technologies.
- **Requires Ohio EPA to promulgate a rule that identifies specific pre-construction steps a company is allowed to take while its permit application is under review.** This provision provides owners/operators with a clear basis in law for proceeding with work – at their expense – to prepare a site for source installation.

Ohio EPA retains full authority for rejecting the permit application if such action is deemed appropriate.

Unfortunately, some provisions of SB 265 have been challenged in court. In particular, the Sierra Club filed suit in U.S. District Court claiming that the law's BAT exemption for small emissions sources is less stringent than Ohio's federally approved State Implementation Plan and in violation of the "anti-backsliding" provisions of the Clean Air Act. In January 2010, the court agreed, which led Ohio EPA to temporarily suspend issuing permits. Ohio EPA appealed the court's ruling in March 2010, and the matter remains unresolved. As a result, Ohio EPA is now requiring BAT for these minor sources (less than 10 tons per year), pending the outcome of the state's appeal, and some previously issued permits could be in danger of being challenged or modified.

Taking Stock of Regulatory Threats, Opportunities, Priorities

Ohio has an opportunity to build on the improvements made possible by SB 265 with additional enhancements to the environmental regulatory environment in our state. Following are brief summary discussions of priority issues, ranging from proposed new National Ambient Air Quality Standards to various interpretation, enforcement and appeals issues.

ISSUE: More Stringent National Ambient Air Quality Standards

The Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) for so-called "criteria air pollutants" that are considered harmful to public health and the environment. The six principal pollutants subject to NAAQS are ozone, nitrogen

oxides, carbon monoxide, sulfur dioxide, particulate matter, and lead.

The law also requires EPA to periodically review the NAAQS and update them as necessary. As a result, these standards have become a moving target that creates an enormous cost burden on business and industry. Ohio businesses have invested billions of dollars in environmental control technologies and more efficient processes to reduce emissions. Today, Ohio is in attainment for nitrogen oxides, carbon monoxide, sulfur dioxide, lead and ozone but has some non-attainment areas for particulate matter.

In January 2010, however, the Obama Administration announced its intention to

impose more stringent NAAQS. Of gravest concern for manufacturers is the possibility that the allowable level of ground-level ozone emissions (i.e., smog) could drop by as much as 20 percent from the 2008 standard of .08 parts per million. That standard had been in place for a decade and was reduced to .075 parts per million in March 2008, which resulted in almost half of Ohio's ozone monitoring stations reporting non-attainment of the standard.

The current Administration's proposal to drop the ozone standard even lower – to somewhere between .06 and .07 parts per million – could have devastating consequences for Ohio. The current .075 standard already is dangerously close to what often is referred to as "background

Sources of Emissions Contributing to Ozone Projected for 2010

Volatile Organic Compounds (VOCs)	
On-road mobile sources ¹	21%
Off-road mobile sources ²	15%
Electric generating (EGU) units	0%
Non-EGU industrial sources	11%
Non-industrial area sources ³	53%
Nitrogen Oxides (NOx)	
On-road mobile sources ¹	27%
Off-road mobile sources ²	15%
Electric generating (EGU) units	38%
Non-EGU industrial sources	10%
Non-industrial area sources ³	11%

¹ cars & trucks

² farm equipment, construction equipment, mobile generators

³ smaller commercial sources (dry cleaners, gas stations) and people (lawn mowers, residential heating, home painting)

Source: Ohio EPA, March 2008 presentation

FACT: Traditional industrial sources (excluding electric generation facilities) account for just one-tenth of Ohio's emissions of volatile organic compounds and nitrogen oxides, the principal pollutants that create ground-level ozone.

Solid Waste Recycling and Reduction

Year	Tons of Waste Reduced or Recycled- Residential and Commercial	Tons of Waste Reduced or Recycled - Industrial	Total
2001	2,979,310	10,564,515	13,543,825
2002	3,015,265	10,775,708	13,790,973
2003	3,124,507	9,917,779	13,042,286
2004	3,386,355	8,775,726	12,162,081
2005	3,745,758	9,474,260	13,220,018
2006	3,518,289	9,501,987	13,020,276
2007	3,817,366	9,085,475	12,902,840

Reduction/Recycling as a Percentage of Generation

Year	Residential/Commercial	Industrial	Total
2001	21.9	61.7	44.1
2002	21.6	63.7	44.6
2003	21.7	50.9	42.2
2004	22.8	55.2	39.6
2005	25.1	57.1	41.9
2006	24.1	57.0	41.7
2007	25.9	53.6	40.7

Source: Ohio Environmental Protection Agency, Division of Solid and Infectious Waste Management, State Solid Waste Management Plan 2009

FACT: Industry leads the way in solid waste reduction and recycling. Reduction and recycling include source reduction activities, reuse, recycling, composting and incineration. Industry is an enormous consumer of recycled materials, such as metals, glass, paper and plastics; thus, manufacturers are strong advocates for improving recycling systems in Ohio and the United States.

NOTE: Ohio EPA attributes some year-to-year variations to changes in economic activity/output: "Ohio's industrial reduction/recycling rates tend to rise and fall in direct correlation with Ohio's economic output. Ohio EPA would expect industrial recycling to correspond to manufacturing activity. Thus, all else being equal, the greater manufacturing output, the more recycling and vice versa."

emission" levels – i.e., minimal emission levels that are not caused by human activity and/or are beyond the control of cities or regions. **The practical effect of dropping the ozone emissions standard even lower would be to put virtually every region of Ohio into "non-attainment" status – a**

designation that brings with it serious consequences for the emission sources and also for our state. For example, non-attainment designation can (a) make the permitting process for a new facility or expansion of an existing facility lengthier and more burdensome, (b) necessitate detailed action plans and costly emission

reduction programs, including politically unpopular programs such as vehicle emissions testing programs, and/or (c) hold up federal highways funds.

In broader terms, non-attainment status significantly hampers industry growth and economic development. Emissions-

intensive manufacturers contemplating new plant locations or expansion of existing plants take into consideration NAAQS attainment levels for prospective cities, regions and states. Locations with large areas of non-attainment will be at a significant competitive disadvantage for attracting manufacturing investment and growth.

Policy Priorities: There are a number of potentially useful actions that could be taken to mitigate the threat of more rigorous NAAQS:

- First and foremost, the Governor's Office and Ohio's congressional delegation should join the Ohio EPA in voicing strong opposition to further reductions in the allowable levels of ozone emissions.
- Second, Ohio needs enhanced data analysis, modeling tools and technical assistance that would allow for more comprehensive evaluation of the potential impact of proposed new federal air-quality standards on Ohio business and industry. Such resources are needed to provide stronger advocacy for Ohio industry and a more robust consideration of options for achieving more rigorous emission standards with minimal impact on the manufacturers and other regulated employers that generate investment, create jobs and stimulate economic activity in our state.
- Third, when Ohio EPA has formulated previous state plans for achieving attainment of NAAQS, historically the focus has been on controlling the large stationary sources of ozone emissions – i.e., the power plants, the steel mills and other large manufacturing industries. But the reality is that non-industrial sources and mobile sources – cars,

trucks and heavy equipment – are large sources of ozone. For that reason, if more stringent standards for ozone emissions are approved, Ohio EPA should establish expanded controls for non-industrial sources, which will yield greater benefit and have less of a negative impact on Ohio's economic competitiveness.

ISSUE: Commonsense Enforcement of Environmental Regulations

While many environmental regulatory issues are highly complex, others are relatively simple. A case in point is Ohio EPA's process for issuing Notices of Violation. A Notice of Violation (NOV) is a formal citation informing a company or a municipality that a rule, law or permit condition has been violated and that corrective action is needed. An NOV may result in a financial penalty.

NOVs are used inconsistently by the various divisions within Ohio EPA, and the process for issuing and responding to NOVs lacks flexibility. For example, companies are not allowed to appeal the citations; once NOVs have been issued, it is difficult to persuade Ohio EPA to retract them even if the company can prove the charges wrong. Furthermore, because NOVs are public documents and sometimes reported in the media, the public relations damage to a company's image may be difficult to undo even if it is eventually shown that the company did no wrong.

Policy Priorities: Two minor modifications to the NOV process could address the problems described above:

- The Ohio General Assembly should revise existing statute to allow companies to appeal NOVs to Ohio's Environmental Review and Appeal Commission (ERAC).

- Ohio EPA should refrain from issuing an NOV until the involved parties have exhausted all non-public options/solutions, such as permit modifications in situations where the alleged "violation" is simply a matter of paperwork and no environmental damage has occurred.

ISSUE: State Regulations No More Stringent Than Federal Regulations

Federal law requires state environmental regulations to be *at least* as stringent as federal regulations. Individual states may elect to impose *more* stringent regulations if they choose, but states may not establish *less* rigorous standards. Within that context, a critical environmental policy question for Ohio lawmakers and regulators is, "Does it make sense to handicap Ohio companies by imposing more stringent and burdensome standards and regulations that put those companies at a competitive disadvantage with other states and nations?"

Policy Priority: As Ohio manufacturers continue retooling their operations for maximum global competitiveness, state lawmakers and regulators should exercise restraint in establishing state standards and regulations that exceed federal standards and regulations, and should avoid doing so altogether without clear and convincing evidence that more stringent standards are necessary.

ISSUE: Interpretation & Application of Federal Standards

Ohio EPA often cites its interpretation of federal regulations as the rationale for certain state regulations it imposes on Ohio business. Ohio manufacturers competing in national markets, however, can find themselves at a competitive

disadvantage because they face greater regulatory burdens based on stricter interpretations of federal regulations than their competitors from other states.

For example, Ohio EPA's interpretation of a federal regulation against "use constituting disposal of hazardous waste" is much stricter than Mississippi EPA's interpretation of that same federal regulation. Whereas Ohio EPA's interpretation would prohibit the use of masonry blocks containing certain recycled and formerly hazardous materials in "below grade" (i.e., on or beneath the ground) applications, the same use of the same product from the same company would be permitted in Mississippi. Ohio EPA's stricter interpretation of federal regulations could put Ohio manufacturers at a competitive disadvantage.

Policy Priority: To help ensure a level playing field for Ohio companies competing in national and global markets, Ohio EPA should be required to evaluate and use best practices for implementation of federal regulations.

ISSUE: Application of Science to Environmental Regulations

Manufacturers have long been concerned about regulators' periodic failure to give full and appropriate consideration to science in establishing and enforcing environmental regulations.

For example, an Ohio company that manufactures brick wanted to dispose of "off spec" unfired bricks by putting them back into their mines as part of the company's reclamation plan filed with the Ohio Department of Natural Resources. Ohio EPA originally rejected the company's disposal plan because the bricks contained small amounts of barium (an additive used to prevent the bricks from discoloring when they are

fired), which the agency argued could contaminate local drinking water.

Even after tests of local groundwater supplies came back negative for the presence of barium, and even after Clemson University conducted a study confirming that barium becomes insoluble as it comes into contact with naturally occurring sulfates in the clay and would not leach into the groundwater, Ohio EPA still pushed back. Despite the strong scientific evidence, it literally took years for the company to resolve the situation with Ohio EPA – after substantial expenditure of time and money.

Policy Priority: Ohio EPA's enforcement of environmental regulations and rules must reflect a careful balance of environmental protection goals, cost-benefit analysis and sound science.

ISSUE: Environmental Review Appeals Commission

The Environmental Review Appeals Commission (ERAC) hears and resolves appeals resulting from various technical and legal actions taken by the Director of Ohio EPA. Unfortunately, ERAC is underfunded and understaffed. And, because many permits are appealed by one party or another, the result is a huge backlog of unresolved cases. While a third-party appeal does not deny a company its permit, it does discourage investors because the appeals process can go on for years.

The 2010-2011 state biennial budget bill contained a provision that would have required ERAC to decide all pending appeals by December 15, 2009; however, that provision ultimately was rejected by the courts.

Policy Priority: Companies whose permits are appealed by third parties

should, for a fee, be given the option of a "fast track" process and expedited resolution of the appeal. The "fast track" option should be available only in situations where a third-party appeal has been filed and should *not* be available to companies who have filed "protective appeals" as a precautionary tactic.

ISSUE: Glass Recycling and Reuse

Recycling is one strategy manufacturers use to minimize their environmental footprint. In the glass manufacturing industry, in particular, recycling offers potentially significant benefits from reductions in raw material consumption, energy use and emissions. For example, for every 10 percent of recyclable crushed glass – called "cullet" – that a container manufacturer uses to create new glass packaging,

- Manufacturing energy requirements are reduced by 2.5 percent,
- Sulfur oxides are reduced by 10 percent,
- Particulates are reduced by 8 percent, and
- Nitrogen oxide is reduced by 4 percent.

Glass container manufacturers understandably are eager to increase the amount of cullet they use in their manufacturing processes. The challenge these companies face in Ohio is the limited availability of high-quality, "commodity grade" cullet, most notably the limited amount of cullet available from current recycling streams. Budget constraints have led to the curtailment of many curbside recycling programs. Some recycling programs have been canceled while others have switched to "single-stream" recycling in which all types of recyclable materials – glass, paper, plastic, aluminum – are mixed together in the collection truck. Unfortunately, commingling crushed glass increases the likelihood of contamination,

which limits its use in the manufacturing of new glass products.

One study estimates that the demand for commodity-grade cullet that can be used in bottle manufacturing exceeds current availability by about one million tons annually. A shortage certainly exists in Ohio, where manufacturers currently

import the majority of the cullet they use from other states, such as Michigan and Pennsylvania, and from Canada.

Policy Priority: State policymakers need to explore – and quantify the full range of potential benefits of – policies that could increase the amount

of commodity-grade cullet in Ohio, including incentives/support for such things as dual stream recycling programs; on-premise restaurant and hotel recycling efforts; landfill limits; consumer beverage container deposit programs; and other opportunities beyond traditional municipal curbside recycling programs.

Toxic Releases to the Environment (Millions of Pounds per Year): Ten-Year Trend for Core Chemicals at Base Years 1988 and 1998 (All Industries)

1988 CORE CHEMICALS

Year	Air	Water	Underground Injection	Land	Total
1988	104,527,630	1,047,455	11,538,544	29,291,941	189,967,460
1998	39,931,376	964,787	11,335,494	29,455,826	123,139,395
2008	21,266,661	408,993	8,921,260	16,394,937	87,257,908
% Change 1988-1998	-61.80	-7.89	-1.76	0.56	-35.18
% Change 1998-2008	-46.74	-57.61	-21.30	-44.34	-29.14
% Change 1988-2008	-79.65	-60.95	-22.68	-44.03	-54.07

1998 CORE CHEMICALS

Year	Air	Water	Underground Injection	Land	Total
1998	158,093,067	9,657,855	28,758,724	90,107,719	342,373,493
2008	90,135,570	8,497,355	22,917,784	55,440,096	227,259,736
% Change 1998-2008	-42.99	-12.02	-20.31	-38.47	-33.62

Source: U.S. EPA, Toxic Release Inventory Explorer

FACT: Ohio manufacturers have made tremendous progress in reducing toxic releases to the environment, year after year after year. These significant reductions have occurred while production output has increased.

NOTE: U.S. EPA requires an annual Toxic Release Inventory from facilities. Chemicals in the annual inventory are added or delisted in any year. Thus, base year core chemical amounts vary.

Federal Climate Change Proposals: Potential Impact on Ohio's Economy

A U.S. Supreme Court decision in April 2007 ruled that greenhouse gases (GHGs) are "air pollutants" under the Clean Air Act and that U.S. EPA has the authority to regulate GHGs. In response, U.S. EPA Director issued an "endangerment finding," which represented a formal determination that GHG emissions contribute to air pollution that "may reasonably be anticipated to endanger public health or welfare." In July 2008, U.S. EPA published an Advance Notice of Proposed Rulemaking on GHG emissions.

Federal climate change legislation is viewed by proponents as one of the major tools for reducing GHG emissions. The primary climate change proposals on the table are H.R. 2454, the American

Clean Energy and Security Act (more commonly known as the Waxman-Markey climate change bill) and the American Power Act (more commonly known as the Kerry-Lieberman bill). These bills would mandate a cap-and-trade program that governs fuel choices available to businesses and consumers.

Analysis indicates that if enacted, both bills would lead to higher electric bills, higher home heating costs, higher gasoline prices and substantial jobs losses. While the impact of the bills would be felt nationwide, Ohio would be disproportionately hard hit due to the state's manufacturing-intensive economy and heavy reliance of coal-fired electricity. And, driving up the cost of energy would put Ohio and U.S. businesses at a competitive disadvantage with foreign competitors like China and India, which repeatedly have refused to consider enacting their own climate change legislation.

Ohio manufacturers have made great progress in improving energy efficiency and reducing carbon emissions, and are committed to making additional improvements. In fact, manufacturers welcome many provisions of these bills, such as expansion of research and development for clean coal technologies, support for carbon capture and sequestration projects, incentives for energy efficiency, incentives for expedited development of nuclear energy production and worker training in clean energy industries. However, it is critically important for federal policymakers to understand that any climate change proposal that imposes additional energy costs and regulatory burden – especially in the current economic climate – will cause significant harm to Ohio's core manufacturing sector and have a potentially devastating impact on Ohio's economy.

The mission of The Ohio Manufacturers' Association is to protect and grow Ohio manufacturing. Through the OMA, manufacturers and manufacturing stakeholders work directly with the members of the Ohio General Assembly, state regulatory agencies, the judiciary community and statewide media with the sole focus of improving business conditions for manufacturers in Ohio.



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