

Interested Party Testimony
H.B. 496
Ohio Environmental Protection Agency

March 28, 2006

Good morning, Mr. Chairman, members of the Committee. I am Joe Koncelik, director of Ohio EPA, and I appreciate the opportunity to testify before you today as an interested party on Substitute H.B. 496. I am pleased with changes made in the substitute version of H.B. 496 accepted by the Committee this morning; I believe they significantly improve the bill.

This legislation deals with fairly complex areas of environmental regulation. Unfortunately, as a result, it can be very difficult to determine what the real impact will be. I will do my best to give the Agency's perspective on the implications of this legislation, good or bad, including those changes accepted in the substitute bill.

Let me start with a description of the big picture. During debate on this bill, it has been raised that Ohio has high levels of air pollution compared to other states. This is true. However, our ranking is due to our heavy manufacturing base, large population and large number of vehicles; it is not a result of lax regulation.

What is left out of the discussion is that Ohio's air quality has dramatically improved in the last 20-30 years. For example:

- * carbon monoxide levels have dropped 61%
- * sulfur dioxide levels have gone down 52%
- * lead levels have decreased by more than 95%

There are a number of other examples that provide clear evidence that Ohio EPA's regulations and requirements work and work well. It is also a fact that Ohio's air quality is going to continue to improve in the coming years. U.S. EPA has adopted more stringent air quality standards for ozone and fine particles to better protect public health. As a result, Ohio has 33 counties designated as non-attainment for one or both of these standards. It's important to remember that these non-attainment designations simply indicate we are striving to meet a more protective standard; the designation does not signify Ohio's air quality is getting worse.

In order to meet these new federal standards, a whole range of aggressive new air pollution control programs will be necessary. Ohio EPA is evaluating new

controls on everything from consumer products and paints to clean fuels and new industrial controls. We estimate that existing pollution levels will need to be reduced by 10-20% from today's levels in order to meet these standards. Some very difficult decisions lie ahead, but our citizens will benefit from much cleaner air.

Now that I have provided a big-picture description of Ohio's air quality, I'd like to talk about the effects of the bill before you.

What is the overall environmental effect of this legislation? While I do not believe the bill is neutral, I do not think the changes represent a significant weakening of environmental protections. H.B. 496 will not change the fact that Ohio's air quality will continue to improve. Any pollution increases that may result from this bill will be more than made up in the coming months when the Agency adopts new air pollution control programs to meet federal standards.

Does this legislation exempt air pollution sources from regulation? Under the bill, sources that emit less than 10 tons a year of non-toxic pollutants would not have to install Best Available Technology (BAT). The substitute bill shores up this aspect by adding a stop-gap measure to ensure all sources emitting more than 10 tons install what is called reasonably available control technology or RACT. Ohio EPA does not view the BAT exemption for sources emitting less than 10 tons of non-toxic pollutants annually as environmentally significant.

A number of people have pointed out that Ohio has 76,000 permitted emission units, compared to just 7,000 in Michigan. In large part, that is because Ohio has a much lower emissions rate that triggers the need for a permit. In an effort to evaluate the disparity between the number of permitted sources in Ohio versus neighboring states such as Michigan, we have already considered rule changes that would go beyond the proposed 10 ton exemption from BAT. As director of a state environmental agency, my job is to protect the environment and public health as well as make sure that we spend our resources to achieve the greatest impact. Ohio EPA may be spending too much time regulating small sources of air pollution with little environmental benefit. Therefore, I think it is appropriate to make calculated revisions to the permitting process.

Does this legislation significantly limit Ohio EPA's ability to be more stringent than federal law? No. For a bit of context, let me say that I am opposed to a blanket limitation on Ohio's authority to be more stringent than federal requirements. However, there are numerous examples throughout Ohio's environmental laws where we have chosen to specifically limit ourselves to federal standards because we have deemed those standards to be protective. As long as we are making educated decisions that, in certain situations, federal standards are strong enough, I don't oppose such limitations.

In H.B. 496, the only limitations on our authority are in areas where the Agency is already choosing to be no more stringent than federal standards. The bill does prevent the Agency from developing more stringent monitoring requirements in an individual permit than what are required in our rules. I am pleased with the additional language that allows us to set more stringent limits in a permit in cooperation with a permit applicant. I am also pleased to see the removal of language pertaining to ambiguity with respect to our intent to be more stringent than federal rules. This language raised many concerns, in part because the language itself was ambiguous and vague. I believe it would have resulted in unnecessary litigation.

In some instances, H.B. 496 specifically authorizes the state to be more stringent than U.S. EPA. For example, the legislation gives specific authority to Ohio EPA to regulate more toxic compounds than are regulated in the Clean Air Act. I am confident that Ohio EPA will be able to provide scientific support, through the rule process, for regulating those toxic pollutants of primary interest in Ohio. The bill will also codify Ohio EPA's air toxics policy, which will act as a specific and aggressive standard for all new sources to reduce their toxic emissions. I think this aspect of the legislation is very good news for Ohioans.

Will the legislation result in huge costs associated with rulemaking required by the bill? It is very difficult to project the number of rules that Ohio EPA will need to adopt as a result of this legislation. However, I do not anticipate we will need to adopt hundreds of rules that will cost the state millions of dollars, as some have represented. As I noted earlier, we have a huge challenge ahead of us to adopt programs to meet the federal air standards. For that reason, I appreciate the change in the substitute bill that gives us three years to complete BAT rules for all source categories for which we currently require BAT. The additional year moves us past the deadlines when Ohio EPA must submit implementation plans for meeting the new federal ozone and fine particle standards. This should provide Ohio EPA adequate time to review existing BAT practices and develop rules for priority source categories.

The changes accepted in the substitute version of H.B. 496 address the remaining issues Ohio EPA had with the bill and, again, I believe those changes significantly improve the bill. I appreciate the opportunity to testify and would be happy to respond to any questions you have.