

STREET ADDRESS:

Lazarus Government Center
122 South Front Street
Columbus, OH 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

**Interested Party Testimony
S.B. 265
Ohio Environmental Protection Agency**

March 8, 2006

Good afternoon, 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 S.B. 265, sponsored by Senator Spada. At the outset, I want to express my sincere appreciation to Senator Spada and Chairman Niehaus for their efforts and patience as we have worked through a series of complex and controversial issues with the members of the business community. Industry has sought legislation that, in their view, would make air pollution regulation more predictable, transparent, and consistent. It is a worthy goal to make environmental regulation more straightforward; however, we should not meet this goal by reducing protections of public health or the environment. I believe the bill before you today accomplishes a very difficult task. It makes environmental regulation more predictable and consistent while at the same time does not erode protections that benefit the citizens of Ohio.

Today's legislation comes during a time when Ohio is facing tremendous challenges with regards to air pollution. Major decisions will be made in the next 15 months that will not only affect public health, but will likely increase compliance costs by hundreds of millions of dollars and affect economic growth. Ohio has 33 counties that do not meet the new federal standard for ozone or fine particles. This represents more counties than any other midwest state. By June of 2007, Ohio EPA will implement new air pollution control programs aimed at bringing all of these counties into attainment with the federal standards. Right now, Ohio EPA is evaluating a whole range of new air pollution control requirements on everything from consumer products to industry and vehicles. It is important to keep in mind that, while the issues being addressed in this legislation are important, our greatest challenge lies ahead.

You have heard in testimony from business representatives on several of the provisions of the bill. I would like to briefly speak to a number of those from the Agency's perspective.

We often hear from businesses that today's fast-paced economy requires companies to quickly adjust to changing market conditions. As a result, our agency is under constant pressure to timely issue the thousands of air and water permits we receive each year. The Agency has instituted a large number of improvements in recent years to streamline permit reviews. These changes have already increased our efficiency; for example, 80% of all air permits we receive are processed in 90 days. Even with the major improvements we have made to both air and water permitting, I agree more can be done.

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director



One approach to addressing timeliness of permit authorizations is to allow the company to begin work prior to receiving a final permit. However, simply allowing a company to build a new air pollution source without a permit would be bad public policy. Ohio EPA often requires changes to facility layouts or pollution control equipment as part of the permit review. Furthermore, until we complete our permit review, we don't know whether a source can even be built and meet air pollution control requirements. The bill strikes a compromise on this issue by allowing businesses to start pre-construction activities to prepare a site before a final permit would be issued. However, a business could not actually install the source of air pollution.

Along with timeliness, Ohio businesses rightfully expect to be treated consistently no matter where they are in the state. One area where Ohio EPA has received criticism for being inconsistent is in its application of Best Available Technology (BAT) requirements to control air pollution from new sources. Currently, Ohio EPA makes a case-by-case determination as to what constitutes BAT for a particular source. In order to reduce the uncertainty and inconsistency in the application of BAT, industry wants Ohio EPA to specifically define BAT in rule. Under the provisions in this legislation, Ohio EPA would have 2 years to promulgate rules that define BAT for each particular source category.

I believe it is a fair criticism to say that case-by-case determinations as to what constitutes BAT can lead to inconsistent determinations. While I believe the approach taken by the bill is fair, I must acknowledge it will present a significant resource challenge. The legislative requirement to develop rules defining BAT comes at the same time we are developing plans to comply with the federal ozone and soot standards. As a result, Ohio EPA may not be able to develop rules by the deadline for all source categories for which it currently requires BAT.

The issue that has probably received the most attention is the issue of air toxics. Should Ohio EPA have the authority to regulate air toxic compounds that are not regulated under the Clean Air Act? Contrary to what others have portrayed, the Clean Air Act is not intended to be a comprehensive scheme for regulating all aspects of air pollution. Instead, it leaves the option for the states to enact additional requirements they deem appropriate. For example, U.S. EPA regulates 187 toxic compounds that are deemed of national significance. However, this does not represent an exhaustive list of harmful compounds. Therefore, Ohio EPA regulates an additional 300+ compounds not on the federal list.

I strongly believe it is important for states to maintain the ability to improve upon the general framework established at the federal level. While a limited number of states have chosen to restrict their authority to only that specified in the Clean Air Act, the majority of states have elected to go beyond the Clean Air Act. Ohio should refrain from engaging in a race to the bottom of environmental protection. While I am a strong advocate for the state's right to provide enhanced environmental protection for its citizens, I believe it is appropriate to expect the state to clearly specify those regulations.

As discussed, U.S. EPA maintains a list of 187 air toxic compounds that it regulates under the general structure of the Clean Air Act. While Ohio EPA has regulated compounds not on the federal list, nowhere can industry find a definitive list of what Ohio EPA regulates. The bill requires Ohio EPA to develop a formal list.

As part of the rule-making process to develop the list of toxic compounds, Ohio EPA will need to provide the "scientific evidence on which the director relied in making the determination." It is important to note that plenty of scientific evidence already exists on the dangers of various compounds. Ohio EPA will have to identify which evidence it is relying on to conclude a particular compound is harmful.

While the bill makes a number of changes that are designed to address industry concerns, the bill also strikes a balance by including a strong provision that will benefit the public health of Ohioans. Let me conclude by discussing this very positive aspect that was included in the latest version of the bill. The bill accepted by committee last week would grant Ohio EPA specific authority to establish standards for air toxic emissions from new facilities. This provision will end an area of significant debate with industry which has lasted for at least two decades.

Currently, Ohio performs air toxic reviews under its air toxic policy with a goal to reduce public health risks associated with exposure to toxic emissions. While almost 3 out of every 4 permits we receive don't have to go through any kind of toxic review, performing toxic reviews has significant value to the environment and human health. For example, during 2002-2004, we eliminated 104 instances where toxic emissions would have increased public health risks unacceptably. Even though we have performed these toxic reviews for a number of years, some industry representatives have challenged our legal authority for requiring the review and also have challenged our methodology in performing the review. This legislation ends the debate by granting specific authority to regulate toxic emissions from new sources.

On that note, I will conclude my testimony. I appreciate the opportunity to testify this afternoon, and would be happy to respond to any questions you may have.