



State of Ohio Environmental Protection Agency

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

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Good afternoon, Mr. Chairman, members of the Committee. Again, I am Joe Koncelik, director of Ohio EPA. At the conclusion of my testimony last week on S.B. 265, Chairman Niehaus asked that I begin this week with a brief opening statement that would respond to written questions submitted by members of the Committee.

I will begin by responding to some of the general questions and issues that were asked and then move on to more detailed questions.

I have been asked to discuss my role in the development of S.B. 265. During the extensive negotiations on the bill, going back to early considerations of language proposed in the budget bill last year, I served as the Agency representative. Given my capacity as director of the Agency, I was asked by some members of the Committee my perspective and insight as to my role in those negotiations. I believe the director's top priority is to protect public health and the environment. As I mentioned last week, I also believe it is the job of the director to evaluate the effectiveness and efficiency of the programs implemented by the Agency. Programs and processes that are too complex or unnecessarily burdensome should be improved to make them more effective. As a state agency constrained with demands on both time and resources, I believe it is my responsibility to make sure we are putting those resources to their best use to maximize their effectiveness.

I believe S.B. 265 will lead to a better allocation of resources in some areas. However, it is very difficult to predict the amount of resources that will be saved with any type of program improvement.

I was also asked whether I felt there were legitimate criticisms raised by industry that this legislation addresses. I do.

As an Agency, we have struggled to make consistent case-by-case determinations as to what constitutes Best Available Technology (BAT). Requiring the Agency to develop rules to specify what BAT is for specific air pollution sources will provide more certainty and predictability while not resulting in significant increases in air pollution.

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

Another major concern is the timeliness of air permits which are often the key authorizations for plant expansions or improvements. Business plans can be constrained by construction seasons which often dictate when work can be performed in the field. S.B. 265 would allow businesses to better plan by requiring the Agency to develop clear guidance as to which work can be performed prior to receiving a permit. However, under this legislation no business could legally install a source of air pollution without its permit.

Finally, I am also very familiar with complaints regarding the enforceability of Ohio EPA's air toxics policy. I spent two years on a permitting work group at Ohio EPA where industry representatives expressed concern that the Agency continued to regulate through policy with no specific authority to implement an air toxics program. Again, this legislation would put that debate to rest and provide the Agency clear statutory authority to implement that process for evaluating toxic emissions.

I received a question regarding my testimony on the air toxics policy. As I stated, I think inclusion of the air toxics policy in this legislation represents a very significant benefit to the environment and public health. Standards that are uncodified are more easily challenged. Without a legal requirement for Ohio EPA to enforce air toxic reductions in the future, a future director could simply eliminate the program altogether. I believe it strengthens Ohio's environmental protection regulations by putting these standards into law.

I have been asked whether S.B. 265 is environmentally neutral. While I do not believe it is neutral, I do believe the changes in question do not represent a significant weakening of environmental protections. For example, I believe the Agency will be unable to develop BAT rules for all source categories currently required to go through a case-by-case BAT determination given the time constraints for rule development. Also, the 10-ton limit threshold for requiring BAT is higher than current practice. While these changes may affect emissions from a limited number of smaller air pollution sources, nothing in this legislation would change the air quality standards we must meet. Ohio will be implementing major programs in the next two years that will result in major reductions in emissions to meet the more stringent federal standards for ozone and fine particles. Therefore, air quality in Ohio will be improving significantly in the coming years, not deteriorating.

I was specifically asked about the provisions in the legislation dealing with ambiguity. My concern is that some lawyers may argue that anytime the Agency wants to be more stringent than federal law it must expressly state that it intends to be more stringent. It is impossible to predict with certainty how a court would interpret this provision.

Finally, I was asked about provisions of this legislation that prevent Ohio EPA from imposing more stringent monitoring, record keeping or reporting requirements than appear in federal law. Nowhere in the latest version of the legislation does it state that Ohio cannot impose more stringent requirements in these areas.

Thank you for the opportunity to continue my testimony. I would be happy to take any additional questions.