



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

**Testimony of Scott Nally
Director, Ohio EPA
Before the
Senate Finance Committee**

May 5, 2011

Good morning, Chairman Widener, Ranking Member Skindell, and members of the Committee; I am Scott Nally, Director of the Ohio Environmental Protection Agency. I am very pleased to be here this morning, and I thank you for the opportunity to testify on Substitute H.B. 153, the biennial budget for FY 2012-13.

I present to you today a fiscally responsible budget; one that reflects the current economic climate while allowing us to maintain our essential operations as we continually look for more innovative, efficient, and effective tools to carry out our work. I would also like to emphasize I strongly believe that we must strike a balance between our role of protecting the environment while allowing for economic development. Ohio EPA plays a significant role in the economic vitality of our state and, as I have stated publically many times, I feel strongly that those two objectives are not mutually exclusive.

Budget overview

Funding for Ohio EPA comes predominately from federal funds and fees paid by regulated entities. We receive almost no General Revenue Fund (GRF) dollars with one exception – the testing of auto emissions in the Cleveland-Akron area.

Even though we are not dependent on GRF, I feel it is my obligation to Ohio taxpayers to propose a fiscally responsible budget. It is important to be financially accountable and transparent and to illustrate to the regulated community that we are good stewards of the funds we receive. Therefore, Ohio EPA's FY 2012 requested funding level was \$187.9 million (11.8% below FY 2011), and \$184.2 million in FY 2013, an additional 2% below -- totaling a 13.8% reduction over the biennium.

There are no fee increases in Ohio EPA's FY 2012 – 2013 budget. In order meet our budget goals, 53 positions will be eliminated through vacancies, attrition and the reorganization of the Hazardous Waste Management Division into two of the Agency's other divisions. Consolidating permitting, inspections and enforcement for both solid and hazardous waste into one division,(the newly named Division of Materials and Waste Management), and moving the cleanup components of the hazardous waste division into what is now the Division of Environmental Response and Revitalization, will make Ohio EPA more efficient.

Additional savings will be realized from lower contracting costs in the successful scrap tire program which has now completed cleanups at most of the known, large abandon scrap tire dumps in Ohio. Contracting costs are also lower in the motor vehicle emissions testing program as a result of competitive bidding. Ohio EPA's legal advertising savings plan for FY 2012 – 2013 coincides with Governor Kasich's statewide initiative included in the budget to streamline the public noticing process which will result in significant budget reductions for Ohio EPA.

As I stated earlier, financial accountability is important and this budget provides transparency and provides a true reflection of actual costs. In the past, Ohio EPA has relied upon internal funding transfers to reimburse programs for the cost of services provided within the Agency. Our FY 2012 – 2013 budget adds clarity to Ohio EPA's actual costs by eliminating a significant amount of those intra-agency funding transfers and the associated appropriation authority for those transfers. In place of the current reimbursement process, the original cost will be paid directly from the appropriate program or fund.

Budget Concerns

I would like to bring to your attention a concern with Sub. H.B. 153, adopted in the House Finance Committee involving the current E-Check program. This program is currently being conducted in 7 counties in northeast Ohio as a result of the federal moderate nonattainment status for ozone in that area. Unfortunately, U.S.EPA is currently in the process of finalizing a revised lower ozone standard which should be in place late this summer. That standard could very likely result in significantly more counties joining northeast Ohio in that moderate nonattainment status, triggering the federal requirement for emissions testing.

I have committed to providing legislators with all of Ohio's options for achieving air attainment. Given the lower standard and the significant challenges with meeting the federal standard, I need to be able to have all options available to the agency, including the type of emission testing program we will have into the future where the federal mandate exists. For the following reasons, I request that the language from the Executive version of H.B. 153 be reinstated:

- The amended language allows for only a decentralized program which will provide less emission reduction credits than the current centralized program. I need to be able to maintain utmost flexibility to allow all potential bidders to participate to determine what program is the most cost-effective, convenient, and reliable for both motorists and the state;
- the amended language eliminates the requirement that the contractor send reminders to owners whose vehicles are subject to the E-Check every two years prior to the

registration renewal. Lack of notification could result in owners forgetting to complete E-Check testing prior to the visit to BMV;

- the amended language only requires a “substantially similar” ozone precursor reduction instead of the “same” ozone precursor reduction as is currently achieved by the program. While the newly added language includes a provision for emissions analyzers to be BAR-97 certified, there is no requirement for the decentralized stations to purchase this testing equipment. These analyzers are needed to test vehicles older than 1996. Losing these vehicles from the testing program could result in lost emission credit reductions of as much as 48%. Those lost reductions would need to be made up by other means such as more stringent emission controls on industries or implementing low-RVP vehicle fuel; and
- the amended language requires legislative approval to expand the program to other counties that might become federally mandated to adopt a testing program when the federal ozone standard lowers. Current law grants us the authority to conduct testing where the program is federal mandated.

Program Initiatives

I would like to share with you a number of priorities I have established since starting as Director at Ohio EPA that reflect my desire to enable the economy to grow while encouraging and improving environmental compliance. The following are a brief overview of a few of the initiatives we will work on at our Agency.

- “In-lieu Fee” Program – Ohio EPA is working with the U.S. Army Corps of Engineers and ODNR to help projects that have evaluated their options for wetland avoidance and minimization, and are still faced with a need to mitigate for some wetland impacts to make their project successful. By paying an “in-lieu fee,” the applicant is relieved of the burden of finding a mitigation project while the appropriate mitigation still occurs, providing a greater chance of success with similar ecological benefits.
- Permitting efficiencies – I am seeking opportunities to permit facilities through the increased use of permits-by-rule and general permits. In particular, I have asked my Division of Air Pollution Control to work with sectors of industry to utilize these tools in a manner that helps both the Agency as well as the regulated facility to operate in compliance.
- Eliminate permit backlog -- We are working to prioritize and streamline our operations to efficiently manage and reduce our permitting backlog. I have asked the permit teams to develop a JV bench to build their strength by working on less complicated permits, allowing the A team to focus on the larger, more complex and time-intensive permits.
- IT initiatives and Compliance Assistance – I am asking my Office of Compliance Assistance and Pollution Prevention (OCAPP), as well as the IT Division, to provide tools to the regulated community to train them on the services we offer to help them achieve

compliance. This includes additional on-line reporting and permitting, like we do for water quality monitoring data and hazardous waste reporting. Additionally, our goal is to have on-line fee payment for solid waste fees in place by June 30th with others to follow. In addition, I am very pleased to announce that Ohio EPA recently received confirmation of the approval of our CROMERR application which will allow for electronic signatures by permit applicants.

- Grand Lake Saint Marys – I have been working with the Governor’s office, the Ohio Department of Natural Resources, and the Ohio Department of Agriculture to develop a coordinated and multi-faceted plan to improve water quality at the lake by reducing phosphorous levels through the use of a variety of tools.
- Brownfields redevelopment – While the Ohio Department of Development takes the lead in pursuing opportunities for economic redevelopment, I am very interested in offering our agency’s assistance to help facilitate creative ways of addressing environmental and economic redevelopment challenges that communities face. We need to look at target programs to help solve these urban blight problems.
- Marcellus and Utica Shale – I have been working with the Governor’s office, Department of Development, and the Ohio Department of Natural Resources to develop a coordinated plan for permitting and managing the potential growth of this natural gas exploration in Ohio. I want to be clear that ODNR has regulatory jurisdiction for sites involving shale drilling, but USEPA has made it clear that this is an enforcement target for them. Therefore, as a state, we need to pool our resources together as an “all hands on deck” group effort to successfully respond to this issue.
- Expedited Settlement Program (ESP) -- Given my priority of compliance first, I am initiating modifications to the current enforcement process to help drive quicker compliance. Historically, the existing enforcement options have been time consuming and resource intensive for both the agency and the regulated entity. By developing new steps to be used early in the enforcement process, I hope to resolve uncomplicated cases expeditiously, putting a facility on notice of a problem, and quickly achieving compliance.

Conclusion:

I have high expectations for the positive impact Ohio EPA can have on the environment and the business climate in our state. I will make sure we are good stewards of the funds we receive and that our regulatory programs are organized and equipped to efficiently manage the work we need to do to make Ohio a great place to work and live. Your support is an important part of this process and we welcome your input. Thank you for your time and I welcome any questions you may have about Ohio EPA.

###