



State of Ohio Environmental Protection Agency

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**Testimony
of
Chris Korleski
Director, Ohio EPA**

**before the
Ohio Senate Environment and Natural Resources Committee**

December 4, 2008

Chairman Niehaus and members of the committee, I thank you for the opportunity to present opponent testimony on SB 386. Primarily, I hope to offer insight into the current status of coal project permitting at Ohio EPA, as I believe many stakeholders may be unaware of our recent efforts in this area.

When I came to Ohio EPA just under two years ago, I chose to focus on several permitting areas where I believe Ohio EPA had not been hitting acceptable standards for timeliness. One of those areas of concern was Ohio EPA's issuance of 401 water quality certifications for projects that impacted wetlands or waterways. This was a difficult target, given the complexity of water quality science and the vague guidance from the courts (including the US Supreme Court) and US EPA about whether and to what extent wetlands and waterways were subject to water quality protections.

While I began focusing on improving the timeliness of all 401 water quality certifications, I "honed in" on coal projects because of concerns raised by applicants about specific coal projects, and as a follow-up to a meeting convened by Senator Carey to discuss the timeliness issue and possible solutions. As a result of those two catalysts, I promptly directed my staff, and worked with them, to eliminate the backlog of pending water quality certifications for coal project permits, i.e., permits that had been "sitting" in our shop for longer than the statutorily mandated 180-day timeframe. Today, I am happy to report that there is no longer a backlog of coal project 401 certifications at Ohio EPA.

Specifically, Ohio EPA has taken the following steps to improve the coal project permitting process:

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Lee Fisher, Lieutenant Governor
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- I developed a new and separate “Coal Review Group” in our water quality certification program to focus specifically on certifications for coal mining and the Ohio Department of Transportation (ODOT) projects.
- I appointed an experienced staff person as manager of the newly-formed Group to oversee all coal and ODOT projects.
- I dedicated two staff persons (including one newly-created position) to work solely on coal mining water quality certification applications.
- We improved our tracking process to ensure we are meeting or exceeding statutory deadlines and initiated an in-house goal of 120 days to review and act on all surface coal mining applications.
- We reinitiated monthly surface coal mining workgroup meetings to address immediate industry issues or concerns. This group, made up of coal industry representatives and water quality certification staffers, has been successful in the past and currently is discussing application format and consistency.
- We increased our communication with Ohio Department of Natural Resources (ODNR) and the U.S. Army Corps of Engineers to attempt to better implement the integrated application process. Our goal is to promote use of the integrated application process as a simplified, more efficient approach to moving applications through the 401 certification process. Indeed, I have committed my staff to participate with ODNR and other interested stakeholders in an upcoming process improvement (or “kaizen”) activity intended to improve the usability and efficiency of the integrated application process.

Since making these changes, we are encouraged by the resulting status of 401 water quality certification applications for surface coal mining. Again, all complete applications have either been processed, or are on track to be fully processed within the allotted 180 days.

In addition to the fact that there is no backlog of pending water quality certification applications, Ohio EPA has several other concerns with SB 386 and the concept of transferring the coal permitting process to ODNR.

- A clear understanding of all the ramifications of the bill is unlikely to be attainable given the very short time frame being considered for adoption.
- Fundamentally, the bill (and its impacts on regulatory oversight) is complex. The bill intends to transfer not only the 401 water quality certification program for coal projects, but also the National Pollutant Discharge Elimination System (NPDES) and Permit-to-Install (PTI)

programs for coal projects as well. Further, if we are reading the bill correctly, the proposed legislation will adversely affect all 401 certifications because sections addressing antidegradation alternatives and attainability analysis would be removed from Chapter 6111.

- While we have the utmost respect for our colleagues at ODNR, ODNR staff does not have the water quality expertise to take over and administer Ohio EPA's current responsibilities. ODNR would have to hire and train water quality experts (equivalent to Ohio EPA's) that would be dedicated to coal issues, and it is possible that ODNR would also have to hire collateral personnel, such as legal staff, to assist in the development of an effective water quality certification program.
- The proposed transfer would lead to duplicative state expertise in two different agencies. This is not an efficient use of state resources, especially when agency budgets are being strained by a rapidly shrinking economy.
- The bill sets forth a July 1, 2009 start-up date for the transfer of the program. As we have learned through transferring the CAFO program to the Ohio Department of Agriculture (ODA), transferring an NPDES program is not likely to be a quick endeavor. Eight years after legislation was passed, ODA has just received from U.S. EPA conditional delegation authority for issuing NPDES permits for CAFOs. Furthermore, my staff has had some preliminary communications with U.S. EPA regarding this legislation, and US EPA management personnel have initially expressed concerns with the concept of transferring the 401 program from Ohio EPA to ODNR.

In conclusion, I would submit to this Committee that if the key intent of the bill is to address a perceived inability of Ohio EPA to timely issue coal project 401 water quality certifications, the bill is unnecessary. Again, we simply do not have a backlog of such applications, and it is my intent to continue to improve the timeliness and efficiency of our permit issuance process, not just for coal projects, but for all 401 water quality certifications.

I thank you for your time and I am happy to answer any questions you may have.