

SUMMER 2023

THE CORD REPORT

The Official Quarterly Newsletter of CORD



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AUGUST 8TH SPECIAL ELECTION SET, STATE OPERATING BUDGET MARCHES ON, VACANCIES FILLED IN OHIO HOUSE THE LATEST ON THE 135TH GENERAL ASSEMBLY

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COLUMBUS - With many new faces around Capitol Square, including a new Speaker of the Ohio House, this General Assembly (our State's 135th) has not been without its fair share of high-profile and controversial topics.

Between a measure to increase the threshold to amend Ohio's constitution to 60% (up from a simple majority) and a corresponding special election, to debates on transgender individuals' participation in sports, there has been much to discuss at the Ohio Statehouse. Not to mention...an entire state operating budget is nearing completion and moves closer to the finish line.

With all of this and more, this is your CORD Legislative Update! Please feel free to contact Michael by email with questions.



August 8th Special Election and State Issue 1

You may have recently read about the controversy surrounding House Joint Resolution 1 or Senate Joint Resolution 2, the resolutions that would allow voters to change the threshold for what is needed to amend the Ohio constitution. Ultimately, the legislature passed this measure, and the question will be on a Special Election ballot on August 8th dubbed "State Issue 1."

A "Joint Resolution" is a special type of legislation that, rather than change Ohio Revised Code like a bill does, adds language to a ballot for citizens to vote on. This particular Joint Resolution established a Special Election to occur on August 8th for voters to decide if a 60% threshold should be met to require changes to the Ohio Constitution, as opposed to the simple majority such a change would require today.

The intense debate around this issue stems from the recent overturning of *Roe v. Wade*, and subsequent ballot initiatives being driven across the country to enshrine abortion rights into State constitutions. While this topic may seem relatively innocuous on the face, the urgency on both sides of the abortion debate is what is driving the noise on this 'increased threshold' provision.

Proponents of this Joint Resolution argue that out-of-state interests are influencing Ohio policies and that it ought to be tough to amend the Constitution to protect it. Opponents of the measure argue that the increased threshold is an attack on abortion rights and that the need to put such a measure in a Special election, which historically have very low turnouts, is anti-Democratic.

Ohio's citizens will decide for themselves on August 8th, as the Special Election to decide this issue will occur. Visit your local county Board of Elections website to determine your polling location if you wish to participate in this election.

New Faces in the Ohio House of Representatives

The Ohio House of Representatives recently appointed two new members to fill vacant seats left open earlier this General Assembly. State Rep. Justin Pizzulli (R-Wheelersburg) has been appointed to the 90th House District to replace former State Rep. Brian Baldrige, who left in January to become the Director of the Department of Agriculture. Outside of the statehouse, Rep. Pizzulli is a Norfolk Southern engineer and a realtor.



State Rep. Justin Pizzulli (R-Wheelersburg)

The House also recently appointed State Rep. Brian Lorenz (R-Powell) to fill the 60th House District seat. Rep. Lorenz was a Powell City Council member and senior manager of permitting at WD Partners. He has filled the vacancy left due to the unexpected death of former State Rep. Kris Jordan in February.

State Operating Budget – HB 33

We inch closer to a completed state operating budget. Constitutionally, the state budget must not only be balanced, but must also be in effect by July 1. Since the beginning of the year, legislators have been developing what will be our state operating budget for the next two years.



State Rep. Brian Lorenz (R-Powell)

The process is well underway, with HB 33, the budget bill, having made its way through the House and the Senate, with each Chamber passing different versions of the bill. Now, the differences are set to be hashed out in a “conference committee” to determine, one by one, which changes are ultimately included in the budget for Governor DeWine to sign (or consider vetoing).

Updates to Competitive Bidding

As part of HB 33, an increase in the threshold for what is required to put out a project to competitive bidding has been increased from \$50,000 to \$75,000. In addition, in the as-passed-by-Senate version of the bill, political subdivisions are now allowed a 20% variance on estimated costs, up from 10%. State agencies remain at 10%.

This is subject to change, however, as HB 33 is currently going through the Conference Committee process, as mentioned above.

HB 64 – Eminent Domain

HB 64, the bill that changes provisions related to Ohio’s eminent domain laws, has been put on pause for the time being. The legislation, which has the opposition of nearly three dozen stakeholders, is on an indefinite hold in the House Civil Justice Committee. Chairman Brett Hillyer has indicated that given the breadth of the opposition, the bill is in need of some fixes. Those changes will not take place before the legislature’s break in the summer; meaning that HB 64 will likely not be discussed or considered for several months.

HB 93 – Tax Lien on Water and Sewer Bills

HB 93, a bill currently in the House State and Local Government committee, is a bill that would change Ohio’s laws related to a municipality’s ability to place a tax lien on a property owned by a landlord whose tenant is delinquent in payment.

Very important to note: 6119 and 6117 districts are NOT currently a part of HB 93, and CORD is working on keeping it that way.

HB 93 is likely to receive a vote out of committee imminently, with possible action on the House floor to follow. However, the bill has still to make it through the full Senate process. While the timeline on the bill is unclear, CORD remains an interested party in the legislation and stands ready to defend the unique nature of 6119 and 6117 districts should the topic come up in the course of discussion on HB 93.



New Distracted Driving Laws Take Effect

Distracted driving laws in Ohio went into effect on April 4th, and early reports are showing that it's already having a noticeable impact across the state. The law, made possible by legislation HB 283, passed last General Assembly, prohibits a person from using, holding, or physically supporting an electronic wireless communications device while operating a motor vehicle. The law also changes the preexisting minor misdemeanor penalty for texting while driving to an unclassified misdemeanor with increasing tiered penalties for violations within a two-year period. The bill also prohibits a law enforcement officer from stopping a driver for a violation unless the officer observes the driver using, holding, or physically supporting the device.

According to a recent [report](#) from Cambridge Mobile Telematics, new data shows a 10% reduction on average phone usage for drivers compared to March of this year. Prior to the law, Ohio drivers spent an average of 1 minute and 39 seconds handling their phones while driving. Since April 4, that figure has dropped to an average of 1 minute and 30 seconds, a 9-second reduction. Additionally, CMT's data shows that the crash rate falls by 1.4% with every 10% reduction in distracted driving. Since Ohio's law began on April 4, CMT estimates that it has helped prevent over 1,000 crashes, 2 fatalities, and \$24 million in economic damages.

Michelle May, manager of ODOT's Highway Safety Program, said, "States that pass hands-free laws typically see a decrease in hand-held phone use and crashes. This data shows we're on the right track to making our streets and highways safer in Ohio. I believe more Ohioans will choose to put their phones down as they learn about the new law and the dangers of interacting with their screens while driving." In April, the state launched an educational campaign on the law just ahead of its effective date. It is aimed at encouraging drivers to "Lock Your Screen Before You Rock the Road" and also includes a website to provide more information about the law, phonesdown.ohio.gov.



MEET CORD'S NEW LOBBYIST

Governmental Policy Group, Inc. has recently hired a new Director of Public Affairs, Michael Guastella. He will be working on all CORD related-issues going forward with the rest of the GPG team. Here is a little more about his background.

Michael is a graduate of Kent State University and holds a bachelor's degree in political science and public policy. Since graduating from Kent State, Michael has worked in and around Ohio's state government. Michael began working for the office of former Ohio Governor John R. Kasich, serving as a Constituent Aide before eventually moving to the Ohio Department of Commerce as the agency's Legislative and Policy Aide in 2015. Michael then went on to serve as the legislative liaison for the Public Utilities Commission of Ohio (PUCO) in mid-2016, where he worked with the General Assembly to confirm several current and former PUCO Commissioners.



In early 2018, Michael was named the Deputy Director of Ohio EPA for Government Affairs and Community Relations until he left State government in late 2020 to join the Ohio Veterinary Medical Association (OVMA) as the Government Relations Director and Treasurer of the Ohio Veterinary Political Action Committee. Prior to joining Governmental Policy Group Inc. in 2023, Michael was the owner of a private lobbying practice where he continued to work with OVMA and several other organizations as a full-service governmental relations, communications, and media relations firm.

As Director of Public Affairs, Michael uses his background in Ohio politics and the political process to effectuate positive outcomes for the firm's clients. Michael supports the full Governmental Policy Group Inc. team on all legislative matters and executive rulemakings at the Joint Committee on Agency Rule Review.

Michael is a native of Cleveland, Ohio. He remains loyal to his Cleveland Browns, despite their best attempts to break him and the rest of the city. He and his fiancé reside in suburban Columbus with their cat Arlie, and their dog Lennon, named after John Lennon as a tribute to Michael's favorite band of all time, The Beatles. You can contact Michael directly at michael@gpgrhr.com.



**GOVERNMENTAL
POLICY GROUP, INC.
RH RESOURCES**

MID-OHIO WATER AND SEWER DISTRICT FORMATION: USING REGIONAL DISTRICTS TO SOLVE COMPLEX SERVICE AND ENVIRONMENTAL PURPOSES



MID-OHIO
WATER & SEWER DISTRICT

Prepared By: John Albers, Albers and Albers

In the spring of 2022, Albers and Albers received a call from Kurtis Strickland, RCAP Regional MIS Coordinator, regarding the potential formation of a regional district by Madison County and potentially, the Village of Plain City. The Madison County Commissioners, working through Rob Slane, County Administrator, and Tom Taylor, Superintendent of the Madison County Sanitary Sewer and Water District, had been exploring, for many years, joining forces with the Village of Plain City under the auspices of a district to expand potable water services and resolve pent up demand for wastewater treatment services in the area. For many years, development along the Route 33 Corridor, extending from the corporate boundaries of Dublin to Marysville, there was significant demand for development. It is one area of Franklin County where development was stymied due to concerns over pollution of the Big and Little Darby Creeks. The Big and Little Darby are extremely pristine waters of the State of Ohio with an unusually large and impressive inventory of freshwater fish and aquatic species. Concern over pollution of the Creeks by rampant development was of great concern to many. The Village of Plain City desired to expand and upgrade their wastewater treatment plant (WWTP) but concerns over whether the resulting discharge could meet OEPA regulations was also a concern.

As a result, Madison County and the Village of Plain City hired the firm of Albers and Albers to assist with the formation of the Mid-Ohio Water and Sewer District ("District"). Since part of the District was also in Union County, a panel including the Union County and Madison County Court of Common Pleas Judges handled the Petition to establish the District. The parties employed the engineering services of IBI Group (now IBI Arcadis Group) to prepare the Plan of Operations. After significant effort by all involved, the parties submitted a Plan of Operations, which was innovative and feasible. It provided for the transfer of all current water and sewer facilities owned by Madison County to the District as well as the transfer by the Village of Plain City of all water and sewer facilities owned by it to the District. O.R.C. 6119.09 is unique in that it permits transfer of facilities and joint projects between political subdivisions, which enable these facilities to be transferred to the District. Further, the Plan provided for the construction of a 14-mile force main and the construction of a new regional wastewater treatment plant to serve both communities. The new plant will discharge into different receiving waters that do not enter the Big or Little Darby Creeks.

The District was formed in January 2023 and is finalizing the transfer of equipment and facilities. Already, other local governments are considering whether to join the District. Mid-Ohio Water and Sewer District is a good example of how regional districts can, through joint cooperation across jurisdictional boundaries, achieve excellent results.





TOP DRAWER REGIONAL DISTRICTS: ADAMS COUNTY REGIONAL WATER DISTRICT

Written by Rick Adamson, General Manager
Adams County Regional Water District



The Beginning

Being without a reliable source of drinking water, in 1966 several people in the county got together and decided it was time for a county water system. Most people said it was not possible. Fortunately, all the county villages, except for the Village of Manchester, were interested as well. In this era FmHA (Farmers Home Administration) was loaning money to help these water systems become a reality. ACRWD started out being Adams County Water Company, an Ohio corporation. To better serve our customers with more grants available to 6119 districts, Adams County Water Company became Adams County Regional Water District in 1997. We are located in southern Ohio approximately sixty-five miles east of Cincinnati. We serve customers in Adams County as well as a portion of Brown County.

The District Board

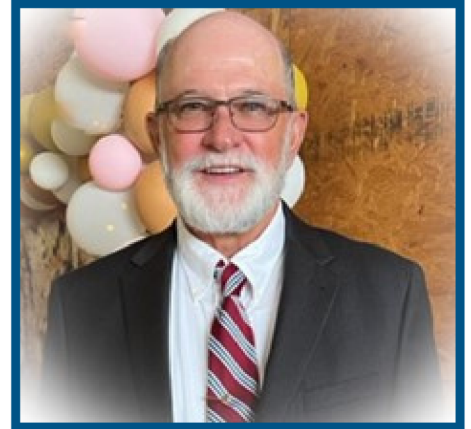
ACRWD's Board of Trustees consists of nine board members of which eight are voting members. The officers are President, Vice President, and Secretary/Treasurer. There are several committees set up by the board to further discuss items that need to be brought to the full board. Our board members are nominated by the nominating committee and interviewed by the said committee. Suggestions are voted on by the full board. Our board is a perpetual board that meets monthly. It was set up this way as we were growing and had many projects going on for several years. Having the same board members through the entire process of the major expansions made the process go much smoother. From time to time, we do have to call special meetings when something needs resolved quickly. The board members' terms are three years each with alternating terms.

Water Treatment Plant

ACRWD pumps water from eight deep wells tapped into the Ohio River Valley Aquifer. The old treatment plant was renovated, and a new plant was built. This new plant went online in 1999. While the plant is rated for 5.3 MGD we are currently pumping an average of 2 MGD. ACRWD has one million gallons of storage at the plant that we use as flow through and to have in case of an emergency. We also have four pressure filters to remove iron and manganese from the water.

General Manager

Rick Adamson was hired in 1987 as a field operator/laborer. He worked his way through the ranks as Assistant Distribution Superintendent and Operations Superintendent and achieved his Class III Water Supply Certification in the process. Rick became the General Manager in September 2004.



Staff

The District currently has six employees in the business office including the General Manager and the Assistant General Manager. We also have thirteen employees in the distribution system and seven employees at the water treatment plant. We have someone at the water treatment plant twenty-four hours a day and seven days a week. Our distribution crews are on call every five weeks and ready to resolve any problems that may arise. Our business office employees are always there to make sure all accounts are up to date and an open line of communication between our customers and the district.

Business Office

The business office consists of the General Manager, Assistant General Manager, accountant/HR, accounts supervisor, accounts clerk, and data entry personnel. The business office is open Monday through Friday from 8:00 a.m. to 4:30 p.m.

Distribution System

The distribution system currently consists of the manager-in-training, distribution supervisor, field operators and laborers. With nearly seven hundred miles of water lines and 7500 taps to take care of, the crew stays busy all the time. All our customers are water only. We do not have a sewer or stormwater system, however, we do also serve 4 villages that maintain their own systems. We pump water through three main trunk lines to the county with three high service pumps assigned to each bank. We also have the capability to feed water between each bank. We strive to provide redundancy in all aspects of our system. We currently have 4 booster pumps and 12 distribution tanks with a combined storage of 2.8 mg and 5 village tanks we serve with another 1.2 mg.

Budget and Rates

Our rate for a four thousand gallon a month user is \$46.75. We use a flat scale, so it is what it is. The board voted to raise water rates beginning January 2023 by 9.14% to help cover portions of our asset management program. The 2022 operating revenues were \$4.3 million while operating expenses were \$3.0 million. The remaining \$1.3 million is allocated for capital improvements, debt services, and funding necessary reserves in case of emergencies.

Our motto: "serving the public thirst".



ACRWD Water Treatment Plant aerial view

IMMUNITY FOR DESIGNING, CONSTRUCTING, OPERATING, AND MAINTAINING WATER AND SEWER SYSTEMS IN OHIO BY REGIONAL WATER AND SEWER DISTRICTS



Rex H. Huffman, Esq., Spitler Huffman, LLP, General Counsel Northwestern Water and Sewer District; Allen Water District

Sovereign Immunity

Much of American law is based on old English law. One of those tenants is the theory of sovereign immunity and that theory was based on the premise that the King can do no wrong. As Mel Brooks' character in the movie *History of the World, Part I* said, "It is good to be the King!"

Throughout the 19th century in Ohio, Courts mostly held that the State of Ohio, its political subdivisions, and its employees were immune from liability for negligent acts that caused injury to persons or property. A thorough review of the history of the theory of sovereign immunity in Ohio can be found in a law review article co-authored by the Honorable Frank D. Celebrezze, then Chief Justice of the Ohio Supreme Court and his law clerk Karen B. Hull. The article was published in the *Cleveland State Law Review* in 1983-1984 and can be found at Frank D. Celebrezze & Karen B. Hull, *The Rise and Fall of Sovereign Immunity in Ohio*, 32 *Clev. St. L. Rev.* 367 (1983-1984).

As the article points out, the issue of sovereign immunity was waived by the State of Ohio in 1912 with the adoption of Section 16 to Article I of the Ohio Constitution, which states that "Suits may be brought against the State, in such courts and in such manner, as may be provided by law". After the passage of that amendment, the issue remained in flux in the Courts, due to the "provided by law" language in the amendment, but in 1974 the Ohio Legislature removed the question of sovereign immunity for the State of Ohio with the passage of the Court of Claims Act, which can be found in Chapter 2743 of the Ohio Revised Code. The Court of Claims Act made it clear that the State of Ohio was not immune from lawsuits. The passage of the Court of Claims Act, however, did not waive the defense of sovereign immunity for the State's political subdivisions, such as regional water and sewer districts ("regional districts") that are created under Chapter 6119 of the Ohio Revised Code.

Government v. Proprietary Function

The question of whether a regional district can be sued was clarified in 1985 with the passage of the Political Subdivision Tort Liability Act ("Act") as set forth in Chapter 2744 of the Ohio Revised Code. ORC 2744.02(A) of that Act provides that, unless there is an exception provided in the statute, "a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function". A definition of government function and proprietary function for purposes of the Act is provided in ORC 2744.01. The reasoning behind the distinction between government functions and proprietary functions, however, was not new in 1985 when the Act was passed. As was explained in the Celebrezze/Hull Law Review Article, this distinction of government functions was first suggested in a case before the Ohio Supreme Court in 1854. The case was *Dayton v Pease*, 4 Ohio 80 (1854) and as explained in the law review article, then as now, it is very difficult to distinguish between what is a government function and what is a proprietary function of a political subdivision.

ORC 2744.01 (C)(1) generally defines "government function" for purposes of the Act. The definition states that a "governmental function" means a function of a political subdivision that is specified in the statute or that satisfies any of the following:

- (a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;
- (b) A function that is for the common good of all citizens of the state; and
- (c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

An example of a government function that is specified in the statute is “the provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system”. ORC 2744.01 (C)(2)(i)).

RC 2744.01(G)(1) generally defines “proprietary function” for purposes of the Act. The definition states that a “proprietary function” means a function of a political subdivision that is specified in the statute as a proprietary function or that is not a “government function” as described in the statute and an act that “promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons”. ORC Ann. 2744.01

An example of a “proprietary function” specifically stated in the statute is the “establishment, maintenance, and operation of a “utility . . . including, a municipal corporation water supply system” and “the maintenance, destruction, operation, and upkeep of a sewer system”. ORC 2744.01 (G)(2)(c) and (d).

Three-tier Analysis of ORC 2744.02

Courts have held that to determine if a political subdivision is entitled to immunity under Chapter 2744 of the ORC a three-tiered analysis is required. First, it must be determined if the entity is a political subdivision and thus entitled to the immunity. Regarding regional districts, ORC 6119.04 (D) provides that when a Court declares that a regional district is finally and completely organized it is a political subdivision of the State and it has the power to sue and be sued. Thus, a regional district satisfies the first tier of the analysis, and it will generally have immunity for damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the regional district or an employee of the regional district in connection with a governmental or proprietary function.

The second tier requires an analysis to determine if any of the exceptions to immunity contained in ORC 2744.02 are present. One of the exceptions to immunity which impacts a regional district is the exception for damage caused by an employee of the regional district who is performing a “proprietary function”. Remember, an example of a proprietary function of a regional district is the maintenance and operation of a municipal corporation water supply system and a sewer system.

Therefore, if the claim for damage is based on the operation or maintenance of the water or sewer system of the regional district, the third tier of the analysis is required to determine if the regional district has a defense that is contained in ORC 2744.03 and is still entitled to the claim of immunity from the claim. Several of those defenses could be relevant in determining the immunity issue for a regional district. One of those defenses is that unless the employee is negligent in performing the act, the regional district may have an argument that the act causing the damage was required by law or was essential to the exercise of the powers of the regional district. ORC 2744.03(A)(2). Another possible defense is that the action or failure to act by an employee of the regional district was within that employee’s discretion with respect to policymaking, planning, or enforcement powers. ORC 2744.03(A)(3). Additionally, a regional district may have a defense entitling it to immunity if the damage resulted from the discretion of an employee of the regional district in determining the acquisition or use of supplies, equipment, or other resources. ORC 2744.03(A)(5). If the regional district can prove one of the defenses contained in ORC 2744.03, it will then be entitled to immunity from the claim for damages.

Court Interpretation of Chapter 2744 of the ORC

This three-tiered process in Chapter 2744 of the ORC effectively retained the distinction of “government function” versus “proprietary function” developed by the Courts starting in the 19th century and retains the premise that political subdivisions are immune from liability for their government functions and may have liability for proprietary functions. A clearer view of this issue can only be found in reviewing the decisions of the Courts of Ohio that interpret Chapter 2744 of the Ohio Revised Code.

An interesting case that considered the question of the immunity of a village for damages suffered by a resident in using the village’s sewer system is the case of *Eikenberry v Municipality of New Lebanon*, 2021 Ohio 453. That case from Montgomery County was decided by the Second Appellate District Court of Appeals. In the *Eikenberry* case, the Village of New Lebanon determined to remedy a storm water infiltration issue with its sanitary sewer system by completing a cured in place re-lining of the sanitary sewer system. During the rehabilitation project, a property owned by *Eikenberry* was not reconnected to the sanitary sewer and the property was damaged by the sewage backup. The cause of the problem resulted in finger-pointing with the Village and Contractor each claiming the other to be responsible for the problem.

Ultimately, Eikenberry filed suit against the Village and Contractor and the Village asserted the defense of immunity, pursuant to ORC 2744.02. The Court of Appeals acknowledged that the Village was a political subdivision and thus the first tier of the question of immunity from ORC 2744.02 was satisfied. The analysis by the Court in determining whether the action of the Village was a government function or proprietary function deserves attention.

The Court recognized that the construction or reconstruction of the sanitary sewer is a government function as prescribed in ORC 2744.01. The question in the case was whether the rehabilitation of the sewer was an act of maintenance or upkeep, and therefore, arguably a proprietary function of the Village and an exception to the claim for immunity.

The Court concluded that it was not the re-lining of the sewer line that caused the damage, but actually the failure of the contractor to connect the property to the sanitary sewer that caused the backup. The Court reasoned that if the sanitary sewer had been completely replaced, and the property not connected, the damage would still have occurred. Thus, based on this fact and other arguments, the Court found that the activity that caused the damage was the reconstruction of the sewer and thus it was a government function, and therefore the Village was entitled to immunity from the claim.

Another case that deserves some review is the case of Angelo vs City of Warren, 2021-Ohio-1260. The case was decided by the Eleventh District Court of Appeals and was an appeal from the Trumbull County Common Pleas Court. In this case, Angelo's water was shut off by the City of Warren due to a variety of unfortunate circumstances. Angelo's heat system relied on the water service and when it was shut off, the heat to the structure was interrupted and the water pipes froze and there was resulting damage.

As in the Eikenberry case, the City of Warren claimed immunity pursuant to ORC 2744.02. Angelo countered that the City was not entitled to immunity citing the exception to immunity contained in ORC 2744.02 where it states that the maintenance and operation of a municipal water system is a proprietary function of the City. The Court agreed with Angelo that the action of the City and its employees was a proprietary function and the Court then had to consider the third tier of the analysis—did the City of Warren have a defense under ORC 2744.03 that would reinstate its immunity?

The City of Warren maintained that "the action or failure to act by the employees that gave rise to the claim of liability was within the discretion of the employees with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employees" and/or that the loss of property "resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources, citing R.C. 2744.03(A)(3) and (5). The Court rejected this argument finding that the errors in communication made by the employees of the City were not part of the policy-making process, planning, or enforcement powers of the City and that the actions did not require judgement or decision making, but the errors were simply evidence of inadvertence not an error in decision making. Thus, the City was denied immunity.

One must remember that even if the regional district is not entitled to immunity in a lawsuit, that does not mean that the regional district will have to pay for the damages. The claimant must still prove that the damage suffered was caused by a negligent or intentional act or a failure to act when required to do so of a regional district's employee.

Summary

Regional districts are entitled to immunity from claims for damages when those claims are based on the provision or nonprovision, planning or design, construction, or reconstruction of a water or sewer system as those activities are "government functions" as defined in ORC 2744.01 (C)(2)(I). ORC 2744.02 provides for that claim for immunity.

Regional water and sewer districts may be denied immunity for damages when those damages are caused by the operation or maintenance of a water or sewer system as those activities are arguably "proprietary functions" as defined in ORC 2744.01 (G)(2). If the regional district can successfully prove that it has a defense to that denial of immunity, as contained in ORC 2744.03, such as the activity causing the damage was caused after an employee of the regional district used his/her discretion or judgment in performing the activity, then the regional district's claim for immunity from the claim can still be successful.

Regardless of whether the regional district has immunity, a person or entity that claims damages from a regional district or its employees must still prove that the damages were caused by the negligent or intentional acts of the regional district or its employee(s).

TRENCHING SAFETY BEST PRACTICES

Written By: Public Entities Pool of Ohio (PEP), Risk Service Team

Trenching and excavation work poses a high threat to all employees. According to the U.S. Occupational Safety & Health Administration, at the end of 2022, 39 workers had died in trenching and excavation work, which is more than double the number in 2021, and the Bureau of Labor Statistics reports that approximately 25 employees are killed annually in trenching and excavation accidents.

There are many hazards involved with excavation projects; collapse, falling debris, blunt force trauma, flooding, and damage to underground services during excavation work causing electrocution, suffocation, explosion, gas escape, etc.

Working in excavations is an extremely dangerous operation which can be made safe by an awareness of the hazards, the safety procedures to be taken, and careful management of the process. Most trench excavation incidents occur due to a lack of training, experience, and improper procedures. In this article, we will discuss best practice methods to help reduce the likelihood of an incident and ways to help your employees avoid injury around the trenching jobsite.

Posing the greatest risk, trench collapse, is more likely to result in worker fatalities than any other excavation-related incidents. A cubic yard of dirt (3'x3'x3') could weigh as much as one ton, and as you breathe out, your lungs deflate, and the sheer weight of the cave-in pressing on your chest reduces how much air you can inhale with each next breath.

The first step in the planning phase of a written excavation work plan is to call Ohio811 before you dig to determine the location of utility lines and conduct a site inspection. The site inspection includes evaluation of the soil condition. Unsafe conditions can be exacerbated by making incorrect assumptions of the soil conditions.

All worksites should have a designated competent person who is trained in trench safety. All employees involved with the project should be trained at an awareness level prior to the work and receive all necessary personal safety equipment. The PEP Resource eLibrary www.apeepelibrary.com provides trenching and excavation safety training options. All work sites should include processes to protect the worker in the trench from a cave-in by adequate protective systems. Protective systems include proper sloping of the debris pile two feet from the trench and creating stepped benched grades. Shoring protection systems in the trench are required for any trench five feet or greater unless the excavation is made entirely of stable rock. Trenches reaching twenty feet or greater require protection system designed by a registered professional engineer. Shoring protection includes installing aluminum or hydraulic supports with trench grade material. Trench grade material made with Douglas Fir with a 1500 psi bending strength or similar should be used with the shoring supports.

A trench box, or trench shield, is a square structure made up of pre-constructed side walls and adjustable cross members, usually made of aluminum or steel. They are placed in the trench and reduce the hazard of a cave-in.

Trench Box or Trench Shield



An example of a trench box used during water line installation; safe, neat, and efficient

Sloping requires soil type recognition. There are three types of soil: Type A (clay, silty clay, sandy clay), Type B (angular gravel, silt), and Type C (sand and other granular compositions). Other than solid rock, Type A is the most stable, while Type C is the least stable.

Sloping protection involves digging the trench walls at a ratio of 1.5 to 1 or approximately 34° for a Type C soil, 1 to 1 ratio or 45° for Type B soils and .75 to 1 ratio or 53° for Type A soils. The risk of collapse is reduced and there is an improved likelihood the employees can easily escape in the opposite direction. The openness also provides the employees room to operate and work more effectively.

Benching is very similar to sloping except for the benching look that gives this system its name. Rather than excavating a flat trench face, benching leaves steps on the side of the excavation. This can either be found as a single bench at the bottom of the trench or a multiple bench system. As a best practice, the vertical height of each bench should not exceed four feet. Benchening can only be performed for Type A and B soils.

In addition to ensuring the trench walls are safe from collapse, other environmental conditions should be continuously evaluated. Water should not be allowed to enter or build up in the trench as this will loosen dirt around the employees. If this happens, all employees should be removed from the trench until normal conditions can be restored. Additionally, work should be halted when it begins to rain and only resume work when a competent person can ensure the conditions are safe to continue..

Other safety features to include in the excavation work plan include providing a safe exit way within 25ft of workers in a long trench and monitoring for low oxygen, hazardous fumes, and toxic gases during the work operations. All excavation work should include a daily inspection of the work site and shoring systems. Inspections should also be conducted anytime conditions of the site change. All inspections should be documented.

Equipment placement should be included in site inspections since collapses are not the only hazard of excavation and trench operations. Heavy equipment working at the site can change soil conditions as work progresses. Vibration and extra weight can also contribute to a trench wall collapse. Therefore, all heavy equipment should be kept away from the edge of the trench. Other hazards include falling loads, backing accidents, slips, trips, and falls.

No matter how many trenching, shoring, and backfilling jobs an employer has done in the past, it is important to approach each new job with care and preparation. There is no guarantee of soil stability when working with a trench. Vibration, moving parts, gravity and other factors can cause a cave-in without warning. Therefore, a best practice of sloping, benching, or using a trench box is highly encouraged. These methods greatly reduce the hazard of a cave-in and ensure your employees have a safe environment in which to work. An employer's commitment to safety culture is crucial to maintaining a safe work environment.

The Public Entities Pool of Ohio (PEP) Risk Services Consultants assist with questions and access to materials regarding trench practices and safety. To learn more about our member services, experts, resources, and all the benefits of PEP membership, please go to www.pepohio.org.

Sloping



An example of sloping and a Trench Slope Tool for Type C soil

Example of simple benching



Example of multiple benching



PART II: PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) AND YOU

Written by Linda Aller Certified Professional Geologist & Registered Environmental Health Specialist Bennett & Williams, Environmental Consultants

Editor’s Note: This is the second of a two-part article dealing with the issue of PFAS and how it might impact water and wastewater systems in Ohio. Part I appeared in the March 2023 issue of the CORD Report and dealt with the complex science and chemistry that surrounds the issue of PFAS substances and possible human health implications. Part Two focuses on a multiplicity of federal actions that have occurred in the last two years, will discuss methods to remove PFAS from drinking water, and will look at personal health issues that surround PFAS. While this article is extremely technical it gives a complete overview of recent federal and state actions that Districts should be aware of as it is likely to affect future activities.

IMPORTANT UPDATE

USEPA Proposed MCLs for PFOS and PFOA

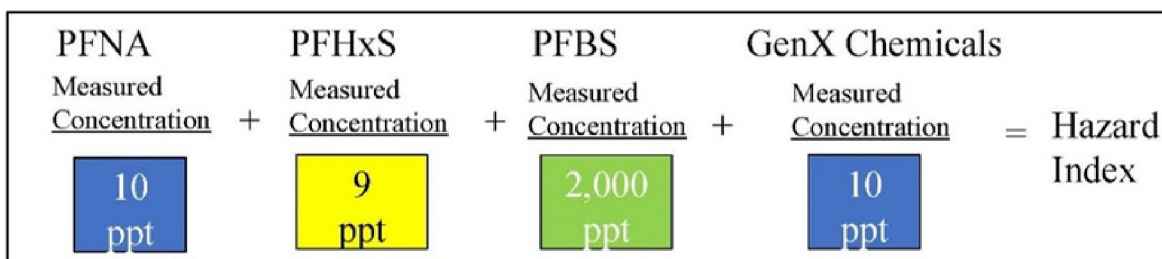
Before Part I of this article entered your inbox, on March 14, 2023, the USEPA proposed the long-awaited MCLs and MCLGs for PFOS and PFOA (published in the Federal Register on March 29, 2023). As shown in the table below, the proposed MCL for either PFOA or PFOS is 4.0 ppt. This limit was chosen to be the lowest practical concentration that could be consistently analytically achieved and met the requirement in the Safe Drinking Water Act to set an MCL as close as feasible to the MCLG. The MCLG was chosen to be 0 based on the interim health advisory levels issued on June 15, 2022, wherein USEPA established interim health advisory levels of 0.004 ppt for PFOA and 0.020 ppt for PFOS.

Compound	Proposed MCLG	Proposed MCL
PFOA	Zero	4.0 ppt (4.0 ng/L)
PFOS	Zero	4.0 ppt (4.0 ng/L)

Even if there is a detection in your water system of 4.0 ppt or greater of PFOA and/or PFOS, it doesn’t mean that there is a violation. As written, the rule allows for a running average of concentrations of PFOA and/or PFOS. Plus, as the rule is currently proposed, any concentration below 4.0 ppt is entered into the running average as 0. This means if the results from testing are 3.9, 4.9, 3.8 and 5.7, for determination of a running average, they would be 0, 4.9, 0 and 5.7. Adding 0 + 4.9 + 0 + 5.7 and dividing by the number of samples (4), the concentration would be 2.65 and not in excess of 4.0. Stay tuned to see if the MCL remains the same and if concentrations below 4.0 are considered “0” for running average calculations for compliance.

Compound	Proposed MCLG	Proposed MCL
PFNA	Hazard Index of 1.0	Hazard Index of 1.0
PFHxS	Hazard Index of 1.0	Hazard Index of 1.0
PFBS	Hazard Index of 1.0	Hazard Index of 1.0
HFPO-DA (or GenX)	Hazard Index of 1.0	Hazard Index of 1.0

So how do you calculate this proposed hazard index MCL? Take the measured concentration of each of the four PFAS and divide by the numbers below. Add up the answers to get the hazard index. If the numbers total 1 or below, then the proposed MCL would not be exceeded. Stay tuned to see if this approach remains as proposed.



Timing of Proposed MCLs

USEPA anticipates that MCLs will be promulgated likely by the end of 2023. Whatever the date of promulgation, the proposed rule allows for three years for full compliance.

And Now . . . Back to Part 2 of a Two-Part Article

LOther Federal Actions on PFAS

On October 18, 2021, the USEPA issued a PFAS Strategic Roadmap that set out a whole agency approach to address PFAS. The roadmap established timelines, specific actions, and research efforts to protect public health and the environment and hold polluters accountable. The roadmap involved action items for five of EPA’s key Offices, including the Office of Water.

One year later, there are seven key items of specific interest to the water industry that have been acted on to date:

- On December 21, 2021, USEPA **issued the final list of parameters to sample under UCMR5**. The list included 29 PFAS and lithium.

- On April 28, 2022, USEPA issued a memorandum on **Addressing PFAS Discharges in EPA-Issued NPDES Permits and Expectations where EPA is the Pretreatment Control Authority**. This was followed by a second memorandum on December 6, 2022, **Addressing PFAS Discharges in NPDES permits and Through the Pretreatment Program and Monitoring Programs**. These memoranda include information about terms that USEPA plans to include in NPDES permits to restrict PFAS discharges and collect information on the sources and quantities of PFAS discharges. USEPA will use this data as part of efforts to issue effluent limitation guidelines in 2023 and 2024.
- On April 28, 2022, USEPA issued **draft recommended aquatic life ambient water quality criteria for PFOA and PFOS**. These numbers address how much of the chemical can be present in surface water before plants and/or animal life is harmed. These numbers are not regulations but provide values for short and long-term exposure for invertebrates, fish, and fish muscle.
- In May 2022, USEPA **added five PFAS (PFOA, PFOS, PFNA, PFHxS, and GenX) to Regional Screening Level Tables** that contain risk-based soil screening levels aimed at groundwater protection. These tables are not clean-up standards, but are used as guidance for clean-up and removal actions.
- In June 2022, USEPA issued **two new Interim Health Advisories for PFOS and PFOA** at 0.020 ppt and 0.004 ppt, respectively. USEPA also **issued two new Final Health Advisories for GenX and PFBS** at 10 ppt and 2,000 ppt, respectively. Controversy has arisen over the Interim Health Advisories for PFOS and PFOA, which are below laboratory detection limits.
- In September 2022, USEPA **initiated rulemaking to designate PFOA and PFOS as hazardous substances** under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). *This proposed rule would impose strict reporting requirements and enable USEPA to seek cost recovery for clean-up.* In addition, USEPA could likely re-open sites that had been previously remediated if PFOA and/or PFOS were expected to be present. This is a hotly contested liability issue and hundreds of comments have been submitted on the proposed legislation.
- On April 13, 2023, USEPA issued an Advance Notice of Proposed Rulemaking (ANPRM) to seek public input on **possible designation of hazardous substances for seven more PFAS**, including PFBS, PFHxS, PFNA, HFPO-DA (GenX), PFBA, PFHxA and PFDA. Also included were precursors to PFOA, PFOS, precursors to the seven above-listed PFAS, and categories of PFAS.

In addition, under the **USEPA PFAS Roadmap**, key scientific research actions to improve analytical methods for water and wastewater have also been undertaken including:

- In 2021, **USEPA published SW-846 Method 8327**, which measures 24 PFAS in groundwater, surface water, and wastewater;
- On December 21, 2022, USEPA **issued the third draft of Method 1633**, which measures 40 PFAS in surface water, groundwater, wastewater, landfill leachate, fish tissue, biosolids, soils, and sediments. The fourth draft is due out now and the method is supposed to be final sometime in 2023. This method will provide an approved method for many different media; and
- On December 21, 2022 USEPA **published draft Method 1621** for adsorbable organic fluorine in wastewater.

Finally, under the USEPA PFAS Roadmap, USEPA has developed several databases and tools related to PFAS:

- On June 7, 2022, USEPA **released the PFAS Thermal Treatment Database**. This database currently includes 58 individual PFAS compounds and 12 thermal treatment process for different media.
- On January 5, 2023, USEPA **released the PFAS Analytical Tools webpage**. This webpage has information about PFAS manufacturing, releases and facilities that handle PFAS across the country.

Are there Methods to Remove PFAS from Drinking Water?

There are three types of technologies that are currently commercially available for treatment of PFAS in drinking water. None of the technology options are inexpensive and all generate waste that must be disposed. These are discussed below. In addition, there are new scientific discoveries on the horizon, but have not been scaled up yet for testing and/or commercial use. In March 2023 the Executive Office of the President of the United States issued a report that summarizes (among other PFAS-related information) some of the novel water treatment technologies for the removal and destruction of PFAS. Watch for these new technologies to be commercially-available in the future.

Granular Activated Carbon (GAC) GAC is the method that has been used the longest to treat PFAS in drinking water. GAC is used for adsorption of PFAS onto the surface area of the carbon. According to AWWA, one pound of activated carbon has a total surface area of 150 acres. In general, GAC is most effective for longer chain PFAS compounds because, all factors being equal, they are retained longer in the carbon. The rule of thumb is the shorter the PFAS chain length, the shorter the breakthrough time in the carbon. GAC is usually used in carbon tanks in series or in powdered activated carbon (PAC) treatment beds that can be rotated so that the system operates with a removal and polishing sequence. Spent carbon must be removed and disposed, although some carbons can be re-generated for a few uses prior to final disposal and full replacement with entirely new carbon. Concerns about GAC are release of PFAS during carbon re-generation or disposal of carbon, which transfers the problem from one media and place to another.

Specialty Anion Ion Exchange Resins Resins also work by adsorption of PFAS. Resins are either gel or microporous and some resin chemistries are more highly selective for PFAS. Resins are typically single use ion exchange resins, although resins that can be regenerated are also commercially available. Typically, resins last longer if pretreatment for removal of suspended solids, colloids and natural organic material is present. Pretreatment is likely to be more important for surface water supplies. Once ion exchange resins are loaded with PFAS, the more common disposal method is through disposal by high temperature incineration. If resins are placed in a landfill, the concern is that the PFAS will leach from the resin and enter the landfill leachate. There are some reports that resin waste can be concentrated before disposal, thereby reducing disposal costs, but the implementation of such technologies should be further researched before being employed.

Reverse Osmosis or Nanofiltration Membranes Reverse osmosis and nanofiltration membranes are effective at removing a wide range of PFAS, including ones with shorter chain length. With both membranes, approximately 80 percent of the water is treated and available for use, while 20 percent of the water is wasted and contains concentrated PFAS waste. Because the concentrated waste stream can be difficult to treat or dispose, these types of systems are typically used in homes where the volume is lower or in tandem with other treatment technologies in complex treatment situations.

So How Do I Know if PFAS is in My Blood?

The only way to know if and how much PFAS is in your blood is to have your blood tested. This can be accomplished the old-fashioned way with a prescription and at a laboratory. Ohio EPA (2023) has information about laboratories and costs for PFAS testing on their PFAS page. Alternatively, there is now a finger-stick home-administered option that will test for 40 PFAS and was developed in one of the major laboratories involved with PFAS testing for over 25 years (Carignan, et al., 2023). Sign up on-line, follow the directions, and mail the test kit according to the instructions. A code will be provided to you for access to results when they are completed. Available at <https://empowerdxlab.com/>, there are two different tests for two different prices.

If I Know the Concentration of PFAS in My Blood, What Does That Mean?

- In August 2022, the National Academies of Sciences, Engineering and Medicine released Guidance on PFAS Exposure, Testing, and Clinical Follow-up. This was the first guidance that recommended clinicians (doctors, etc.) offer PFAS blood testing to patients that are likely to have a history of elevated exposure. Further, using serum or plasma concentrations of the sum of seven PFAS considered by the committee, the report recommended further actions for follow-up care for PFAS exposure (or none).
- If blood levels were below 2 ng/mL, then no adverse health effects are expected.

- If blood levels were between 2 and 20 ng/mL, patients should be encouraged to reduce PFAS exposure, especially for pregnant patients. The report indicated that clinicians should perform the usual standard of care and prioritize for screening of dyslipidemia once – starting between age 9 and 11, and once every four to six years after age 20. In addition, screen for hypertensive disorders of pregnancy at all prenatal visits, and screen for breast cancer based on age and other risk factors.
- If blood levels were greater than 20 ng/L, patients may face a higher risk. In this case, patients should be encouraged to reduce exposure, especially for pregnant patients. Screening for dyslipidemia with a lipid panel should be performed on patients over age 2. In addition, at all well visits, the clinician should conduct thyroid function testing (for patients over 18) with serum thyroid stimulating hormone (TSH). In addition, clinicians should assess for signs and symptoms of kidney cancer (including with urinalysis) in patients over 45, and assess for signs and symptoms of testicular cancer and ulcerative colitis in patients over the age of 15.

Are There Methods to Remove PFAS from My Blood?

According to data from the CDC - as reported in Lewis et al. (2015), it is estimated that 97 percent of the United States population has PFAS in their blood. The best way to lower concentrations in blood or prevent further accumulations of PFAS in blood is to reduce exposure. There is no currently approved way to quickly remove PFAS from blood. Ways to reduce exposure include:

- Make sure drinking water is PFAS-free;
- Only mix baby formula with PFAS-free water;
- Pay attention to fish advisories and only consume recommended amounts;
- Shy away from grease-proof packaging for food like microwave popcorn and fast-food wrappers and boxes;
- Avoid products treated for water and stain resistance like carpets, clothing, rain gear, sport equipment, and camping equipment;
- Check product labels for words like “fluoro” or “perfluoro” in the ingredient list;
- Avoid using non-stick cookware that have damaged or worn non-stick coating;
- Remove dust from your house, when possible, especially if small children are present; and
- Avoid ski wax and make-up products that are long-lasting (like lipstick) or water proof (like water proof mascara).

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COUNTY LEGISLATIVE PROPOSALS FOR THE 135TH GENERAL ASSEMBLY

In the last edition of the CORD Report we summarized the Legislative Priorities of both CORD and OTA for the current session of the Ohio General Assembly. CORD and its lobbyists also work closely with other local government associations in the Ohio General Assembly. Following are issues included in the Legislative Program of the County Commissioners Association (CCAO) for the 135th General Assembly of interest to CORD members. Some of the proposals are also supported by CORD, however, some CORD has no position on or may oppose. The complete Legislative Programs and Priorities of CCAO is available on the CCAO website at: [2023-2024 Legislative Platform \(ccao.org\)](https://www.ccao.org). CCAO is the oldest state association of counties in the U. S., and is led by Executive Director Cheryl Subler.



Cheryl Subler, CCAO Executive Director

- Concerning environmental regulations, local governments have a critical need for clarity, predictability, and consistency for policies that reflect scientific consensus, for common sense enforcement, and for careful cost-benefit analysis as part of the policy making process.
- Communities are impeded by a prescriptive approach to setting permit limits for nutrients, storm water, and for TMDL-derived parameters. U.S. EPA admits that many water quality issues are caused primarily by non-point sources. CCAO is encouraged by the state's emphasis on controlling non-point sources through the H2Ohio Fund and other programs dealing with non-point sources.
- Communities are impeded by prescriptive federal approaches to evaluation of local financial capability. The federal regulatory framework is applied in a way that fails to adequately consider local economic conditions.
- Financial capability assessments should be based on the basic principles reflected in EPA guidance but should further evaluate appropriate and unique local economic factors that apply to the community.
- The state should consider allocating public works bonding capacity to local projects, reestablish the Ohio Water and Sewer Rotary Commission, and provide significantly greater funding support for governments confronted with EPA Findings and Orders. One of the ways Ohio could facilitate this funding is to allow counties permissive authority to institute a service fee on water bills to be used for EPA Findings and Orders and compliance.
- Encourage USDA Rural Development to allow for refinancing of existing water and sewer loans to allow local communities to save millions in interest payments. Similar authority was provided in recent legislation for Ohio Water Development Authority loans.
- Oppose eliminating the authority for the mandatory connection of properties within 200 feet of the right-of-way to a county sewer system, while giving counties the discretion to authorize temporary, non-renewable exceptions for home sewage disposal systems that are new and in good working condition.
- Support the ability of a county to opt into prevailing wage requirements on public projects, which allows for more flexibility and administrative savings for counties facing costly construction projects.

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- For “expedited” annexations, county commissioners should have the authority to (1) raise other concerns that are not addressed in statute, such as traffic, land use plans, water and sewer utilities, and the impact on school districts; and (2) to negotiate an acceptable resolution with other political subdivisions involved in the annexation.
- Support the ability of the county sewer districts and the County Sanitary Engineer to perform force account work, as it appears this authority currently only applies to the County Engineer. Support increasing the threshold amounts to reflect cost increases since the last adjustment in 2003 and eliminate the 3% cap on annual threshold adjustments.
- Support increasing the county competitive bid limit from the current \$50,000 amount to \$100,000 and index this amount to annual or biennial increases in the consumer price index.
- Support the ability to waive contract performance bond requirements for construction projects not exceeding \$250,000.
- Support continuing the match of state subsidies to local soil and water conservation districts on a 1:1 basis (One Dollar State for Every Local Dollar). In the past, the state match rate has fallen as low as 71%.
- Support a requirement that the Division of Mineral Resources at the Department of Natural Resources be required to hold a public hearing on applications for permits for an oil and gas well, or a brine injection well, if requested by local government.
- Support a change in state law making county commissioners, instead of common pleas judges, the appointing authority of the board of directors of a conservancy district and allow county commissioners to serve on the board of directors.
- Support a new authority for the county commissioners to enact an impact fee on new development to help pay for costs of roads and bridges, parks, and water, and sewer and drainage improvements caused by the new development. Prior to determining the impact fee, counties would be required to prepare a proposed study on the costs and hold public hearings.

Finally, CCAO established a Water Quality Task Force to look broadly at the issue of water quality in the State of Ohio. The Task Force was co-chaired by Lucas County Commissioner Pete Gerken and Auglaize County Commissioner Doug Spencer. Taking a comprehensive view of the issue of water quality, the Task Force issued a report and we will try to summarize some of its primary findings and recommendations.

CCAO supports the continuation and expansion of the H2Ohio program and funding. H2Ohio invests in farmers who utilize nutrient best management practices on their operations. The Program also supports wetland construction projects and local water and sewer infrastructure to improve water quality. Addressing Ohio’s water quality challenges requires a sustained state commitment and a recognition that investments may take years to bear results. Additionally, there should be an emphasis on measuring the results of H2Ohio and other programs in key areas of the state and using that data to drive future water quality improvement actions. Best management practices that prove successful should continue to be supported, but those decisions must be driven by data.

CCAO also recognizes that there are strong sentiments regarding TMDL enforcement actions from a variety of perspectives. Some counties are heavily reliant on Lake Erie for tourism, recreational and drinking water purposes. Many counties are also reliant upon production agriculture to power their local economies.

Agriculture could potentially be subjected to increased regulatory oversight due to TMDL enforcement actions. The goal of CCAO is to achieve a balance where TMDL enforcement can lead to cleaner water while still allowing key industries to thrive. CCAO believes that the TMDL process should be followed-up with appropriate enforcement actions on the proper actors. These actions should appropriately reflect the contributors of nutrient loading while considering the unique circumstances of specific industries and individuals. Enforcement should be flexible enough not to penalize those individual actors working to improve water quality, but should be impactful enough to drive improvement in those who do not make water quality a priority.

Regulatory actions should be data-driven and take into consideration the respective size of the nutrient, loading contribution, previous actions taken to mitigate nutrient loss and the estimated cost of compliance. TMDL enforcement could have significant impact on agricultural producers, landowners, businesses, and local governments. The goal of a clean Lake Erie is a worthy endeavor and pursuing that goal requires a balanced approach. Improved water quality and vibrant industries do not have to be mutually exclusive goals.

CCAO also recognizes the need for more state funding for Ohio's research centers to study water quality issues. Heidelberg University's National Center of Water Quality Research, University of Toledo's Lake Erie Center, and Ohio's Sea Grant program (including Ohio State University's Stone Lab) are on the forefront of water quality research and education aimed at maintaining the health of Lake Erie. The Association also strongly encourages Ohio's land grant universities to work collaboratively on water quality research endeavors. By combining their expertise and technologies, Ohio's land grant universities can maximize their impact on water quality and other challenges.



Further, CCAO believes that "credit trading" is the concept of investing dollars from POTWs to pay farmers to implement conservation farming practices to reduce nutrients from entering waterways. Wastewater treatment facilities will then receive credits from regulatory agencies to help meet permit criteria. Trading programs are more cost-effective and provide broader environmental benefits than just technical upgrades at wastewater treatment facilities. CCAO encourages state financial support to encourage more credit trading programs, such as the state match program for soil and water conservation districts.

CCAO believes that public-private cooperation can unlock previously unavailable resources. Private industry and local governments own considerable infrastructure which can be utilized to further a wide array of water quality improvement efforts. These types of collaborations would encourage local governments to partner with institutions of higher education. As with credit trading programs, green infrastructure projects should also be coordinated with quality and timely research to measure the effectiveness of these programs. CCAO recommends that Ohio EPA should include more "green" infrastructure requirements for separate municipal storm water systems.

As it relates to septic tanks and other household sewage treatment systems (HSTS), CCAO calls on Ohio EPA to use its enforcement authority against property owners whose systems lack an NPDES permit and are designed to discharge off-lot. Likewise, local Ohio boards of health should use their enforcement authority against homeowners with failing systems that are significantly contributing to phosphorus pollution.

The Ohio Department of Health should consider imposing more stringent standards when permitting the installation, alteration, or operation of HSTS in order to minimize phosphorus pollution. State investment to assist residents in offsetting the costs of these expensive projects would greatly aid in these efforts. The Ohio EPA has previously made a limited amount of assistance available in the past, and such practice should be expanded upon going forward.

BITS AND PIECES FROM CORD

Written by: Larry Long
CORD Director of Membership Development

HAB Forecast for Summer

The early season projection of the National Oceanic and Atmospheric Administration (NOAA) and Heidelberg University shows that Lake Erie will likely see a "moderate" harmful algal bloom (HAB) this year. The severity levels are measured from 1 to 10, with 10 being the most severe. An index rating of 5 or higher is considered a more severe bloom. Scientists say that the severity level of the bloom is expected to be between 2.5 and 6. "A smaller bloom, a severity of 3-4, could be expected if precipitation remains at or below average through July. The overall seasonal forecast will be issued on June 29th.

Primary Election Tax Issues

The recent primary election saw that only 48% of school funding issues were approved by voters in Ohio. Of the 75 issues on the ballot statewide, only 36 passed. By comparison, voters approved 49 of 75 issues in the 2022 primary, a 65% passage rate. Renewal requests enjoyed broad support, with 72% passing, while two thirds of new funding requests were rejected by voters. The approval rate for new funding requests was the lowest since 2007. On the other hand, public library levy requests were approved by voters in 6 of the 7 districts proposing levies, continuing historically strong support by voters.

Consent Decree Over Lake Erie Phosphorus Lawsuits

On May 4 U. S. District Court Judge James Carr of the Northern District of Ohio inked a consent decree ending years of litigation over the state's handling of Lake Erie algal blooms. The decree settles litigation pending for nearly six years. The court case was brought by the Environmental Law & Policy Center (ELPC) and the Lucas County Commissioners. The case claimed that U. S. EPA and Ohio EPA failed to fulfill legal duties under the federal Clean Water Act by failing to develop a Total Maximum Daily Load (TMDL) for the Maumee Watershed which resulted in a significant decline of water quality in Lake Erie. A TMDL defines the maximum amount of pollutants that a body of water can receive and still remain clean. The major issue in the Maumee Watershed is phosphorus, which contributes to the harmful algae blooms that have impacted the Toledo area in recent years.

The consent decree requires Ohio EPA to submit a Maumee Watershed Nutrient TMDL to U.S. EPA by June 30, 2023. Those that filed the lawsuit were generally supportive of the outcome. Howard Lerner, ELPC Director said that "For too long, the Ohio EPA had resisted calls by local governments, environmental groups, and scientists to prepare a mandatory action plan to reduce the agricultural runoff pollution of manure and fertilizers which causes the recurring Lake Erie toxic algal blooms. The U.S. EPA also had failed to force Ohio to prepare the TMDL to reduce agricultural runoff pollution sufficient to clean up Lake Erie." The three current Lucas County Commissioners also issued statements welcoming the ruling.

Lake Erie Advocates member Mike Fenner, however, criticized the consent decree stating that the judge's order simply means the Ohio EPA will continue to endorse what he called the "failed" programs of H2Ohio. According to Fenner, "It can't come close to the pollution reductions needed because it allows even more factory 'farms' to produce millions more gallons of waste and apply it untreated on fields draining into Lake Erie. Judge Carr, the County Commissioners, and the Environmental Law & Policy Center, are captive to a legal system that wants the public to believe Lake Erie can be cleaned up without telling the factory farm industry it has to stop building more facilities and phase out the ones it has."

Judge Carr, however, ends on a positive note, concluding, "There's reason to hope that, in time, the Maumee River will no longer display, as it has for countless summers, a loathsome foul and slimy green surface as it flows through Toledo on its constant and irresistible course on to Lake Erie's Western Basin."

Utica Shale Oil and Gas Production Generates Property Taxes in Eastern Ohio

Ohio's oil and natural gas industry paid \$57.6 million in real estate property taxes in eight eastern Ohio counties in 2021, according to the latest data from county auditors as reported by the Ohio Oil and Gas Association. Since shale development began in Ohio in 2010, the industry has paid more than \$364 million in property taxes in these eight counties. The 2021 tax payments rank second highest over the past 12 years, behind only 2020 (\$62.2 million).

Specific 2021 totals per county are as follows: Belmont, \$17.3 million; Carroll, 2.5 million; Columbiana, \$603,000; Guernsey \$5.0 million; Harrison, 8.1 million; Jefferson \$11.2 million; Monroe \$10.6 million; and, Noble, \$2.3 million. The Association also claims that the oil and gas industry employ more than 200,000 Ohioans.

State Capital Improvement Program (SCIP) in 8th of 10-year Program

Some Regional Districts have utilized funds from the Ohio Public Work Commission (OPWC) State Capital Improvement Program (SCIP) for water, sewer, and storm water improvements in the past, utilizing District Public Works Integrating Committees. During recent testimony on the state budget, we were reminded that this program is scheduled to expire in the near future unless action is taken by the General Assembly and additional bonding authority is approved by the electors.

While OPWC Executive Director Linda Baliff was testifying for the agency's operating budget during the budget process, Baliff stated: ***"Although capital funds are, of course, contained in the current capital act please note that SCIP is in its eighth year of its current 10-ten-year bonding authorization which means we will eventually need the assistance of the General Assembly for a state ballot issue prior to expiration of the current authority."***

Some may not remember that the State Capital Improvement Program was created in 1987 and renewed in 1995, 2005 and 2014 by amendments creating new sections in Article VIII of the Ohio Constitution, given the strict debt limits that have existed in the Ohio Constitution since the 1800's. These Constitutional provisions allow the State to use its general revenues as debt support to issue general obligation bonds up to \$175 million in fiscal years 2017 to 2021 and \$200 million in fiscal years 2022 to 2026. **Let's start reminding our Legislators that renewal of this program will be needed in the future!**

H2Ohio Funds "Two-Stage" Ditch Projects

As part of Governor DeWine's H2Ohio initiative, the Ohio Department of Agriculture (ODA) recently awarded \$4.2 million in grants for 12 two-stage ditch projects. On the funding, newly appointed ODA Director Brian Baldrige said, "We are keeping our foot on the gas pedal to reach our nutrient reduction goals. These projects will provide water quality benefits that complement the other best management practices offered through H2Ohio."

Six county engineers and six Soil and Water Conservation Districts will receive funds to construct or improve two-stage ditches. A two-stage ditch is a conservation practice that modifies the shape of a drainage ditch to create vegetation benches on each side. Two-stage ditches provide benefits such as slowing water flow, reducing maintenance costs, and improving water quality.

Recipients will receive up to 100% of the requested funding for these projects. More than 18,000 acres of watershed will benefit from the 8.4 miles of two-stage ditch projects. Construction of these projects will begin this summer, and all projects must be completed by Fall 2024. The two-stage ditch became the **eighth best management practice** offered through ODA's portion of H2Ohio.

Great Council State Park—Ohio's Newest State Park

Land for Ohio's newest state park was approved by the Ohio Controlling Board earlier this year. Ohio DNR is purchasing 14 acres of land for \$1.35 to establish Ohio's 76th State Park. Located in Greene County, just north of Xenia, Great Council State Park will be a connection to Ohio's Native American and pioneer past. The area was once home to *Oldtown*, one of the largest-known Shawnee settlements in Ohio. More than 1,000 people called *Oldtown* home from approximately 1777 to 1780. Their stories directly intersect with that of historic settlers like Daniel Boone, who was held captive in *Oldtown* for a period of time.

Great Council State Park will feature a 12,000-square-foot interpretive center with an architectural design based on the traditional council house form that was historically used by the Shawnee tribes. Inside, visitors will find three floors of exhibits, a theater area, a living stream, and a gallery. In addition to its 76 state parks, Ohio DNR also maintains 24 state forests, 142 nature preserves, and 150 wildlife areas across the state.



Flint, MI—Back in the News

A judge has ordered Flint, Michigan to replace any remaining lead or steel water lines by August 1st. This is the latest intervention into the case by the Federal District Court in litigation by Flint residents who are represented by the National Resources Defense Council in a case initiated in 2016.

For 18 months, until the fall of 2015, Flint used Flint river water without treating it to prevent corrosion. More than 10,000 pipes have been replaced, however, 1,000 homes still have not been inspected. The city has checked more than 95% of the targeted homes, but has been delayed because of COVID-19 and the shortage of copper pipe and other materials. Nearly \$100 million in funding has come from the state and federal governments to address the problem. And, yes, many residents still complain about how front yard damage has not been properly repaired.



Recent OWDA Funding Awards Announced

- **Morgan-Meigsville Rural Water District** in Morgan County - \$348,000 at 1.78% for 30 years for construction of 31,000 feet of waterline along State Routes 266 and 377 to extend service to 20 residential users currently served by private wells.
- **Northwestern Water & Sewer District** in Wood County is receiving \$560,000 at 3.42% for 20 years for the construction of 2,600 feet of waterline between Tracy and Oregon Roads in Perrysburg Township to extend service to an industrial user.
- **Northwestern Water & Sewer District** in Wood County is receiving \$721,000 at 3.05% for 20 years for the construction of 2,300 feet of waterline along Main Street in the Village of Walbridge to replace aging waterlines.
- **Southwest Licking Community Water and Sewer District** in Licking County is receiving \$7.1 million at 3.90% for 25 years for the construction of 27,000 feet of waterline along State Route 310 and Worthington Road to extend service within Jersey and St. Albans Townships.
- **Trimble Township Wastewater Treatment District** in Athens County is receiving \$20,400 at 3.65% for 5 years for the development of a preliminary engineering report to evaluate alternatives for improving ammonia removal at the District's wastewater treatment plant to achieve compliance with permit limits.

Gubernatorial Appointments of Interest

- **Allen W. Behnke** of Lima (Allen County) and **Robert K. Keener II** of Mogadore (Summit County) to the **State Emergency Response Commission** for terms beginning March 30, 2023, and ending Jan. 13, 2025
- **Ty Dale Marsh** of Columbus (Franklin County) to the **Ohio Air Quality Development Authority** for a term beginning Feb. 24, 2023, and ending June 30, 2026.
- **Kathryn Bartter Arnold** of Columbus (Franklin County) to the **Ohio Soil and Water Conservation Commission** for a term beginning Feb. 24, 2023, and ending June 30, 2026.
- **Joshua S. Motzer** of Columbus (Franklin County), **Kevin L. Baxter** of Powell (Delaware County) and **David Losinski** of Gahanna (Franklin County) reappointed to **the Underground Technical Committee** for a term beginning Feb. 24, 2023, and ending Dec. 31, 2026. (Note: In 2015 Ohio law assigned the Public Utilities Commission of Ohio (PUCO) with the duties of enforcing Ohio's damage prevention laws—"Call Before You Dig." Aggrieved parties will have the option of reporting alleged compliance failures to the PUCO to be investigated. When the investigation is complete, the PUCO will then forward the information to the Underground Technical Committee (UTC), a 17-member panel made up of individuals with knowledge and experience in safe excavation, who will decide if a compliance failure occurred and determine an appropriate consequence.)