

# Environmental Update

June 2019 (Issue 3)

## OHIO EPA RULEMAKINGS AND ANNOUNCEMENTS

### Air

**Stakeholder Input Requested on Rules - OAC Chapter 3745-104, Accidental Release Prevention Rules:** Ohio EPA is requesting stakeholder input on potential amendments to Ohio Administrative Code (OAC) Chapter 3745-104, "Accidental Release Prevention Rules." The rules require facilities to submit a Risk Management Plan (RMP), i.e. implement a prevention program and an emergency response plan or program. Ohio EPA is asking for input on the rule from potentially affected parties. Ohio EPA will be accepting comments on these potential changes through **Wednesday, June 26, 2019**.

**Availability of Draft Business Impact Analysis for Comment - OAC Chapter 3745-23, "Nitrogen Oxide Standards":** The Ohio Environmental Protection Agency, Division of Air Pollution Control (DAPC) is making available a draft business impact analysis document for comment for rules in Ohio Administrative Code (OAC) [Chapter 3745-23, "Nitrogen Oxide Standards."](#) The rules in this chapter contain the requirements under which Ohio EPA will monitor for Nitrogen Oxides as part of Ohio's State Implementation Plan (SIP) for the attainment of the national ambient air quality standard (NAAQS). DAPC is requesting comments on the draft business impact analysis (BIA) before DAPC proposes the rules to the Joint Committee on Agency Rule Review (JCARR). DAPC will be accepting comments on the BIA document through **Tuesday, June 25, 2019**. The Public Notice can be viewed [here](#), and a Synopsis of Changes can be viewed [here](#).

**Proposal of Amended Rules - OAC Chapter 3745-14, NOx Budget Program Rules (Phase 2):** Ohio EPA has proposed amendments to Ohio Administrative Code (OAC) rules 3745-14-01, 3745-14-04, and 3745-14-08 to the Joint Committee on Agency Rule Review (JCARR). This is the second in two phases of rulemaking to revise OAC Chapter 3745-14. Ohio EPA will be holding a public hearing on the amended rules and the 110(l) document on **Tuesday, July 16, 2019, at 10:30 a.m.** at Ohio EPA Central Office, Columbus, Ohio. The Public Notice can be viewed [here](#), and a Synopsis of Changes can be viewed [here](#).

### Water - Drinking and Groundwater

**Division of Drinking and Ground Waters (DDAGW) primary drinking water standards:** DDAGW has proposed "no changes" to several primary drinking water standards rules in Chapter 3745-81 of the Ohio Administrative Code (OAC) and OAC rule 3745-91-10 source water protection plan rule to Joint Committee on Agency Rule Review (JCARR). The business impact analysis can be viewed [here](#). Click [here](#) for more information.

### Water - Surface

**Deer Creek Watershed Loading Analysis Plan (Draft):** The Deer Creek Watershed loading analysis plan is now available for review and comment. The comment period ends **June 28, 2019**. The loading analysis plan can be found [here](#). The loading analysis plan fact sheet can be found [here](#).

### Waste - Hazardous

No updates at this time.

### Waste - Non-Hazardous

**Early Stakeholder Outreach - Construction and Demolition Debris (C&DD) Rules:** The Division of Materials and Waste Management (DMWM) has released an Early Stakeholder Outreach (ESO) fact sheet for Construction and Demolition Debris (C&DD) Rules. The stakeholder fact sheet can be found [here](#). Written comments will be accepted through **June 24, 2019**.

**Division of Materials and Waste Management (DMWM) Landfill Interested Party Draft:** DMWM has released an interested party draft of eight municipal solid waste rules in Ohio Administrative Code (OAC) 3745-27. The Business Impact Analysis can be viewed [here](#), and the Interested Party Fact Sheet can be viewed [here](#). Follow the links below to view the draft rules. Comments on the draft rules must be submitted by **July 22, 2019**.

### Environmental Practice Group Attorneys

[Louis E. Tosi](#),  
Environmental Practice Administrator

[Michael E. Born](#)

[Kevin S. Braig](#)

[Cheri A. Budzynski](#)

[Douglas G. Haynam](#)

[Matthew T. Kemp](#)

[Marcus A. Miller](#)

[Mark E. Mercer](#)

[Michael J. O'Callaghan](#)

[William L. Patberg](#)

[Joseph S. Simpson](#)

[Michael A. Snyder](#)

- [3745-27-02 Draft](#)
- [3745-27-05 Draft](#)
- [3745-27-06 Draft](#)
- [3745-27-07 Draft](#)
- [3745-27-08 Draft](#)
- [3745-27-09 Draft](#)
- [3745-27-11 Draft](#)
- [3745-27-14 Draft](#)

## Department of Environmental Response and Revitalization

**Director's Final Findings and Orders (DFFOs) to the Occidental Chemical Corporation and Mariana Properties, Inc.:** On May 7, 2019, the Director of the Ohio Environmental Protection Agency (Ohio EPA) issued as a final action Director's Final Findings and Orders (DFFOs) to the Occidental Chemical Corporation and Mariana Properties, Inc. to implement Remedial Design/Remedial Action (RD/RA) activities at the Diamond Shamrock Operable Unit (OU) 15 Site, located in the northeastern corner of the Diamond Shamrock Painesville Works Site, Painesville, Lake County, Ohio (Site). The Diamond Shamrock OU15 RD/RA DFFOs can be found [here](#).

---

## OHIO DEPARTMENT OF NATURAL RESOURCES

### Oil and Gas

**Ohio Department of Natural Resources (ODNR) Responses to Comments for Draft Brine Disposal Fee Rules Posted:** ODNR Division of Oil and Gas Resources Management (DOGRM) has responded to a comment received regarding the Draft Brine Disposal Fee rules. This draft rule package establishes requirements and procedures for annual submittal of a brine disposal fee. ODNR's response can be viewed [here](#). Additional information can be found [here](#).

**Division of Oil and Gas Resources Management Well Plugging Five-Year Rule Review:** The Division of Oil and Gas Resources Management (DOGRM) is making a draft of Well Plugging Rules available for interested party/informal review. Ohio law requires DOGRM to review rules every five years. As part of this five-year rule review, DOGRM thoroughly examines each section of Ohio Administrative Code (OAC) 1501 following standards outlined in the Joint Committee on Agency Rule Review's procedure manual. DOGRM proposes to amend and or rescind portions of well plugging rules located in OAC 1501:9-11, Plugging Wells. The interested party/informal review period will be open until **Monday, June 17, 2019**. The executive summary can be viewed [here](#) and the draft rules can be found [here](#). All stakeholders are welcome to provide comments by email to [DOGRM.Rules@dnr.state.oh.us](mailto:DOGRM.Rules@dnr.state.oh.us) or in writing to the Division of Oil and Gas Resources Management, 2045 Morse Road, Building F, Columbus, Ohio 43229-6693.

### Mineral Resources

No updates at this time.

### Geology

No updates at this time.

### Soil and Water Resources

**Reminder: Lake Erie Water Levels High:** With the amount of rainfall that Ohio has received this spring, the Lake Erie water levels continue to rise. Lake Erie water levels are currently at near record highs, will remain high and are anticipated to peak in the month of June. Lake levels will then begin to subside due to a normal seasonal decline. High water levels increase the chance of flooding in low-lying coastal areas, especially during wind-driven seiche events. Along the entire Lake Erie shoreline, the combination of high water and waves may result in increased or catastrophic erosion during severe storm events. Coastal property owners need to be aware of anticipated storm events and where there may be increased chances of coastal flooding or erosion. ODNR provides free on-site technical assistance to owners of property along Lake Erie by ODNR coastal engineers. Call the ODNR Office of Coastal Management at 419-626-7980 to speak with a coastal engineer.

---

## OHIO DEPARTMENT OF AGRICULTURE

### Administration

No updates at this time.

### Animal Health

No updates at this time.

### Dairy

No updates at this time.

### Food Safety

**Retail Food Safety Advisory Council Meeting:** Retail Food Safety Advisory Council Meeting will be held **June 4, 2019, 9:30 a.m.** at Ohio Department of Agriculture, Bromfield Building-Auditorium 8995 East Main Street, Reynoldsburg, OH 43068.

**June 3, 2019:** Deep Foods Inc. of Union, NJ is recalling Deep Golden Raisin 7oz., 14oz. and 28oz. Because they contained undeclared sulfites. Consumers who have sensitivity to sulfites run the risk of serious or life-threatening allergic reactions if they consume this product. Additional information can be found [here](#).

**June 3, 2019:** Perdue Foods LLC., a Bridgewater, Va. establishment, is recalling approximately 31,703 pounds of ready-to-eat chicken products that may be contaminated with extraneous materials, specifically pieces of bone material. Additional information can be found [here](#).

**June 3, 2019:** Johnsonville, LLC., a Sheboygan Falls, Wis. establishment, is recalling approximately 95,393 pounds of its ready-to-eat jalapeño cheddar smoked sausage products that may be contaminated with extraneous material, specifically hard green plastic. Additional information can be found [here](#).

**May 30, 2019:** J Deluca Fish Company Inc., doing business as Nautilus Seafood, a Wilmington, Calif. firm and the importer of record, is recalling approximately 69,590 pounds of Siluriformes fish products that were not presented for import re-inspection into the United States. Additionally, the products were produced at a Vietnamese establishment that was not eligible to export Siluriformes fish to the United States. Additional information can be found [here](#).

**May 29, 2019:** Richwell Group, Inc., doing business as Maxfield Seafood, a City of Industry, Calif. firm and the importer of record, is recalling approximately 154,560 pounds of Siluriformes fish products that were not presented for import re-inspection into the United States. Additionally, the products were produced at a Vietnamese establishment that was not eligible to export Siluriformes fish to the United States. Additional information can be found [here](#).

**May 28, 2019:** ADM Milling Co. is recalling five-pound bags of Baker's Corner All Purpose Flour packaged for ALDI because of the potential presence of E. coli, which was discovered during testing of a five-pound bag of Baker's Corner All Purpose Flour by the Rhode Island Department of Health. The products were distributed in select stores in the following states: Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and West Virginia. There are two lot numbers involved in this recall: Lot L18A02 and L18A03. The products have Best If Used By Dates of Dec. 2 and Dec. 3, 2019. The product was manufactured at ADM's flour mill in Buffalo, New York. Additional information can be found [here](#).

**May 24, 2019:** In cooperation with ADM Milling Co., ALDI has recalled Bakers Corner All Purpose Flour sold at retail locations in the Northeastern United States due to a potential presence of E. coli. This product was sourced from an ADM Milling Co. production facility in Buffalo, N.Y. and was distributed to select ALDI stores in 11 states: Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and West Virginia. The Bakers Corner All Purpose Flour affected by this recall is sold in a 5 lb. bag with a best if used by date of Dec. 2, 2019, lot code L18A02B and the following UPC code: 041498130404. ALDI has removed this product from store shelves in these states. On **May 28, 2019**, ALDI expanded the recall to include all best if used by dates and all lots of Bakers Corner All Purpose Flour products produced by ADM Milling Co. in Buffalo, N.Y. from store shelves in these states. Additional information can be found [here](#).

**May 23, 2019:** Aurora Packing Company, Inc., a North Aurora, Ill. establishment, is recalling approximately 62,112 pounds of raw beef products that may be contaminated with E. coli O157:H7. The products subject to recall bear establishment number "EST. 788" inside the USDA mark of inspection. These items were shipped nationwide for further distribution and processing. Additional information can be found [here](#).

**May 22, 2019:** House of Spices (India) is recalling all lots of 7 oz. (200g) packages of "LAXMI DRIED APRICOT", 7 oz. (200g) UPC code 2324617054, because they may contain undeclared sulfites. People who have allergies to sulfites run the risk of serious or life threatening allergic reaction if they consume these products. Additional information can be found [here](#).

**May 22, 2019:** Hearthside Food Solutions of Woodridge, IL is voluntarily recalling 7-Eleven 'The Italian Job' sandwiches, which have an incorrect information panel label that does not declare eggs as an allergen. Persons who have an allergy or severe sensitivity to eggs run the risk of serious or life-threatening allergic reaction if they consume the recalled product. Additional information can be found [here](#).

**May 22, 2019:** BEF Foods, Inc., a Lima, Ohio establishment, is recalling approximately 527 pounds of beef pasta products that were produced without the benefit of federal inspection and outside of inspection hours, the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) announced today. The ready-to-eat beef stroganoff pasta items were produced on May 3, 2019. The following products are subject to recall: 18 oz. sealed plastic trays containing "Bob Evans Beef Stroganoff Pasta" with a USE BY date of 07/02/19 and a time-stamp ranging between the hours of 15:00 and 18:37 represented on the tray seal. Additional information can be found [here](#).

**May 22, 2019:** In cooperation with Oakhouse Bakeries, ALDI has voluntarily recalled Specially Selected Paleo Maple Almond Granola from stores due to the potential presence of a foreign material. ALDI has removed the affected product from all stores. The affected product was an ALDI Find that was available starting on February 13, 2019 and sold in an 8 oz. pouch. The best if used by dates are 1/22/20 and 1/23/20, with the following UPC code: 4099100040067. Additional information can be found [here](#).

**May 20, 2019:** Vienna Beef Ltd., a Chicago, Ill. establishment, is recalling approximately 2,030 pounds of beef frank links products that may be contaminated with extraneous materials, specifically metal, the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) announced today. The beef frank links items were produced on May 2, 2019. The following products are subject to recall:

- 10-lb. cases containing "SKINLESS BEEF FRANKFURTERS 6" 8's 10#" with case code 013180 and package code 9122 represented on the label.
- 10-lb. cases containing "SKINLESS BEEF FRANKFURTERS 6" 11's 10#" with case code 013312 and package code 9122 or 9123 represented on the label.
- 10-lb. cases containing "SKINLESS BEEF FRANKFURTERS 7" 9's 10#" with case code 013490 and package code 9122 or 9123 represented on the label.

Additional information can be found [here](#).

**May 20, 2019:** US TRADING COMPANY is warning consumers not to consume GLOBAL PRIDE RATTAN SHOOT IN BRINE. The product is being recalled because the product contains Sulfites which is not declared on the labeling. The product(s) may cause adverse reactions if consumed by sulfite sensitive individuals. Consumers who have severe sensitivity to sulfites run the risk of serious or life-threatening allergic reactions if they consume the product. Additional information can be found [here](#).

**May 20, 2019:** Coolhaus is voluntarily recalling its DairyFree Horchata Frozen Dessert Sandwich because it may contain milk. People who have an allergy or severe sensitivity to dairy run the risk of a serious or life-threatening allergic reaction if they consume the product. Additional information can be found [here](#).

**May 20, 2019:** Caito Foods LLC., an Indianapolis, Ind. establishment, is recalling approximately 1,767 pounds of salad with chicken products due to misbranding and undeclared allergens. The products contain soy, a known allergen, which is not declared on the product label. Additional information can be found [here](#).

**May 13, 2019:** Stutzman Farms of Millersburg, Ohio is voluntarily recalling its Organic Golden Pastry Flour due to an undeclared wheat allergen. The following products are subject to this recall: Organic Golden Pastry Flour (sold in 2 lb., 5 lb., and 10 lb. packages). Products were sold directly to retailers in Ohio. All lots of product prepared, sold, or distributed from Stutzman Farms with a sell by date through 10/26/19 have been voluntarily recalled. There have been no reported illnesses to date associated with this recall. People who have an allergy or sensitivity to wheat run the risk of a serious or life-threatening allergic reaction if they consume these products. The product is safe for consumption by those who do not have a wheat allergy. Additional information can be found [here](#).

**May 13, 2019:** Bittersweet Farms, located in Whitehouse, Ohio, is voluntarily recalling its pesto due to a processing deviation. The products were sold in 6 oz. glass jars with a lot code: 1B42518. There have been no reports of illness involving the product identified in this recall, however individuals exhibiting any symptoms of foodborne illness should contact a physician immediately. Additional information can be found [here](#).

**May 13, 2019:** Deshi Distributors LLC. of Jamaica, NY, is recalling its 3.5 oz., 7 oz. and 14 oz. packages of Deshi "Golden Raisins" because they contained undeclared sulfites. Consumers who have severe sensitivity to sulfites run the risk of serious or life-threatening allergic reactions if they consume this product. Additional information can be found [here](#).

**May 8, 2019:** STIFF BOY LLC. is voluntarily recalling all lots within expiry of The Beast capsules to the consumer level. FDA analysis has found the product to be tainted with sildenafil. Sildenafil is an FDA approved drug for the treatment of male erectile dysfunction and is in a class of drugs called phosphodiesterase (PDE-5) inhibitors. The presence of sildenafil in THE BEAST Capsules renders it an unapproved drug for which safety and efficacy have not been established and, therefore, subject to recall. Additional information can be found [here](#).

**May 8, 2019:** D.B.P. Distribution is voluntarily recalling all lots of Titanium 4000 capsules to the consumer level. FDA analysis has found this product to be tainted with sildenafil and tadalafil. Sildenafil and tadalafil are both FDA approved active ingredients used for the treatment of erectile dysfunction and are in a class of drugs called phosphodiesterase (PDE-5) inhibitors. The presence of sildenafil and tadalafil makes Titanium 4000 an unapproved drug for which safety and efficacy have not been established and, therefore, subject to recall. Additional information can be found [here](#).

**May 7, 2019:** ICCO Cheese Company, Inc. (ICCO) of Orangeburg, New York, is recalling Gia Russa Unseasoned Whole Grain Bread Crumbs and Gia Russa Italian Seasoned Whole Grain Bread Crumbs with "best by" dates of 08/21/2019, 09/21/2019, 10/04/2019, 11/09/2019, 11/12/2019, 12/05/2019 because they may contain undeclared walnuts and pecans. People who have a tree nut allergy or severe sensitivity, do not consume the recalled product as it may cause a serious or life-threatening reaction. Additional information can be found [here](#).



**May 6, 2019:** Tyson Foods, Inc., a Rogers, Ark. establishment, is recalling approximately 11,829,517 million pounds of frozen, ready-to-eat chicken strip products that may be contaminated with extraneous materials. The frozen, ready-to-eat chicken strip items were produced on various dates from Oct. 1, 2018 through March 8, 2019 and have "Use By Dates" of Oct. 1, 2019 through March 7, 2020. The products subject to recall bear establishment number "P-7221" on the back of the product package. Additional information can be found [here](#).

**May 6, 2019:** Conagra Brands, Inc., a Russellville, Ark. establishment, is recalling approximately 2,094,186 pounds of frozen entrees (PF Chang's Home Menu - Pad Thai and Chicken Fried Rice) due to misbranding and an undeclared allergen. The product contains milk, a known allergen, which is not declared on the product label. Additional information can be found [here](#).

**May 3, 2019:** The U.S. Food and Drug Administration is alerting the public to a possible Listeria monocytogenes contamination of l'Explorateur soft ripened cheese. This pasteurized, cow's milk cheese was made by Société Fromagère de la Brie in St. Simeon, France and distributed throughout the U.S. The FDA advises consumers and retailers to not eat, sell, or serve cheese labeled as l'Explorateur. Additional information can be found [here](#).

All recalls can be viewed [here](#).

## Meat Inspection

No updates at this time.

## Plant Health

**Ohio Department of Agriculture (ODA) Gypsy Moth Treatments in Central and Eastern Ohio:** ODA began aerial treatments on 6,195 acres in Hardin, Licking, Marion, Morgan, Muskingum, and Noble counties in early and mid-May designed to control the gypsy moth population in Ohio in mid-May. Treatments on 2,517 acres in Auglaize, Cuyahoga, Fulton, Hancock, Lorain, Lucas, Paulding, Seneca, and Williams counties also began in mid-May, as larva and leaf development reaches the optimal threshold for treatment.

## Soil and Water Conservation

No updates at this time.

---

[www.shumaker.com/environmental](http://www.shumaker.com/environmental)

# SHUMAKER®

Shumaker, Loop & Kendrick, LLP

This is a publication of Shumaker, Loop & Kendrick, LLP and is intended as a report of legal issues and other developments of general interest to our clients, attorneys and staff. This publication is not intended to provide legal advice on specific subjects. In particular the IRS requires us to advise you no person or entity may use any tax advice in this new sletter to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action. Additionally, while we welcome electronic communications from our clients, we must advise non-clients who may contact us that an unsolicited e-mail does not create an attorney-client relationship, and information of non-clients who send us unsolicited e-mails will not be held in confidence unless both parties subsequently agree to an attorney-client relationship.