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Environmental Update, June 2020 (Issue 15)

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LAWYER SPOTLIGHT



Joe Simpson has extensive experience in environmental law, including litigation and regulatory counseling regarding environmental matters.

He has represented Fortune 500 clients concerning compliance in Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund), Resource Conservation and Recovery Act (RCRA), Clean Air Act, Clean Water Act, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Toxic Substances Control Act (TSCA), and other matters. Additionally, Joe has extensive experience in environmental indemnity litigation.

In recent years, Joe has served as counsel for a major petroleum company in litigation challenging the company's Clean Air Act permits for a multibillion dollar refinery expansion project. He also served as part of a team that successfully defended a major petroleum company in multimillion dollar litigation related to environmental representations and warranties pertaining to the sale of a chemical plant.

OHIO EPA RULEMAKINGS AND ANNOUNCEMENTS

Air

Public Comment Request – 2015 Ozone National Ambient Air Quality Standard Emissions Inventory & Emissions Statement Program – Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren Counties: The Director of Ohio EPA is requesting that the United States Environmental Protection Agency (U.S. EPA) revise the current State Implementation Plan to include the 2014 NOx and VOC emissions inventory as the base year inventory for the 2015 Ozone National Ambient Air Quality Standards (NAAQS). This submittal covers the requirements for both the emissions inventory requirements and the emission statement program under the 2015 ozone NAAQS. The emission statement program was already approved under previous NAAQS and remains unchanged. Ohio EPA has prepared an inventory for the Cincinnati and Cleveland 2015 Ozone NAAQS nonattainment area, including the point, nonpoint, non-road, and on-road sectors. The base year ozone emissions inventory is an inventory of the actual reported, estimated, or calculated annual and ozone season day NOx and VOC emissions for Ohio sources. The State of Ohio will request that U.S. EPA review and approve the 2014 emission inventory and Ohio's emission statement program for the purpose of the 2015 ozone NAAQS. A draft emissions inventory and emission statement is available [here](#).

Comments can be submitted to Holly Kaloz at holly.kaloz@epa.ohio.gov. The comment deadline is **Monday, June 22, 2020**.

If you have any questions regarding the 2015 Ozone National Ambient Air Quality Standard Emissions Inventory & Emissions Statement Program, contact Mike Born at mborn@shumaker.com or 614.628.4415.

Water – Drinking and Groundwater

Early Stakeholder Outreach – Plan Approval Rules: The Division of Drinking and Ground Water (DDAGW) has reviewed rules in Chapter 3745-91 of the Ohio Administrative Code to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code. The rules describe Public Water System (PWS) plan approval. DDAGW is proposing to file rules 3745-91-04, 3745-91-05, and 3745-91-12 as no change.

Proposed revisions rules in Chapter 3745-91 of the Administrative Code include the following:

- Adding the definition of "General Plan" and updating "Substantial Change" definition in rule 3745-91-01.
- Adding language regarding General Plan content and submission requirements (including all community system improvement projects and those seeking Water Supply Revolving Loan Account (WSRLA) funding), total cost evaluations, plan approval for found systems, streamlined water line approvals, and prohibition of like-kind replacements when wells or treatment items are located in pits in rule 3745-91-02.
- Updating language in rule 3745-91-03 to include electronic submission.
- Updating plan sign-off protocol in rule 3745-91-07.
- Updating references and adding clarifying language and the process to obtain a variance from the rules to rule 3745-91-08.
- Adding clarifying language to include non-transient non-community water systems serving sensitive populations to rule 3745-91-09.
- Updating references and adding clarifying language that all public water systems must have a source protection plan to rule 3745-91-10.

The Early Stakeholder Fact Sheet is available [here](#). The comment deadline is **Friday, June 26, 2020**.

If you have any questions regarding PWS plan rule changes, contact Cheri Budzynski at cbudzynski@shumaker.com or 419.321.1332.

Water – Surface

Final Integrated Report: Ohio EPA has submitted a final 2020 Integrated Report to U.S. EPA for approval on May 11, 2020. The 2020 Integrated Report indicates the general condition of Ohio's waters and lists those waters that are currently impaired and may require Total Maximum Daily Load (TMDL) development in order to meet water quality standards. For example, Ohio EPA has listed Lake Erie's western shoreline, western open water, and islands' shoreline as impaired for public drinking water supply and recreation due to the presence of algae. Ohio EPA identified these areas as high priority and has committed to developing a TMDL to address the algae issue for Western Lake Erie over the next two years. The report fulfills the State's reporting obligations under Section 305(b) (33 U.S.C. 1315) and Section 303(d) (33 U.S.C. 1313) of the Federal Clean Water Act. The full report is available [here](#). Additional information regarding the report is available [here](#).

If you have any questions regarding Ohio EPA's final 2020 Integrated Report, contact Cheri Budzynski at cbudzynski@shumaker.com or 419.321.1332.

Draft Ephemeral Streams and Isolated Wetlands General Permit: Ohio EPA has proposed a draft Ephemeral Streams and Isolated Wetlands General Permit for public comment. U.S. EPA and the U.S. Army Corps of Engineers recently issued a final rule that clarified the definition of Waters of the United States; this rule becomes effective June 22, 2020. The new definition excludes certain "ephemeral streams" from the definition of Waters of the United States, which were previously under the jurisdiction of the U.S. Army Corps of Engineers. Ephemeral streams are small streams, including those streams that do not flow all the time. Recognizing that Ohio has approximately 36,000 miles of ephemeral streams, Ohio EPA thought it necessary to develop a strategy to regulate these waters in Ohio. The permit authorizes the filling of and the discharge of dredged material into ephemeral streams for activities impacting more than 300 linear feet of ephemeral streams. The permit requires: (1) pre-activity notice to Ohio EPA; (2) requirements to restore any temporary impacts to ephemeral streams; (3) mitigation requirements for permanent impacts to ephemeral streams; and (4) annual reporting requirements. Activities impacting less than 300 linear feet of ephemeral streams must follow the permit's general terms and conditions but are exempt from meeting the other requirements of the permit. The draft permit is available [here](#). A link to Ohio EPA's webinar presentation is available [here](#). The comment deadline is Wednesday, June 17, 2020.

If you have any questions regarding Ohio EPA's draft Ephemeral Streams and Isolated Wetlands General Permit, contact Cheri Budzynski at cbudzynski@shumaker.com or 419.321.1332.

Division of Environmental Response and Revitalization (DERR)

Early Stakeholder Outreach – Voluntary Action Program: Minor Rule Changes: Ohio EPA Division of Environmental Response and Revitalization (DERR) is considering the following changes to one Voluntary Action Program (VAP) rule in Ohio Administrative Code (OAC) chapter 3745-300:

- Update the reference to Ohio EPA's Sample Collection and Evaluation of Vapor Intrusion to Indoor Air guidance document in OAC 3745-300-15 to incorporate the March 2020 update.

The Early Stakeholder Fact Sheet is available [here](#). The comment deadline is **Monday, June 8, 2020**.

Notification of revised draft Technical Guidance Manual for Hydrogeologic Investigations and Ground Water

Monitoring Chapter 10 (Ground Water Sampling) review and comment period: A final draft update of Chapter 10 of the Technical Guidance Manual for Hydrogeologic Investigations and Ground Water Monitoring (TGM): Ground Water Sampling has been posted to the Ohio EPA DERR Geology and Ground Water Support web page available [here](#). The TGM provides guidance on monitoring well installation and decommissioning (or sealing) to help the regulated community comply with Ohio EPA's monitoring well regulations. The TGM is applicable to the Resource Conservation and Recovery Act (RCRA), Voluntary Action Program (VAP), and the Remedial Response programs. Additional information regarding the TGM is available on the DERR Geology and Ground Water Support web page. The comment deadline is **Friday, June 19, 2020**.

If you have any questions regarding the DERR, contact Mike O'Callaghan at mocallaghan@shumaker.com or 614.628.4431.

Ohio Department of Natural Resources

Oil and Gas

Public Comment Request – Proposed changes to Well Plugging Rules: The Ohio Department of Natural Resources, Division of Oil and Gas Resources Management (Division) will hold a virtual public hearing to accept testimony on proposed changes to OAC sections 1501:9-11-01 through 1501:9-11-13, Well Plugging. The hearing will be conducted in accordance with Chapter 119 of the Ohio Revised Code. Information regarding the rule package and public hearing is available [here](#). The public hearing will be held on **Thursday, June 18, 2020 at 1:00 p.m.** The comment deadline is **Wednesday, June 24, 2020**.

If you have any questions regarding the proposed changes to Well Plugging Rules, contact Mark Mercer at mmercerc@shumaker.com or 419.321.1436.