



**Testimony of Scott Nally**  
**Director, Ohio EPA**  
**Before the**  
**Senate Finance Subcommittee on General Government**  
**On H.B. 59**

**April 23, 2013**

Good afternoon Chairman Peterson, Ranking Member Schiavoni, and members of the Finance Subcommittee; I am Scott Nally, Director of the Ohio Environmental Protection Agency. I am very pleased to be here this afternoon and I thank you for the opportunity to testify on Amended Substitute H.B. 59, the biennium budget for fiscal years 2014-2015.

I present to you today a fiscally responsible budget that will continue programs that protect and improve Ohio's environment, leverage information technology, and improve agency efficiencies while promoting economic growth. During my past two years as director, I have streamlined agency operations, expanded permitting options, increased compliance assistance, and implemented an enforcement option to encourage timely return to compliance. As I have stated before, I strongly believe that we must strike a balance between our role of protecting the environment while allowing for economic vitality and development throughout the state. The budget I have proposed reflects the changes I have made and my continued effort strike the appropriate balance.

**Budget overview**

The Ohio EPA budget is primarily comprised of federal funds and fees paid by regulated entities. For the proposed FY 2014, the percentage break down is: 23% federal funds, 65% state fees (SSR), 5% General Revenue Funds (GRF) and the remaining 7% from predominantly state general services fund.

As with the last budget I presented to you, Ohio EPA is again not seeking any fee increases in this biennium budget proposal for FY 14-15. Also, as in the past, Ohio EPA receives very little General Revenue Fund (GRF) dollars with one exception – the auto emissions testing program in the Cleveland-Akron area. To be more transparent during this budget cycle, this budget proposes the

same \$10.9 million that historically has been transferred from the state GRF to an OEPA State Special Revenue line item in a now more transparent OEPA GRF line-item.

Therefore, for FY 2014, Ohio EPA requests total funding of \$202.7 million which is \$20 million or 9.0% below FY 2013, and for FY 2015, Ohio EPA requests total funding of \$205.8 million which is \$3.1 million or 1.5% over FY 2014 but still below the FY 2013 funding levels. The requested budget will support 1,215 full-time equivalent positions (FTEs), a reduction of 57 positions compared to our FY 2013 funded level. This reduction in staff reflects continued efficiencies and an ongoing effort to live within our means, while providing value to our customers.

### **Highlights**

You will notice that the current FY 2013 is \$53.3 million or 31.5% over the actual FY 2012 budgeted amount, which shows a sharp contrast to our proposed FY 2014/2015 request. I would like to explain briefly the apparent increase in appropriations for FY 2013. The current FY 2013 budget reflects several one-time increases. For example, a significant increase occurred when Ohio EPA absorbed the Diesel Emission Reduction Grant (DERG) program during the budget cycle and the appropriation authority for FY 2012 was rolled forward into FY 2013. A similar accounting scenario was used for ODNR's litter/scrap tire recycling program which was transferred to Ohio EPA in FY 2013 along with all outstanding grant obligations. We also had a one-time IT controlling board request and lastly, a one-time increase in federal NRD (Natural Resources Damages) and state monies for water restoration projects and landfill clean-up.

Comparing FY 2013 to biennium FY 2014, there are a few specifics I would like to point out:

The Federal Special Revenue Fund Group has a reduction of 22.8%, which reflects a smaller Natural Resources Damages (NRD) appropriation and the reduced DERG appropriation.

The State Special Revenue Fund Group has a reduction of 12%, which reflects eliminating one-time obligations for water restoration projects, landfill cleanups and the litter and scrap tire recycling grants transferred from ODNR, as well as vacant positions eliminated.

The Subsidies and Shared Revenue Account Category has a reduction of 32.7%. This change captures reductions in both Federal and State Special Revenue Fund Groups for the NRD and DERG programs, water restoration projects and the litter and scrap tire recycling program transfer from ODNR.

The Hazardous Waste Clean-up line item 715623 was increased 19% which was offset by a decrease in the Hazardous Waste Facility Management line item 715621 of 21.8%. This reflects a transfer of funding from the Division of Materials and Waste Management (DMWM) to the Division of Environmental Response and Revitalization to better reflect work load.

The Drinking Water Protection line item 715651 was reduced 13.9%, but the Drinking Water SRF (715669), Groundwater Support (715664) and Drinking and Ground Water (715673) line items were increased to offset the reduction.

The Nonpoint Source Pollution Management line item 715641 was reduced 100% due to being consolidated into a single federal fund (Water Quality Protection Fund 715684) within the same program to allow for better flexibility in spending.

### **Budget language items**

Ohio EPA is seeking very few legislative changes in this proposed budget. The proposal contains changes to finalize last biennium's reconfiguring of three agency divisions into two, the Division of Materials and Waste Management (DMWM) and the Division of Environmental Response and Revitalization (DERR). In order to reflect the true allocation of work between the two divisions, the current 50/50 split of a \$1.00 solid waste fee is reallocated between the Hazardous Waste Management Fund and the Hazardous Waste Cleanup Fund. This is not a fee increase. The new split of the existing fee is 30/70 and the monies in those funds are reallocated as well to align them with the costs of regulating hazardous waste facilities and cleaning up hazardous waste sites. Also, the allowable uses under the Cleanup Fund are expanded to reflect the additional cleanup work completed under DERR with the new division of labor between the two new divisions.

As a side note, I would like to mention that a comprehensive review of the solid waste statute (referred to as H.B. 592 from 1988) is currently being undertaken by my staff with input from all external stakeholders. This review is taking into consideration all aspects of the current statute, including solid waste fees collected by the state, the solid waste management districts, and local health departments. Those discussions are still on-going and changes that result from that effort will be included in separate legislation, possibly later in the year.

In addition, the budget reflects several technical changes that include the consolidation of two federal funds and two state special revenue funds to better manage spending authority and streamline accounting. All the dollars going into and out of those funds will continue to be tracked separately as required by state and federal law.

### **Language Removed in House Finance**

The House Finance Committee removed language from the introduced version of H.B. 59 which would provide Ohio EPA with statutory authority to seek assumption of the Clean Water Act Section 404 permitting program. Currently the U.S. Army Corps of Engineers conducts that review and Ohio EPA carries out the separate 401 water quality certification process as a part of that permitting effort. I propose to streamline that process by seeking 404 assumption from the Corps allowing Ohio EPA to take the first steps towards that end. The goal is to streamline the permitting process for projects that would impact waters of the state, and eliminate the confusion and delays

that result from having both Ohio EPA and the US Army Corps of Engineers/USEPA reviewing and permitting these projects. For these reasons, I am strongly advocating restoration of the language from the Executive version of H.B. 59.

The House also removed language from the as-introduced version of H.B. 59 that would have established important requirements governing the disposal of TENORM (Technologically Enhanced Naturally Occurring Radioactive Materials). Language was included because we expect to see an increase of this waste material as the natural gas activities increase in Ohio. There is no comprehensive system in place to ensure that landfills taking TENORM waste from the oil and gas industry receive an adequate amount of information on this material in order to ensure consistent, appropriate management and disposal of TENORM. The as-introduced language put protections in place to require testing from the generator which offers assurance to the landfill owner and Ohio citizens that the waste is handled properly. The language required both in-state and out of state shipments of TENORM to be accompanied with analytical results demonstrating that the waste is below prohibited levels prior to disposal in a solid waste landfill. It also prohibited any disposal of TENORM waste at a solid waste landfill above levels regulated by ODH. Our proposed legislation regarding TENORM is a result of a joint ODH, ODNR, and Ohio EPA effort to provide a flexible and comprehensive, yet safe and efficient method for the oil and gas industry and the solid waste industry to manage materials with TENORM. Providing this regulatory guidance and structure is vital to ensure protection of workers and citizens while providing industry with regulatory certainty and flexibility. Again, for these reasons, I would ask that the originally proposed language be reconsidered here or in another legislative vehicle.

### **Conclusion**

In conclusion, I present to you a budget proposal that reflects responsible spending while allowing us to continue our agency efforts to protect the State's environment. As a peer once told me, we are not simply just mere users of our natural resources but stewards for the next generation to follow. As you review this proposal, please keep in mind that most line-item changes are simply transfers from other line items to better reflect work load and thus net out in the end. Thank you for your time. I am pleased to present this testimony to you today and welcome any follow-up questions.