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**Director Craig W. Butler H.B. 64 Testimony
House Finance Subcommittee on Agriculture, Development
and Natural Resources
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Good evening, Chairman Thompson, Ranking Member O'Brien and members of the House Finance Subcommittee on Agriculture, Development and Natural Resources committee. I am Craig Butler, Director of Ohio EPA, and I appreciate the opportunity to provide testimony on House Bill 64, Governor Kasich's budget proposal.

Ohio is a much different state today than it was just four years ago. We are a much different and a much *better* state.

The improvements we've seen in the past four years haven't come by accident or from sheer good luck. It's all been due to tough work by a determined governor, like-minded legislators and Ohioans who were ready to see change.

It's clear that the rest of the nation has its eyes on Ohio – as they all want to know how we're doing it. But we're not done by any means. It's understandable that some Ohioans may be ready to pull over to the rest stop to take a well-deserved break, but Governor Kasich believes we need to keep our foot on the accelerator and make an even more determined drive to grow our state.

How does Ohio EPA fit in with this?

As it has been since its creation in 1974, Ohio EPA's mission is to protect the environment and public health by ensuring compliance with environmental laws and demonstrating leadership in environmental stewardship. I take very seriously our commitments to ensure Ohio companies comply with our laws and protect public health. Where I differ from some past Directors is that I believe we can and should first use our voluntary programs and business assistance tools to assist companies to comply with our complex regulations, and, at the same time, help businesses expand and locate in Ohio and create jobs and economic prosperity in Ohio.

As examples of this commitment to economic development assistance, the Agency provides \$40 million per year in funding to local governments and organizations through grants for air pollution control, environmental education, diesel school bus retrofits, watershed restoration, and acquires land and conservation easements to protect and improve water

quality. Ohio EPA also supports economic development by awarding \$375 million per year in federal and state funded low-interest loans to local communities for wastewater and drinking water infrastructure projects.

At the end of the day, we believe Ohio EPA is a national leader in protecting human health and the environment, and an asset when assisting companies locate and expand in Ohio. I do and will continue to strive to ensure we maintain this very important balance of using our regulatory tools and our business assistance tools together to help Ohio grow and maintain a healthy environment.

As an overview of who we are, we have approximately 1,100 full-time and 100 seasonal employees in Columbus, Reynoldsburg, Groveport, Twinsburg, Bowling Green, Logan, and Dayton. We issues permits governing installation and operation of pollution sources; provides oversight through inspections and air, water, and ground sampling; monitors and reports on environmental quality; provides compliance assistance and environmental education to industry and the general public; helps businesses prevent pollution; and responds to spills and other emergencies 24/7.

Our proposed budget will reduce our number of full-time equivalents by 27 through attrition. A small but significant reminder that we are watching the state's dollars carefully and adjusting staffing and as needed, not simply adding more staff when new programs come along.

Our budget proposal for fiscal year 2016 is \$183.2 million, an 8.2 percent **decrease** from fiscal year 2015. Funding for fiscal year 2017 would be \$185.9 million, a slight 1.5 percent increase from fiscal year 2016.

\$10.9 million per year of comes from the General Revenue Fund. This \$10.9 million pays for the E-Check auto emissions testing program in seven counties in Northeast Ohio because these counties are not in attainment with federal ozone requirements.

Ohio EPA's budget does not include any fee **increases**. We are asking to only extend existing fees for our air, surface water, drinking water and materials and waste management divisions, and to reallocate materials and waste management funding to support our increased focus on business assistance, compliance assistance and pollution prevention.

Ohio EPA's budget asks for one new fee, but it will support a program that I believe will make us more efficient and save money in the long run. This new program is to develop a "certified water quality professional program," which I will detail later in my testimony this evening.

We are asking to use our drinking water protection fund as state matching funding for federal grants, continue conducting the successful Diesel Emission Reduction Grant program (DERG) and increase spending authority to update the surface water permitting/tracking computer program. Again, these changes will help leverage federal dollars and provide more

funds for drinking water upgrades, as well as supporting the DERG program that is helpful to municipalities and others to reduce harmful diesel emissions from school busses and protect our children's health.

In summary, we are doing everything we can as an agency to take Ohio to the next level and create more pathways and more opportunities for Ohioans to succeed while protecting the environment. I am fully convinced we can be a key positive driver in creating new jobs and strengthening our families and our communities. As the Governor has said, and I concur, a job is the number one way to keep Ohioans out of poverty.

Let me provide you with some specifics on the Certified Water Quality Professional program I previewed earlier. First, in our Division of Surface Water, we are excited to propose a Certified Water Quality Professional program. The "certified water quality professional" program will allow a prequalified, 3rd party private-sector evaluation and assessment of wetlands and streams for water quality certification and Isolated Wetland Permit applications.

This proposal will be mirrored after our successful certified professional provisions of our Voluntary Action Program (VAP) used to clean up blighted properties for reuse. This program may be the first of its kind nationally and is designed to eliminate duplication while making certain we protect our critical wetland and streams while reviewing applications to impact these resources. We believe that this new private certification process will streamline review efforts and reduce the time it takes to issue permits. We also fully believe we have safeguards, such as proposed training and certification of all the new water quality professionals, as well as an auditing program to ensure work is done correctly.

Rest assured, this program has appropriate safeguards to protect our critical wetlands and streams. While we are confident this new program will work to cut the time it may take to receive a permit, we anticipate having critical engagement and auditing of all new "certified water quality professionals" and their work product to ensure they follow the law.

We believe this will work because it has already worked in Ohio. The brownfields VAP serves as a good model as it's proven its effectiveness over the past 18 years. It has provided a streamlined and environmentally sound path to clean up contaminated property and has a proven track record of making sure that this work is done professionally and within the requirements of the law.

Ohio EPA, ODNR and interested parties worked together on a provision dealing with right-to-know reporting for oil and gas producers. Since 2001 oil and gas producers have used ODNR's production reports to meet the federal Right-to-Know chemical inventory provisions. Recently that practice was challenged and it was determined that the reports needed to be updated to capture regulatory changes. Our budget language will provide a mechanism for oil and gas producers to resume use of production reports in 2016 to meet state chemical inventory disclosure requirements while ensuring those reports are statutorily up-to-date and available to emergency response professionals in case of an emergency. This will eliminate a

duplication of effort because the companies will not be required to provide the same information to two government agencies.

Another proposal we have will provide Ohio EPA emergency responders with the authority to request chemical information that may include confidential trade secret information in the event of an emergency. As you likely know, Ohio EPA emergency response staff respond 24/7, 365 to environmental spills and disasters and coordinate mitigation and cleanup efforts with local, state and federal partners to ensure Ohio's environment is protected. This proposal, simply, but very importantly, will allow Ohio EPA to ask for information from companies during an emergency and share that information with others, such as water treatment plant operators who have an immediate public health or safety interest to protect.

The need for this provision came from issues that we dealt with during an oil and gas well pad incident last summer. The language would protect the confidentiality of trade secret information provided to an emergency responder, and extend that confidentiality to others, such as water plant operators, who receive the information for purposes during an emergency. This very important change will provide us the ability to protect public health in the event of an emergency, while also protecting confidential business information.

Governor Kasich has called Lake Erie the crown jewel of Ohio. I agree with him. Since the implementation of the Clean Water Act in 1972 Lake Erie has made a remarkable recovery. Unfortunately, for reasons that are not entirely clear, and as evidenced by recent increases in algal blooms, we appear to be back-sliding. Two provisions in our budget proposal will help us, in addition to those at ODNR and ODA, to continue addressing algal blooms, especially in the Lake Erie watershed.

The first provision would require certain wastewater treatment plants to monitor their discharge for phosphorus and require plants that don't have current phosphorus limits to conduct a study to determine the feasibility of such a limit on their systems. Given the issues with nutrient and phosphorus loading in Ohio's waters, including inland lakes and Lake Erie, it is important to have accurate data on the amount of phosphorus discharged into our waters. This amendment will provide a framework for future targeted efforts and be very valuable when determining how to allocate resources to best address the algae problem.

Dealing with dredge material is another important piece of our budget proposal. While dredging our harbors is vital to Ohio's economy, placing dredged material in Lake Erie worsens the environmental problems in the lake. It is simply not beneficial to place this material back in Lake Erie and I am concerned about the potential impact on water quality of continuing this practice.

In the Cleveland harbor, one of our eight federal navigation channels that must be dredged by the U.S. Army Corps of Engineers to keep commerce moving, the material still contains PCBs and other legacy contaminants. As you have certainly heard recently, Ohio strongly opposes the Army Corps proposal to dispose of this PCB-laden material in Lake Erie.

This material needs to be placed in a landfill to keep it from impacting our drinking water and fisheries.

In Toledo and other harbors, there is concern that the phosphorous and nutrient-laden dredge material can contribute to algal blooms that jeopardize drinking water and potentially impact tourism and fishing. While finding other uses for this material is a huge challenge, there are, or we must find, ways to beneficially reuse this clean material so that it can be a marketable commodity, not a liability. This amendment will all but eliminate the practice of open lake disposal by 2020 and incentivize other options for the dredge materials. With the environmental impacts of dumping this material in the lake evident, it is time to rethink this and find ways to reuse and recycle this material.

We are also proposing a provision that would create a “knowingly” and “purposely” standard for water pollution control violations. Currently, all criminal violations of Ohio’s water pollution laws are misdemeanors, regardless of their severity or the intent of the violator. This is inconsistent with our authorities under other programs and is a needed change.

As evidence these changes are needed we need to look no further than the egregious illegal dumping of brine material into the Mahoning River in Youngstown that occurred throughout 2012. Without the assistance of the U.S. Department of Justice, the individuals responsible for this crime would not have been able to have been criminally charged and convicted as criminals under the Clean Water Act. While this is a positive result and sentencing has begun for individuals involved, it is important this law be updated to ensure Ohio does not have to rely on the federal government to respond to violations that occur within our borders.

We are proposing two provisions that would help improve and protect drinking water. We have found that public drinking water systems are good at identifying new infrastructure needs to support new development projects. But once the pipes are in the ground, they are often forgotten or poorly maintained. We are proposing to ensure the long-term sustainability of public water systems by requiring them to develop and implement an asset management plan. Such a plan will drive system operators to think about how to maintain their systems, and identify and plan to address deficiencies before there are significant public health risks and non-compliance.

Our most recent example of this need comes from Lawrence County in the past few weeks where due to a system failure, hundreds were left without water.

In this not so unique instance, one of two pump stations flooded, causing loss of both pumps in that station. Approximately half of the water system served by that station, including two storage tanks, emptied before one of pumps could be restarted. Because of the system’s inadequate pumping capacity, lack of a backup and a large amount of unaccounted-for water loss (reported to be nearly 70%), it has taken more than a week to fill the system. Because the water system’s lack of a competent operator, coupled with having no staff with technical,

financial or managerial capability, or complete knowledge of the infrastructure components, this was a failure waiting to happen, and it did. Ohio EPA staff, with support of the general manager of the nearby HECLA Water Association, had to operate the system to restore service. Several other nearby water systems also provided support, as did the local and Ohio EMA. This is an all-too-familiar reason why this proposal is needed. Understanding and managing critical water infrastructure is critical. Millions of Ohioans depends on it.

Ohio also has many public water systems owned and operated by private entities, including mobile home parks, homeowners' associations and nursing homes. The provision of drinking water is often considered secondary to the primary business they conduct. The owners of these systems often don't understand the full costs for the operation and maintenance of their water systems. After a period of neglect, the systems break down, resulting in water outages for lengthy periods of time, public health risks and non-compliance.

Current law requires that homeowners associations, when developing a new drinking water system or modifying an existing system, maintain some type of financial assurance to address serious problems that may arise affecting the ability to provide a safe, reliable source of drinking water. Ohio EPA is proposing a similar legislative change that would require manufactured housing communities, apartments and nursing homes that have their own public water systems to also maintain emergency funds to fix major problems. This legislation addresses the financial gap by requiring deficient owners to establish an escrow account and systems, in general, to demonstrate financial assurance.

A recent example of this began in September 2014 at Pineview Estates Mobile Home Park in the Dayton area. The manufactured home park had been sited with a significant deficiency after an inspection identified only one of the two wells were working and the working well was leaking water. Nothing had been done to correct the wells and on December 1, 2014, the only working well failed. This caused the system to depressurize and nearly 500 people were without potable water. The owner was unresponsive and didn't want to address the wells or put money into the system. This caused an extended depressurization and boil advisory while residents had to rely on bottled and hauled water for several days.

Additional changes we are proposing include a technical change in law dealing with air pollution control to fix an over-looked cross reference from earlier legislation; change the definition of lead free to be consistent with federal law; update state law regarding the Water Pollution Control Loan Fund to be consistent with federal law changes; continue the federally required E-Check program in seven northeast Ohio counties; and combine two separate, but similar, advisory councils related to solid waste and recycling.

As you can see, we are committed to working with fewer staff in the next biennium and exploring creative ways to protect the environment while encouraging economic growth. We are looking for opportunities to assist businesses with technical and financial resources without needing statutory changes, and we are doing this by combining our compliance assistance and funding programs into one office to provide a "one stop shop" for communities and businesses

to come for help at Ohio EPA. This effort is just getting started, but through 2016 I will be talking more about how we are building this new free, confidential service program to help Ohio businesses and communities.

As director of Ohio EPA, I share the Governor's vision for jobs growth and new opportunities to find success in our state and at the same time make certain all Ohioans have a safe environment in which to live and work. I appreciate the opportunity to speak with you today and I hope you are as proud as I am of Ohio's progress and vision for a prosperous future. I would be happy to answer any questions you have.