

Environmental Update

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Welcome to the Shumaker, Loop & Kendrick, LLP Environmental Update; a monthly publication dedicated to providing content regarding Ohio administrative and regulatory law, as well as up to date information on the Ohio EPA's rulemaking process, including early stakeholder outreach, interested party review and request for comments, proposed rules, and public comment periods. In addition, the update offers information regarding environmental issues affecting businesses and environmental professionals across the state of Ohio. If you have questions regarding the information provided, feel free to contact Marcus Miller at mmiller@shumaker.com or 614.628.4466.

LAWYER SPOTLIGHT

Marcus Miller is an associate in the Litigation and Environmental practice groups of Shumaker, Loop & Kendrick, LLP. Marcus has experience representing clients in various aspects of environmental law, including compliance and environmental litigation. He also regularly represents clients in commercial transactions involving environmental issues, including due diligence in mergers and acquisitions. Marcus spent four years working for Shumaker full time while attending law school at night. While in law school, Marcus served as a judicial extern for the Honorable Algenon Marbley of the United States District Court for the Southern District of Ohio, as well as judicial extern for Chief Justice Maureen O'Connor of the Ohio Supreme Court. He was also a staff member on the *Capital University Law Review*, Volume 45. Marcus brings a high level of dedication to his work and to each client that he serves.



ENVIRONMENTAL PRACTICE GROUP ATTORNEYS

[Michael E. Born](#)

[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](#)

[Louis E. Tosi](#)



OHIO EPA RULEMAKINGS AND ANNOUNCEMENTS



Air

Availability of Draft BIA Document for Comment - ERC Banking Program Rules: After review of the rules contained in Ohio Administrative Code (OAC)

Chapter 3745-111, regarding the requirements for the Voluntary Emission Reduction Credit Banking Program, Ohio Environmental Protection Agency (Ohio EPA), Division of Air Pollution Control (DAPC, has determined the rules remain necessary but need no changes.

The ERC Banking Program is a voluntary banking program, which creates a method for generating and transferring emission reduction credits for the future use of offsetting emissions in areas designated as not meeting the National Ambient Air Quality Standards (nonattainment areas. Currently, Ohio is a nonattainment area for particulate matter (PM2.5 and eight-hour ozone. Under the New Source Review requirements of the Clean Air Act, any construction of a new or modified major source in a nonattainment area must offset emission increases with creditable emission reductions from an existing source in a similar geographic area. Facilities that can demonstrate emission reductions can bank credits and sell them to potential buyers. Those looking to construct a new or modified major source can use the banking program to identify and purchase emission credits to offset any increases in emissions from the project.

DAPC is requesting comment on the rules and the draft business impact analysis (BIA document before the division formally proposes them to the Joint Committee on Agency Rule Review (JCARR. The Public Notice is available [here](#). The Rule Synopsis is available [here](#). The Business Impact Analysis is available [here](#). DAPC will be accepting comments on the BIA document through **Friday, February 14, 2020**.

If you have any questions regarding the ERC Banking Program, contact [Cheri Budzynski](#) at cbudzynski@shumaker.com or 419.321.1332.

Ohio EPA Air Pollution Reporting Reminders:

On Friday, February 7, 2020, Ohio EPA issued a reminder to facilities regarding the following annual reporting requirements:

- Permit Evaluation Report - due February 18 (ONLY due for those facilities that have had a Permit to Install and Operate (PTIO) issued that was effective during the reporting period)
- Annual Emissions Report - due April 15
- Title V Compliance Certification - due April 30
- Quarterly Compliance Report - due April 30

Additional information regarding air pollution reporting and guidance is available [here](#).



Water - Drinking and Groundwater

Proposed Revisions to Primary Drinking Water

Standard Rules: Ohio EPA, Division of Drinking and Ground Waters (DDAGW) has proposed revisions to several Primary Drinking Water Standard rules in Chapter 3745-81 of the Administrative Code to JCARR. The proposed amendments are a result of the five-year rule review requirements of Section 106.03 of the Ohio Revised Code (ORC). The Public Notice is available [here](#). The Business Impact Analysis is available [here](#). The comment deadline is **February 26, 2020**. Ohio EPA will also hold a public hearing on the revised rules on **February 26, 2020 at 10.30 am** at Ohio EPA Central office, Columbus, Ohio.

Public Notice: Proposed Rulemaking Governing Disadvantaged Community Loan Rules of the Ohio Administrative Code: Ohio EPA DDAGW has drafted minor revisions to Disadvantaged Community Loan rules in Chapter 3745- 88 of the OAC. The draft amendments are a result of the five-year rule review requirements of Section 106.03 of the Revised ORC. Proposed revisions to the rules include the following:

- Revising the definition of "Disadvantaged Assistance" in OAC Rule 3745-88-01 to clarify that maximum term is consistent with what is allowed in the Safe Drinking Water Act.
- Changing "Pre-application" to "Nomination" in OAC chapter 3745-88.
- Removing the requirement to submit a complete application separate from the WSRLA loan application for designation as a disadvantaged community in OAC Rule 3745-88-02.
- Clarifying that the poverty rate in the area served by the applicant is determined by the most recent data of the US Census Bureau in OAC Rule 3745-88-02.
- Clarifying the percentage of capitalization grant that may be available to provide subsidies to disadvantaged communities in OAC Rule 3745-88-02. This revision is proposed to make the rule consistent with the federal requirement.

The Public Notice is available [here](#). The comment deadline is **March 5, 2020**.

If you have questions, contact [Mike Born](#) at mborn@shumaker.com or 614.628.4415.



Water - Surface

Raccoon Creek Watershed Draft Biological and Water Quality Report Available for Comment: Ohio EPA Division of Surface Water (DSW) recently made the Raccoon Creek Watershed Draft Biological and Water Quality Report available for review and comment. The report Fact Sheet is available [here](#). The Report is available [here](#). The comment period is closed.

Lower Scioto River Draft Loading Analysis Plan: Ohio EPA DSW recently made the Lower Scioto River Draft Loading Analysis Plan available for review and comment. The plan Fact Sheet is available [here](#). The Report is available [here](#). The comment deadline is **March 2, 2020**.

Interested Party Review - Beneficial Use Designation Rules (OAC 3745-1): Ohio EPA DSW is seeking input on draft rules in OAC Chapter 3745-1 for the following Water Quality Standards Beneficial Use Designation rules:

- 3745-1-11: Maumee River drainage basin
- 3745-1-12: Sandusky River drainage basin
- 3745-1-19: Huron River drainage basin
- 3745-1-23: Portage River drainage basin

Ohio EPA has drafted revisions to these rules, which includes changing the beneficial use designations for some water bodies, adding water bodies that are currently undesignated to the rules, and verifying existing beneficial use designations already listed in the rules. The Fact Sheet is available [here](#). The comment deadline is **March 5, 2020**.

If you have questions, contact [Cheri Budzinski](#) at cbudzinski@shumaker.com or 419.321.1332.



Department of Environmental Response and Revitalization

Ohio EPA and U.S. FWS Issue Request for Proposals for Natural Resource Damages Restorations of Aquatic, Wetland, Upland, and Riparian Habitat within Areas of Lucas and Ottawa Counties, Ohio: On January 15, 2020 the Ohio EPA and the United States Fish and Wildlife Service (jointly the NRD Trustees), issued a Request for Proposals (RFP) for restoration and preservation projects as part of compensation for injured natural resources along the lower Ottawa River, Lucas County, Ohio and western Lake Erie. Compensation will be provided through completion of preservation and/or restoration projects with similar types of habitat as those injured in the lower Ottawa River and western Lake Erie by historical releases of hazardous substances. The RFP is available [here](#). Submissions are due by **March 27, 2020**.

If you have questions, contact [Doug Haynam](#) at dhaynam@shumaker.com or 419.321.1354.



Ohio EPA Announcement

Ohio EPA's 11th Compliance Assistance Conference: The Compliance Assistance Conference is a two-day conference (March 31 - April 1, 2020) targeted to businesses and others who need to know the basics about environmental compliance. However, the agenda also includes advanced topics, such as Title V permits and reporting and a special three-hour Spill Prevention, Control, and Countermeasure (SPCC) session. There also will be a plenary panel session from EPA program chiefs. The conference will cover hot topics that are important to you, including:

- Risk Assessment 101
- Preparing a Storm Water Pollution Prevention Plan
- Intro to Water Quality Standards
- EPCRA, TRI and RMP Reporting
- Air Permitting Basics and Reporting
- Preparing for an Ohio EPA Inspection
- Hazardous Waste Requirements
- Hazardous Waste Rules Update
- Used Oil and SPCC Requirements
- NPDES Permits and Electronic (e-DMR) Reporting
- Compliance Assistance: Resources to Help You Reduce Pollution and Achieve Compliance
- Storm Water Requirements for Industrial and Construction Activities
- Universal Waste and Used Oil Rules

The Conference agenda is available [here](#).

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