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Full Hearing

**Senate Agriculture Committee
 Future Agricultural Nutrient Management Legislation
 Ohio Department of Natural Resources Director Jim Zehringer,
 Ohio Department of Agriculture Director David T. Daniels and
 Ohio Environmental Protection Agency Director Scott Nally
 June 11, 2013**

Director Zehringer:

Good morning Chairman Hite, Vice Chairman Balderson, Ranking Member Gentile and members of the Senate Agriculture Committee. Thank you for this opportunity to discuss future legislation that we believe achieves an important balance in Ohio: healthy lakes and healthy bottom lines for our state's farms.

I am Jim Zehringer, Director of the Ohio Department of Natural Resources. The Department, through its Division of Soil and Water Resources, has primary responsibility for working with farmers and other landowners directly and through the County Soil and Water Conservation Districts on a variety of natural resource related issues. Over the past year and into the foreseeable future, agricultural nutrient management will be the number one priority for the Division, and one of the top priorities of the Department. I am pleased to be joined here today by Director David Daniels of the Ohio Department of Agriculture and Director Scott Nally of the Ohio Environmental Protection Agency.

I would like to provide a brief history, and some broader context, of our agencies' collective efforts to addressing the issue of agricultural nutrients and water quality, through the creation of the *Directors' Agricultural Nutrients and Water Quality Working Group*. I would also like to briefly discuss future legislation which, many would argue, has been a long time coming. While it is imperative that we move forward as quickly and as wisely as possible, we must recognize that there is no proposal, and no

regulation, that will make an immediate impact on improving water quality overnight. But we believe that by moving forward with recommendations that have been carefully developed through an inclusive and deliberative process, we can be proactive in making a measureable difference over the long run.

But in the short term, it is imperative that we act soon after what has happened recently in Lake Erie. Over the last several years, there has been a noticeable and significant increase in the severity and frequency of algal blooms which have occurred in Lake Erie, attracting unfortunate statewide and national attention. We must maintain the ecological integrity of Lake Erie, and its economic importance without putting over-burdensome regulations on Ohio's farmers. It is our duty to balance the health of Lake Erie and the profitability of our state's agriculture.

It is important to note that the loading of dissolved phosphorus into Lake Erie's tributaries from agricultural sources is not an intentional act by farmers in the watershed. Instead, we are witnessing the combined effect of a non-point source dynamic over a very large area. Developing an appropriate and effective response to a non-point source issue of this magnitude becomes much more complex, and far more challenging.

Recognizing these challenges, Governor Kasich asked the Directors of the Ohio Department of Natural Resources (ODNR), Ohio Environmental Protection Agency (OEPA) and Ohio Department of Agriculture (ODA) to develop recommendations on how the State of Ohio can proactively partner with the agricultural community to encourage agricultural production practices that promote nutrient stewardship. The three agencies brought together a diverse working group that included farmers, research scientists, agribusiness leaders, and environmentalists to discuss how agricultural practices may be contributing to the deteriorating conditions in Lake Erie, and to help the directors develop those recommendations. The establishment of the *Directors' Agricultural Nutrients and Water Quality Working Group* was significant, and unprecedented, for several reasons. First, while other groups had been more comprehensively focused on identifying all sources of phosphorus (e.g., wastewater treatment plants, industrial discharges,

home sewage treatment systems, etc.), this working group has been focused only on the role of agriculture.

Secondly, the diversity of stakeholders which comprised this working group was unique. Never before have so many individuals and organizations been convened on this issue, representing such a broad array of interests and expertise. In addition to the directors and staff from the three agencies, participants of this working group ranged from agricultural businesses and certified crop advisors, to representatives of commodity and general farm organizations. Environmental interests and academia as well as federal agencies were also at the table. In all, more than 125 individuals participated in at least one meeting.

Finally, the working group was unique in that it set out to develop actionable recommendations within a much shorter period of time than many previous undertakings. We didn't want to take years to develop recommendations which would merely sit on a shelf and collect dust.

One of the goals of the group was to assist the three directors in recommending best management practices (BMPs) that can be readily adopted in the short term, and to identify methods by which those BMPs can be communicated to both producers and the industry. The Directors established the foundation of their recommendations by encouraging farmers to adopt the nutrient management guidelines known as 4R Nutrient Stewardship.

The 4R concept promotes using the right fertilizer source, at the right rate, at the right time, with the right placement. Recent studies indicate that the timing of fertilizer application, and how well it is incorporated into the soil, can significantly reduce dissolved reactive phosphorus from entering our waterways.

The initial recommendations for improving production practices made by the working group include:

- Taking frequent soil samplings and following soil nutrient rates based on OSU guidelines
- Not spreading nutrients on frozen or snow covered ground

- Encouraging nutrient management plans.
- Incorporating nutrients into the soil

Based upon the solid foundation of work that has been established by the recommendations of the *Directors' Agricultural Nutrients and Water Quality Working Group*, the agencies began to work over the course of this past year to develop draft legislation which would implement some of those key recommendations and establish new or modified authority where warranted. On March 7th of this year, continuing the proactive and inclusive approach that has been the hallmark of the working group, we brought together farm organizations, commodity groups, agri-business, and environmental interests, in order to receive their input on the initial draft legislation. Our goal from the beginning was to develop legislation that includes effective, yet non-burdensome, initiatives to help address ag-nutrient issues while providing all of Ohio's citizens with the confidence that water quality in Lake Erie, or anywhere in Ohio, is being taken seriously by all of us.

As a result of all of these efforts, significant changes were made to the initial proposed legislation. I would now like to highlight the key aspects of what we hope to see implemented in future legislation. From the perspective of ODNR, our proposal is largely centered around nutrient management plans (NMPs):

- **Expanding who is authorized to develop NMPs for farmers**

Building upon the concept of the nationally recognized 4R program, we believe nutrient management plans can offer a more structured approach by which agricultural producers can follow a clear path forward in managing nutrients on their own farms, basically implementing the 4R's. By expanding beyond local soil and water districts, and the Division of Soil and Water to include the private sector, we can increase the capacity to meet the potential needs of the producers. By incorporating specific and consistent standards, nutrient management plans can provide affirmative defense for producers, more of these plans can be completed, and the process will be more accessible to more farmers.

- **Expanding what is defined as a “Nutrient”**

Currently, ODNR’s overall authority is largely limited to livestock manure (and *not* to commercially manufactured fertilizers, which are commonly used on grain farms). Recognizing that “a nutrient is a nutrient,” and regardless of source, our goal should be to keep nutrients on the land and out of our water. The ability of ODNR to treat all agricultural nutrients equally will enable the department to more proactively work with all farmers in addressing today’s nutrient management and water quality issues.

- **Protecting farmers who develop NMPs**

Today, farmers who work with ODNR and local Soil and Water Conservation Districts to develop nutrient management plans are at risk of sensitive information being subject to public records request. From soil test results to planned crop rotations and fertilizer applications, this information must be protected as proprietary to the farm’s business plan. This very real possibility can deter farmers, who want to do the right thing for their farms and for the environment. We want to remove this hurdle, and assure the farmers, that confidential information contained in their plans will remain confidential. This protection is afforded producers who work with NRCS in developing Comprehensive Nutrient Management Plans utilizing the same basic information that is included in a Nutrient Management Plan. We need an Ohio law that mirrors the federal law. A court case in the state of Maryland recently up-held law there that said nutrient management plan information held by the state is confidential information.

- **Restructuring Soil & Water Resource Commission**

The Commission provides over-sight to the Division and approves the state matching funds to local Soil & Water Districts. The proposed legislation would make the Department of Agriculture and OSU College of Agriculture representatives on the Commission as ex-officio members equal to ODNR and in their place add two additional farmer members. This would not increase the size of the Commission.

In closing we will continue to work with the agricultural producers, agri-business and environmental interests through the legislative process. Thank you again for this opportunity. I look forward to our discussion. I would now like to introduce David Daniels, Director of the Ohio Department of Agriculture.

Director David T. Daniels:

Thank you, Director Zehringer. In addition to the changes Director Zehringer just spoke to you about, the Department of Agriculture has been working on language to implement several of the working group's recommendations to develop a fertilizer applicator certification program and to collect more detailed data from fertilizer distributors and retailers.

Fertilizer Applicator Licensing

ODA's Pesticide & Fertilizer Regulation section currently issues licenses to pesticide applicators that require continuing education credits every three years. One initial response that was made by OSU Extension to address the water quality problems, particularly in the northwestern region of the state, has been including at times a nutrient management education block to the pesticide continuing education curriculum.

The language in this bill, however, will give ODA the authority to also develop a separate, comprehensive certification program for commercial and private fertilizer applicators and will require applicators to renew that certification every three years. The curriculum for this program would be based heavily on the 4R nutrient management concept and other best management practices that emerge as research on the issue progresses.

Fertilizer Data Collection

The proposed legislation would also require licensed fertilizer retailers to report annually data on where fertilizer sales are made. Currently, fertilizer retailers in Ohio must report to ODA the tonnage (or the amount) of fertilizer that is sold, but there is no requirement to provide information about where that fertilizer's last distribution point is located. The bill would authorize the department to collect information on the amount and location of sales. The purpose of this change is to provide more data for research and to guide future policy making decisions.

There are a variety of factors contributing to algal blooms in our lakes. Because there are several non-agricultural sources of dissolved phosphorous entering Lake Erie, it is important to note that Ohio's agricultural industry should not be singled out as the only source. Nonetheless, we do know that the land application of commercial fertilizer and livestock manure is a contributing factor.

One of the key pieces of the working group report last year were the identification of the guiding principles which we have tried to follow. Through every step of this process, we have worked to balance the need to maintain the viability of the agricultural producers in the state with the need to take quick action to restore the quality of our water resources.

This is a complex problem and there are still many unanswered questions but I believe that Ohio farmers understand the problem and want to be part of the solution. They are stewards of the land. They care about the environment. It is the foundation of their business and their survival. They understand that it is time to rethink the way we have been used to doing things to preserve the quality of our lakes and streams, and safeguard public health. This bill is a tool the state will use to help them do that.

At this time I would like to ask Ohio Environmental Protection Agency Director Scott Nally to step forward and make a few remarks.

Director Scott Nally:

Thank you, Director Daniels. Chairman Hite, Vice Chair Balderson and Ranking Member Gentile, thank you for the opportunity to speak briefly on this important legislative initiative and to provide some insight into all of the great work and outreach efforts that have taken place since the first Directors' Agricultural Nutrients and Water Quality Working Group was convened in August of 2011.

Since that time we, as a state, have reached out to a broad cross section of stakeholders to gather input about the nutrient management issues impacting Ohio. The outreach also provided a forum to discuss and recommend best management practices we can implement. This effort has resulted in a number of exciting partnerships.

For instance, we leveraged the resources at Ohio's colleges and universities, our research institutions and private businesses to create partnerships and a monitoring network so as we implement best management practices we are set up to assess the effectiveness of those practices.

We are very proud of these partnerships which include Wright State University; Battelle; TetraTech; United States Geological Survey; YSI, an Ohio-based company and world leader in water monitoring; Natural Resources Conservation Service, Heidelberg University; OSU Extension and Soil and Water Conservation Districts, University of Toledo; The Ohio State University Stone Lab; and John Carroll University.

And finally, as the Agency responsible for developing the state nutrient management plan to submit to the federal government, Ohio EPA realizes this is not just a non-point source issue. This is an issue all of us must work on together -- from both the point source (businesses, homeowners and municipalities) and non-point source perspective -- to make a difference. Ohio EPA will continue to work with our partners at ODNR and ODA to make sure we include all of our constituent groups in efforts to improve nutrient management practices in our state. Thank you on behalf of all three directors. We're happy to take any questions you may have.

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