House Agriculture and Natural Resources Committee
Testimony in Support of House Bill 490
Provided by Ohio Department of Natural Resources Director James Zehringer
April 8, 2014

Good morning Chairman Hall, Vice Chairman Thompson, Ranking Member Cera and members of the House Agriculture and Natural Resources Committee. My name is Jim Zehringer and I am the Director of the Ohio Department of Natural Resources (ODNR). Thank you for giving me the opportunity to provide testimony on the policies being proposed by ODNR in House Bill 490. These common sense proposals are designed to protect public health and safety and make government more efficient and effective. With me today to assist in answering any questions at the conclusion of my testimony are: Mike Bailey, Chief of the Division of Soil & Water; Rick Simmers, Chief of the Division of Oil and Gas Resources Management; Scott Zody, Chief of the Division of Wildlife; and Paul Baldridge, Chief of the Office of Real Estate.

A number of our provisions are technical changes, and so in the interest of time I will skip over them in my oral testimony to instead focus on the provisions that have the most stakeholder interest. However, descriptions of those technical requests are provided below.

- Revises the definition of the term "tract" in oil and gas law. Currently, "tract" is defined as *"a single, individually taxed parcel of land appearing on the tax list."* However, because publicly-owned land is not taxed, it is sometimes not listed on the tax list. To address this, ODNR is proposing to revise the definition of tract to simply mean a *"single, individual parcel of land."*
- Clarifies which "owner" is being referenced in the oil and gas mandatory pooling statute. Currently, in the mandatory pooling statute, it is unclear whether the law is referencing a mineral rights owner or a surface rights owner. This revision helps to better distinguish one owner from the other.
- Removes the exemption in oil and gas law that states that no fee is required when submitting an application to plug back an existing well. Plug back permits are the only permits that the Division of Oil and Gas Resources Management (DOGRM) does not charge a fee for, and yet similar amounts of time and effort are involved in the review and processing of these permits as any other permit the Division receives. All permits submitted to DOGRM, including this one if approved by the General Assembly, are based on population thresholds where the permitted activity would be conducted.
- Allows the Director to approve specific types of property transactions under $1,000,000 which are currently approved by the Governor. The vast majority of these transactions involve small value sales, leases and licenses that convey permanent or temporary interest or use of land. For example, canal lands are leased or sold for residential or commercial use. Licenses are frequently issued for replacement or expansion of public utilities. In addition, licenses or easements are granted to neighbors across small sections of public lands so they may have improved access to their homes. On occasion, small land exchanges or sales are transacted when they improve ODNR's operational efficiency, including the sale of surplus lands, such as canal lake lands.
- Brings ODNR's newspaper publication requirements in line with the Department of Administrative Services law enacted under HB 153 of the 129th General Assembly so that when ODNR publishes a notice or advertisement two or more times in a newspaper of general circulation, the first publication shall be made in its entirety in a newspaper of general circulation, but the second publication may be made in abbreviated form in a newspaper and on the newspaper's internet web site, if the newspaper has one.

Transfer of the Agriculture Pollution Abatement Program from ODNR to ODA:

During the course of numerous conversations that Director Daniels and I have had with the agricultural community over the past year, we regularly heard the suggestion that it would make more sense to house all agricultural nutrient issues under one cabinet-level agency, rather than dividing them among multiple agencies. Currently, state oversight of agricultural pollution and manure management responsibility for smaller livestock farms belongs to ODNR. The Ohio Department of Agriculture (ODA), meanwhile, regulates our state's larger livestock farms.

Under HB 490, ODNR's authority over manure management on small-scale farms would be transferred to ODA. Since ODA already runs a robust manure management program, and because ODA will soon have comprehensive authority of commercial fertilizer thanks to your help in passing Senate Bill 150, it only makes sense that ODA would be the appropriate agency to administer authority over all agricultural nutrients.

I want to be very clear that this proposal will in no way diminish the invaluable role that each of Ohio's 88 local Soil and Water Conservation Districts (SWCDs) play in addressing manure-related issues. The respective authority of each district will not change, nor will the State of Ohio's commitment to local SWCDs. Our agencies fully recognize that it is only through strong SWCDs that Ohio will be able to successfully address our long term agricultural nutrient and water quality issues. Local SWCDs have always been, and will continue to be, the "boots on the ground" when it comes to addressing water quality concerns, especially those related to nutrients. One of the many strengths of SWCDs is their ability, through local relationships, to help livestock farmers *voluntarily* fix problems. Currently, on those occasions when local SWCDs determine that voluntary measures alone are no longer sufficient and further enforcement action is necessary to protect Ohio's natural resources, they ask ODNR to take action.

What will change under this proposal is the state agency that a local SWCD eventually asks to assist in enforcement: it will now be ODA instead of ODNR. What will also change is how ODA will take action. Rather than utilizing the process of issuing Chief's Orders, as ODNR has historically done, ODA would instead utilize the authority to issue civil penalties, which is an enforcement process consistent with many of ODA's other regulatory programs, and one in which ODA has vast experience in successfully administering.

Emergency Planning and Community Right-to-Know Act (EPCRA):

As described on the United States Environmental Protection Agency's (U.S. EPA) website, EPCRA was passed by Congress in 1986 *"to help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment."*

Ohio has more than 64,000 producing oil and gas wells and thousands of associated surface storage facilities. Most of these wells and facilities must file EPCRA information to three, separate entities per EPCRA law: the state (through OEPA); county Local Emergency Planning Committee; and local jurisdictional fire departments. Prior to a state law change in 2001, local governments and fire departments had to index and store hard copies of required filings in order to access information in the rare event of an emergency.

To reduce this administrative burden on the locals and fire departments and provide a more efficient data search tool for not only emergency responders and local governments but also the public, the General Assembly enacted legislation in 2001 directing DOGRM to host and manage an emergency response website to fulfill the reporting objectives of EPCRA relative to oil and gas facilities. This website was designed by a multi-stakeholder team that included local emergency responders and county officials. In the event of an emergency, first responders utilize a geographic information system to access information regarding all oil and gas wells that are located within a radius of the emergency, including, but not limited to: unique well name and API number; location; coordinates; well ownership; products stored on location including all associated Material Safety Data Sheets (MSDS); and owner emergency response contacts

and phone numbers. Well status and ownership records are updated on a weekly basis by DOGRM. All of this information is conveniently available 24 hours a day, seven days a week.

It was recently brought to the U.S. EPA's attention that Ohio's system may not meet the strict letter of the law with regards to new EPCRA reporting standards. For example, the emergency response website does not include street addresses for oil and gas wells or the Dun and Bradstreet number of owners, which are both requirements of EPCRA. However, oil and gas wells do not have street addresses, and independent producers do not typically have Dun and Bradstreet numbers. Nonetheless, the U.S. EPA Region V issued a letter indicating that Ohio oil and gas operators are required to resume filing EPCRA reports for every well and facility through the standard EPCRA procedure.

In an effort to both correct any alleged deficiencies in the reporting system, as well as create the best quality access to all information, DOGRM is initiating a major upgrade to our Risk Based Data Management System that, among other functions, supports the emergency response website. DOGRM is willing to amend the database so that it includes fields for all information required under EPCRA.

At this time, ODNR is hoping that the U.S. EPA will provide the immediate guidance needed to ensure full compliance is achieved. Otherwise, DOGRM risks expending valuable time and resources on EPCRA updates that may later be deemed insufficient. If that coordination cannot be accomplished, the proposal in HB 490 would abolish the 2001 law change and revert all EPCRA reporting on the state-level back to the OEPA.

Enforcement of the Oil and Gas Law:

The majority of oil and gas companies in our state are good operators who hold a high regard for Ohio's laws and regulations. However, there have been a few instances where a company or its employee made a conscious decision to violate the law.

As a result of past events, the Administration has proposed legislative changes, both in a substitute version of SB 46 (-4 substitute version) and identically in HB 490 to add even more clarity and strength to Ohio's already comprehensive oil and gas law. The intent of our proposal is to:

1. Ensure that prior actions follow a company looking to do business in Ohio; and
2. Provide ODNR with tougher penalties and more options to address violations of the law by a company or one of its employees.

If an operator has a questionable history, that history should be considered as part of the review for any new permit, applicant or transportation certificate. If an operator chooses to break the law, ODNR should have the strongest language possible that allows the agency to immediately shut down operations that endanger public health or safety.

This proposal will help to ensure the maximum protection of public health, safety and the environment. And while there are many good oil and gas companies in our state, those few bad actors who show blatant disregard for the laws we have in place to protect Ohio's communities and natural resources will be held accountable for their actions. This proposal gives ODNR multiple avenues to accomplish this charge.

Incidental Takings at Wind Energy Facilities:

The Division of Wildlife (DOW) is proposing to clarify language that was enacted in the last Mid-Biennium Budget Review bill which allows the Chief to issue permits for the incidental taking of wildlife. "Taking" is generally thought of as harming or killing.

Our proposal would clarify that such permits would be issued to large wind generating facilities (greater than 5 megawatts) in Ohio to allow a certain level of taking of wildlife, specifically birds and bats, due to the operation of the wind facility. The current law is overly vague and lacks any mechanism for DOW to levy a fee for the value of wildlife taken under such a permit. The proposed amendments would clarify that

such permits only apply to large wind facilities and allow the Chief to establish through a public rule-making process the appropriate fees to charge relative to the value of wildlife allowed to be taken.

These changes are necessary due to the disparate nature of wind facilities in size, location and amount of incidental take that may occur. Therefore, it is very difficult to set or even estimate what an appropriate fee might entail. The rules would allow these situations to be addressed on a case-by-case, project specific basis. In addition, the rule process would allow DOW and industry, through the Common Sense Initiative process, the flexibility needed to negotiate not only fee issues, but also address strategies and operational adjustments that might be needed in the event a facility takes wildlife in excess of what is permitted.

Our interest is to avoid, minimize and mitigate to the greatest extent possible the taking of wildlife as a result of the operation of these facilities.

Mr. Chairman and members of the Committee thank you for your time and I would be happy to take any questions you may have about any of ODNR's provisions contained in HB 490.