

November 6, 2024
ENVIRONMENTAL RESOURCES TECHNICAL ADVISORY COMMITTEE
Executive Committee
Meeting Summary

Attendance

Tia Rutledge	Portage County Water Resources
Tony Demasi	City of Cuyahoga Falls
Dominic DiSalvo	City of Ravenna
Mike Fritz	City of Wooster
Kevin Givins	City of Orrville
Genny Hanna	City of Akron
Chuck Hauber	Summit County Engineer's Office
Kendra Heiser	Summit Soil and Water Conservation District
Patrick Jeffers	City of Twinsburg
Dan Joseph	City of Akron
Ross Nicholson	Summit County Department of Sanitary Sewer Services
Justin Rechichar	Portage County Health District
Pete Wearstler	City of Alliance
Julie Reis	Summit County Public Health
Paige Seech	Stark County Health Department
Patricia Vanah	Ohio EPA
Stephanie Deibel	Summit County Engineer's Office
David Kohlmeier	CTI Engineers, Inc.
Michael Liptak	EnviroScience, Inc.
Joe Hadley	NEFCO
Tom LaPlante	NEFCO

Vice Chair Rutledge called the meeting to order.

Public Comments

There were no comments from the public.

Meeting Summary

The October meeting summary was accepted as transmitted.

Discussion Item

"Regulatory Updates to the Clean Water Act – Ohio Wetlands Law and Compliance"; Michael Liptak, PhD, Certified Senior Ecologist, EnviroScience, Inc.

Dr. Liptak gave an overview of the 1972 amendments to the federal Water Pollution Control Act of 1948, when it became known as "The Clean Water Act", with the objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters". He then covered the legal history of federal jurisdiction under the Clean Water Act, i.e., the six U.S. Supreme Court cases that define "waters of the U.S.", what defines a "wetland"; and Ohio's wetlands law and compliance. He presented details on what constitutes "waters of the U.S." and noted that "waters of the U.S." isn't defined in the Clean Water Act. He then discussed how far upstream one can go before a stream or wetland is no longer a "water of the U.S.", based on decisions from six U.S. Supreme Court cases since 1985, ending with the Sackett v. EPA decision in 2023; and he explained Ohio EPA's isolated wetland law and compared it to the U.S. Army Corps of Engineer's Nationwide Permit requirements for impacting wetlands. Topics covered include:

- Previous amendments (updates) to the Water Pollution Control Act of 1948: 1952, 1956, 1959, 1960, 1961, 1965, 1966, 1970, 1971 (two during this year)
- Three types of streams: Perennial, intermittent, ephemeral

- Official Section 404 Clean Water Act definition of “wetland”
 - Wetlands have: Hydrophytic vegetation, hydric soils, wetland hydrology
 - U.S. Army Corps of Engineers’ (USACE’s) jurisdictional determination (JD) of wetlands
 - Legal history of federal jurisdiction under the Clean Water Act
 - Six U.S. Supreme Court cases and counting: all six cases discussed in detail with graphics
 - What does the statute actually say?
 - Section 301(a) prohibits discharges of pollutants to “navigable waters” with a permit
 - “Navigable waters” means “the waters of the U.S., including the territorial seas
 - Definition of “navigable waters” also applies in CWA Sections, 401, 401, and 404
 - Interpretation of “waters of the U.S.” controversial since the CWA of 1972
 - Executive Branch defined “waters of the U.S.” in 2015 (Obama Administration), 2020 (Trump Administration), and 2023 (Biden Administration)
 - Sackett v. EPA (6th U.S. Supreme Court wetlands case; May 25, 2023); “adjacent” debated
 - Adjacent to body of water connected to traditional interstate navigable waters
 - Has continuous surface connection with the body of water
 - U.S. EPA and USACE issue Final Rule to Amend 2023 Rule, published September 8, 2023
 - Ohio isolated wetlands regulation: Requires mitigation for ANY impact to wetlands
- USACE Nationwide Permit: Typically allows up to 0.1 acre of impacts to wetlands

Dr. Liptak’s presentation concluded with them fielding many questions from the ERTAC.

NEFCO FY2025 Work Program

NEFCO staff to begin an update of Clean Water (208) Plan Chapter 5: “Management of Nonpoint Source Pollution and Stormwater Runoff”

Mr. LaPlante reported that as part of NEFCO’s FY2025 contracts with Ohio EPA, staff will begin an update of this 208 Plan chapter. He went over Mr. Hadley’s plan for starting the Chapter 5 update, noting that Mr. Hadley believes this is an opportunity for the region to tell staff what’s needed in this chapter; what it should contain. Mr. LaPlante indicated that NEFCO staff will be reaching out to the city, county, and health districts stormwater program managers and coordinators to meet with them and discuss one-on-one any needed changes to their existing stormwater management programs, much the way the health departments identified in the first Chapter 4 update in the early 2000s what they needed ODH to do, leading to the 2015 Sewage Treatment System Rules, OAC 3701-29, to be developed and adopted by the agency.

Comments received by NEFCO on draft FY2025 201/208 FPA update, staff’s responses

Mr. LaPlante reported that the 30-day public review and comment period for the draft FY2025 201/208 FPA update ended on October 29th with no substantive comments being received by NEFCO on the proposed FPA update areas. He noted that two wastewater management agencies commented, confirming their submitted updates and one of those MAs requested that minor adjustments be made to its proposed wastewater prescriptions to make them conform to the parcel and road boundaries better. He added that NEFCO’s GIS specialist assisted that MA with its request.

Ohio EPA receives no comments on Areawides’ submitted 208 Plan updates from 2023; next steps for state certification of NEFCO’s submitted Plan updates

Mr. LaPlante reported that the next steps for state certification of NEFCO’s and some of the other Areawides’ submitted 208 Plan updates from 2023 include reviews by Ohio EPA Division of Surface Water senior management then by the Director of Ohio EPA followed by certification by the Governor. He noted that after the Governor certifies the Plan updates, Ohio EPA DSW will submit them to the U.S. EPA for approval. He added that once U.S. EPA approves the updates, they will be incorporated into the state’s Water Quality Management Plan.

ERTAC meeting dates and venues in calendar year 2025

Mr. LaPlante distributed a hard copy of the calendar year 2025 ERTAC meeting schedule and locations and indicated he'd email it to all ERTAC members after the meeting. He noted that all meetings will be held at The Natatorium in Cuyahoga Falls on the first Wednesday of the month, except for the January meeting, which will be held on January 8th at The Natatorium, since the first Wednesday in January falls on New Year's Day.

Free online Riparian Setback Implementation Workshop being held by Chagrin River Watershed Partners on November 20th from 1:00 to 4:00 p.m.

Mr. LaPlante shared this meeting announcement with the ERTAC and noted that this workshop is aimed at helping communities strengthen and implement their existing riparian setback ordinances. He added that a hyperlink to register for, and join the workshop was provided with the agenda mailout and he offered to email the link to anyone requesting it.

Reports from ERTAC members (a chance for members to report on activities or problems affecting their communities)

There were no reports from ERTAC members.

Information items requested

Mr. Demasi requested a copy of selected articles. Mr. Hadley noted that after the agenda mailout, an article was published titled, "Maine Hunters Warned Not to Eat Deer, Turkey Over PFAS Concern". He offered to share this additional information item with any member requesting it.

Ohio EPA Public Notices requested

Mr. Demasi requested a copy of selected Ohio EPA public notices.

Ohio Environmental Legislation Recently Signed or Introduced

None.

Other Business

There was no other business to discuss.

ERTAC Contact Hour Course List

Vice Chair Rutledge drew the ERTAC's attention to the list.

Next Meeting

Vice Chair Rutledge said that the next meeting would be held at 9:00 a.m. on December 4, 2024 at The Natatorium, Hopewell Room, 2345 4th Street, Cuyahoga Falls, Ohio.