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THE CORD REPORT

The Official Quarterly Newsletter of CORD



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CORD HAS MOVED!

New Address:

1086 N. 4th St., Suite 105
Columbus, Ohio 43201

All other contact info remains unchanged.

CORDOHIO.ORG

Feel Free to Contact Our Staff

*Larry Long, Director of Membership
Development: larrylong@cordohio.org*

*Catina Taylor, Executive Assistant:
catina.taylor@alberslaw.com*



REVIEW OF THE 133RD & 134TH OHIO GENERAL ASSEMBLY

Written by Andrew Huffman
Director of Legislative Affairs
Government Policy Group

133rd General Assembly

The end of 2020 marked the conclusion of the 133rd Ohio General Assembly. Like so many who welcomed the new year, many were happy to see the end of the legislative session, which was marred by a corruption scandal involving former Ohio House Speaker Larry Householder (R-Glenford). Householder was indicted in July 2020 on racketeering charges in an alleged \$61 million bribery scheme to pass a \$1.3 billion bailout of two nuclear power plants operating in northern Ohio. Shortly after news of

the scandal broke, the House of Representatives ousted the former Speaker and replaced him with Rep. Bob Cupp (R-Lima) to serve the remainder of the session.

While the Householder scandal and the state's response to the COVID-19 pandemic dominated the legislative agenda for much of 2020, we did see a flurry of activity in December, as lawmakers attempted to put the finishing touches of dozens of bills before the end of the year. While social distancing and limited in-person meetings made traditional advocating somewhat challenging, CORD continued to successfully represent 6119 districts and were happy to see a number of legislative priorities pass before the end of the session.

CORD played a critical role in the movement of a water and sewer infrastructure loan bill. HB 264, introduced by Reps. Shane Wilkin (R-Hillsboro) and Rep. Michael O'Brien (D-Warren), authorizes the Ohio Water Development Authority (OWDA) to make loans and grants to government agencies to refinance public water and wastewater infrastructure projects. Previously, OWDA was not able to refinance loans, and with the historically low interest rates, systems were losing out on significant savings. CORD provided testimony in support of the measure in both the House and Senate. We were happy to see HB 264 pass both chambers with unanimous support with an emergency clause, meaning the bill took effect immediate upon the governor's signature, which occurred on January 9th, 2021.

CORD also had to fight to defeat a controversial provision in a bill (HB 665) that would exempt land owned or operated by agricultural societies from paying stormwater fees charged by 6119 districts. The bill was designed to update outdated laws pertaining to Ohio's fairgrounds; however, it included a provision exempting fairgrounds from paying stormwater fees charged by 6119 districts. CORD provided testimony in both the House and Senate against the provision. Proponents argued that as nonprofit entities, fairgrounds should be exempt from such charges. Nevertheless, the provision singled out 6119 districts and set a bad precedent by exempting a single non-profit entity from paying stormwater charges. CORD successfully fought to remove the provision, and the bill was passed without the harmful language. While only a limited number of districts are engaged in stormwater programs, enactment of such an exemption would set a precedent for future legislation to expand the exemption to other types of governmental and non-profit entities as well as its application to traditional water and sewer projects.



CORD was also happy to see SB 33 pass the finish line, albeit nearly two years after its initial introduction. SB 33 was introduced to protect critical infrastructure facilities from damage caused by protestors. The legislation would add new prohibitions under the offenses of criminal mischief, criminal trespass, aggravated trespass, and making false alarms that pertain to specified types of conduct occurring

in or on a critical infrastructure facility. The legislation creates a new civil clause of action for willfully causing damage to a critical infrastructure facility and provides for the imposition of increased fines for groups complicit in such offenses. CORD worked with the bill's sponsor and other lawmakers to ensure that water and wastewater treatment systems were included in the definition of "critical infrastructure" and thus protected under the bill.

The COVID-19 pandemic has been devastating in so many ways but has really taken a toll on local governments and the services many provide to Ohio's citizens. The federal government recognized this and passed the Coronavirus Aid Relief and Economic Security Act (CARES Act) in March of 2020. Ohio received a total of \$4.5 billion in state and local government funding. During the pandemic CORD highlighted the challenges that 6119 districts were experiencing, as a growing number of customers became delinquent. These efforts led to the DeWine Administration developing a \$55.2 million program dedicated to housing and water/stormwater utility assistance. The program, which was approved in October 2020, provides \$50 million in direct assistance through local community Action Agencies (CAAs). The remaining amount will be used for administrative costs.

2020 was unconventional to say the least. Nevertheless, CORD continued to successfully advocate on the behalf of 6119 districts before Ohio's decision-makers.

134th General Assembly

The members of the 134th Ohio General Assembly were sworn-in on January 4th, 2021. Speaker Bob Cupp (R-Lima), after being selected to replace Rep. Larry Householder (R-Glenford) as Speaker after the corruption scandal involving HB 6, was reelected to the top post in the House. Despite the scandal, House Republicans actually picked up seats on election day and now control a 64-35 seat majority. There was much less turmoil in the Ohio Senate, as former Senate President Larry Obhof (R-Medina) was required to leave office due to term limits and will be replaced by Senator Matt Huffman (R-Lima) this session. Republicans in the Senate enjoy a 25 to 8 seat majority.

As with any new legislative session, the beginning of the 134th General Assembly has focused on the biennial operating budget, which was unveiled by the DeWine Administration in early February. The executive budget bill (HB 110) proposes a total of \$74.66 billion in General Revenue Fund (GRF) spending. The House of Representatives passed the measure in April by a vote of 70 to 27 and it is currently pending in the Ohio Senate. The state operating budget must be passed and signed by July 1st, 2021.



The governor initially proposed over \$240 million in the budget bill for the H2Ohio program, which is spread across the Ohio Department of Agriculture (ODA), the Ohio Environmental Protection Agency (OEPA), and the Ohio Department of Natural Resources (ODNR). This funding was cut to \$170 million by the House. The Ohio EPA took the biggest hit, with its funding reduced to \$10 million per year under the House plan, compared to \$46 million per year in the as-introduced version of the bill. The OEPA has been focusing its H2Ohio efforts on replacing lead pipes and failing septic systems. The Ohio Senate is now in the process of reviewing the bill and Senate Finance Chairman Matt Dolan has expressed interest in the H2Ohio program, saying that Ohio needs to send the message that the H2Ohio program is here to stay despite the current biennium-by-biennium funding strategy. CORD is hopeful funding will be restored to the H2Ohio program to the levels proposed in the executive version of HB 110.



CORD was happy to see legislation (HB 167) offering \$465 million in federal funding for rent and utility assistance quickly pass through both chambers and signed into law by the governor. The funding was made available through the Consolidated Appropriations Act, 2021. Eligible households that have been disconnected, are in threat of disconnection, or are behind on their water, sewer, trash removal, and home heating and electric can receive payment assistance in arrears and future payments until the program expires. The funding will be administered through the state's community action agencies. This latest round of funding follows two previous investments into rent and utility assistance programs made by the state to provide relief to those impacted by the pandemic.

While the main operating budget will steal the spotlight until the Ohio General Assembly recesses in July, we do expect dozens of bills to be addressed during this time. As of this article, nearly 500 bills have been introduced. It will be important for CORD members to closely monitor the legislative activity during this hectic time in the legislative schedule, as the budget bill can often be a vehicle for numerous policy changes that could negatively impact 6119 Districts.

Finally, please watch your email inboxes for the periodic reports on bill introductions, status reports, and requests for grassroots lobbying help with your members of the General Assembly. Also, if you have suggestions for changes in state law that will make your job easier let the CORD staff know and they will be happy to work with you to develop a policy proposal.

Andrew Huffman, May 2021



PFAS "FOREVER CHEMICALS": A NEW CHALLENGE

Written by Larry Long



Earlier this year an article in [Scientific American](#) declared that the so-called "forever chemicals" are "widespread in U. S. drinking water." The article ([Forever Chemicals Are Widespread in U.S. Drinking Water - Scientific American](#)) talks of a study by the Environmental Working Group, a non-profit advocacy organization, that asserts that "the drinking water of a majority of Americans likely contains forever chemicals." This is just the most recent of a variety of developments on the issue of Per- and Polyfluoroalkyl Substances around the country and in Ohio. For example, in December 2019, at the direction of Governor DeWine, the Ohio EPA and Department of Health (DOH) released the [Ohio Per- and Polyfluoroalkyl Substances \(PFAS\) Action Plan for Drinking Water](#).

What are Per- and Polyfluoroalkyl Substances (PFAS)?

- PFAS compounds include over 9,000 man-made chemicals, over 600 of which are currently used in the U. S. for industrial, commercial and consumer products. They are used to make products more resistant to stains, grease, and water. Some are also used to manufacture paper and cardboard packaging, carpeting, and leather products. They also are used extensively in the manufacture of nonstick cookware, water resistant clothing, and personal care products. PFAS chemicals are also prevalent in firefighting foams, at military installations, and at fire training facilities. Two specific chemicals in the PFAS family, PFOA and PFOS, are the most produced and have been widely studied.
- Exposure to PFAS chemicals is primarily by ingestion. Studies conclude that PFAS are not easily metabolized in the body and indicate that potential health risks associated with PFAS exposures can include liver damage, thyroid disease, elevated cholesterol, decreased antibody response to vaccines, pregnancy-induced hypertension, decreased fertility and small decreases in birthweight, and developmental and immune toxicity.
- PFAS's do not occur naturally and are not easily biodegrade. They are, however, somewhat common in the environment as they have been used in manufacturing for years. PFAS soil contamination is a concern for surface and ground water drinking water sources.
- There are significant differences between certain research scientists and representatives of the chemical industry. Studies by the Environmental Working Group, looking only at PFOA's and PFOS's, maintain that over 200 Million Americans are exposed thru their drinking water to one part per trillion (ppt) or more, a level some maintain can have significant health implications. When the level is increased to 10 ppt. or more, it is estimated that 80 Million Americans are impacted. The American Chemical Council maintains that "there is no scientific basis for contaminant levels lower than 70 ppt." Both sides appear to agree that more data is needed.

Federal & State Developments

The Safe Drinking Water Act requires U.S. EPA to identify up to 30 unregulated contaminants to be monitored by public water systems every five years. The purpose is to provide a basis for future regulatory actions to protect public health. Under an U.S. EPA rule on unregulated contaminants six PFAS chemicals were monitored by 186 Ohio public water systems from 2013-2015. The monitoring found only one public water system, serving Wright Patterson Air Force Base (WPAFB), with elevated levels.

In 2016, the U.S. EPA established a Health Advisory Level (HAL) of 70 parts per trillion (ppt) for PFOA and PFOS in drinking water to combat possible adverse health effects for sensitive populations. U.S. EPA is also working on a national framework to set regulatory standards for PFAS. This includes a national safe drinking water standards or maximum contaminant level (MCL).

In September 2019, Governor Mike DeWine established an inter-agency workgroup to address the emerging issue of PFAS in Ohio, both for the protection of our natural resources and public health. DeWine asked Ohio EPA and the Department of Health (ODH) to work together to develop a statewide PFAS Action Plan looking at potential threats to both public and private drinking water systems.

Prior to this, Governor DeWine, along with 14 governors signed a letter to both the United States Senate and House Armed Services Committees calling for more comprehensive national legislation on PFAS and action to address PFAS contamination in and around military bases.

The Ohio Per- and Polyfluoroalkyl Substances (PFAS) Action Plan for Drinking Water

In December 2019, the Ohio EPA and Department of Health released the Ohio Per- and Polyfluoroalkyl Substances (PFAS) Action Plan for Drinking Water. The plan establishes the following six objectives and strategies:

- Gather and provide sampling data from specific types of public water systems to determine if PFAS is present in raw and finished drinking water.
- Assist private water system owners with guidelines and resources to identify and respond to potential PFAS contamination.
- Establish Action Levels for drinking water systems in Ohio to aid in appropriately responding to PFAS contamination for the protection of public health.
- Work with Ohio communities to identify resources to assist their public water systems in implementing preventative and long-term measures to reduce PFAS-related risks.
- Develop and disseminate educational information to the public to increase awareness and understanding of PFAS related compounds and the relative risk of exposure to PFAS through drinking water and other exposure pathways.
- Continue ongoing engagement to ensure this action plan for Ohio is adapted as the scientific body of knowledge expands and the regulatory framework progresses at the national level.

[VIEW THE ENTIRE PLAN HERE](#)

Testing of Public Water Supplies

After the release of the Action Plan, Ohio started testing 1500 public water systems for PFAS and planned to complete the job by year-end. The Ohio EPA received additional appropriation authority to conduct the testing. The Ohio Controlling Board approved an additional \$2.5 Million for this purpose. Raw and finished water samples were collected at public water systems, with a goal of completing sampling activity by the end of 2020. Sampling efforts were coordinated by Ohio EPA under contracts with qualified consultants and laboratories. Contract labs conducted analyses in accordance with U.S. EPA-approved methods for drinking water.

In announcing testing of public water supplies, including schools and childcare centers, Ohio EPA Director Laurie Stevenson said that: "Children are considered a sensitive population when exposed to environmental contaminants like PFAS. "We need to ensure the water that children drink at these schools and daycares is not contaminated with PFAS above the Ohio PFAS Action Levels."

Federal and State Developments

Both of Ohio's U. S. Senators have been heard on this issue. U.S. Senator Sherrod Brown has urged the U.S. Senate to require the U.S. EPA to designate these chemicals as hazardous substances. "Are we on the side of Ohioans or are our elected officials on the side of the chemical companies?" Brown asked. "Our parents shouldn't have to worry about their children's health every time they turn on the faucet." U.S. Senator Rob Portman "believes that we must combat exposure to emerging contaminants, such as PFAS substances, so that drinking water remains safe for all Ohioans."



During the last session of Congress, the U.S. House of Representatives passed a bill to require U.S. EPA to declare PFAS hazardous substances, set safety standards for their presence in drinking water, give water companies grants to help remove the chemicals, and require remediation of the chemicals when they are released into the environment. The proposal would also have required comprehensive toxicity tests on all PFAS chemicals. The bill did not proceed in the Senate and it faced a likely Presidential veto. So far during the 117th on May 18 Congress Rep. Paul Tonko (D-New York) introduced HB 3291. Among other things, the bill would amend the Safe Drinking Water Act to provide financial assistance to water systems affected by PFAS and to require EPA to adopt regulations for PFAS. The bill has been assigned to the House Energy and Commerce Committee.

Legislation was also introduced last year at the Statehouse but did not pass. It would have required Ohio EPA to establish maximum allowable contaminant levels for PFAS substances in drinking water. More recently, on December 18, 2020, the U. S. EPA released interim guidance relating to PFAS Chemicals. This guidance does not address standards but focuses on destruction and disposal and is open for public comment currently.

At the same time speculation abounds on more aggressive federal action by the Biden Administration. President Biden's Environmental Justice Plan, issued during the campaign stated that Biden would "tackle PFAS pollution by designation PFAS as a hazardous substance, setting enforceable limits for PFAS in the Safe Drinking Water Act, prioritizing substitutes through procurement, and accelerating toxicity studies and research on PFAS." So, stay tuned.

Recent Jury Verdict Grants \$50 Million to Ohio Couple

This recent headline case involves a Pomeroy (Meigs County) couple after the man suffered two bouts of testicular cancer that he claims stemmed from years spent drinking water contaminated with "forever chemicals." Attorneys sought \$105 million for Travis Abbott and \$15 million for his spouse after he lost both testicles to cancer. Of the \$50 million jury award, all damages were compensatory. Abbott will receive \$40 million while his wife will receive \$10 million.

Abbott lives downstream along the Ohio River from DuPont de Nemours Inc.'s Washington Works plant near Parkersburg, West Virginia. According to court records, DuPont dumped per- and polyfluoroalkyl substances (PFAS) into the air, drinking water, soil, and Ohio River for years. The jury found that DuPont did not act with actual malice so punitive damages were not awarded. DuPont plans to appeal and "will vigorously challenge those rulings and the verdict on appeal. DuPont does not believe that historical DuPont's use of PFOA contributed to the plaintiffs' past health problems and disagrees with the jury's decision regarding compensatory damage," the company said. "However, the jury's decision not to award punitive damages validates our position that at no time was there a conscious disregard for those living near the Parkersburg, West Virginia, plant." Another case for a second couple diagnosed with kidney cancer, seeking \$11.5 Million in damages resulted in a hung jury.

Larry Long, May 2021



EXCAVATION ON TOWNSHIP ROADS - A NEW CHALLENGE

Written by Larry Long

One of the primary jobs of Township Trustees is to maintain the township road system. In order to meet this responsibility, the General Assembly has given Trustees various powers under state law. For example, Trustees are given the general authority, by resolution, to require permits prior to the installation of driveway culverts or prior to excavation on a township road or in the township road right-of-way (ORC 5571.16). The statute further allows the Trustees to adopt a resolution to require plans showing the location, size and duration of the excavation and methods of excavation, refilling, and resurfacing.



Trustees may also require the use of warning devices to protect travelers and the township must be indemnified against liability or damages. Finally, the township may require a deposit or bond to guarantee performance under the permit which is issued by the Township Fiscal Officer. A fee of up to \$50 can be charged for this permit. The law also provides certain exceptions for electric and telecommunication poles and in certain emergency situations.

But how do these provisions impact excavations done on township roads or on township right-of-ways by ORC Chapter 6119 Districts? This question was answered last August when Ohio Attorney General Opinion 2019-029 was issued. The question was asked by the Columbiana County Prosecutor as the Buckeye Water District in Wellsville was installing water lines in Yellow Creek Township. In addition to the \$50 permit fee, the township was also asking for a cash deposit of over \$160,000, a consulting fee of \$870, and an inspection fee of almost \$38,000, for a total of over \$203,000.

The District maintained that it does not need a permit because it is not a “person” under ORC Section 5571.16. Also, the District believed it was authorized by R.C. 6119.06(Z) and (BB) to act without the township’s consent. The Attorney General essentially agreed with these contentions by the District. The opinion points out that the township may require permits from any “person” as “person” is defined in ORC 1.59. The definition in this section includes “an individual, corporation, business trust, estate, trust, partnership, and association”, but not a political subdivision like a Regional Water and Sewer District. Likewise, ORC Section 6119.06 further clarifies that the District need not obtain a permit, but the District is required to restore and repair the road to its original condition or provide compensation to the township to do so. Division Z of ORC 6117.06 gives Regional Water and Sewer Districts specific authority to:

Exercise the powers of the district without obtaining the consent of any other political subdivision, provided that all public or private property damaged or destroyed in carrying out the powers of the district shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor by the district.

OAG 2019-029 also addresses a number of other questions and issues as it relates to excavations on township roads such as liability and road closure authority of townships. For further information refer to the entire Opinion [HERE](#)





Ohio State Auditor Keith Faber

Ohio's Sunshine Laws StaRS Rating System

At the beginning of his term, State Auditor Keith Faber announced an initiative targeted at local governments and state agencies regarding their adoption and implementation of public records best practices. The new program, labeled the Star Rating System (StaRS), rates public entities, including regional water & sewer districts on a four-star basis, measuring the degree to which entities utilize certain public records best practices.

This system is used by both auditors from the State Auditor's office and contracted independent public accountants (IPAs) when they test for compliance with Ohio's Sunshine Laws. This includes both Ohio's public records and open meeting law.

StaRS Rating System

- ★ **Open and Transparent Government:** Meets all Sunshine Law requirements.
- ★★ **Achievement in Open and Transparent Government:** Implemented 1-2 best practices
- ★★★ **Outstanding Achievement in Open and Transparent Government:** Implemented 3-4 best practices
- ★★★★ **Highest Achievement in Open and Transparent Government:** Implemented 5 or more best practices
- Non-compliant:** Sunshine Law requirements are not fully achieved.

The following best practices will be used during the compliance stage of audits to determine the number of stars that will be awarded beyond One Star for basic compliance:

- The public office employs a method to track public records requests, such as record requested, date received, and date provided.
- To assist the public in making a request for records the public office has standard request forms that are available to requestors to use if they wish, as well as for the staff to use when a request is made via phone.
- The public office provides an acknowledgment to the requestor when a public records request is received, consistent with how the request was made.
- To assist the public in making a request for records, the public office has publicized (website, public records poster, etc.) the name or office title of the records custodian and his/her contact information. Further, the public office's staff has been trained on how to route public records requests to the record custodian, who also has been trained on fulfilling the public records requests, including guidelines for negotiating ambiguous or large requests.
- The public office has an online presence that provides the office's agendas, policies and schedules.
- The public office has an online presence that provides access to official documents, such as the annual budget, salaries and contact information.

Public offices that are compliant with public records and sunshine laws and implement best practices become eligible to receive a StaRS Award. Those that receive StaRS ratings with two or more best practices will be eligible to print a certificate that highlights their accomplishment. In addition, the State Auditors website will post the StaRS level of each entity so those who work hard to keep government transparent will be recognized for their efforts. For additional information refer to [Auditor of State Bulletin 2019-003](#) or the [StaRS website](#).

