



## Testimony regarding HB 363 - Transferring authority to administer National Pollution Discharge Elimination System (NPDES) for Confined Animal Feeding Operations (CAFOs)

By Joe Logan, Director of Agricultural Programs, Ohio Environmental Council

Mr. Chairman, Committee Members, we appreciate the opportunity to present testimony on this important legislation. As you know, HB 363 (As Introduced) is intended to consummate the transfer of authority to administer the National Pollution Discharge Elimination System (NPDES) as it pertains to Confined Animal Feeding operations (CAFOs), to the Ohio Department of Agriculture. As you also know, the NPDES program is one of the primary tools given to the USEPA by the Congress, under the Clean Water Act. The USEPA has customarily delegated the authority to administer this program to State agencies charged with environmental protection.

In their proponent testimony before this committee at your last Committee hearing, Director Boggs and Director Korleski both characterized HB 363 as a minor remnant of unfinished business, left over from 2008. We want to make it clear that many Ohio citizens and organizations believe that this proposal will be extremely important to the vitality of their communities and to the health of our environment.

It is important to appreciate that this proposed transfer is no trivial matter. Actually, such a transfer of authority would be totally unprecedented. Never before, has any state agency other than the state agency that is charged with environmental protection, been granted authority to administer the National Pollution Discharge Elimination System.

We understand that the Department of Agriculture (ODA) and many agribusiness interests have sought such a transfer for many years. We also appreciate that the ODA has invested much effort in trying to conform their CAFO permitting program to suit the requirements of USEPA.

Even given all that, the Ohio Environmental Council respectfully opposes this unprecedented transfer for the following reasons:

- 1.) The definition of pollution included in HB363 is expansive. It would give ODA authority for overseeing potential discharges of extremely hazardous materials, such as munitions,

hazardous chemical waste, nuclear waste and other substances – over which they have no experience or particular knowledge.

- 2.) The changing structure of agribusiness – toward consolidated, industrial and vertically integrated production and processing operations, has blurred the distinction between agricultural production facilities and food or bio-product manufacturers. Under such circumstances, HB 363 would subject the Department of Agriculture to substantial “mission creep”, and might cause even more confusion and ambiguity over who should be monitoring discharges from vertically integrated agribusiness complexes.
- 3.) The purpose of the NPDES is to prevent discharges of pollution into the waters of the state. The Ohio EPA has a mandate to protect and restore Ohio’s environmental resources. The Ohio Department of Agriculture lacks such a mandate. In fact, in discussions with the ODA staff in 2008, I asked why the Director would even consider approving a permit for an additional large poultry production facility in a watershed that Ohio EPA had documented was already impaired by nutrients from poultry manure from facilities already sighted in the area. I was told that the Department believed they were precluded from considering such environmental factors because the statute enumerating the criteria for denying a permit lacked any reference to environmental factors. We find nothing in HB 363 that rectifies this concern. Considering this glaring omission in the ODA’s statutory mandate, we find it unimaginable that this body would proceed with the re-delegation of authority for administering the Clean Water Act, unless adequate environmental criteria were added to ODA’s statutory authority.

We also appreciate that the USEPA had indicated back in late 2008 that Ohio’s proposed transfer of authority would be “approvable, pending statutory and administrative code changes,” but we hasten to point out that a new administration is now in place at USEPA. We hope and expect that USEPA Administrator Jackson might prefer to reconsider her predecessor’s tentative approval, in light of their indications of a more aggressive approach to environmental pollution from non-point sources.

Lastly, we wish to point out that failure to immediately pass HB 363 will not unleash havoc on the industry. In fact, the ODA and Ohio EPA have been working together to control pollution from CAFOs for several years. As you know, the ODA has been refining and managing their permitting program since 2002, with the OEPA intervening only when pollution discharges happen. Having two agencies on the job when “things happen” is very reasonable – especially if only one agency has a mandate to keep our water clean. If HB 363 does not pass today or tomorrow, the sun will still rise in the east, Ohio’s farmers will continue to produce meat milk and poultry products, and Ohio citizens will still have the security that our water resources are being protected.

Thank you, Mr. Chairman for hearing this testimony. I will be happy to try to answer any questions the Committee may have.