

Association of Ohio Metropolitan Wastewater Agencies
John G. Newsome, President
H.B. 385 Opponent Written Testimony
House Agriculture and Conservation Committee
June 1, 2022

Chairman Koehler, Vice Chair Creech, Ranking Member Brent, and Members of the Committee, thank you for the opportunity to present written testimony on behalf of the Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”). My name is John Newsome and I serve as President of AOMWA. AOMWA opposes Substitute House Bill 385, which, if enacted, could result in enormous penalties for violations of the proposed prohibition of discharges of wastewater in the Western Basin of Lake Erie. This could result in extremely negative financial ramifications for municipal corporations that commit relatively innocuous violations of the proposed prohibition. Unfortunately, such exorbitant penalties would necessitate an increase in the costs of service for the general service population, ultimately negatively impacting ratepayers.

AOMWA is a not-for-profit trade association that represents the interests of public wastewater agencies across the state of Ohio, and AOMWA’s members include cities of Akron, Avon Lake, Bowling Green, Canton, Columbus, Dayton, Euclid, Fairfield, Hamilton, Lancaster, Lima, Marysville, Middletown, Newark, Portsmouth, Solon, Springfield, Wadsworth, Warren, and Butler County, Greene County, Hamilton County, Summit County, the Metropolitan Sewer District of Greater Cincinnati, the Northeast Ohio Regional Sewer District, and the Tri-Cities Regional Wastewater Authority. AOMWA serves more than 4 million Ohioans and successfully treats more than 320 billion gallons of wastewater each year. AOMWA and its members are concerned that the proposals in Substitute House Bill 385 would introduce significant financial challenges that would frustrate the ability of local governments to achieve this fundamental purpose.

Under current law, Ohio Revised Code Section 6111.04 prohibits the discharge or placement of sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.¹ This prohibition does not apply if the person discharging or placing such wastes holds a valid, unexpired permit, or renewal of permit, governing the causing or placement of such wastes.² In addition, no permit holder may discharge in excess of allowed levels under the existing permit without receiving authorization from the director to do so.³ As a result, the statutory framework operates to prohibit discharges of wastewater that fail to adhere to permitted concentration permit limits. Substitute House Bill 385 would prohibit discharges specifically into Lake Erie’s Western Basin.

As drafted, the substitute bill language would dramatically alter the current penalty scheme for discharge violations in the Western Basin. Under Section 6111.07, the current code provides that no person shall violate Section 6111.04, and any person who commits such a violation “shall pay a penalty of *not more than* ten thousand dollars per day of violation.”⁴ Additionally, criminal violations of Section 6111.04 include purposeful violations, which result in a fine of “*not more than* twenty-five thousand dollars” and knowing violations, which result in a fine of “*not more than* ten thousand dollars.”⁵ As the code is now written, each day of violations is considered a separate offense. Under Substitute H.B. 385, a penalty for a knowing violation of proposed section 6111.61 would be “*not less than* two hundred fifty

¹ R.C. § 6111.04(A).

² R.C. § 6111.04(A); *id.* § 6111.04(G).

³ R.C. § 6111.03(C).

⁴ R.C. § 6111.07(A); § 6111.09.

⁵ R.C. § 6111.99(A)–(B).

thousand dollars and not more than one million dollars for each offense.” Each day of violation is still considered a separate offense.

Generally, in Ohio EPA enforcement cases, the regulated entity may have a number of “days of violation” for what most people would consider a single incident of noncompliance. As explained above, the current law sets penalties as “not more than” certain dollar amounts. By contrast, this bill sets a mandatory *minimum* of \$250,000 *per day* of violation.

AOMWA believes that Ohio EPA should retain discretion to award lower civil penalties in appropriate cases. Often, violations of R.C. Chapter 6111 coincide with efforts to improve the facility’s wastewater treatment process. For example, a municipality may be performing capital improvements while experiencing periodic compliance issues, because the improvements are designed to address the problem. In these circumstances, it is not unlikely that a permit violation may last longer than one month. Under the proposed penalty scheme, a permit violation could result in massive penalties during a period of capital improvements, which would be financially disastrous for a municipality.

For example, if a municipality in the Western Basin were to discharge in violation of its permit for as little as one month while the wastewater treatment plant is in the process of capital improvements, Ohio EPA and the Ohio Attorney General’s Office would likely consider the minimum penalty to be \$7.5 million. Ohio EPA and the Ohio Attorney General’s Office would likely take the position that they are forced to do so despite investments and efforts by the municipality to improve its treatment processes. If the State were to claim that a \$7.5 million penalty is required, then this would subject the municipal corporation and ratepayers to a far higher penalty than is typical in the case of for-profit corporations. This would lead to an inequitable result. Ohio EPA and the Ohio Attorney General are well-positioned to evaluate which violations warrant a high penalty, and AOMWA respectfully believes that discretion should not be removed.

As a second example, a city’s treatment plant may violate its permit due to a minor exceedance of its permitted concentration limits. Despite a marginal violation that would likely have no significant environmental damage, this legislation would require that a \$250,000 penalty be imposed for each day of violation. Again, Ohio EPA is well suited to evaluate the circumstances and assess whether such a penalty is appropriate.

These punitive civil penalties would impose further strains on local governments, and it is not clear that the objective aligns with the legislative intent. AOMWA is aware that the legislation was introduced in response to a compliance issue involving a specific city in Northwest Ohio. However, the impact of that incident increased the nutrient loading in that area at an estimated 0.03%. Although AOMWA recognizes that this incident was serious and is not typical, we respectfully suggest that any legislative solution should avoid penalizing other municipalities in the region that are actively working to improve their environmental impact. As such, AOMWA urges the committee to reconsider the proposed penalties in Substitute House Bill 385.

Further, it is not clear from the current bill language whether there would be any exception to this prohibition for permit holders. It appears that the bill is no longer intended to ban NPDES discharges outright, as this would cause an unsanitary waste management issue. Although AOMWA strongly encourages the committee to not move the proposed bill forward, if the committee elects to do so, it should clarify that Section 6111.61(B) does not apply to permit holders using language similar to that found in R.C. § 6111.01(A) and (G).

Lastly, it is also unclear what proposed section 6111.602 is designed to address, as it only applies to publicly owned sewerage systems that are “not otherwise required to obtain an NPDES permit.”

Moreover, the purpose of this bill is tied to discharges in the Western Basin of Lake Erie, yet no language in proposed section 6111.602 indicates that it only applies to the Western Basin. Therefore, AOMWA suggests that this language should be deleted from the proposed legislation.

AOMWA understands that the purpose of this legislation is to hold municipalities that may be unlawfully discharging into Lake Erie's Western Basin accountable by ensuring that financial penalties adequately deter such behavior. However, this bill goes beyond "sending a message" to municipalities and, instead, has the potential to create drastic consequences for ratepayers throughout Northwest Ohio.

As a result, AOMWA and its member agencies strongly oppose Substitute H.B. 385's proposed prohibition against discharging into Lake Erie's Western Basin and its minimum penalty amounts. Mr. Chairman and Members of the committee, your attention and consideration in this matter are very much appreciated.