

# Ohio EPA Division of Surface Water Updates

Ashley Ward, P.E.

July 19, 2023



**Environmental  
Protection  
Agency**

# Outline

- DSW Leadership in key positions
- Compliance
- Water Quality Standards Triennial Review
- Storm Water General Permit
- H2Ohio River Initiatives
- Priority Projects



# DSW Leadership

Ashley Ward – Environmental Engineer 5 (Assistant Chief)

- Wet weather
- Walter Ariss (NPDES, 208)
- Tyler Liston (IT Resources, Permits Processing)
- Larry Reeder (Enforcement)
- Bill Palmer (Compliance)



# DSW Leadership

Archie Lunsey (being promoted to NWDO Chief)

- Melinda Harris (Standards, Rules, Credible Data, Fish Consumption)
- Marianne Mansfield (Assessment and Modeling)
- John Matthews (319, Lake Erie)
- Josh Griffin (Nutrients)
- Jennifer Martin (Fiscal)



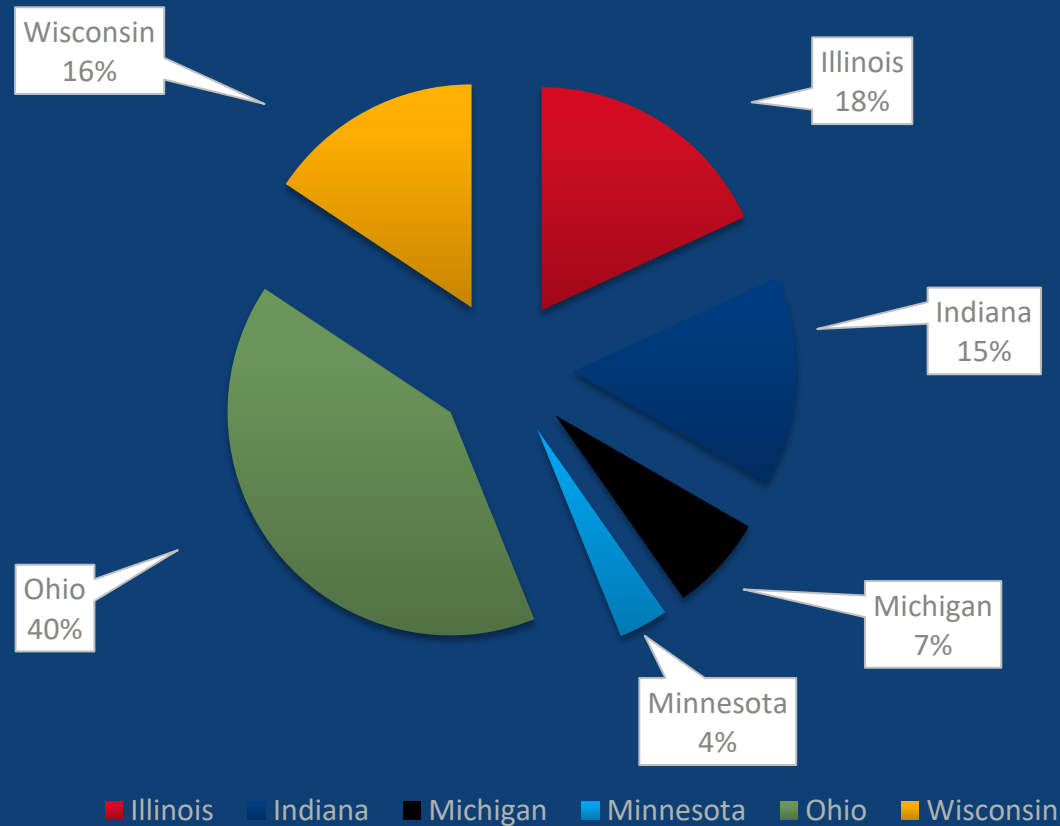
# DSW Leadership

Joby Jackson

- Anna Kamnyev (401 & Mitigation)
- Betsy Sheerin (Biosolids, Dredge, CCR)
- Erin Sherer (PTI, Pretreatment, Operator Certification)
- Jason Fyffe (Stormwater)



# Region 5 Individual NPDES Permits



# What is Significant Noncompliance?

- Failure to submit a discharge monitoring report
- Failure to meet a permit compliance schedule milestone
- Violations of formal enforcement actions
- Significant permit effluent violations



# What is Significant Noncompliance?

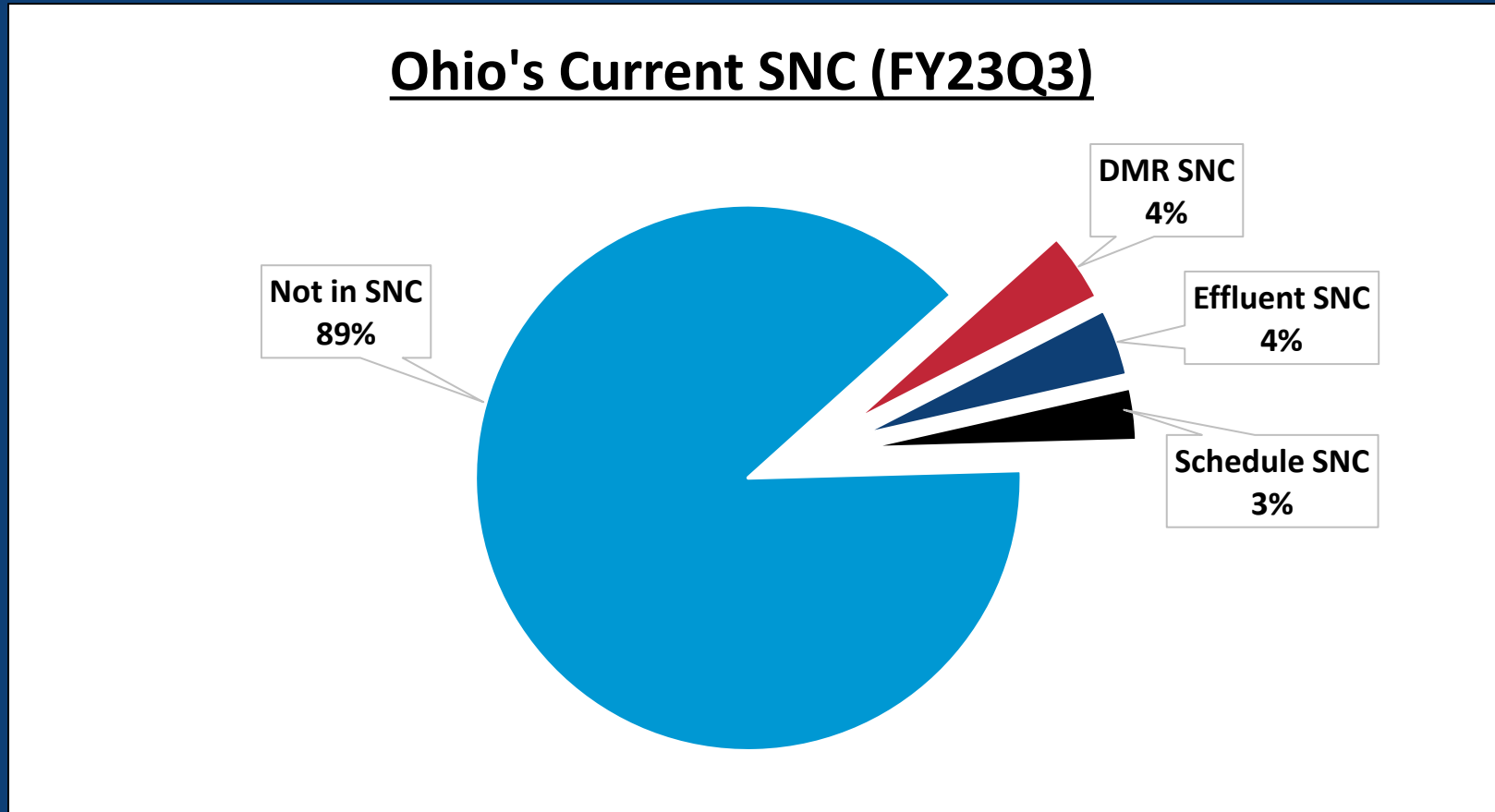
## Permit effluent limit violations

- Violations Exceeding Technical Review Criteria
  - 40% exceedance for conventional pollutants (e.g. BOD, TSS, ammonia, oil and grease)
  - 20% exceedance for toxic pollutants (e.g. copper, cyanide, chlorine)  
*Trigger — Two or more months in a six-month period*
- Chronic violations: any monthly effluent limit by any amount.  
*Trigger — Four or more months in a six-month period*



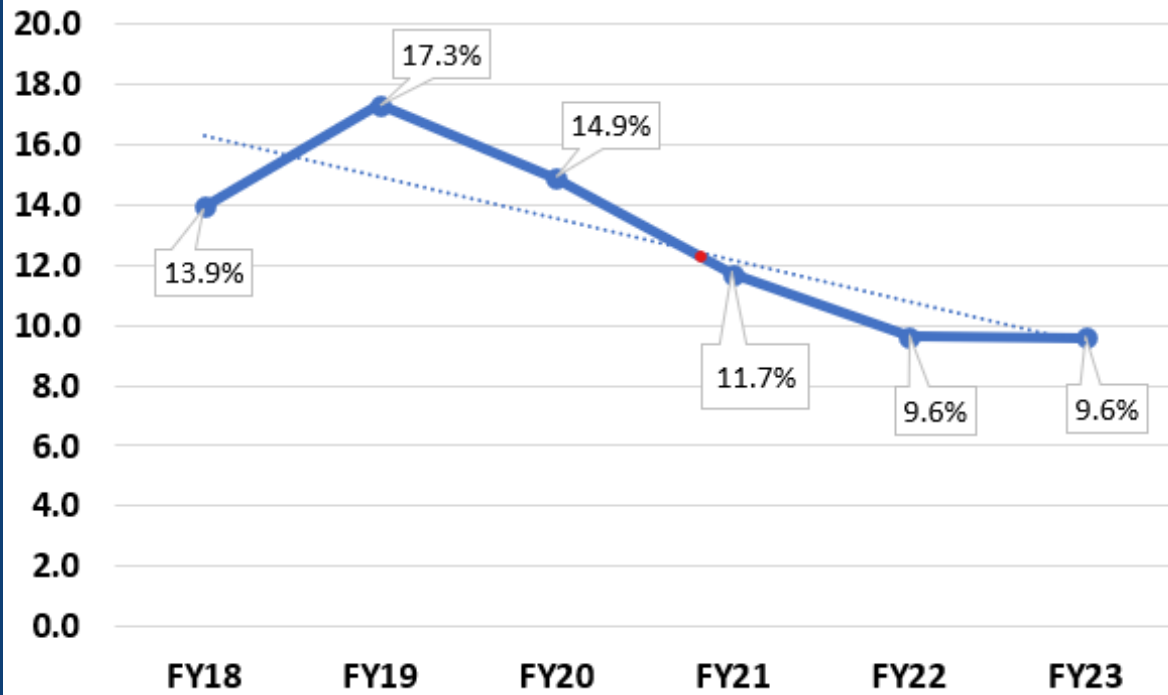


# Ohio's current SNC breakdown

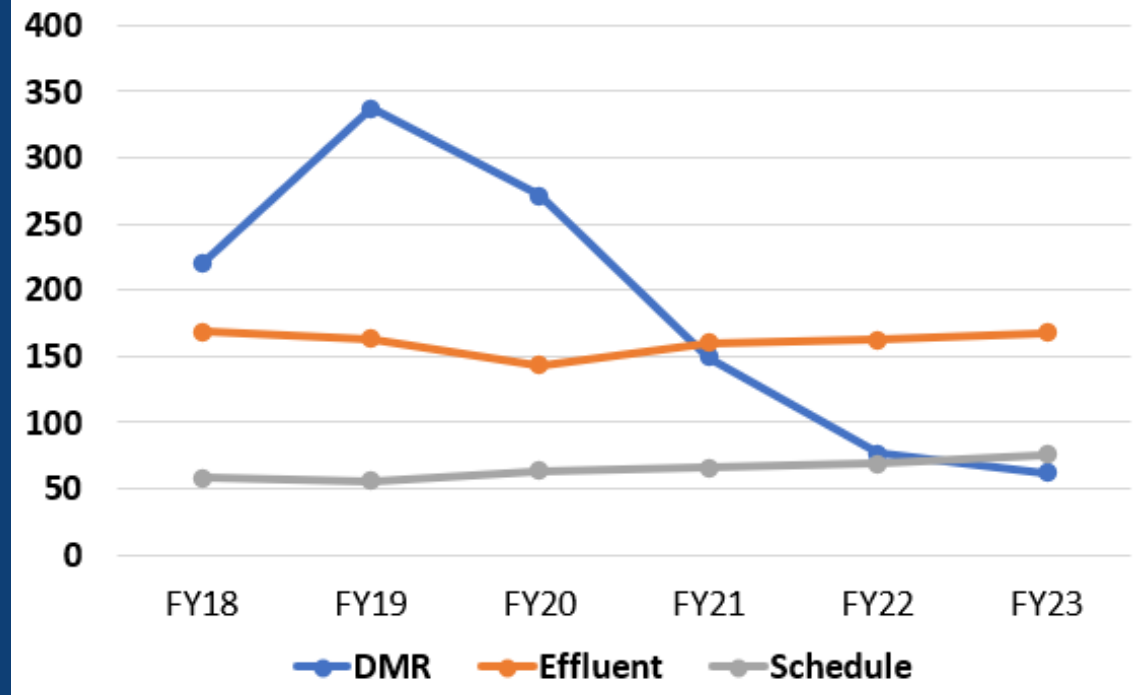


# Annual SNC stats

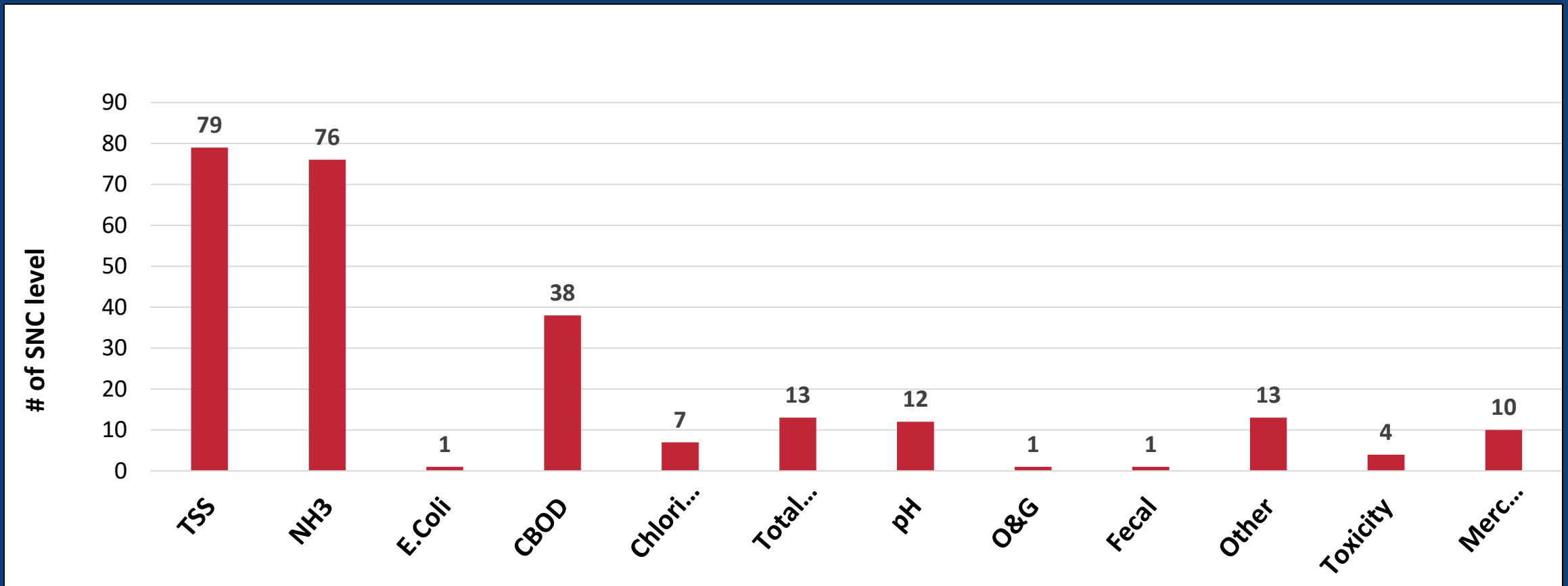
Annual average %SNC rate



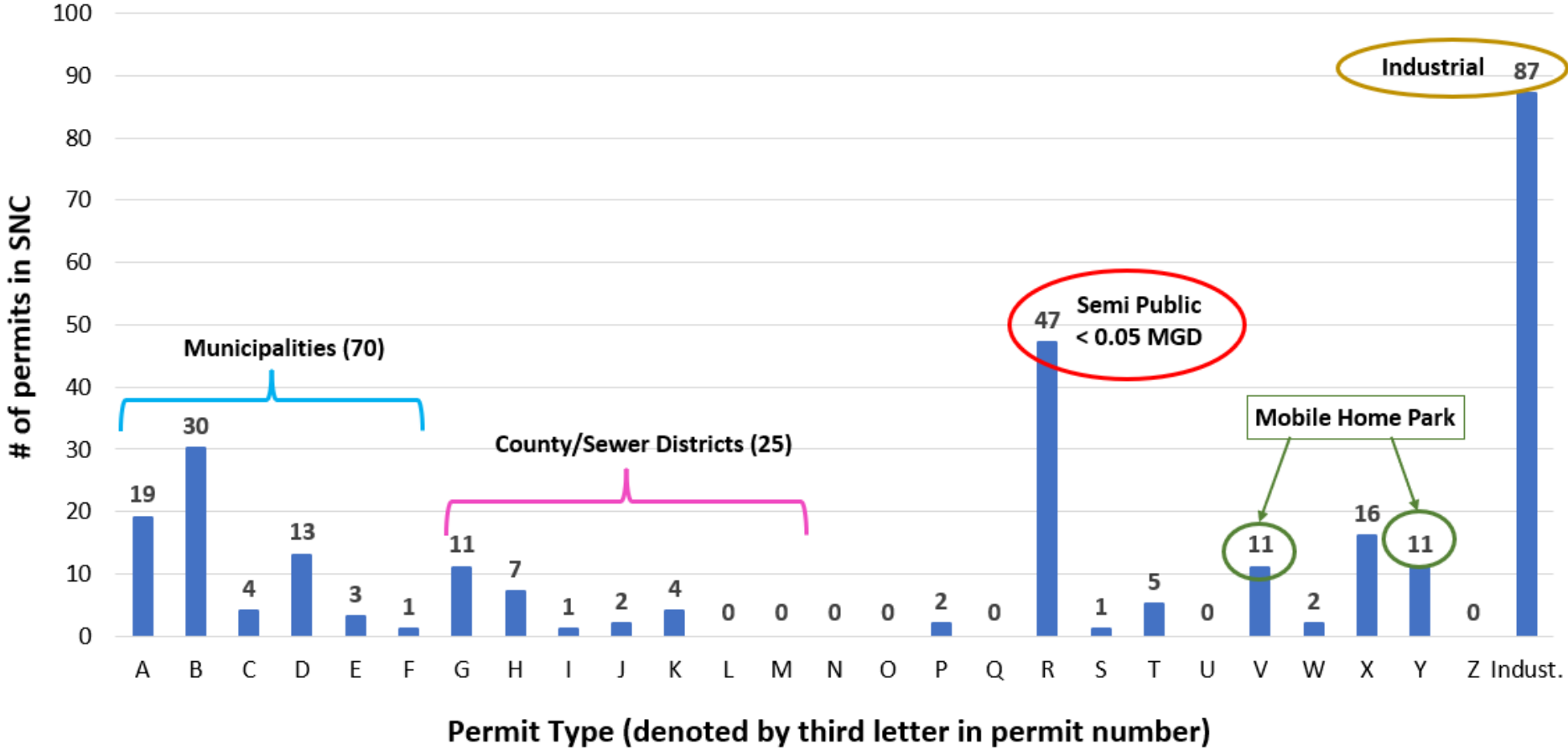
Annual average SNC by type



# What are effluent SNC issues? (Past 6 months)

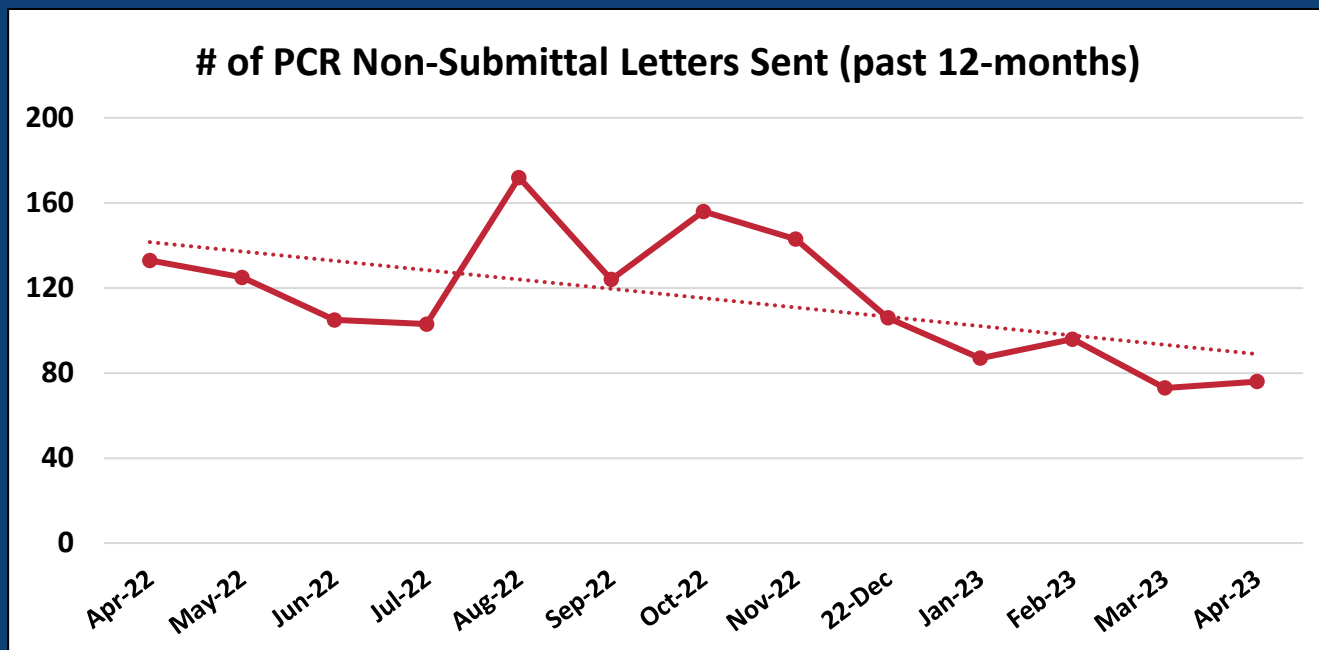
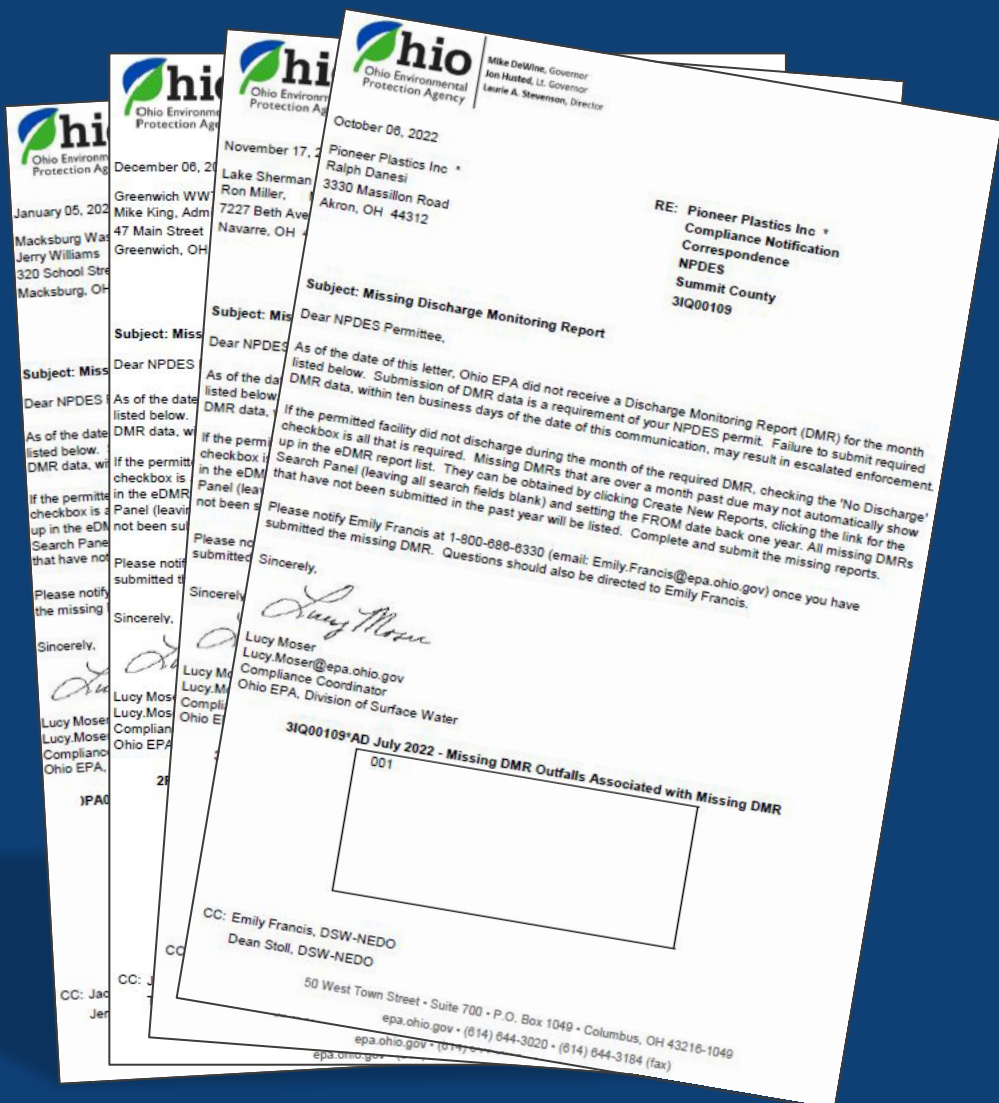


# SNC By Facility Type (Jan - Jun 2023)



# Preliminary Compliance (PCR) Non-Submittal Letters

- Sent to facilities who failed to submit their Discharge Monitoring Report (DMR)
- Typically sent 1 – 2 weeks after DMR was due
- Sent monthly via “snail-mail”
- Sent to Individual NPDES permits and small sanitary general permits



# K2C Sheets (Keys to Compliance)

- Sent to all new and renewed Individual NPDES permits and small sanitary general permits
- Contain helpful compliance tips, dates to remember, contact information, etc. that are unique to each permit

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## NPDES Keys to Compliance

**My permit renewal application is due by July 4, 2027**

Permit applications must be submitted (Pinned) by the Owner/Responsible Official with an eBiz account  
**To use eBiz, you must have an OHID account through the State of Ohio**

**My Discharge Monitoring Reports (DMRs) are due by the 20<sup>th</sup> of the following month after sampling**  
 If no discharge occurs for the entire month, select the "No Discharge" checkbox on the DMR

**My treatment plant requires a Class I Professional Operator of Record (ORC)**

**My Annual Sludge Reports (ASRs) are due each year on March 1st**

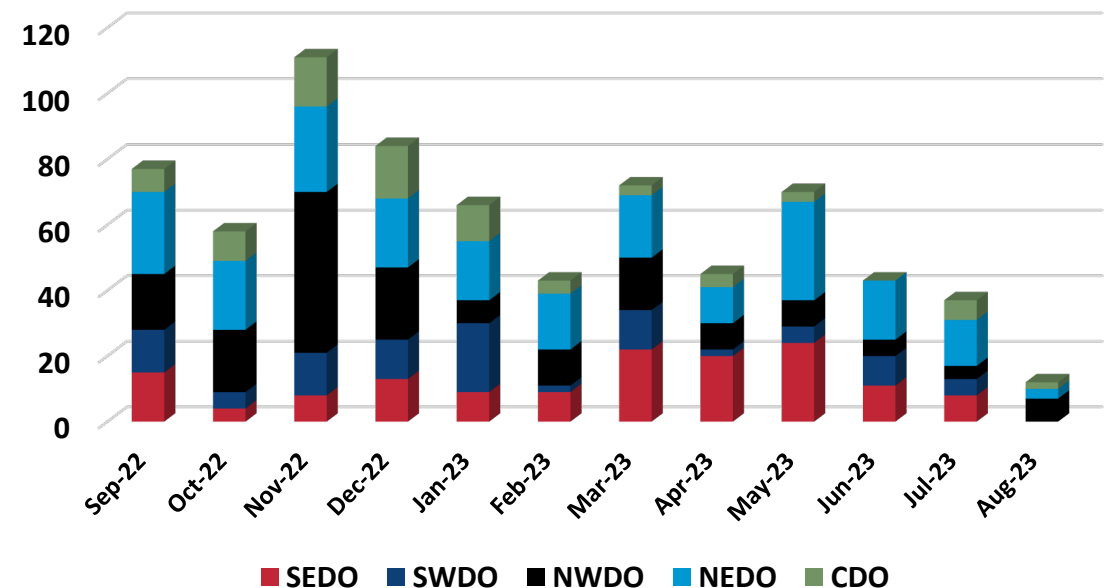
Need administrative or technical assistance? Call the Compliance Assistance Hotline for FREE and CONFIDENTIAL help: (800) 329-7518

**Morgan Elementary School WWTP**  
 NPDES Permit #1PT00098\*ED  
 Effective Date: 1/1/2023  
 Expiration Date: 12/31/2027

Use the eBusiness Center (eBiz) to manage my facility and data: <https://ebiz.epa.ohio.gov>  
 Need eBiz Help? Email us at [DSW.ebizhelp@epa.ohio.gov](mailto:DSW.ebizhelp@epa.ohio.gov) or contact our eBiz Administrator at (614) 644-2135

**DON'T HESITATE TO COMMUNICATE!**  
 Your Ohio EPA Inspector, Kevin Chandler, is there to help!  
 Contact Kevin at 937-285-6034 or at [Kevin.Chandler@epa.ohio.gov](mailto:Kevin.Chandler@epa.ohio.gov)  
 You can also contact the Southwest District Office at 937-285-6357

**# of K2C Sheets Issued (past 12 months)**



# WQS Triennial Review - Creating 3 Year Work Plan

- In developing the plan, consider:
  - Internal input
  - External input
  - Rulemakings already underway
  - Other Agency priorities



# Why a Triennial Review?

- Required by Clean Water Act
  - States must hold public hearings to review all their standards every 3 years
  - States must consider public input all WQS rules
  - States must consider latest science
  - Not a rulemaking – it informs priorities for future rulemakings





# Triennial Review Process

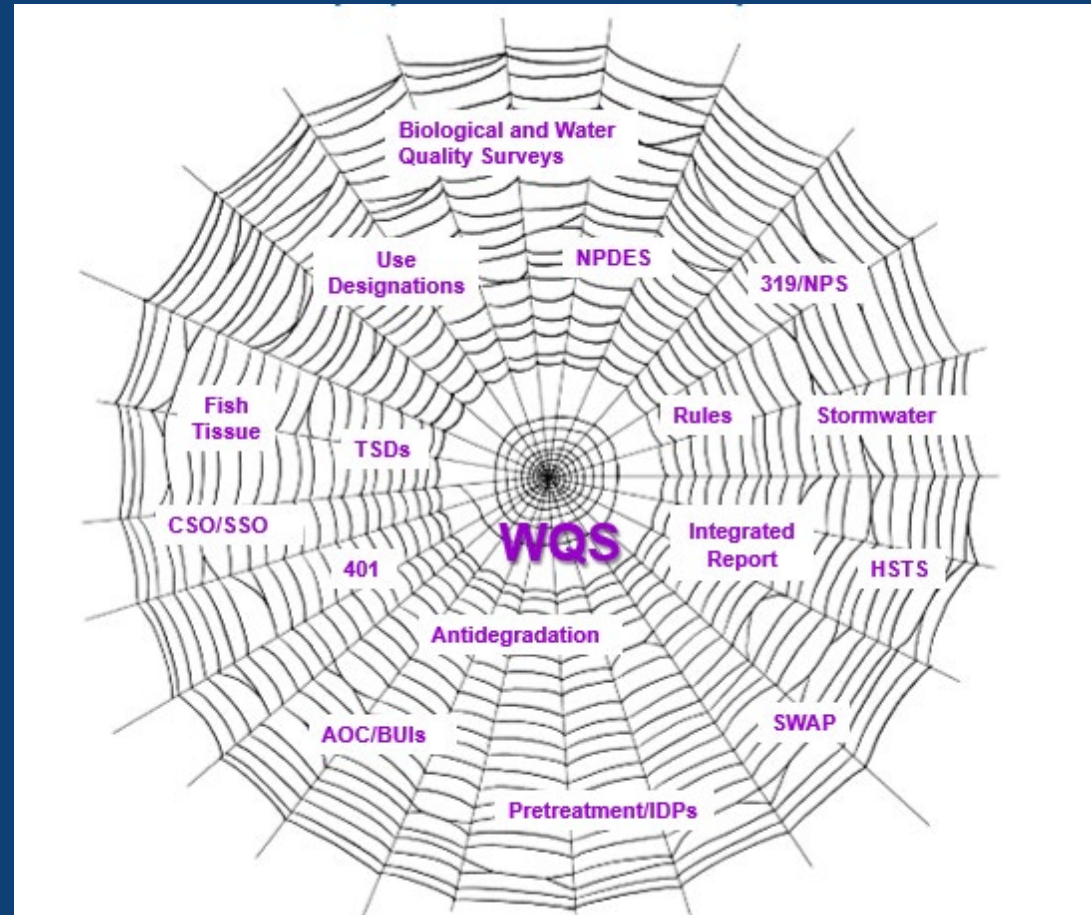


Steps 1 - 4 occur every 3 years. Rulemaking is continuous - each rule is reviewed every 5 years.



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# The water quality web – why WQS are needed



# Priority options

Option	Rule #	Rule title and subtopic if applicable
A.	3745-01-01	Purpose and applicability
B.	3745-01-04	Criteria applicable to all waters
C.	3745-01-05	Antidegradation - NPDES discharges
D.	3745-01-05	Antidegradation - Special high-quality waters
E.	3745-01-05	Antidegradation - Best available demonstrated control technology
F.	3745-01-06	Mixing zone demonstration and sizing requirements
G.	3745-01-07	Beneficial use designations and biological criteria (e.g.: Coldwater Habitat definition)
H.	3745-01-35	Aquatic life and wildlife criteria - U.S. EPA recommended and Ohio EPA developed criteria for parameters finalized since the last rulemaking
I.	3745-01-37	Water quality criteria for recreation use designations and aesthetic conditions
J.	3745-01-39	Site-specific modifications to criteria and values
K.	3745-01-40	Methodologies for development of aquatic life criteria and values
L.	3745-01-41	Methodology for deriving bioaccumulation factors
M.	3745-01-42	Methodologies for development of human health criteria and values for the Lake Erie drainage basin
N.	3745-01-43	Methodology for the development of wildlife criteria for the Lake Erie drainage basin
O.	3745-01-44	Whole effluent toxicity provisions

# Online Survey

Please rank your top five choices - indicate one option each for first priority, second priority, etc. You may also indicate any number of items that you feel should not be a priority (not required).

	First	Second	Third	Fourth	Fifth	Not a priority
3745-01-01 Purpose and applicability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3745-01-04 Criteria applicable to all waters	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3745-01-05 Antidegradation - NPDES discharges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3745-01-05 Antidegradation - Special high quality waters	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3745-01-05 Antidegradation - Best available demonstrated control technology	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3745-01-06 Mixing zone demonstration and sizing requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3745-01-07 Beneficial use designations and biological criteria (e.g.: Coldwater Habitat definition)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3745-01-35 Aquatic life and wildlife criteria - U.S. EPA recommended and Ohio EPA developed criteria for parameters finalized since the last rulemaking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

# Status

- Public hearing was held January 18, 2023
- Comment period ended January 31, 2023
- DSW staff are working to finalize report, which will be posted online
- Antidegradation and Aquatic Life Use Criteria are priority rulemakings



# NPDES Construction Stormwater General (CGP) Permit Renewal OHC000006



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# CGP Notable items

- **6th Generation General Permit**
  - Issued: April 11, 2023
  - Effective: April 23, 2023
- **Existing Permittees Needing to Renew Coverage**
  - Renewal Notices were sent week of April 24<sup>th</sup> with instructions
  - Will have 180 days to renew coverage (10/20/2023)
  - NOI Renewal fee applicable if existing coverage was issued prior to April 23, 2022



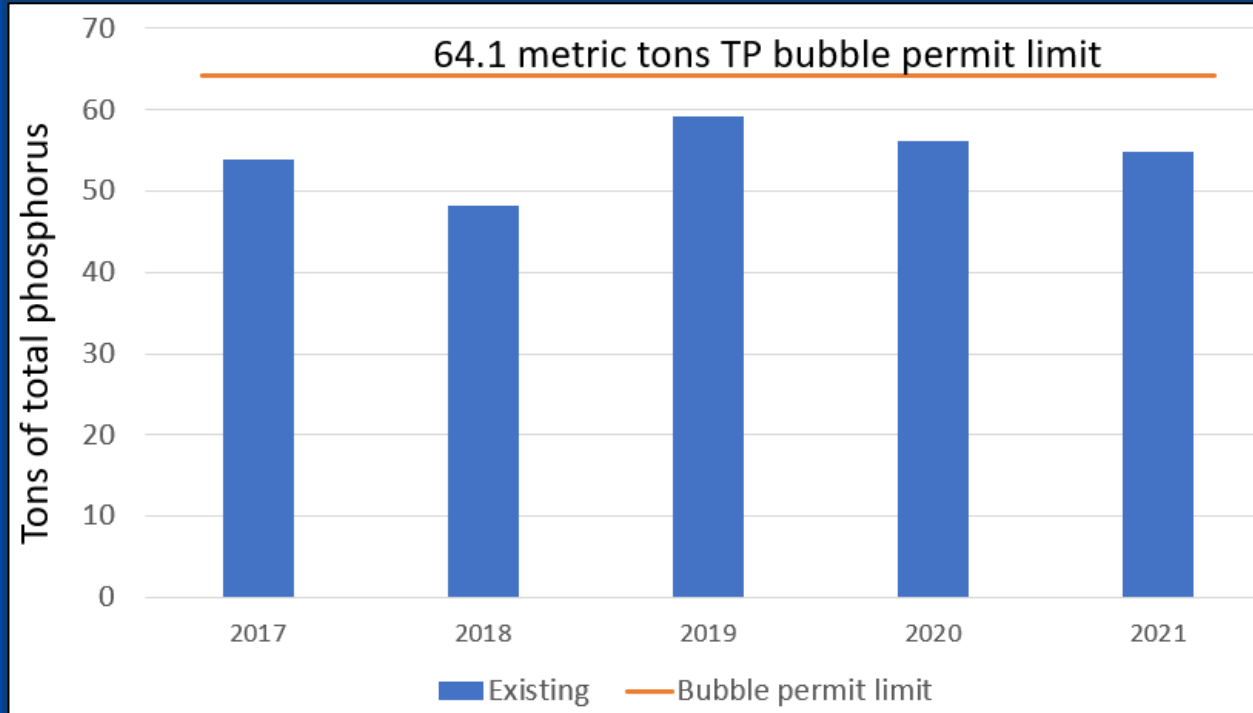
# Maumee Watershed TMDL Total Phosphorus General NPDES Permit





# Grouped WLA Performance

39 individual permittees represent 85% of Ohio's point source wasteload



- No exceedances in five years
- Range:  
48.0 to 59.1 MT

\*Assumes all facilities are covered



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# Timeline for Maumee Watershed GP

- May 12 : Released draft General Permit to stakeholders for preview
- June 1: Stakeholder Outreach Meeting
- July 7: Public Notice of GP

**Dependent on finalization of Maumee Watershed  
Nutrient TMDL**



# Priority Projects - Euclid

- Ohio’s NPDES universe includes **292 majors & 2,920 minors**
- In FFY 2021, US EPA identified these nine permits for “real time review”:

<u>Permit number</u>	<u>Name</u>	<u>Type</u>	<u>Expiration Date</u>
OH0020541	City of Nelsonville	POTW	Modification 10/27/2020
OH0064009	Summit County Environmental Services	POTW	10/31/2020
OH0052922	City of Bucyrus	POTW	11/30/2020
OH0028240	Zanesville City of	POTW	1/31/2021
OH0031062	City of Euclid	POTW	2/28/2021
OH0028118	Willard, City of	POTW	2/28/2021
OH0049999	Eastern Ohio Regional Wastewater Auth	POTW	6/30/2021
OH0027740	City of Toledo	POTW	8/31/2021
OH0003891	Aleris Rolled Products	NON-POTW	1/31/2021



# Priority Projects - Euclid

- Ohio included a phosphorus limit of 1.0 mg/L
- Specific objection from R5 included a limit based on the facility achieving a phosphorus concentration of 0.007 mg/L
- The specific objection sited non-attainment of the Lake Erie Central Basin's public water supply designated use
- The Lake Erie Central Basin Open Water assessment unit no longer meets the criteria for impairment



# Priority Projects – Euclid

- US EPA Specific Objections to Euclid's Proposed NPDES Permit Renewal
  - November 2, 2021
  - Hearing with R5 Administrator Shore was held June 7 & 8, 2022
  - Administrator Shore can withdraw the objection, modify it or uphold it
  - Discussions ongoing

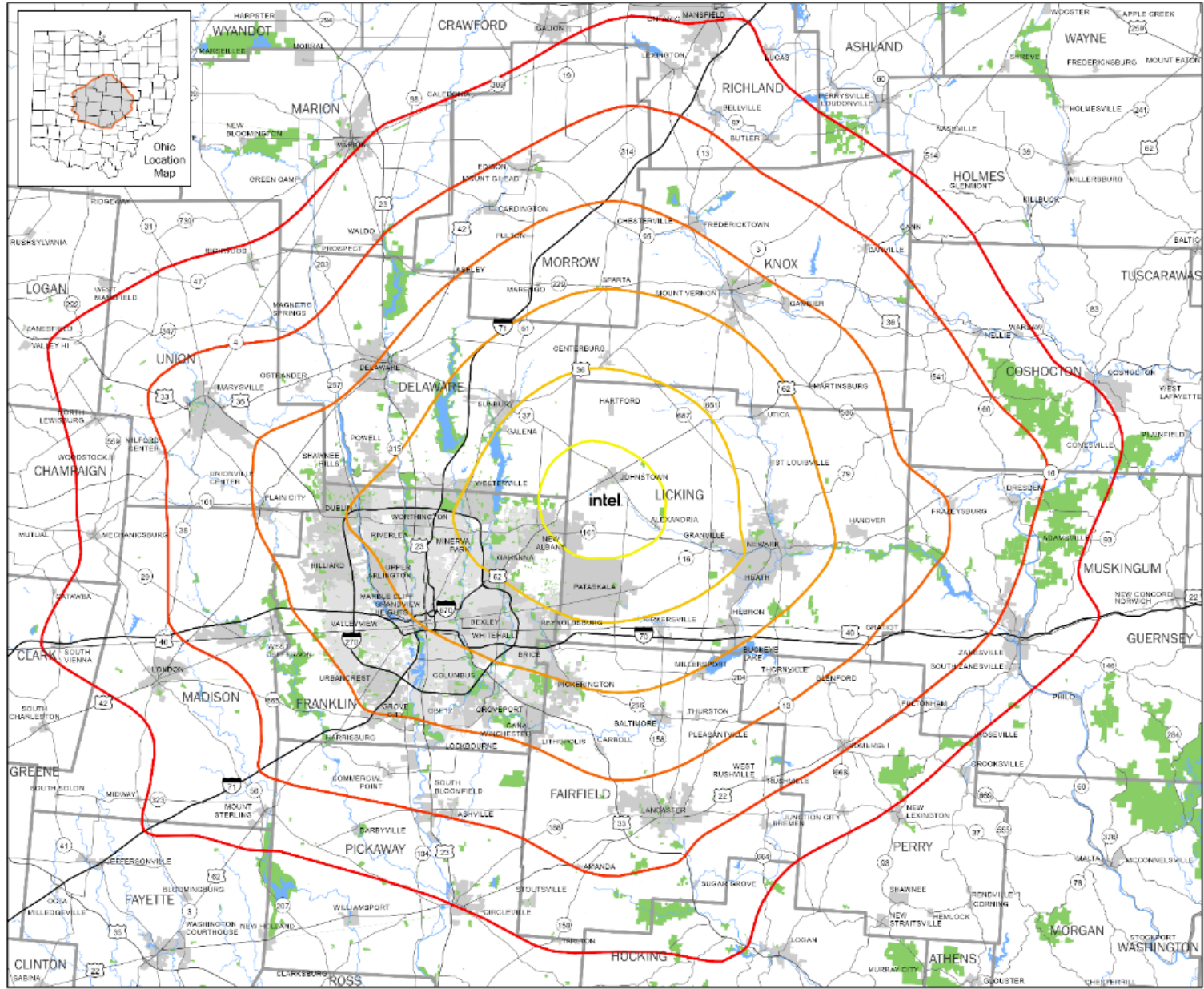


# Priority Projects

- Intel



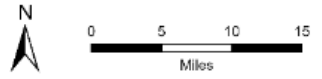
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# Intel Site Driving Times

- intel Intel Site
- Travel Time in minutes
- 60
- 50
- 40
- 30
- 20
- 10
- Park/Open Space

Note:  
 Travel assumed by car.  
 Travel times are approximate from Intel site out at 5pm.  
 Buffers generated using ESRI Network.



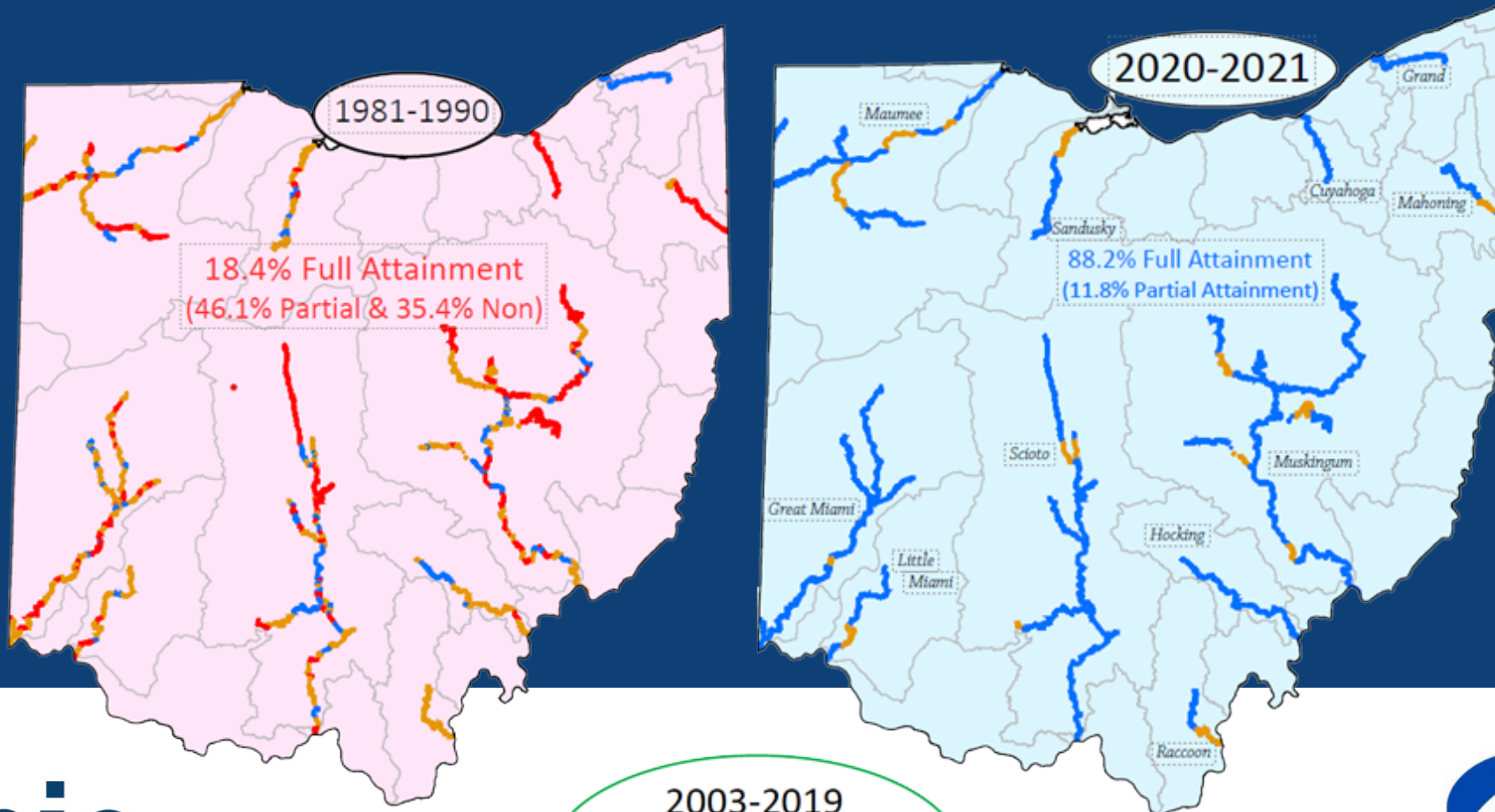
The information shown on this map is compiled from various sources made available to us which we believe to be reliable. N:\GIS\REQUESTS\Internal\Intel Plant\IntelBase.aprx 4/29/2022

# H2Ohio

Rivers Initiative

Aquatic Life  
Use  
Attainment

Full   
Partial   
Non 



H2Ohio

2003-2019  
75.0% Full Attainment  
(21.9% Partial & 3.1% Non)

 **hio**  
Ohio Environmental  
Protection Agency



# Emerging Contaminant Assessment

## THE GOAL

*Assess the status of rivers for contamination from emerging contaminants.*

## THE PURPOSE

While assessment of potential threats from emerging contaminants to both Ohio's public and private drinking water systems have been underway since 2020, Ohio EPA is also required to assess and report on the quality of Ohio's waters. Using draft water quality criteria from U.S. EPA, Ohio EPA will hire a contractor to sample water and fish tissue for emerging contaminants from representative locations in major rivers throughout the state.



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# H2Ohio

*Rivers Initiative*

151 Sites in all large rivers

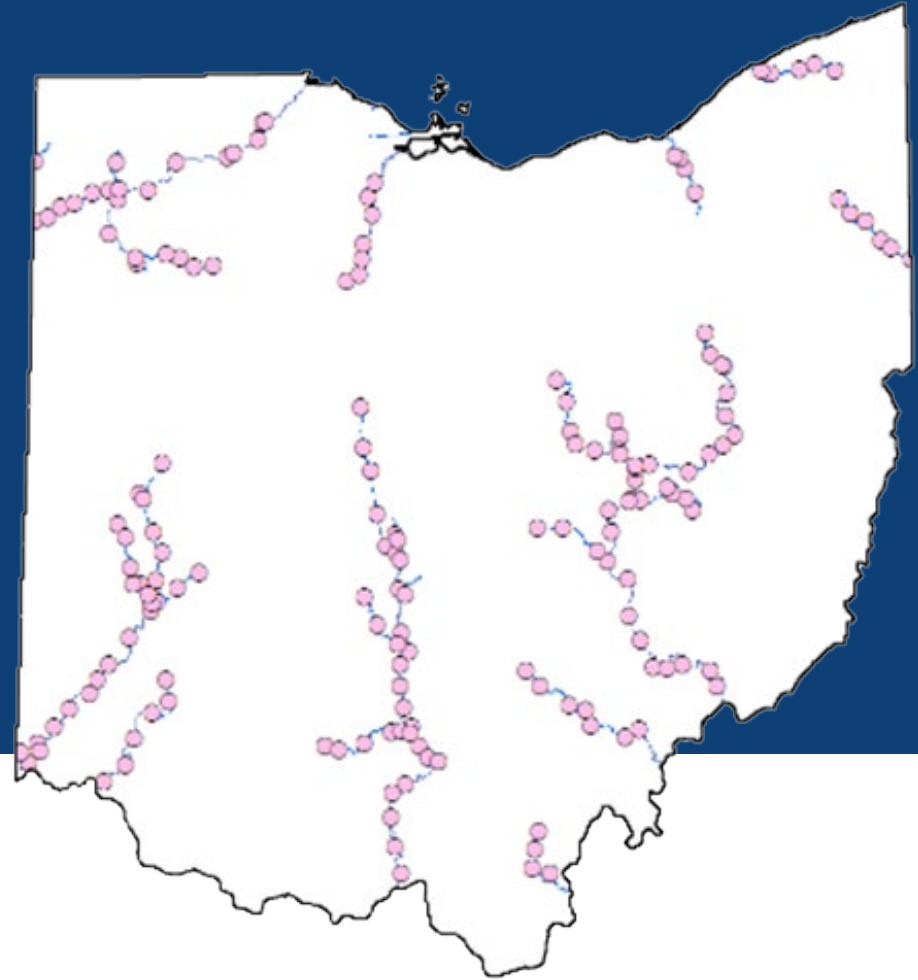
*Water Column Chemistry*

*(bugs) Invertebrate whole-body*

*Invertebrate Community Assessment*  
*(type and number of macroinvertebrates)*

*Fish whole-body*

*Fish Muscle*



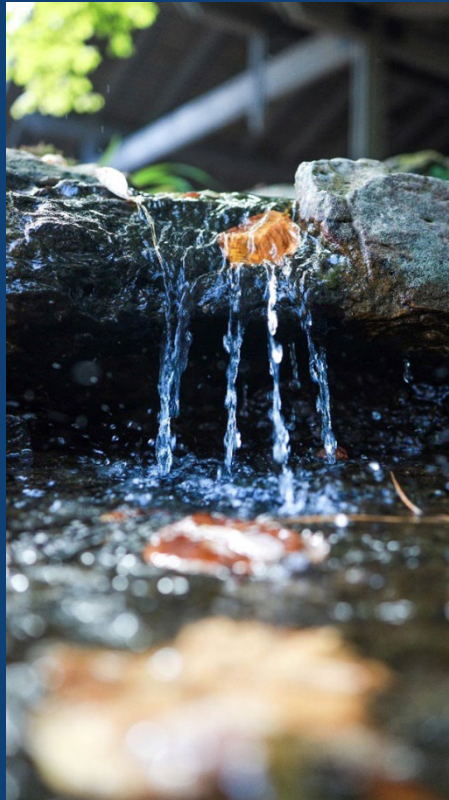
# River Restoration

## THE GOAL

*Prioritize and fund river restoration in areas with impairments through stream restoration, habitat creation, and contaminated sediment removal.*

## THE PURPOSE

Portions of Ohio's rivers and streams have modified and/or degraded conditions such that aquatic life uses do not meet the minimum goals of the Clean Water Act (CWA). Ohio EPA has prioritized three large river tributaries that, with habitat restoration, have the potential to recover to higher quality status. The goal of this program will be to remove water quality impairments to improve their ecosystems and put these waterbodies on a path to exceptional warmwater habitat and/or a scenic river designation that will undoubtedly contribute to Ohio's economy.

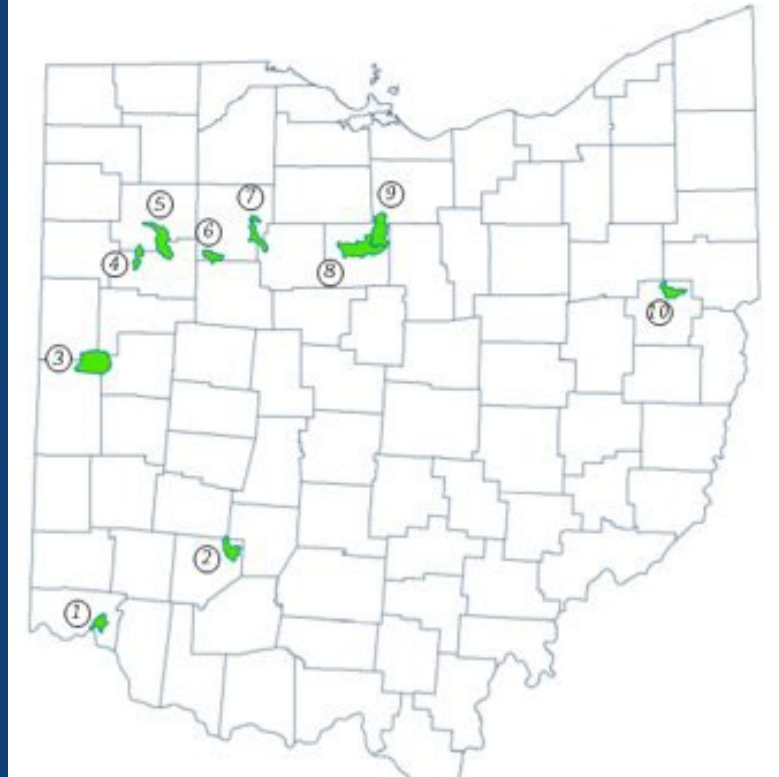


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# H2Ohio

Rivers Initiative

Stream	Drainage Area	Gradient	QHEI	Narrative
1 Duck Creek	7.3	18.87	25	Culverted stream channel can be naturalized
2 Wilson Creek	18.0	3.16	43	Trapezoidal ditch with potential for self-forming channel
3 Mile Creek	18.5	1.60	28	Low gradient may require habitat enhancements
4 Honey Run	10.9	2.82	41	Trapezoidal ditch with potential for self-forming channel
5 Plum Creek	22.0	2.24	40	Trapezoidal ditch with potential for self-forming channel
6 Riley Creek	12.1	3.97	37	Natural features exist; pollution abatement needed (may have been addressed)
7 Brights Ditch	28.4	5.63	35	Trapezoidal ditch with potential for self-forming channel
8 Red Run	4.3	5.13	31	Small drainage area requires habitat enhancements
9 Celery Creek	13.4	10.30	22	Trapezoidal ditch with potential for self-forming channel
10 Still Fork Sandy Creek	47.0	2.96	39	Better livestock practices to reduce sedimentation



# Road Salt Management

## THE GOAL

*Decrease salt contamination and maintain safety and service levels.*

## THE PURPOSE

Salt from deicing chemicals applied to roads and parking lots for winter travel safety has been building up in soils and water tables for several decades and is now spilling over into our rivers and drinking water supplies. To reverse this trend, this effort will provide education and outreach to help local governments modernize their snow removal fleets through cost-sharing incentives, new technologies and adoption of best management practices developed to maintain safety and service levels while decreasing the amount of salt application by 50%.



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# Dam Removal

## THE GOAL

*Ohio EPA, in concert with ODNR and ODA, proposed to remove aging and non-functional low head dams to improve safety and the health of our large rivers.*

## THE PURPOSE

Low head dams once served to harness energy for grain mills, or to store water for drinking water supply. Now, these dams are old and risk potentially catastrophic failure, causing a danger to humans, restricting the natural movement of fish, and impeding the normal processing of nutrients and sediment as the water moves downstream. This effort targets nine existing low head dams for removal.



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# Questions?

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# Emerging Trends

A Look at National Issues in Water Law

Cheri A. Budzynski



# Overview of Presentation

- Current Federal Water Regulations
- Legal Update on Waters of the United States (AGAIN!)
- ORSANCO Update

# Review of Current Federal Administration Rulemaking

# Final and Proposed Regulations & Guidance

- PR: PFAS National Primary Drinking Water Regulation Rulemaking
- Guidance: Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs
- PR: Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances
- PR: Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category
- FR: Revised Definition of “Waters of the United States”

# PFAS National Primary Drinking Water Regulation Rulemaking

- Proposed Rule – March 29, 2023
- EPA to regulate six PFAs as contaminants under SDWA
- The current MCL is 20 ng/L for five PFAS in drinking water: PFOA, PFOS, PFHxS, PFHpA, PFNA
- Affects Drinking Water Sources

Compound	Proposed MCL (enforceable levels)
PFOA	4.0 parts per trillion (also expressed as ng/L)
PFOS	4.0 ppt
PFNA	1.0 (unitless) Hazard Index
PFHxS	
PFBS	
HFPO-DA (commonly referred	

# Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs – Guidance to States

- **Applicability - Industry categories known or suspected to discharge PFAS:**
  - Organic chemicals, plastics & synthetic fibers
  - Metal finishing; electroplating
  - Electric and electronic components
  - Landfills
  - Pulp, paper & paperboard
  - Leather tanning & finishing
  - Plastics molding & forming
  - Textile mills
  - Paint formulating
  - Airports

## Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances

- Authorizes the Administrator to promulgate regulations designating as hazardous substances such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment
- A designation would facilitate cleanup of contaminated sites and reduce human exposure to these “forever” chemicals

# Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

Wastestream	Subcategory	Requirements
FGD Wastewater	Not Closing	Chemical Precipitation + Membrane Filtration
	EGUs Permanently Closing 2028	Surface Impoundments
	Early Adopters Closing 2032	Chemical Precipitation + Biological Treatment + Ultrafiltration
BA Transport Water	Not Closing	Dry Handling or Close-Loop Systems
	EGUs Permanently Closing 2028	Surface Impoundments
	Early Adopters Closing 2032	High Recycle Rate Systems
CRL	Not Closing	Chemical Precipitation
	EGUs Permanently Closing 2028	
	Early Adopters Closing 2032	
Legacy Wastewater	Not Closing	Best Professional Judgement
	EGUs Permanently Closing 2028	
	Early Adopters Closing 2032	

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# Waters of the United States

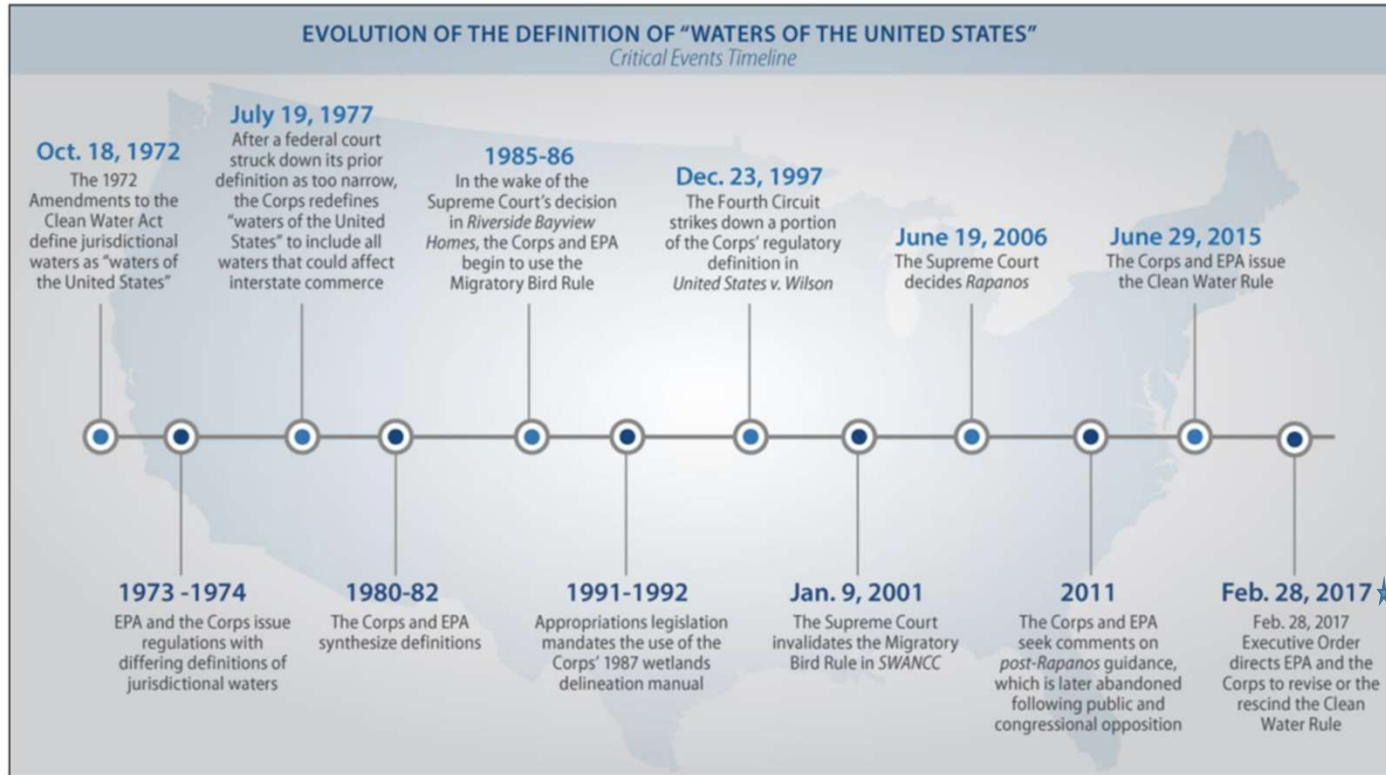
A Tug of War



# Definition Tug of War



**Figure I. Major Events in the Evolution of “Waters of the United States”**



**Source:** Congressional Research Service, based on the sources cited in this report.

★ Since that time the Trump Administration repealed the 2015 Rule, finalized the 2019 Rule, the Biden Administration finalized the 2023 rule, AND the Supreme Court issued an opinion on the definition.

# Waters of the United States

- The Clean Water Act prohibits discharge of any pollutant into “navigable waters” without a permit
- Application of Clean Water Act only applies to “waters of the United States”
  - All waters currently used, or used in the past, or susceptible to use in interstate or foreign commerce, including all waters subject to ebb and flow of tide
  - All interstate waters, including interstate wetlands
  - All other waters, which use, degradation or destruction could affect interstate commerce
  - Territorial seas

# WOTUS Case and Policy History

- *United States v. Riverside Bayview Homes* (1985)
  - Rule: Wetlands adjacent to traditional navigable waters are covered by the CWA; wetland need not be navigable to be regulated; coverage of isolated wetlands
- *Migratory Bird Rule* (1986-2000)
  - Corps determined in 1986 that federal jurisdiction extended to isolated wetlands visited by migratory birds
- *Solid Waste Agency of Northern Cook County (SWANCC) v. Corps of Engineers* (2001)
  - SWANCC court rolled back part of Bayview, demanding there be some nexus to navigable waters
  - For federal jurisdiction to extend to isolated, intrastate wetlands, SWANCC court demanded wetland be “adjacent to” some navigable water

# WOTUS Case and Policy History

- *Rapanos v. US* (2006)
  - Issue = Whether CWA covers wetlands that do not contain, and are not adjacent to, waters that are not navigable in fact
  - Supreme Court split 4-1-4
  - Justices issued five separate opinions (with no one opinion being a majority) – 126 S. Ct. 2208 (2006)
  - Judgment vacated and case remanded

# WOTUS Case and Policy History

- Plurality Opinion (Scalia)
  - “Navigable waters” means “relatively permanent bodies of water”
    - “... at a bare minimum, [wetlands require] the ordinary presence of water”
  - Scalia two-part test
    - “... relatively permanent standing or flowing body of water connected to traditional interstate navigable waters” – excludes ephemeral streams
    - “... continuous surface connection to bodies that are ‘waters of the United States’ in their own right” – making it difficult to determine where “water” ends and “wetland” begins
- Significant Nexus Opinion (Kennedy)
  - “Nexus” exists “if the wetlands ... significantly affect the chemical, physical and biological integrity of other covered waters more readily understood as ‘navigable’”

# WOTUS Case and Policy History

- Courts split on what interpretation applied
- Despite EPA/Corps attempts to clarify the definition and interpretation through guidance under the plurality and significant nexus opinions
  - Guidance: Non-binding and not subject to notice and comment rulemaking
- Determining jurisdiction: Time and resource intensive

# 2015 WOTUS Rulemaking (Obama)

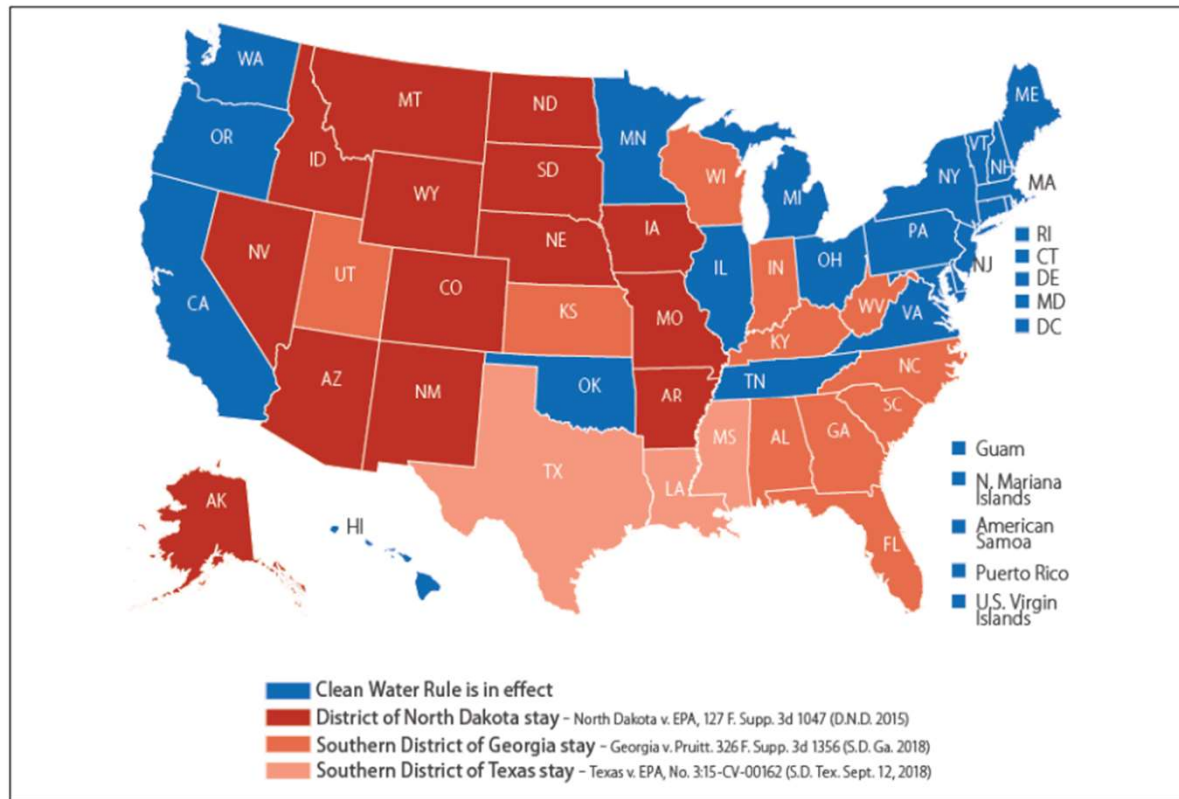
- Waters of the United States: In addition to the jurisdictional categories of waters, the definition includes:
  - All impoundments of “traditional” navigable waters
  - All tributaries of “traditional” navigable waters and impoundments
  - All waters, including wetlands, adjacent to waters identified in categories one through five
  - On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a traditional navigable water



# Challenges to the 2015 WOTUS Rule

- *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617 (2018): Supreme Court, in a unanimous opinion, held that rules defining the scope of “waters of the United States” are subject to direct review in the district courts
  - Resulted in the litigation of the definition in multiple districts.
- 2016: The Trump Administration stayed the 2015 definition until 2020 and indicated that he was going to revise the rule to be consistent with Scalia’s opinion

# Challenges to the 2015 WOTUS Rule



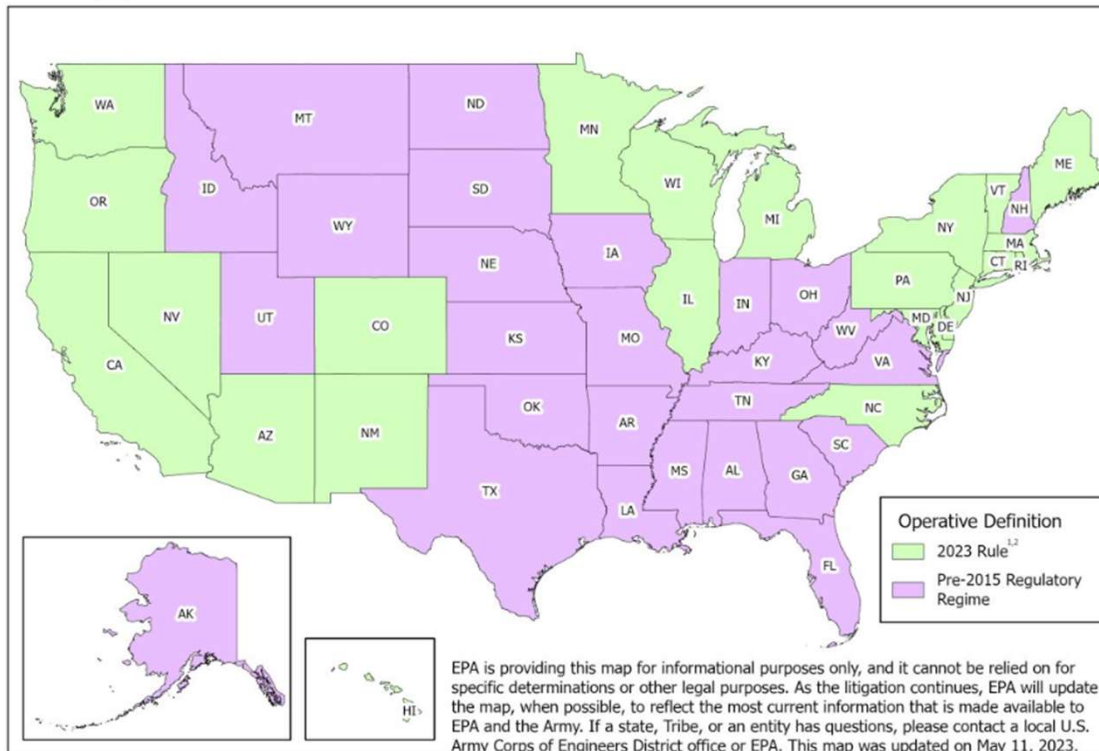
# Challenges to the 2019 WOTUS Rule

- In 2019, Trump finalizes the rule finalized – reflected Scalia’s definition in *Rapanos*
  - Also resulted in litigation
- *Pasqua Yagui Tribe v. EPA*: Petition for Review to vacate the Trump Era definition of WOTUS. An Arizona federal judge vacated the rule in August 2021. Industry groups appealed the decision in October 2021. In January 2022, the Industry groups filed a motion for voluntary dismissal and the case was dismissed in February 2022
- *Navajo Nation v. Regan*, No. 2:20-cv-00602 (D.N.M. Sept. 27, 2021): U.S. District Court for the District of New Mexico issued an order vacating and remanding the NWPR
  - Six courts also remanded the NWPR without vacatur or without addressing vacatur

# Challenges to the 2023 WOTUS Rule

- In January 2023, U.S. EPA finalized the Biden Administration Rule, which was closer to the Kennedy Significant Nexus definition
- *Texas v. EPA*, No. 3:23-cv-17 (S.D. Tx.): Stayed the Biden Administration definition in Idaho and Texas
- *West Virginia, et al. v. EPA*, No. 3:23-cv-32 (D.N.D.): Stayed the Biden Administration definition in 24 additional states including Ohio
- *Kentucky v. EPA*, No. 3:23-cv-7 (E.D. Ky.): Court dismissed the case on lack of standing. The Sixth Circuit remanded case back to the District and stayed the Biden Administration definition in Kentucky

# Challenges to the 2023 WOTUS Rule



<sup>1</sup>Also operative in the U.S. territories and the District of Columbia

<sup>2</sup>The pre-2015 regulatory regime is operative for the Commonwealth of Kentucky and Plaintiff-Appellants in *Kentucky Chamber of Commerce, et al. v. EPA* (No. 23-5345) and their members (Kentucky Chamber of Commerce, U.S. Chamber of Commerce, Associated General Contractors of Kentucky, Home Builders Association of Kentucky, Portland Cement Association, and Georgia Chamber of Commerce).

# The Supreme Court Weighs In (AGAIN)

- *Sackett v. EPA:*

- U.S. Supreme Court granted cert. in January 2022 to hear petition on the question of “Should Rapanos be revisited to adopt the plurality’s test for wetlands jurisdiction under the Clean Water Act.”
- Petitioner’s brief submitted on April 11, 2022 and Respondent’s brief submitted June 10, 2022
- Oral arguments held October 3, 2022
- Opinion issued May 25, 2023 with a 5-4 decision. Technically all nine judges agreed that the Sackett’s property was not WOTUS but ...

# The Supreme Court Weighs In (AGAIN)

- Court Opinion (Alito): The CWA extends to “Wetlands with a continuous surface connection to bodies that are waters of the United States in their own right, so that they are indistinguishable from those waters.” (internal quotations omitted)
- Thomas/Gorsuch: Would have limited the definition to traditional navigable waters and allow the states to regulate all other waters
- Kagen/Sotomayor/Jackson/Kavanaugh: Would have had a more expansive definition than the majority opinion
- Where are we? U.S. EPA must propose rules consistent with the majority opinion. Expected in September 2023

# ORSANCO Update



- Ohio River Valley Water Sanitation Commission
  - Federal Commissioners
  - Illinois
  - Indiana
  - Kentucky
  - New York
  - Ohio
  - Pennsylvania
  - Virginia
  - West Virginia



MEMBER STATES



# ORSANCO Update



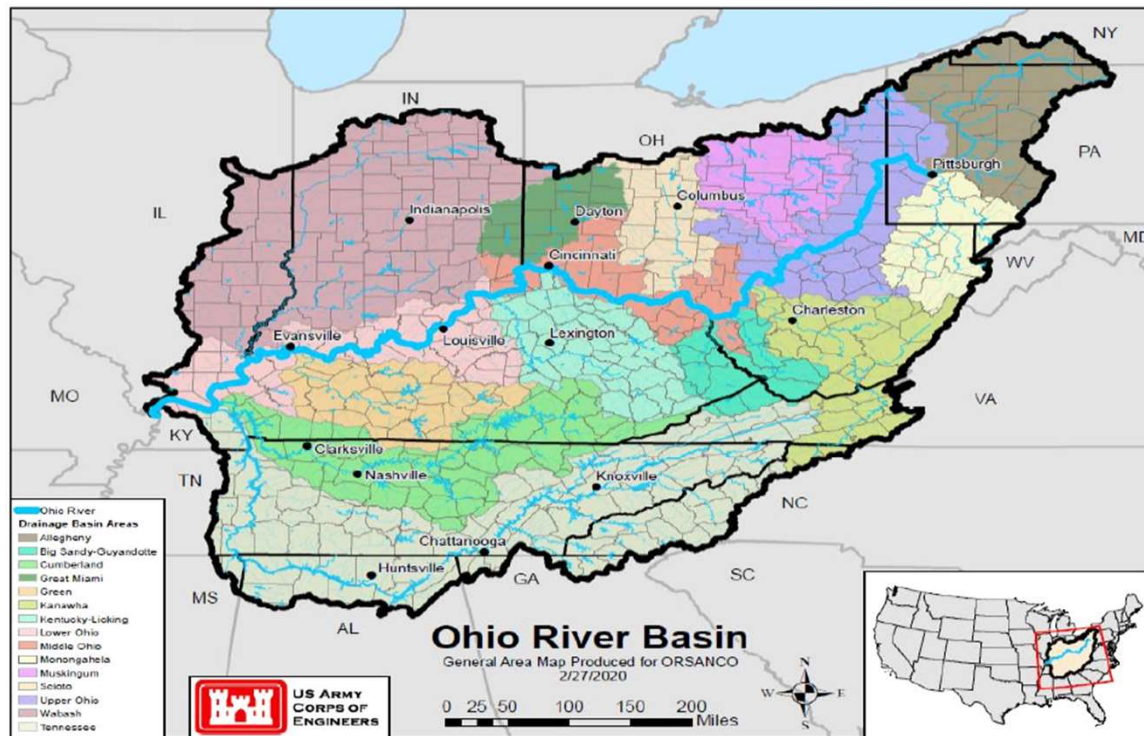
## Technical Committee

- Biological Water Quality
- Stream Quality Criteria
- Monitoring Strategy
- NPDES: Reviews all NPDES permits for facilities on the Ohio River

## Advisory Committees

- Water Users
- Special Interest
  - Chemical Industry
  - Power Industry
  - Watershed Organizations
- Public Information
- Publicly Owned Wastewater Treatment Works

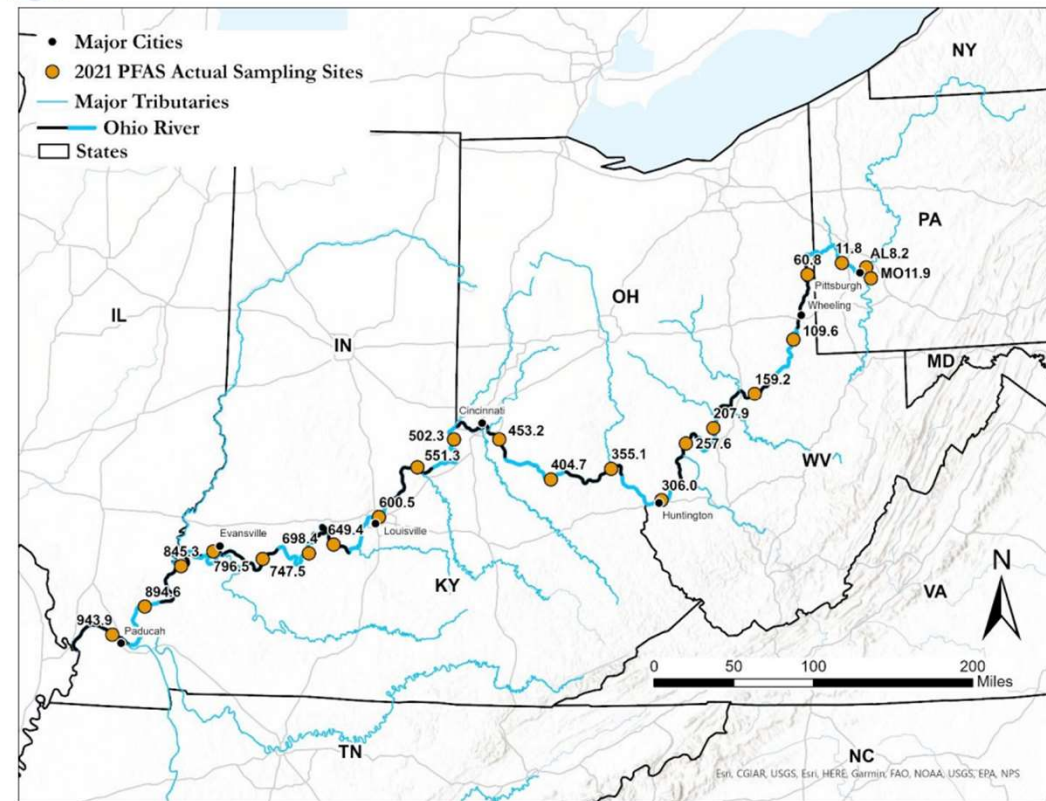
# ORSANCO Update



# ORSANCO Update



- PFAs monitoring in ambient water of the Ohio River.
  - The primary objective of this effort was to characterize ambient levels of select PFAS compounds in the Ohio River at 20 sampling locations.
  - A secondary objective of the study was to investigate the distribution of PFAS in the Ohio River water column.



# ORSANCO Update



- Results

- Every site had detections of multiple PFAS
- Twelve of twenty eight PFAS were detected; nine were detected frequently.
- HFPO-DA had the highest concentration at 32.2 ng/L
- PFOA was detected at nineteen sites with a range from 4.88 ng/L to 12.90 ng/L
- HFPO-DA (GenX) was detected at nine sites with a range from 5.63 ng/L to 32.20 ng/L
- PFBA was detected at one site at 5.31 ng/L
- PFBS was detected at three sites with a range from 5.01 ng/L to 6.05 ng/L
- PFPeA was detected at five sites with a range from 5.76 ng/L to 26.60 ng/L

# Questions?

Cheri Budzynski

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# Environmental Permitting in Ohio

Steve Wells - AEP



# NPDES Permit Issues

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- Low-Level Mercury
  - Intake Water
    - Check concentrations on regular basis, if having issues.
  - Treatment Chemicals
    - Check the MSDS Sheet
    - Cheaper is not always better
- Emerging Chemicals
  - PFAS
  - Bromide



# NPDES Permit Issues

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- NPDES Permit Renewals
  - Timing
    - Start Early!
      - Allows for resampling, if necessary
    - Review Existing Data and New WQS
      - Will prevent surprise monitor and/or limits
    - Include Request for Changes and Revisions
      - Provide documentation for changes and revisions that you want to see in the Permit
    - Submit Early, if possible
      - Eliminates Risk that an Application is deemed incomplete





# Construction Stormwater

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- Inspections
  - Documentation
    - Electronic
    - Paper
  - Changes to Controls
    - Keep up-to-date map on-site
- Post Closure BMPs
  - Maintenance
  - Who checks them?

# Questions?



Steve Wells, AEP  
sfwells@aep.com

## Cheri A. Budzynski

Partner, Diversity and Inclusion Committee Co-Chair



### CONTACT

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### EDUCATION

J.D., *magna cum laude*, Order of the Coif, The University of Toledo, 2007

Ph.D., Experimental Psychology, Bowling Green State University, 2001

M.A., Experimental Psychology, Bowling Green State University, 1998

B.A., *summa cum laude*, Lourdes College, 1995

### SERVICE LINES

Environmental and Energy

Environmental

### BUSINESS SECTORS

Construction

Environmental

Manufacturing

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A management-side attorney for more than 10 years, Cheri counsels clients on day-to-day environmental compliance and other administrative issues at their facilities. Clients draw on the fact she frequently works with Ohio EPA, U.S. EPA, and the Ohio River Valley Water Sanitation Commission regarding environmental regulations, thus, allowing her to effectively and efficiently, advise clients on regulations on both the state and federal level and seek changes to regulations that impact their business by providing input to the regulatory agencies and, if necessary, appealing the regulations.

Cheri serves as national discovery counsel for asbestos litigation, concentrating on all aspects of discovery. Hardworking and organized, she has significant experience managing a large document repository, developing discovery responses, assisting with corporate product witness deposition preparation, and helping counsel around the country with defense strategy.

Colleagues and clients alike also look to Cheri for her ability to successfully handle sophisticated permit issues, including permits under the Title V and New Source Review Provisions of the Clean Air Act, the NPDES program under the Clean Water Act, and construction and operation permits.

Outside her environmental practice, Cheri also advises clients on contractual agreements related to equine law.

Furthermore, Cheri enjoys spending time cooking and riding horses.



#### **BAR AND COURT ADMISSIONS**

- Florida, 2008
- Ohio, 2007
- United States Court of Appeals, District of Columbia
- United States Court of Appeals, Sixth Circuit
- United States District Court, Northern and Southern Districts of Ohio
- United States Supreme Court

#### **PROFESSIONAL AND COMMUNITY AFFILIATIONS**

- Toledo Bar Association
- Toledo Women's Bar Association
- Ohio Bar Association
- President, Toledo Women's Bar Association
- Past Social Media Vice Chair, American Bar Association Section of Environment, Energy, and Resources Air Quality Committee

#### **HONORS**

- Best Lawyers in America, Environmental Law, 2021
- Ohio Rising Star by *Super Lawyers* magazine, 2014 - 2017
- *Toledo Business Journal*, "Who's Who in Toledo Area Law"