

Executive Order, Jack Irvin and Brandon Kern

Joe: While it wasn't surprising, it was certainly disappointing when Governor John Kasich made good on what he had been hinting at issuing an executive order that's going to create quite a regulatory nightmare, if you will, for many farmers in Ohio. 7,000 farmers, two million acres in northwestern Ohio. In with us today are two of our leading policy folks Jack Irvin and Brandon Kern. I forget your exact titles guys so I want to skip those, but Jack, the executive order just what exactly was it that the governor sprung on us this week.

Jack: So the governor has directed his agencies to come together and work on declaring potentially a watershed in distress for up to eight different watersheds in northwest Ohio of course. The Western Lake Erie Basin and primarily in that kind of lower portion of the western Lake Erie Basin. Kind of a long story short, still a lot of process to go through but the director of agriculture kind of formulates all the proposals, formulates the reports, has to move forward with having the Soil and Water Commission, it's an independent body that would review, thumbs up or thumbs down to move forward and then the department would try to implement a series of rule packages. So unfortunately, we don't know a ton at this point in terms of the exact details as the administration hasn't been sharing those with us. But we are pretty confident that it would have some similarities to what's been going on in Grand Lake St. Mary's.

Joe: And then in addition to that one important point we'll probably get into this more, the governor's news conference they talked a lot about nutrient management plans but what they didn't talk about is an attempt to add commercial fertilizer under the definition of agricultural pollution. It's not spelled out that way, but it appears it's in there.

Jack: Yeah that's certainly one of the biggest changes that we're looking at right now. So Grand Lake St. Mary's was a watershed in distress, still is, that has some date specific times of when people cannot spread manure - December 15 through March 1st, and then also requires nutrient management plans. This proposal would include commercial fertilizer at least the way we understand it and I think we have to be very clear, we are sharing here what we understand. Unfortunately we're still flying blind in a lot of stuff we haven't had very much feedback but we do anticipate including commercial fertilizer and some type of nutrient management plan requirement and probably some type of restrictions on timing of applications.

Joe: I said it wasn't a surprise but Brandon the reaction here in the office, by our farmer leaders our grassstops, this is not good.

Brandon: Well, I think there's certainly a lot of questions that still need to be answered and I think there's still a lot of confusion at this point about how this will be implemented because as Jack said we don't have a lot of details yet. We've got kind of a general outline from the governor's executive order but not a lot of details about how it could potentially be implemented. And I think there's definitely a large level of frustration to the fact that we didn't have the chance

to be able to provide some of the feedback that we feel would have been helpful in eliminating some of that confusion and you know some of the shortcomings of this approach that we've already identified. So you know it seems like, Joe, there's also a little bit of inconsistency. You know the fact that we're going the regulatory route here. There are some inconsistency in the administration's rhetoric about how many resources they've put towards the water quality issues surrounding Lake Erie and then how they've treated agriculture.

Joe: Yeah they keep saying we put \$3 billion into cleaning up Lake Erie.

Brandon: Right, but yet we know and it's been reported that maybe as little as 1 percent of those dollars have actually gone to agricultural practices directly on-farm practices. And so there's a little bit of confusion here on our part because there's certainly a priority for resources going to water quality but they're going to a lot of other areas but yet agriculture is the priority when it comes to new regulations.

Joe: One of the issues that we brought to the forefront when asked after this executive order is how does this fit in with all of the layers of regulation that are already in place?

Brandon: Well that's one of our biggest questions I think. So you look at the regulations in place already, Senate Bill 150, the requirement for farmers who are applying nutrients to go through a certification program and get education and training on best management practice and be certified to do so. You have Senate Bill 1, which directly impacts this region we're talking about now the western Lake Erie Basin where you have restrictions on application based on certain soil conditions and what the weather forecast is calling for the administration earlier this year. You know a couple of months ago declared the western Lake Erie portion, the western portion of Lake Erie impaired and that impairment designation has an associated lawsuit that's pending going on right now where there's environmental groups challenging how the Ohio EPA has handled this and one of the things that they are calling for in continuation of that case is for a TMDL (total maximum daily load) to be established. And that's a major unknown how that takes place so how this new layer of regulation fits in with all those different things that are already going on that impact farmers in that region is a big question mark at this point.

Joe: Jack you and B.K. have both made the point. There's more things we don't know than what we do. But in terms of what we know as far as what's going to be happening next.

Jack: So we do know on the 19th the Soil and Water Commission's expected to bring this up for consideration among other things I'm sure, but part of it would certainly be this executive order the watershed in distress discussions and possible rule packages. And then we know from there they'd have to move through the formal rulemaking processes that the state has and certainly it's not a quick and timely process. And then if that would move forward from there that would continue on in terms of the requirements for nutrient management programs. The Director of Agriculture did mention that he thought 2020 crop year was kind of the timeline for when this would be moving forward from the agency's perspective. So again that's what we know for now.

Joe: So one of our complaints even before the executive order was announced. And then after was you've not brought the regulated community into the discussion. So since the actual order was issued has there been any change in that, Jack any cause for optimism?

Jack: Well, no cause for optimism is the right word exactly but certainly I think they have heard us and recognize there is some serious frustration out there. They did host a call with a lot of the agricultural leaders and gave us an opportunity...

Joe: The agency heads?

Jack: Yes the directors for their respective agencies of ag, department natural resources and EPA and certainly gave us some opportunities to raise some questions. Unfortunately, we didn't get a lot of answers bluntly. So there's a lot of questions on timing remain. As Brandon pointed out, how these regulations are going to interplay, what are the resources available both in terms of staffing from the state side, dollars to implement these programs and just a laundry list of questions that unfortunately we did not get answered.

Joe: So what's next? What kind of steps are we taking on behalf of Ohio's farmers, Jack?

Jack: Well certainly we're not just going to sit back and be idle. We've been engaging all along as best we can and will continue to do that. We're going to explore any type of legal options. We have certainly been engaged in the rulemaking process, going engage with the commissioners and just getting out with our grassroots and explaining what's going on as best we can.

Joe: And we'll be reaching out to members as you pointed out in keeping everybody's informed as possible, this whole thing about regulating commercial fertilizer as an ag pollutant. Brandon, there was some legal questions there that were going to be pursuing?

Brandon: Yeah I think so. It depends on how the administration pursues this, but if they think there are some real questions then the legal community as to whether they have the authority to do it under existing statute and the administrative leaders from the administration seem to indicate that's how they're going to pursue this, that they believe an interpretation of existing statute would give them that authority to do so and I think there's a lot of folks on our side who would strongly disagree. So exploring what our legal options may be if they proceed down that road is definitely going to be one of these next action steps.

Joe: I mentioned in a news conference about the only thing they really focused on is helping farmers get nutrient, well, requiring farm workers to get nutrient management plans. What a surprise, a couple of months ago we announced an initiative to help that actually happen. Then it didn't take a law to do it.

Brandon: Absolutely. I mean that's exactly right, Joe. The industry came together and said we want to promote the idea of nutrient management plans. We all believe in them. You know the difference here is that you're going to probably put a regulatory timeframe and a requirement on creating nutrient management plans where the industry was trying to come together and be able to do them and provide those for our members ourselves. So there are real capacity issues out there about how much capacity government has to be able to support us in getting these plans written in the timeframe that they think they're going to in this rate under this new regulation and that's probably the real issue. But we're committed to promoting nutrient management plans. We've already made that commitment. So you know that part of it is not necessarily the problem. Helping farmers get nutrient management plans not necessarily the problem. It's the regulatory process that they're now going to have to go through to achieve that is what creates a lot of restrictions.

Joe: So the nutrient management plans, we got a moment left here. Helping farmers get those that's just kind of like the latest in the step, I mean we have been on this as an organization and as an agricultural community and we'll continue to do so.

Brandon: Yeah, and as you know and as our members know our water quality action plan has been ongoing. We spent more than \$2-and-a-half million of member membership dollars on different outreach programs and research to support agriculture's reaction and action steps on improving water quality. And we're going to continue to do all these things. As part of this too, I think one thing that we need to do a better job of this is going to be a focus for staff here at Farm Bureau is being able to tell our story more effectively and a little bit more loudly. I think one thing that you know we are kind of in our community is kind of modest about what we do and we don't like to beat our chest and talk about you know all the great things that we do sometimes. But this is one that we need to do that because this will be a continuing problem that we're going to have to face and we need people to understand, and my experience has been, Joe, when people do understand all the things that agriculture has done and the investments we've made they're impressed by it. I mean when I go out talk to community groups and others they are impressed by the things that farmers do and they're impressed of what a significant investment we have made. So we have to go out and tell that story more so that people know.

Joe: The only certainty I can offer is this is not the last time we're going to be talking about this. A couple of our senior directors in the policy shop, Brandon Kern and Jack Irvin. I'm Joe Cornely.