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VIA E-MAIL (dsw_rulecomments@epa.ohio.gov)

Rule Coordinator
Ohio EPA - Division of Surface Water (DSW)
P.O. Box 1049
Columbus, OH 43215

Re: Early Stakeholder Outreach – New Biological Criteria Narrative Rule (OAC 3745-2-03)

Dear Rule Coordinator:

The Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”) appreciates the opportunity to comment during Ohio EPA DSW’s Early Stakeholder Outreach for the Biological Criteria Rule (OAC Chapter 3745-2-03). AOMWA is a not-for-profit trade association that represents the interests of public wastewater agencies across the state of Ohio, serving more than 4 million Ohioans and successfully treating more than 300 billion gallons of wastewater each year.¹

As noted in the current version of OAC. § 3745-1-07(C), biological criteria “provide a direct measure of attainment of the warmwater habitat, exceptional warmwater habitat and modified warmwater habitat aquatic life uses.” This recognition plays a significant role in Ohio’s approach to the regulation of water quality and is of great importance to regulated point sources, such as AOMWA’s members, which operate under these regulations. AOMWA therefore has a significant interest in ensuring that any new rulemaking on this issue carries forward this well-established principle and the flexibilities built into the current rule.

As a preliminary matter, AOMWA notes that Ohio EPA’s January 4, 2019 Notification of Early Stakeholder Outreach (ESO) provides no specific detail regarding changes that are being considered by the Agency. Because of this, it is difficult for regulated entities to know whether rule revisions being considered will affect, or are likely to affect, their operations. This vague form of notification leaves it to members of the regulated community to comment on any aspect of the regulatory framework that could potentially be affected by the rulemaking. Likewise, when the Agency solicits stakeholder input but declines to specifically respond to such input or address it as part of its subsequent rulemaking, it undermines the intent of the ESO process to allow for meaningful involvement by stakeholders prior to the release of draft rule language. Moving

¹ AOMWA members include Akron, Avon Lake, Bowling Green, Butler County, Canton, City of Hamilton, Columbus, Dayton, City of Fairfield, Hamilton County, Lancaster, Lima, Metropolitan Sewer District of Greater Cincinnati, Middletown, Newark, Northeast Ohio Regional Sewer District, Portsmouth, Solon, Springfield, Wadsworth and Warren.

forward, in order to make the ESO process more efficient and ensure that comments solicited as part of this process are given due consideration, AOMWA would request that the Agency specify the rule changes that it is considering as well as commit to responding to comments received as part of the ESO process.

Nonetheless, given the significance of the biological criteria for AOMWA's members, we offer the following comments regarding aspects of the rules that could potentially be affected by new rulemaking:

First, AOMWA requests that any new rulemaking proposed by Ohio EPA retain the regulatory flexibility contained in the existing rules. Biological criteria provide a direct measure of attainment of aquatic life uses. Currently, OAC § 3745-1-07(C)(1) allows the Director of Ohio EPA to conclude that attainment of biological criteria in a water body will take precedence over the application of selected chemical specific aquatic life or whole effluent criteria. This fundamental concept gives the Agency flexibility to assign different effluent limits where existing effluent may not meet the determined chemical and whole effluent criteria, but the stream is nonetheless in attainment.

Second, AOMWA believes that the new rule should maintain existing protections for point sources that are meeting all applicable chemical specific and whole effluent criteria. Under the existing regulatory framework, additional regulatory controls shall not be imposed on point sources that are meeting chemical specific and whole effluent criteria unless certain conditions are present, including that "[t]he point sources are shown to be the primary contributing cause of the nonattainment." OAC § 3745-1-07(C)(2)(a). This aspect of the rules appropriately requires a relationship between a facility's discharge and the receiving water body's nonattainment. Conversely, it protects point sources from the imposition of costly requirements which may have little or no environmental benefit.

Finally, AOMWA opposes any revisions to the existing biological criteria in Table 7-1 of existing OAC. § 3745-1-07 that are not based in sound science. The existing biological criteria significantly affect the regulated community, and the imposition of different biological criteria must first be supported by quality and robust data and reasoning as well as some assurances that any such criteria would result in a material environmental benefit. Additionally, we request that the Agency provide ample time for the regulated community to review, analyze and comment on the technical bases for any proposed changes to the biological criteria currently set forth in Table 7-1.

AOMWA appreciates your consideration of these comments and Ohio EPA's willingness to engage AOMWA and other stakeholders on this issue. AOMWA and its members look forward to working with the Agency on this rulemaking moving forward. Should you have any questions, please contact Andrew Etter at andrew.etter@squirepb.com or (614) 365-2765. Thank you for your attention to and consideration of these comments.

Sincerely,



Brian M. Gresser, P.E.
President, AOMWA

cc: (via e-mail)
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