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February 24, 2021

VIA EMAIL ONLY

Ohio EPA - Division of Surface Water
Attn: Permits Processing Unit
epa.dswcomments@epa.ohio.gov
P.O. Box 1049
Columbus, OH 43215

**Re: Comments on Ohio EPA's Draft Section 401 Water Quality Certification
Associated with the 2021 Nationwide Permit Renewals**

Dear Rule Coordinator:

The Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") appreciates the opportunity to comment on Ohio EPA's Draft Clean Water Act Section 401 Water Quality Certification for the 2021 Nationwide Permits ("Draft 401 WQC"). 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 320 billion gallons of wastewater each year.¹

AOMWA members will be affected by the Draft 401 WQC in two primary ways. First, as members of the regulated community, AOMWA members frequently complete projects that require Nationwide Permits, such as NWP 43 (stormwater management facilities) and the new NWP 58 (utility line activities for water and other substances), which was formerly authorized under NWP 12. Second, AOMWA members serve an important role in protecting watersheds by treating wastewater before it is discharged. In addition, AOMWA members are aware of their close relationship with water bodies surrounding their facilities, and the potential that lowering of water quality could have indirect consequences on their operations.

As a result, AOMWA hereby incorporates the comments submitted by its members, the City of Columbus and the Northeast Ohio Regional Sewer District. In particular, we highlight the following concerns associated with the Draft 401 WQC:

- Before the recent federal rulemaking, many of the U.S. Army Corps of Engineers' Nationwide Permits featured a 300 linear foot maximum for activities that can be

¹ AOMWA 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 and the Northeast Ohio Regional Sewer District.

authorized when relying on the NWP. See 86 Fed. Reg. 2744, 2761 (Jan. 13, 2021). For activities that exceed the threshold, activities that impact waters of the U.S., which are also considered waters of the State of Ohio, must obtain an individual permit and may not proceed under the streamlined process for NWPs. However, under the new federal NWPs, this limit has been replaced with a ½ acre maximum for both wetlands and streams. As described in greater detail in NEORSD's comments, this approach will dramatically increase the filling and related activities that can be authorized through a NWP. For example, under the new approach, a permittee could fill 4,356 linear feet of a 5 foot wide stream. This degree of impact is not consistent with the stated purpose of the NWPs to authorize no more than minimal individual and cumulative adverse environmental effects. 86 Fed. Reg. at 2750. It is also not consistent with Ohio EPA's draft determination that the permitted activities will not "[p]revent or interfere with the attainment or maintenance of applicable water quality standards in Chapter 3745-1 of the Administrative Code." OAC § 3745-32-03(D)(1)(b). Ohio has the ability to impose more protective restrictions in this circumstance, notwithstanding the federal change. 33 CFR § 330.4(c)(2).

- Similarly, the Nationwide Permits streamline the permitting process for NWP 12 by reducing the circumstances in which a preconstruction notice is required from seven instances to two. Again, without the review of such activities through the individual permit process, the potential for lowering of water quality associated with these revisions is likely. At a minimum, the removal of this restriction and the resulting NWP interferes with the attainment of water quality standards, and pursuant to OAC § 3745-32-03(D)(1)(b), a unique Ohio condition should be added to address this potential.

Finally, AOMWA believes that Ohio EPA's public participation associated with the WQC was inadequate. Ohio EPA's website currently states that the Agency released a public notice on December 16, 2020. However, that public notice was not provided via email, consistent with Ohio EPA's typical notification process for rulemakings and water quality certifications of this scope. Although the most recent iteration of the Draft 401 WQC was circulated via email on January 15, 2021, interested parties had no meaningful opportunity to do so initially. AOMWA raised a similar complaint in comments provided on March 10, 2017 on the Draft 401 WQC associated with the 2017 NWPs. We request that the Agency provide notifications associated with such influential water quality certifications via email.

AOMWA appreciates your consideration of these comments. We look forward to working with the Agency on this and other operator certification issues moving forward. Should you have any questions, please contact Rees Alexander at rees.alexander@squirepb.com or (614) 365-2798.

Thank you for your attention to and consideration of these comments.

Sincerely,



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President, AOMWA

cc: (via e-mail)
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