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VIA EMAIL ONLY

Ohio EPA - Division of Surface Water
epatmdl@epa.ohio.gov
P.O. Box 1049
Columbus, OH 43215

Re: Comments on Ohio EPA's Draft Loading Analysis Plan for the Maumee Watershed Nutrient TMDL

Dear TMDL Coordinating Team:

The Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") appreciates the opportunity to comment on Ohio EPA's Draft Loading Analysis Plan for the Maumee Watershed TMDL. 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 submits the following comments:

1. **Remediation Should Not Focus on Point Sources.** The Loading Analysis Plan states that "[t]his TMDL will ultimately expand to include more detailed allocations beyond nonpoint sources." We appreciate that these allocations will be addressed later in the TMDL development process. When the Agency turns to that step, the Agency should rely principally on the Nutrient Mass Balance Study's conclusion that point sources are not the primary source of phosphorus loading. The Nutrient Mass Balance Study explicitly recognizes that "[i]f nonpoint nutrients are found to be the major contributor of downstream total phosphorus load, then focusing remediation on point source nutrients would neither be prudent or efficient."² The Nutrient Mass Balance Study reports that "**nonpoint sources were the highest contributors to the phosphorus load in the . . . Maumee (89 percent) watershed.**"³ Meanwhile, point sources contributed merely 7% of the phosphorus load.⁴ The study attempted to quantify the largest contributors of phosphorus

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.

² *Ohio EPA Nutrient Mass Balance Study* at pg. 5 (2020).

³ See pg. 3.

⁴ See pg. 24.

loading to identify the best opportunities for remediation. Its findings demonstrate that point sources should not be a focal point for remediation. Further, as Ohio's 2020 Domestic Action Plan appropriately recognizes, publicly-owned treatment works have already invested significantly in efforts to reduce phosphorus loading to Lake Erie. Over the last several decades, AOMWA members have invested literally billions of dollars to address and substantially reduce or treat wet weather flows and to improve their treatment systems, which have helped to reduce nutrient discharges. In fact, many of these systems have already improved their wastewater treatment processes to achieve phosphorus effluent limits, and as a result, have already reduced their total phosphorus discharge loadings by greater than 40 percent. As a result, waste load allocations should be based on equity and account for significant efforts already undertaken by point sources. Additional point source reduction will not achieve corresponding improvements in the Western Lake Erie Basin.

2. **Future Aquatic Life Use Standards Should be Promulgated as Rules.** Ohio EPA has indicated that it plans to update its Lake Erie aquatic life use assessment in the 2022 Integrated Report. Ohio EPA has acknowledged that water quality standards must be promulgated as rules pursuant to R.C. 119.03. *Fairfield Cty. Bd. of Comm'rs v. Nally*, 2015-Ohio-991, ¶ 37, 143 Ohio St. 3d 93, 102, 34 N.E.3d 873, 882. Yet it appears Ohio EPA is planning to include the assessment methodology in the Integrated Report, without complying with R.C. 119.03. AOMWA believes that the development of aquatic life use assessment methodologies or any other de facto water quality standards should be finalized as part of a notice and comment process separate from that of the Integrated Report.
3. **The Assumption of Conservative Phosphorus Loading Needs to be Evaluated.** The Loading Analysis Plan includes the assumption that “the transport of phosphorus loads through the Maumee watershed to Lake Erie in the springtime is assumed to be conservative, i.e., no phosphorus is removed from within the system.” However, it does not appear that there is an adequate foundation for this assumption, and evidence actually supports the opposite conclusion. The Great Lakes Advisory Board's Nutrient Workgroup concluded that “investments in larger nutrient reduction projects **located within lower watershed tributaries and/or adjacent to receiving water bodies** will result in increased nutrient (excess P) removal at a lower cost when compared to **multiple smaller projects in the upper watershed**.”⁵ Further, the contribution of streambank erosion and river bed resuspension are two important processes that must be considered, along with delivery ratios from land parcels to loadings at the Maumee River mouth. AOMWA requests that Ohio EPA provide the research, documentation, or other support for its conclusion that no phosphorus is removed from the system.
4. **The Agency Should Provide a Comment Opportunity for Verification of the Mass-Balance Model Approach.** The Agency has indicated that it plans to use the mass balance model to develop the Maumee Watershed Nutrient TMDL. The mass balance approach does not account for legacy phosphorus or critical source areas and, as discussed above, does not account for the contribution of phosphorus from streambank erosion and river bed resuspension. The use of the mass-balance model in this manner has not been validated. The agency has indicated it will verify the mass balance methods using the Soil and Water Assessment Tool (“SWAT”). The SWAT accounts for instream

⁵ <https://www.glri.us/node/423> (select Nutrients Workgroup Draft Recommendations (PowerPoint)) at slide 8.

processes, legacy phosphorus and critical source areas. Under the Agency's current planned approach, stakeholders would only receive an opportunity to evaluate this verification within the review of the Preliminary Modeling Results. AOMWA requests an opportunity to review this important, fundamental verification in isolation. We believe a separate opportunity for comment is necessary because the verification will drive the Agency's approach to the Preliminary Modeling Report. If stakeholders are only afforded an opportunity to address the verification within the Preliminary Modeling Report, then many of the decisions based on the verification will already be underway. In addition, OAC 3745-2-12(A)(2)(a) requires that the Agency provide an opportunity to comment on "the proposed modeling approach" **before** the preliminary modeling results, and the verification may be an important piece of the Agency's modeling approach that must be completed before moving forward with the preliminary modeling results.

5. **DRP Should Be Used to Develop Allocations.** The Agency has acknowledged that Dissolved Reactive Phosphorus must be addressed to make progress in restoring attainment of designated uses in the Western Lake Erie Basin. Before management practices are recommended in the implementation strategy, there must be consideration of how well those management practices perform in terms of reducing DRP loads (TP loads have declined and are holding steady, however, DRP loads are increasing).
6. **AOMWA Appreciates Ohio EPA's Case-by-Case Approach to Each HUC-12.** The Agency has now clarified that it does not plan to propose 40% reductions in total phosphorus loading from each HUC-12. AOMWA supports this case-by-case approach to each HUC-12. In a HUC-12 that is largely unregulated and fails to manage nutrients effectively, it appears that phosphorus reductions greater than 40% could be achieved more readily than in watersheds that have taken steps to manage nutrients. By contrast, in a HUC-12 that already features optimal nutrient management processes, it would not be appropriate to require an **additional** 40% reduction.
7. **A Case-by-Case Approach to Land Uses is Also Appropriate.** Similarly, a uniform reduction applicable to each land use is also problematic. This approach does not recognize the importance of legacy phosphorus and critical source areas that account for a disproportionate load of phosphorus.

AOMWA appreciates your consideration of these comments, and looks forward to participating in the development of this TMDL. We encourage Ohio EPA to offer frequent opportunities for interactive stakeholder engagement through periodic in-person meetings, calls, or webinars. By providing stakeholders an opportunity to ask questions, these interactive stakeholder events will enhance the engagement process and ultimately improve the TMDL. Should you have any questions, please contact Rees Alexander at rees.alexander@squirepb.com or (614) 365-2798. Thank you again for your attention to and consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "John G. Newsome". The signature is fluid and cursive, with a long horizontal stroke at the end.

John G. Newsome, P.E.
President, AOMWA

cc: (via email)
Rees Alexander, Esq., Squire Patton Boggs (US) LLP
Katherine Wenner, Esq., Squire Patton Boggs (US) LLP