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**VIA EMAIL ONLY**

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

**Re: Comments on Ohio EPA's Draft Section 401 Water Quality Certification  
Associated with 41 Remaining 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 41 remaining 2021 Nationwide Permits that were not renewed in March 2021 ("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.<sup>1</sup>

The 2021 Nationwide Permits include a new permit, NWP 59, which authorizes impacts for Water Reclamation and Reuse Facilities. However, Ohio EPA's Draft 401 WQC proposes to require the more burdensome *individual* WQC for any activities authorized under this NWP 59, as opposed to authorization under the general 401 WQC. During a webinar on October 6, 2021, Ohio EPA explained that it tentatively plans to require an individual WQC for this type of facility because the Agency is not familiar with these types of facilities and would prefer to review these facilities on a case-by-case basis until it has greater familiarity with them.

However, the federal rule is somewhat ambiguous in its description of Water Reclamation and Reuse Facilities.<sup>2</sup> The proposed rule states that it covers "centralized systems for planned water reuse" due to increased "pressure on water resources." Thus, it appears that this term is intended to cover integrated wastewater and drinking water treatment systems that may be used in states with limited water resources (i.e., states outside of Ohio). However, the proposed rule also describes "indirect potable water reuse," an example of water reclamation and reuse:

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<sup>1</sup> 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.

<sup>2</sup> *Proposal to Reissue and Modify Nationwide Permits*, 85 Fed. Reg. 57298, 57348-9 (Sept. 15, 2020).

For indirect potable water reuse, water is treated with an environmental buffer and used for drinking water. For example, stormwater or wastewater is first directed to a municipal wastewater treatment plant for treatment. Once treated, it is then directed to an environmental buffer, such as a lake, river, or a groundwater aquifer that is used as a source drinking water. The water is then treated at a drinking water treatment plant and directed into the drinking water distribution system.

Fed. Reg. at 57348-9. This description of water reuse covers not only closely connected wastewater and drinking water systems, but also the more traditional process of wastewater discharges to a river that itself could be a drinking water source. As a result, AOMWA is concerned that this term “Water Reclamation and Reuse Facilities” could be interpreted to cover traditional wastewater, stormwater, and drinking water treatment facilities. In turn, Ohio EPA’s requirement that these facilities obtain an individual WQC could cause confusion as to whether traditional wastewater and drinking water treatment facilities are eligible for coverage under the Ohio WQC associated with the Nationwide Permits. Ohio EPA is extremely knowledgeable about these traditional wastewater and drinking water treatment facilities, and therefore should not require an individual water quality certification on this basis.

Ohio EPA’s proposed approach to require an individual WQC for NWP 59 would lead to confusion and would also be inconsistent with Ohio EPA’s treatment of other NWP activities. Under the Draft 401 WQC for NWP 7, which provides authorization for the construction of certain Outfall Structures and Associated Intake Structures, Ohio EPA authorizes construction of elements of wastewater treatment systems. Yet if these same elements of a wastewater treatment system are also deemed part of a larger “indirect potable water reuse” system, then they could be authorized under one section of the WQC, while they are prohibited under another section unless an individual permit is obtained. Ohio EPA should not treat these wastewater facilities differently merely based on the interpretation that they also qualify as part of a larger “indirect potable water reuse” system.

AOMWA therefore requests that Ohio EPA either (1) incorporate terms for NWP 59 that are comparable to those terms that apply to NWP 7; or (2) clarify in the final WQC that an individual WQC is required for NWP 59 only for those water reclamation and reuse structures that are closely connected, and not those wastewater facilities that discharge to an environmental buffer, such as a lake, river, or a groundwater aquifer that is used as a source drinking water.

AOMWA appreciates your consideration of this comment. Should you have any questions, please contact Rees Alexander at [rees.alexander@squirepb.com](mailto:rees.alexander@squirepb.com) or (614) 365-2798.

Sincerely,



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