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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: Interested Party Review – Water Quality Standards – Human Health Criteria
(OAC 3745-1-32, 3745-1-33, and 3745-1-34)**

Dear Rule Coordinator:

The Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”) appreciates the opportunity to comment during Ohio EPA DSW’s Interested Party Review for the Triennial Water Quality Standards review of the criteria found at OAC Chapters 3745-1-32, OAC 3745-1-33, and OAC 3745-34. 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

The fact sheet accompanying this rulemaking notes that changes to these rules are being proposed to incorporate current human health information reflected in the maximum contaminant levels (MCLs) established under the Safe Drinking Water Act, the USEPA 2015 updates to 94 human health water quality criteria, and the Ohio River Valley Water Sanitation Commission (ORSANCO) 2015 pollution control standards (PCS). The revisions also include implementing MCLs statewide (historically MCLs were only applied in the Ohio River Basin).

It is unclear how the assumptions embedded in USEPA’s 304(a) criteria reflect state-specific conditions. When the USEPA updated the Human Health Ambient Water Quality Criteria document in 2015, assumptions regarding consumption rates, bioaccumulation factors, health toxicity values, and relative source contributions were revised. These highly conservative revisions are not state specific and represent human health risks for a narrow range of the general population. In this rulemaking, Ohio EPA has applied these assumptions to Ohio’s human health water quality criteria, likely resulting in highly conservative criteria without explanation.

In many cases, the USEPA 2015 Human Health Ambient Water Quality Criteria are based on a carcinogenicity of 10^{-6} risk. The USEPA has indicated that alternative risk levels may be

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.

used, including a 10^{-5} risk level. Ohio EPA selected the same risk factor as USEPA (10^{-6} risk) in at least 34 instances and used a lower risk factor (10^{-5}) in at least 30 cases. Regardless of the risk factor selected, the updated criteria are significantly more stringent than Ohio's existing criteria and no basis for the selected risk factors is provided.

In at least 28 instances, Ohio EPA appears to have selected criteria that are not consistent with the USEPA 2015 Human Health Criteria. These criteria are most likely based on the ORSANCO PCS or other MCLs; however, Ohio EPA has not provided rationale (on a pollutant specific basis) as to the selection of the applicable criterion.

The Business Impact Analysis (BIA) concluded these proposed rules would negatively impact 151 of the 3,250 NPDES permitted dischargers. Effective limits and monitoring requirements were determined based on the currently effective human health criteria that are, in many cases, orders of magnitude higher than the proposed criteria. These lower criteria will most likely result in more NPDES permitted dischargers having reasonable potential to exceed water quality standards during subsequent NPDES permit renewals, as priority pollutant monitoring analyses are evaluated against the new standards. Additionally, many of the proposed water quality standards are likely at concentrations below the detection levels that NPDES permit holders are currently using to analyze for these parameters. Ohio EPA therefore lacks important information on the potential impact of these new criteria on permittees.

For these reasons, AOMWA requests that the Ohio EPA provide the following information to impacted stakeholders in order to allow for an adequate review of the proposed changes:

- A more comprehensive assessment of these pollutants, including the relative contribution of various sources (e.g., atmospheric deposition, geological, etc.);
- The supporting documentation (including the factors for determining the USEPA's Human Health Criteria reflect conditions in Ohio) associated with adoption of the USEPA recommended human health criteria;
- Justification for adopting MCLs as ambient water quality criteria;
- Explanation for the selection of carcinogenicity risk factors for the various pollutants;
- Clarification as to the basis of the updated human health criteria for each of the pollutants considered in this rulemaking;
- Explanation of the need to apply criteria developed for the Ohio River statewide, for criteria based on the ORSANCO standards;
- Justification for the application of ORSANCO's bacteriological criteria when the future of ORSANCO's PCS is being debated; and
- A more thorough analysis of the economic impacts associated with meeting these criteria.

We also request that Ohio EPA give stakeholders additional time to review and comment on such information before the Agency proceeds with this draft rulemaking.

AOMWA suggests that Ohio EPA consider development of state-specific human health criteria based on sound science using the best available data and risk information. Ohio must develop criteria that are protective of the designated uses but is not required to use the same assumptions used in the national criteria or specifically adopt the national criteria. In its published BIA Ohio EPA states "revisions were necessary to bring consistency between state regulations, ORSANCO PCS, and federal water quality criteria." AOMWA submits that mere consistency is

not sufficient justification for this rule change. While Ohio EPA indicates economic impacts are site specific they could be very significant especially in the event additional treatment is required.

As directed through the Common Sense Initiative and stated in Ohio EPA's BIA it is incumbent upon the state to establish the proper balance between the water quality goals and the costs to society of attaining those goals. AOMWA encourages Ohio EPA to ensure its economic evaluation is thorough so it can adequately assess and transparently strike this balance.

AOMWA appreciates your consideration of these comments and Ohio EPA's willingness to engage AOMWA and other stakeholders on this issue. We 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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Rees Alexander, Squire Patton Boggs (US) LLP