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VIA E-MAIL (dap@lakeerie.ohio.gov)

Ohio Lake Erie Commission
P.O. Box 1049
Columbus Ohio, 43216-1049

Re: Ohio Lake Erie Commission's Draft Ohio Domestic Action Plan 2020

Dear Commission:

The Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") appreciates the opportunity to comment on the Ohio Lake Erie Commission's ("OLEC's") Draft Ohio Domestic Action Plan 2020 ("Draft Action Plan"). AOMWA is a not-for-profit trade association that represents the interests of publicly owned treatment works ("POTWs") 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 part of these efforts, our members have been and are continuing to invest billions of dollars in improvements to address existing permitting and regulatory requirements, many of which have or will help to reduce their nutrient levels. AOMWA and its members also have been at the forefront of many of the State's recent nutrient reduction efforts, including:

- Supporting Ohio EPA in the development of recommendations for a "weight of the evidence" approach to nutrient water quality standards in Ohio that would (1) protect Ohio's watersheds from nutrient impairment; (2) restore impaired waters to their designated uses; and (3) establish implementation procedures and discharge limits that are effective in abating nutrient impairment as well as reasonable and fair for regulated point sources, such as our members;
- Collaborating with Ohio EPA to develop a biennial nutrient mass balance study that can be used to identify the most environmentally beneficial and cost-effective mechanisms for nutrient reduction;
- Completing informational sampling for nutrients associated with wet weather flows in 2018 and 2019 to help Ohio EPA better assess the effectiveness of wastewater utilities' treatment efforts in reducing nutrient impacts associated with wet weather events;

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

- Aiding Ohio EPA and other stakeholders to enact legislation that established procedural requirements for the development and implementation of Total Maximum Daily Loads (“TMDLs”) in Ohio, many of which address nutrient pollution caused by phosphorus;
- Testifying in support of OLEC’s efforts to address Lake Erie’s nutrient issues and asset management problems affecting Ohio’s public water systems as part of legislation before the General Assembly; and
- Working with Ohio EPA to establish appropriate phosphorus monitoring and optimization study requirements to help identify and minimize nutrient impacts associated with wastewater utilities’ wet weather discharges as part of legislation enacted in 2017.

As demonstrated by the actions above, AOMWA is fully supportive of OLEC’s mission and Ohio’s on-going efforts to meet the proposed reduction of nutrient loading to Lake Erie by 40% set forth in the Great Lakes Water Quality Agreement of 2012. Toward this end, AOMWA was pleased to see—and is supportive of—several changes to and/or elements in the latest iteration of the Draft Action Plan that we believe would help to advance reasonable and effective nutrient solutions in Ohio. AOMWA offers the following specific comments in support of these items.

1. **Removal of Statewide Phosphorus Effluent Limits Imposed Regardless of Impact on the Receiving Water Body.** AOMWA generally supports Ohio’s efforts to reduce phosphorus loading into Lake Erie through methods that are based on sound science and evaluate the specific nature of the water body into which treated effluent is discharged. As discussed above, AOMWA is supportive of a weight of the evidence approach to assess nutrient impacts specific to a particular water body. This approach seeks to ensure that nutrient reductions are necessary and will lead to water quality improvements, rather than pursuing further, costly nutrient reductions from point sources that may not result in any measurable environmental benefit. For this reason, AOMWA agrees with and supports the Draft Action Plan’s removal of reference to an arbitrary statewide 1.0 mg/L phosphorus concentration effluent limit, which had been included in the 2018 version of the Domestic Action Plan.
2. **Recognition of Significant Prior Investment in Phosphorus Reductions by Municipal Wastewater Treatment Systems.** The Draft Action Plan appropriately recognizes the significant prior investments of POTWs to reduce phosphorus loading to Lake Erie. As discussed above, over the last several decades, AOMWA members have invested billions of dollars to address and eliminate wet weather flows and to improve their treatment systems, which have helped to reduce nutrient effluent. 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.
3. **Support for Phosphorus Optimization by Municipal Wastewater Treatment Systems.** Optimization of the operation of existing treatment works to further reduce phosphorus discharge loadings may also be appropriate where such operational changes are financially feasible and environmentally beneficial. As the Draft Action Plan explains, many municipalities have submitted optimization plans that “periodically identif[y] potential optimization opportunities” and these municipalities have “submitted schedules to implement changes when appropriate.” *Draft Action Plan* at pg. 78. Meanwhile, others have already invested significantly to reduce their total phosphorus discharge loadings and/or have already optimized their operations to the maximum extent that is economically

feasible. AOMWA continues to support phosphorus treatment optimization where appropriate, and appreciates the Draft Action Plan's recognition of the prior efforts and current innovations at POTWs.

- 4. Public Involvement and Engaging in Partnerships with Affected Stakeholders.** The Draft Action Plan also indicates that the State is considering forming an "Advisory Board," composed of members from "a range of organizations." *Draft Action Plan* at pg. 17. As described in the Draft Action Plan, this advisory board would meet at least annually, would be open to the public, and would create work groups to focus on specific topics. AOMWA supports the establishment of an advisory board that would aid OLEC in its mission by providing recommendations to all state agencies involved with the Domestic Action Plan. In addition, AOMWA believes that convening a group of stakeholders from a variety of backgrounds (i.e., not academic and state agency representatives only) would lead to the development of workable approaches. AOMWA and its members have extensive knowledge of municipal wastewater treatment and the nutrient problems facing Ohio's water resources, and therefore would request that representatives from AOMWA and/or its member utilities be afforded the opportunity to participate constructively on such an Advisory Board.

In addition, the Draft Action Plan describes three options for public involvement, and AOMWA would support all three levels of engagement (advisory board, annual conference, and ad-hoc meetings). The importance of Lake Erie nutrient issues for the State of Ohio warrants a multifaceted approach that incorporates all three types of public engagement.

Aside from these comments, AOMWA has the following requests for clarification with respect to certain strategies and discussion related to reducing nutrient impacts as set forth in the Draft Action Plan:

- 1. 40% Reductions in Total Phosphorus Loading from Each River Watershed.** The Draft Action Plan states that individual watersheds should be meeting the 40% reduction in phosphorus loading. *Draft Action Plan* at pg. 2. As the Draft Action Plan correctly notes, each major river watershed has its own characteristics and unique circumstances. For example, the Maumee River is a top priority (the five-year average TP load from the Maumee is more than double the Cuyahoga, Sandusky, and Portage Rivers combined). *Draft Action Plan* at pg. 4, tbl. 1. In addition, the Lake Erie watershed is composed of 7 million acres, 4 million of which are from the Maumee River Watershed. Pg. 18; see also pg. 31, Figure A5 (describing the percentage of Ohio's total contribution of total phosphorus load as being 85% agricultural in the Maumee River watershed); pg. 4 (discussing the fact that the "Cuyahoga River is much more urbanized, and therefore has a more even split between wastewater treatment and nonpoint sources of total phosphorus."). We understand that OLEC intends to provide flexibility and set appropriate reduction goals for different sources, based in part on prior efforts and on which sources of phosphorus discharges can feasibly reduce phosphorus loading, and strongly believe this same approach should apply to specific watersheds.

We are not aware of any binding law, regulation, or agreement that would prevent adjusting phosphorus reduction goals for these river watersheds based on the local conditions and nature of the watershed at issue. Indeed, the Western Basin of Lake Erie

Collaborative Agreement² states simply that *the Western Basin* must achieve a 40 percent total load reduction, and does not impose a 40% reduction on each localized unit that impacts the Western Basin. Accordingly, AOMWA is opposed to any regulatory actions that are based on an across-the-board 40% reduction target for each river watershed. The only basis that the State has provided for applying 40% targets to each watershed is a 2015 Report issued by an Annex 4 subcommittee, but those targets were developed without the benefit of current nutrient loading data, including the extensive data compiled as part of the State’s Nutrient Mass Balance Study efforts. The State should follow its adaptive management approach and develop targets appropriate for *each* watershed based on this new information.

2. **40% Reductions in Total Phosphorus Loading from Each HUC-12 Unit.** The Draft Action Plan applies a similar logic to each HUC12 Unit. “HUC12 Units” are smaller watershed units within the Maumee River Watershed and are depicted in a thin grey line in Figure 5 on page 12 of the Draft Action Plan:



Figure 5: Watershed planning for HUC12s in the Maumee River watershed -- existing NPS-IS and plans under development.

The Draft Action Plan suggests that each HUC12 will uniformly receive a total phosphorus reduction target of 40%. See *Draft Action Plan* at pg. 29 (discussing goal of avoiding forcing some watersheds to reduce loading by more than 40 percent). During the State’s webinar provided on February 24, 2020, Ohio EPA indicated that 40% reductions would be targeted at a HUC12 Unit-level.

However, a 40% reduction in total and dissolved phosphorus at the mouth of the Maumee is not likely to be achieved in a cost-effective manner through a uniform 40% reduction across each HUC12. Consistent with the adaptive management approach endorsed in the Draft Action Plan (see page 1), the Plan should allow for loading reductions on the

² *Governors for the Western Lake Erie Basin States of Michigan and Ohio and the Premier of the Province of Ontario, Western Basin of Lake Erie Collaborative Agreement* (Jun. 13, 2015), [https://lakeerie.ohio.gov/Portals/0/Ohio%20DAP/Western Basin of Lake Erie Collaborative Agreement -2015-06-13.pdf](https://lakeerie.ohio.gov/Portals/0/Ohio%20DAP/Western%20Basin%20of%20Lake%20Erie%20Collaborative%20Agreement%202015-06-13.pdf).

HUC12 level that can be adjusted as appropriate and do not always need to be precisely 40%. In particular, AOMWA is concerned about the potential for this similar analysis being applied as part of a TMDL. AOMWA is not aware of any binding legal requirement that reduction targets must be set at precisely 40% for each HUC12 Unit. AOMWA therefore requests the State clarify that the 40% reduction target for each HUC12 Unit may serve as a point of reference, but can be adjusted as is appropriate to effectively support Ohio's large-scale nutrient reduction goals while still being mindful of a specific watershed unit at issue.

- 3. Nutrient Mass Balance Study Approach Modifications.** Although the Domestic Action Plan framework is structured to set forth a summary of the State's current activities, the Draft Action Plan includes an overview of a modified approach to the Nutrient Mass Balance Study. It is difficult to assess and comment meaningfully on this modified approach without reviewing the 2020 Nutrient Mass Balance Study, which Ohio EPA indicated (during the February 24, 2020 webinar) will become available in approximately June 2020. Please note that AOMWA reserves the right to comment further on the "modified" Nutrient Mass Balance Study approach when the full report becomes available, and AOMWA's limited comments on this issue should not be interpreted as supporting the approach outlined in the Draft Action Plan's Appendix A (pages 20-39). Nonetheless, AOMWA does offer two comments on the discussion in Appendix A of Far-Field Targets for the Maumee River Watershed.³

First, this analysis includes a different and more targeted method for determining nutrient loads from non-point sources (referred to as landscape sources in the Draft Action Plan) than what we have seen in previous versions of the Nutrient Mass Balance Report. It breaks down the non-point source load in an attempt to better represent agricultural, developed, and natural land sources. As discussed above, the analysis includes load estimates and calculated 40% reduction goals at the HUC12 watershed level assuming that the loads from natural areas will not be reduced.

Although AOMWA supports the State's efforts to better understand the specific sources underlying non-point source loading, the results in Tables A5-A11 are not reproducible. Some of these inconsistencies are likely due to rounding, but others appear to be related to differing assumptions with the load for a land use less than 100 pounds per acre. We request that the actual calculations supporting the tables be made available for review. In addition, please clarify if the State intends to use this methodology in all watersheds that are included as part of the Nutrient Mass Balance Study, and explain the rationale supporting any anticipated variations from the analysis described in Appendix A.

Second, part of this method includes estimated land uses, using NLCD (USGS, 2014). It is important that the land use estimates are correct if they are going to be used to develop loading targets, so that analysis should also be made available for review. In addition, the Draft Action Plan uses the following phosphorus yields for each land use (agricultural = 0.85 lbs./acre; developed = 0.42 lbs./acre; natural = 0.09 lbs./acre) without clear explanation of the sources of these values. Using the same yields for each HUC12 does

³ This Appendix and its analysis has broader significance than the Maumee River alone – the State has explained that it has started by evaluating far-field load reduction planning efforts for the southern portion of the Maumee River watershed, and then will develop the remaining plans for the remainder of the Maumee, Portage, Sandusky and Cuyahoga River watersheds. *Draft Action Plan* at pg. 11. Thus, it appears this analysis will serve as a template for other Lake Erie watersheds.

not address the variability that is anticipated in the landscape. We therefore request that the State make available for review: (i) its GIS analysis supporting its land use estimates; (ii) the source(s) and related background supporting the phosphorus yield values used for each land use; and (iii) the ranges or a standard deviation around the mean addressing the variability that is anticipated in the landscape.

Again, we appreciate your consideration of these comments and OLEC's willingness to engage AOMWA on this issue. AOMWA looks forward to continuing its work with OLEC and Ohio's other agencies to address the State's nutrient 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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