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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 2018

Dear Commissioners:

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 2018 ("Draft Action Plan").[1] 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.[2] The fundamental purpose of our organization and its members is to protect the water resources on which Ohio's communities depend. Indeed, our agencies are the front line of protection for these water resources and as a result of our efforts over the last 40 years, significant water quality improvements have occurred across Ohio.

As part of these efforts, our members have made longstanding and substantial investments in safe and clean water infrastructure aimed at protecting the public health of Ohio's citizenry. These infrastructure improvements include the investment of billions of dollars to address and eliminate wet weather overflows which can contribute to the nutrient problem. AOMWA, as an organization, also has been at the forefront of many of the State's recent efforts aimed at addressing Ohio's nutrient issues, including:

- Supporting Ohio EPA's Nutrient Technical Advisory Group ("TAG") in its development of recommendations for a Stream Nutrient Assessment Procedure ("SNAP") to establish a dynamic and effective 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 should be effective in abating nutrient impairment as well as reasonable and fair for

[1] By email dated September 20, 2017, OLEC General Counsel, David Emerman, confirmed that comments on the Draft Action Plan from AOMWA and the Northeast Ohio Regional Sewer District ("NEORSD") would be timely if submitted by October, 5, 2017.

[2] AOMWA members include Akron, Avon Lake, Butler County, Canton, City of Fairfield, City of Hamilton, Columbus, Dayton, Hamilton County, Lancaster, Lima, Marysville, Metropolitan Sewer District of Greater Cincinnati, Middletown, Newark, NEORSD, Portsmouth, Solon, Springfield and Warren.

regulated point sources, such as our members. The SNAP recognizes that nutrient impacts are specific to a particular water body. Therefore, it seeks to maximize the limited financial resources of our public wastewater agencies by establishing limits that can be shown to address identified biological impairments in a particular watershed.

- Championing legislation that requires Ohio 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. These efforts ultimately resulted in Ohio's initial Nutrient Mass Balance Study for Ohio's Major Rivers, which was issued on December 30, 2016.

- Working with 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. This legislation also validated, subject to certain appeal rights, those TMDLs developed by Ohio prior the Ohio Supreme Court's decision in *Fairfield Cty. Bd. of Commrs. v. Nally*, 143 Ohio St.3d 93, 2015-Ohio-991, many of which address nutrient pollution caused by phosphorus. *See also*, Draft Action Plan, Appendix A.

- Submitting testimony in support of provisions in SB 2 (132nd General Assembly) aimed at helping OLEC better address Lake Erie's nutrient issues and addressing asset management problems affecting Ohio's public water systems.

- Negotiating with Ohio EPA to establish appropriate requirements that require certain publicly owned treatment works ("POTWs") to perform phosphorus monitoring and to conduct a technical and financial capability study related to their ability to achieve 1.0 mg/L total phosphorus (enacted as part of SB 1 in the 131st General Assembly).

As demonstrated by the actions above, AOMWA is fully supportive of OLEC's mission and Ohio's 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. However, in keeping with AOMWA's efforts to advance reasonable and effective solutions to the State's nutrient problem, we are writing to express our concerns, comments and/or requests for clarification with respect to the following aspects of the Draft Action Plan.

Proposed Legislative Mandate Of 1 mg/L Phosphorus Limit For All Treatment Works

As an initial matter, AOMWA strongly opposes the Draft Action Plan's call for a legislative mandate of a 1.0 mg/L monthly average phosphorus discharge limit for all treatment works in Ohio. *See* Draft Action Plan at Item 7, p. 16. We understand that such legislation would seek to extend a 1.0 mg/L monthly average phosphorus limit beyond the Annex 4 priority watersheds to all treatment works in Ohio.

A statewide phosphorus limit would run counter to and severely undermine the SNAP approach recommended by the TAG. The SNAP approach would ensure that appropriate nutrient limits are developed for regulated point sources based on an assessment of nutrient impacts specific to the particular water body at issue. This approach seeks to ensure that nutrient reductions are necessary and will lead to water quality improvements, and could result in limits under 1.0 mg/L for some sources while other sources may receive higher or no limits The SNAP, which resulted from years of water quality monitoring and data analysis by Ohio EPA biologists and more than two years of hard work by and dialogue between members of the TAG and Ohio

EPA, is now largely developed and ready to be adopted by Ohio EPA through rulemaking. In contrast, an across-the-board 1.0 mg/L phosphorus limit for point sources is arbitrary and bears no science-based relationship to any phosphorus concentration which may be a threshold level resulting in excess eutrophication within a given watershed. As such, to adopt a 1.0 mg/L across-the-board phosphorus limit would be a drastic step backward from rational, science-based, cost-effective efforts to control nutrient-caused pollution that would result in the expenditure of many millions of dollars by regulated point sources on nutrient reduction technologies that might not even provide any measurable decrease in nutrient impacts. Furthermore, this would have a regressive cost impact, in that small and rural communities would generally face a substantially higher cost relative to their revenue bases.

The need for a 1.0 mg/L monthly average phosphorus limit for all treatment works is also directly contradicted by the findings of Ohio EPA's initial Nutrient Mass Balance Study for Ohio's Major Rivers ("NMB Study"). The initial NMB Study clearly demonstrates that, based on data from water years 2013 and 2014, the nutrient contributions from point sources, including publically owned treatment works (POTWs), industries and permitted wet weather discharges, is a mere fraction of the nutrient impacts from nonpoint sources in the Annex 4 priority watersheds included in the study. For example, the NMB Study data shows that total phosphorus loading from the Maumee watershed contributed by major Ohio WWTPs (generally facilities with greater than 1.0 mgd discharge flow) for water years 2013-2014 averaged only 4.7% of the total phosphorus loading from the Maumee watershed. The sum of all smaller Ohio POTW discharges (Classes 2 through 5) plus all industrial discharges plus permitted wet weather discharges contributed only 2.8% of total phosphorus loading from the Maumee watershed for water years 2013-2014. Hence, adding new phosphorus effluent limits on all smaller facilities would likely have an unmeasurable impact on total loadings to the Western Basin of Lake Erie. The NMB Study is intended to inform Ohio's efforts to meet the nutrient reduction targets in the 2012 Great Lakes Water Quality Agreement. It is therefore significant that the NMB Study explicitly recognizes that its findings do not support a statewide phosphorus limit on all treatment works: "***[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***." NMB Study at p. 5.

Moreover, a legislative mandate for an across-the-board phosphorus limit for treatment works is contrary to the adaptive management principles that are central to both the Western Basin of Lake Erie Collaborative Implementation Framework ("WBLEC Implementation Plan") and the Draft Action Plan itself. *See* WBLEC Implementation Plan at p. 3; Draft Action Plan at p. 3 ("[c]entral to the implementation of the Domestic Action Plan is the adaptive management process"). Adaptive management seeks to address nutrient issues by providing for the opportunity to evaluate alternatives and implement the most likely cost-effective alternative(s), evaluate their effectiveness, then adapt and continue implementation. There may be a variety of measures that can help to reduce nutrient impairments in a given watershed (nutrient reductions, habitat restoration, runoff prevention, etc.), and it makes sense that communities should be given flexibility to determine how best to utilize their available resources and to learn from their prior experiences in this regard. The Draft Action Plan embodies this adaptive management approach by prioritizing key facilities "on a facility by facility basis" where phosphorus reductions are most likely to be effective (p. 15, ¶ 1). By contrast, an across-the-board limit would require the investment of significant public funds even when the environmental benefit is limited. For example, small and rural communities could be required to meet the 1.0 mg/L phosphorus limit at significant cost with little practical impact on water quality—such an approach is simply bad public policy.

The Draft Action Plan also notes that the across-the-board limit would apply "unless alternative limits or conditions are deemed appropriate by the Director." While this language recognizes the inherent need for flexibility to address a problem that is not amenable to a one-size-fits-all approach, the discretion of the Director is no replacement for the scientific and rational approach embodied in the SNAP. The SNAP already contains a detailed framework for determining when and how phosphorus limits should be developed—the product of years of collaboration between Ohio EPA and stakeholders.

Finally, committing to a 1.0 mg/L phosphorus limit for treatment works would be premature given that the impacts of such a limit are likely to be further defined by the technical and financial capability studies that certain POTWs are required to submit by the end of the year. And, in any event, it is inappropriate to include a pledge to legislate a statewide phosphorus limit for treatment works in the Draft Action Plan developed by OLEC, which is tasked with coordinating state and local policies pertaining to *Lake Erie*. *See* R.C. 1502.21. Such a policy, which has extremely costly implications for point source dischargers across the State and would result in very limited overall phosphorus loading reductions, should be subjected to vigorous public debate and not nonchalantly included among the directives of this document.

Nonpoint Source Nutrient Contributions

As outlined above, our members are committed to doing their part to address nutrient issues impacting Ohio's watersheds. Their substantial and longstanding investment in the State's wastewater infrastructure, which has helped to reduce impacts that can contribute to the nutrient problem, represents a collective cost to the ratepayers and businesses that our members serve in excess of ten *billions* of dollars. Moreover, as regulated entities, we expect to further spend millions more in response to additional government-mandated nutrient requirements that are currently being developed by Ohio EPA pursuant to the recommendations of the TAG. But these efforts cannot preserve and protect our State's watersheds alone—nor would our efforts by themselves do much good (despite the tremendously high cost).

It should be noted that many POTWs, which have already invested in necessary wastewater treatment process improvements to achieve phosphorus effluent limits, have already reduced their total phosphorus discharge loadings by substantially greater than 40 percent. It may be possible to optimize the operation of existing treatment works to further reduce phosphorus discharge loadings – although it is highly unlikely that such phosphorus treatment optimization would be capable of achieving a further 40% reduction from the existing phosphorus reductions achieved by treatment works already complying with existing phosphorus effluent limits. Substantial further reductions will likely require additional and significantly more costly treatment process upgrades for such POTWs. Given that the total loading contributed by such POTWs is generally such a small fraction of the total loading from the Annex 4 priority watersheds, such major capital and operating expenditures by the public entities would be unreasonable and would provide little to no measurable impact to overall Lake Erie phosphorus loadings.

As highlighted by the findings of the NMB Study, agricultural runoff and other nonpoint sources are significant contributors to nutrient-caused impairment of water bodies in Ohio's Annex 4 priority watersheds (and elsewhere in the State). For example, the NMB Study data for water years 2013-2014 shows that 86% of the total phosphorus loading from the Maumee River watershed into Lake Erie is contributed by nonpoint sources. While AOMWA is aware of the innovative agricultural land management practices being pursued in some parts of the State and supports the directives in the Draft Action Plan aimed at addressing nonpoint nutrient contributions, we continue to believe that the current measures in place are insufficient. Although

Ohio's POTWs are willing to serve as partners in reducing nutrient pollution, the Draft Action Plan appears to continue the trend of imposing burdens on POTWs and point sources alone. This approach directly contradicts the research generated from the NMB Study. The NMB Study found that nonpoint sources contributed the vast majority of total phosphorus loading, yet the Draft Action Plan continues to do little to address the actual problem: agricultural runoff and other nonpoint sources. Rather than voluntary, incentive-based goals, Ohio's policymakers and stakeholders should engage in meaningful discussions about the need to require controls and oversight on the non-regulated sources of nutrient pollution in our State.

Forty Percent Reductions for Individual Watersheds

Finally, the Draft Action Plan inappropriately suggests that *individual* watersheds should be meeting the 40% reduction in phosphorus loading. 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 pollution can actually feasibly reduce phosphorus loading. However, the Draft Action Plan should be revised to properly reflect OLEC's stated intent. For example, the Draft Action Plan sets a goal to "[a]chieve a 40 percent annual load reduction in the amount of total phosphorus entering Lake Erie's central basin . . . ." *See* p. 2. It further states that this goal applies to the Sandusky, Huron, Vermilion, Cuyahoga, and Grand Rivers. *See also* p. 22. This discussion should be revised to clarify that these individual watersheds will not necessarily be subject to a 40% reduction.

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 Andrew Etter at andrew.etter@squirepb.com or (614) 365-2765. Thank you for your attention to and consideration of these comments.

Sincerely,

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President, AOMWA

cc: (via e-mail)
Karl Gebhardt, OLEC / Ohio EPA Deputy Director for Water Resources
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