



John G. Newsome, P.E.,
President, AOMWA
1250 Fairwood Avenue
Columbus, OH 43215
(614) 645-8276

August 9, 2021

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 Second Module Regarding Maumee Watershed TMDL Development Step 1, Project Study Plan, and Step 2, Biological and Water Quality Report

Dear TMDL Coordinating Team:

The Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") appreciates the opportunity to comment on Ohio EPA's Second Video Module addressing the Maumee Watershed TMDL, specifically step 1 (i.e., the project study plan) and step 2 (the biological and water quality report). 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 for your consideration, and requests that the Agency (1) improve the level of stakeholder engagement by creating more interactive work groups and providing written reports that summarize the voluminous information provided, and (2) develop the Loading Analysis Plan and water quality targets based on a rigorous and careful consideration of unique watershed characteristics.

1. By enhancing stakeholder involvement, Ohio EPA will strengthen the ultimate Maumee Watershed TMDL.

Consistent with AOMWA's prior comments on nutrient issues, AOMWA supports an enhanced and interactive level of stakeholder engagement for a project of this level of importance. As Ohio EPA has acknowledged, this is the first far-field TMDL in Ohio. It will presumably be used as a model for future far-field TMDLs in other watersheds. As a result, AOMWA believes that the ultimate TMDL would benefit from a more open and interactive dialogue with affected parties and stakeholders, a procedural improvement that would serve to enhance the final TMDL by thoroughly balancing stakeholder concerns, criticisms, etc. with the Agency's objectives. At a

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.

minimum, by enhancing the level of stakeholder engagement, Ohio EPA would be able to *consider* differing viewpoints as its work proceeds.

Although the video module was helpful in providing some information regarding the Agency's direction, it left open many questions, making it difficult for stakeholders to meaningfully offer comments regarding the proposed approach.² AOMWA strongly believes that there needs to be an opportunity for affected stakeholders to work collaboratively with the Ohio EPA in the development of this TMDL. Ohio EPA's diverse nutrient Technical Advisory Group ("TAG") worked with the Agency to develop and help draft rule language for nutrient criteria and their implementation in streams and small rivers. Among other points, it appeared that the TAG and Ohio EPA reached agreement on fundamental points underlying future policy decisions regarding nutrient regulation in Ohio. First, the TAG focused on a "weight-of-evidence" approach to nutrient evaluation. Such an approach recognizes that nutrient impacts cannot be identified strictly by the measurement of nutrient concentrations. Complementary water quality data must be considered to determine whether nutrient (or algal) impairments exist. Second, the TAG emphasize the nutrient rulemaking in Ohio should prioritize adaptive management in the implementation of nutrient regulations and regulatory tools such as TMDLs, in order to conserve limited resources in local governments and other organizations, while ensuring that management initiatives work in the field. These points exemplify how the stakeholder process should work and the potential benefits of organizing a similar nutrient advisory group.³

Further, the Agency is required to provide the opportunity to comment on particular documents pursuant to R.C. 6111.562. In pertinent part, that rule provides as follows:

(A)(1) The director of environmental protection shall provide notice of and opportunity for input from potentially affected dischargers, county soil and water conservation districts, and other stakeholders during the development of a TMDL after March 24, 2015, at each of the following stages of development of a TMDL and plans and actions necessary for TMDL implementation:

(a) **The project assessment study plan, including portions of the plan that seek to determine the causes and sources of impairments or threats;**

(b) **The biological and water quality study report or its equivalent;**

(c) The loading analysis plan, including, but not limited to, the proposed modeling approach and the water quality restoration targets, goals, or criteria;

(d) The preliminary modeling results including any management choices, load allocations, wasteload allocations, allowances for margin of

² The comments submitted by the Maumee Watershed Coalition (the Cities of Lima, Defiance, and Perrysburg, the Village of Archbold, Allen County, Ohio Corn and Wheat Growers Association, Ohio Soybean Council, Ohio AgriBusiness Association, Cenovus Energy, and PCS Nitrogen Ohio, L.P.) raise dozens of questions left unanswered by Ohio EPA's video module 2.

³ If Ohio EPA has concerns regarding the timeline for TMDL development and is concerned that enhanced stakeholder engagement would delay the project, this concern could be resolved by adhering to a structured schedule. AOMWA believes that affected stakeholders would be comfortable working expediently with the Agency during the development process in order to accommodate any concerns Ohio EPA may have regarding an advisory group's impact on the TMDL development timeline. If Ohio EPA does not involve stakeholders from the outset, this would increase the risk of litigation challenging the final TMDL, which could actually cause longer delays than developing the TMDL with a stakeholder advisory group.

safety and future growth, and permit limits necessary to achieve a water quality target, goal, or criterion and the preliminary TMDL implementation plan establishing specific actions, schedules, and monitoring proposed to effectuate a TMDL.

The director shall allow not less than thirty days for input at each stage described in divisions (A)(1)(a) to (d) of this section.

Ohio EPA has not cited any project assessment study plan or biological and water quality study report specifically tailored to the Maumee watershed. Instead, the Agency has simply cited prior reports, etc., and has concluded that these reports suffice for the requirement to develop and provide an opportunity to comment on the project assessment study plan and the biological and water quality study report or its equivalent.⁴

Although Ohio EPA may take the position that the statute intentionally permits the use of other reports to substitute for a biological water quality study report through the language “or its equivalent,” the referenced documents are so voluminous that it is impossible to determine which findings are being relied upon by the Agency, and AOMWA therefore asks that the Agency prepare a technical analysis of the data that will be used in the development of the TMDL. Without such a technical document, the current outreach fails to meet the Agency’s obligations under R.C. 6111.562(A)(1)(b), because none of the documents are the “equivalent” of a biological and water quality study report. Regardless of the Agency’s intent in incorporating a variety of documents without generating a biological and water quality study report that describes how these documents are being considered, the effect on stakeholders is that it is very difficult to wade through a mass of documents to determine what the Agency’s plans and findings have been to date. Additionally, the quoted language “or its equivalent” is not set forth in subsection (A)(1)(a), unlike subsection (A)(1)(b), and therefore a project assessment study plan for this Maumee Watershed Nutrient TMDL is required. Consistent with the request of the Maumee Watershed Coalition, AOMWA requests that Ohio EPA prepare a technical analysis of the data that will be used in the development of the TMDL and provide this document for stakeholder feedback.

2. Given the significance of the Maumee watershed TMDL, the Loading Analysis Plan and future steps should feature enhanced stakeholder engagement and a rigorous consideration of watershed characteristics in setting targets and goals.

In addition to the request for additional reports to satisfy Steps 1 and 2 of the TMDL development process, AOMWA requests that Ohio EPA enhance its stakeholder engagement for its development of a Loading Analysis Plan, particularly given that the Loading Analysis Plan requires that the Agency provide its “proposed modeling approach and ***the water quality restoration targets, goals, or criteria.***” R.C. 6111.562(A)(1)(c). Given the importance of this step in molding the ultimate final TMDL, it would be beneficial not only for stakeholders but also the Agency to improve its outreach process so that commenters are provided an opportunity to comment with a more complete understanding of the Agency’s goals, etc., for the final TMDL.

⁴ See Ohio EPA, Maumee Watershed Nutrient TMDL, TMDL Project and Schedule (“The Maumee Watershed Nutrient TMDL is now at the third step in the TMDL development process.”), <https://epa.ohio.gov/dsw/tmdl/MaumeeRiver#1885010595-tmdl-project-and-schedule> (last visited August 8, 2021). The project assessment study plan and the biological and water quality study report or its equivalent are steps 1 and 2 under R.C. 6111.562, so the Agency believes it has completed Steps 1 and 2.

Regarding these water quality restoration targets, goals, and criteria, AOMWA respectfully makes two suggestions for consideration as the Agency develops the Loading Analysis Plan.

- As AOMWA stated in its comments on the Domestic Action Plan, we do not believe that it is appropriate for **all** individual watersheds discharging to the Western and Central Basins to each be meeting a 40% reduction in phosphorus loading. Instead, we believe that the Agency should take a more nuanced approach by considering whether certain watersheds should target more aggressive reductions while others should be credited for current nutrient management efforts. This comment also applies to the HUC-12 watersheds within the Maumee watershed as depicted in a thin grey line in Figure 5 on page 12 of Ohio EPA's Draft Domestic Action Plan:



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

The State indicated during a webinar on February 24, 2020 that 40% reductions would be targeted at a HUC-12 unit level. AOMWA believes that this approach is unnecessary and would require costly reductions in phosphorus loading in a haphazard and inequitable manner. For example, 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. As stated in our comments on the DAP, AOMWA is not aware of any binding legal requirement that reduction targets must be set at precisely 40% for each HUC-12 Unit. When AOMWA raised these concerns with the Ohio Lake Erie Commission, the Commission indicated that HUC-12 yields are based on unique characteristics of each HUC-12 area and did not identify any legal requirement that 40% reduction targets must be applied within each HUC-12. Nonetheless, AOMWA requests that Ohio EPA elaborate and clarify that the 40% reduction target for each HUC-12 unit may serve as a point of reference, but the Loading Analysis Plan can set water quality targets and goals greater than or less than 40% based on unique watershed considerations.

- AOMWA strongly believes that when Ohio EPA develops the Loading Analysis Plan and implements the Maumee Watershed TMDL, the Agency should rely heavily on its Nutrient Mass Balance Study. 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.”⁵ The Nutrient Mass Balance Study reports that “nonpoint sources were the highest contributors to the phosphorus load in the . . . Maumee (89 percent) watershed.”⁶ Meanwhile, **point sources contributed merely 7% of the phosphorus load.**⁷ The study attempted to quantify the largest contributors of phosphorus 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.

AOMWA appreciates your consideration of these comments. 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,



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

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

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

⁶ See pg. 3.

⁷ See pg. 24.