NACWA
A Clear Commitment to America's Waters

May 22, 2013

Rule Coordinator
Ohio EPA – Division of Surface Water
Lazarus Government Center, P.O. Box 1049
Columbus, Ohio 43216-1049
dsw_rulecomments@epa.ohio.gov

RE: Ohio EPA's Early Stakeholder Outreach/Developing Rules to Reduce the Impacts of Nutrients in Surface Water

Dear Rule Coordinator,

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the Ohio Environmental Protection Agency's (Ohio EPA) Early Stakeholder Outreach (ESO) notice regarding the proposed development of nutrient criteria for Ohio. NACWA represents more than 280 public wastewater treatment utilities across the country, including 11 wastewater utilities in Ohio that will likely be directly engaged with Ohio EPA as its rulemaking proceeds.

Nutrient-related impacts are arguably the top water quality challenge currently facing our nation's waters and NACWA is committed to working toward science-based and rational approaches to address *all* sources of nutrient pollution. Reliance on nutrient control strategies that do not account for the varying ecological effects of nutrient pollution will result in major expenditures for point sources with minimal or no improvement to water quality for many waters. Since it began work in 2002 to establish a nutrient control program, Ohio has been a national leader on efforts to develop criteria that are scientifically sound and that effectively link nutrient concentrations to actual water quality impacts.

States need room to innovate and try new approaches that do not necessarily fit a national mold. While the U.S. Environmental Protection Agency (EPA) has continued to press states to develop numeric nitrogen and phosphorous criteria for all waters, it has begun to better recognize that it must be flexible in its expectations to enable innovation. Beginning with its March 2011 memorandum, *Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions*, EPA acknowledged that while it would like to

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"maximize progress" toward reducing nutrient discharges in all states, "states need room to innovate and respond to local water quality needs". Ohio's proposed approach to addressing nutrient-related impacts as outlined in the ESO – numeric criteria directly linking nutrients with impacts on designated uses based on measures of stressor variables – is entirely consistent with and advances the goals of EPA's 2011 memorandum.

General Nutrient ESO Approach

Ohio EPA has laid out a strong proposal that utilizes the wealth of water quality information it has collected over the last decade and that seeks to strike the right balance in controlling nutrient discharges relative to impacts on designated uses. The multi-metric scoring system (the Trophic Index Criterion or "TIC") for determining impairment of streams and rivers outlined in the Nutrient ESO is a strong, weight-of-evidence approach that will better account for the varying impacts nutrients can have on different waterbodies. In its April 2010 report, *SAB Review of Empirical Approaches for Nutrient Criteria Derivation*, EPA's Science Advisory Board (SAB) stressed the importance of "establishing linkages among designated uses and measured responses, stressors and measures of stressors"... and " relating measures of stressors directly to deleterious effects on designated uses" when developing nutrient criteria. Unlike other approaches such as EPA's eco-regional criteria, Ohio's TIC will better accomplish these objectives.

Though important questions remain regarding the implementation of the TIC, NACWA supports the state's efforts to use a system that will better consider in-stream stressor and response variables in an integrated fashion to determine the need for control measures. U.S. EPA has previously insisted that numeric values for the key stressor variables be independently applied when determining impairment or the need for an effluent limit. Only very recently however, with statements regarding criteria efforts in Florida and Maine, has EPA begun to recognize the validity of a weight of evidence approach like the TIC proposed by Ohio.

Though Ohio may be uniquely positioned to develop and use the TIC given the extensive water quality information it has available, the success of Ohio's weight of evidence approach will have national significance in terms of providing a potential model for other states that are struggling to address impacts related to nutrients.

Implementation Challenges

NACWA understands that concerns will be raised with the proposed nutrient targets Ohio EPA is considering. This is an issue that many states are struggling with – establishment of nutrient criteria that push wastewater utilities to the limits of technology and beyond – and U.S. EPA is working to provide more guidance to the states in this area. NACWA urges Ohio EPA to maintain an active and open dialogue with the public wastewater community on this issue throughout the rulemaking process. Ohio's proposed inclusion of adaptive management concepts that would allow for evaluation of nonpoint source reductions and more cost-effective control measures prior to imposition of final nutrient targets for point sources, is an important element that can help ensure that Ohio is investing in those management actions that will provide the biggest water quality benefit.

Along the lines of adaptive management, integrated planning, as contemplated by U.S. EPA in its June 2012 Framework, should play an important role in Ohio and across the country as more states look to develop nutrient control strategies. Affordability considerations and flexible implementation timeframes should factor

heavily in the implementation of the nutrient reductions contemplated by the Nutrient ESO given the Clean Water Act obligations many Ohio communities are already working hard to complete.

Nonpoint Source Contributions

The Nutrient ESO indicates that where a stream or river is threatened or impaired both effluent limitations for point sources and "nonpoint source load reduction goals" will be developed. The scope and enforceability of the nonpoint source "reduction goals", however, are poorly defined and largely listed as "voluntary". It is well-documented that agricultural and other nonpoint sources are significant contributors to nutrient impairment of waterbodies across the country and in Ohio. Any effective nutrient control program must contain meaningful reduction requirements for nonpoint sources. The establishment of accountability frameworks for nonpoint sources at the state level must be a top priority if progress on controlling the negative impacts of nutrients is going to be made. These frameworks would include a quantitative allocation process for all sources, performance standards (to enable progress monitoring), and implementation drivers (e.g., loss or redirection of funding for nonpoint source management to the extent possible under current law). Ohio should consider using state authority to include these elements in its final nutrient control strategy.

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Again, NACWA appreciates the opportunity to comment on Ohio EPA's ESO notice regarding the proposed development of nutrient criteria in Ohio. The proposed approach Ohio EPA has presented for stakeholder comment is an important step in the right direction.

If you have any questions, please contact me at chornback@nacwa.org or 202/833-9106.

Sincerely,

Chris Hornback
Senior Director, Regulatory Affairs