

**MEMORANDUM**

**TO:** Amanda Payton, Ohio Environmental Protection Agency

**FROM:** Jacob Ritzenthaler, Regulatory Policy Advocate

**DATE:** October 25, 2017

**RE:** **CSI Review – Water Quality Standards Beneficial Use Designations (OAC 3745-1-29)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package contains one amended rule<sup>1</sup> proposed by the Ohio Environmental Protection Agency (OEPA). The rule package was submitted to the CSI Office on June 21, 2017 and the public comment period was held open through July 21, 2017. No public comments were received during this time.

The federal Clean Water Act (CWA) requires the adoption of water quality standards to protect bodies of water within each state. These standards include beneficial use designations, narrative and numeric criteria related to the use designations, and evaluation procedures for decisions that could lower water quality. Ohio Administrative Code (OAC) 3745-1-29 specifically covers the Wabash River drainage basin and is being amended to add water bodies that are currently undesignated and change beneficial use designations for various water bodies.

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<sup>1</sup> OAC 3745-1-29 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same rule number.

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During early stakeholder outreach, OEPA sent the proposed rule to stakeholders through its online interested parties list. One comment was received from Mercer County, which was accepted by OEPA and added to the rule. No comments were received during the CSI public comment period.

The business communities impacted by this rule include any business that is subject to the National Pollutant Discharge Elimination System (NPDES) permit program or CWA Section 401 water quality certification. As stated in the BIA, the rule does not create a burden on businesses directly, but through the requirements of other regulatory programs. The adverse costs come in the form of wastewater treatment costs for NPDES program participants, as well as project approval and mitigation measures necessary to compensate for materials discharged into bodies of water for CWA Section 401 participants. These adverse costs are necessary to protect public safety by establishing standards that protect and improve the quality of water within the state. Additionally, OEPA estimates that the proposed rule will create no additional burdens on businesses, as the rule sets forth less stringent chemical criteria for bodies of water where current permittees are operating. After reviewing the proposed rule and the BIA, the CSI Office has determined that the rule satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule package is justified.

### **Recommendations**

For the reasons described above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

Based on its review of the proposed rule package, the CSI Office recommends the Ohio Environmental Protection Agency should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.