



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Mandi Payton, Ohio Environmental Protection Agency

FROM: Caleb White, Business Advocate

DATE: October 25, 2023

RE: **CSI Review – Water Quality Standards – No Change Beneficial and Wetland Use Designations (OAC 3745-1-29, 3745-1-30, and 3745-1-53)**

On behalf of Lt. Governor Jon Husted, 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 consists of three no-change rules proposed by the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on March 20, 2023, and the public comment period was held open through April 20, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on March 20, 2023. The package was originally submitted containing four no-change rules. However, after receiving several comments on one of the rules, the OEPA decided to remove it from this package and file it as a part of another rule package containing amended rules.

Ohio Administrative Code (OAC) 3745-1-29 and 3745-1-30 assign beneficial use designations to the Wabash River, and Mill Creek drainage basins, with OAC 3745-1-29 establishing the use designation for the Wabash River Drainage Basin and OAC 3745-1-30 establishing the use designation for the Mill Creek Drainage Basin. Each respective rule also contains both a table outlining the use designation for the basin as well as an appendix which contains a generalized map of the drainage basin. OAC 375-1-53 establishes the wetland beneficial use designation. This rule package initially

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included OAC 3745-1-20, which assigned a beneficial use designation to the Rocky River Drainage Basin, but after receiving several comments regarding this rule during the CSI public comment period, the OEPA elected to remove this rule from the rule package.

During early stakeholder outreach, the OEPA sent electronic notification to its Division of Surface Water (DSW) rulemaking interested party list and posted a fact sheet on the DSW website on November 4, 2022. The OEPA requested that comments be submitted by stakeholders by November 18, 2022. Approximately 2,600 total interested parties were contacted via email. The OEPA received one comment during this time period from the Midwest Biodiversity Institute (MBI). MBI's comments were focused on the Mill Creek Basin and highlighted that it has submitted data for streams in the Mill Creek Basin for over ten years to the OEPA's Credible Data Program without their data having been approved. The OEPA states that the submitted data in question for Mill Creek has not been approved by its Credible Data Program due to staffing, time, and resource limitations. Due to these constraints, the OEPA has decided to move forward with no changes to their rules and with the understanding that if the Mill Creek data are verified as credible, the agency may later move forward with rulemaking. During the CSI public comment period, the OEPA received four comments.

The first three comments came from the Cleveland Metroparks, Rocky River Watershed Council, and the Cleveland Airport System, addressing OAC 3745-1-20. The Cleveland Metroparks and Rocky River Watershed Council suggested corrections to the spelling of several creeks and streams contained within the Rocky River Drainage Basin while the Cleveland Airport System suggested changing the designation of Abram Creek from a Warmwater Habitat to a Modified Warmwater Habitat due its inability to support and maintain warmwater organisms. In response to these comments the OEPA decided to remove this rule from the package and submit it as a part of a different rule package which contained amended rules.

The final comment was submitted by MBI regarding the OAC 3745-1-30. MBI again highlighted that they have submitted data for streams in the Mill Creek Basin for over ten years to the OEPA's Credible Data Program and expressed concern that several of their use designations for tributaries in the Muddy Creek and Rapid Run sub watersheds based off submitted data were not adopted by the OEPA. The OEPA responded that the data which has been submitted to their Credible Data Program has not been approved yet and that the agency would thus be moving forward without changes to this rule.

The business community impacted by the rules includes businesses regulated through the National Pollutant Discharge Elimination System (NPDES) permit and Section 401 water quality certification programs. The OEPA notes that the business community is impacted by the rules indirectly through these regulatory programs, which are designed to ensure compliance with water quality standards under the federal Clean Water Act (CWA). The adverse impacts created by the

rules include the level of wastewater treatment needed to meet the effluent limits imposed by the OEPA through the NPDES permit program and the terms and conditions imposed through the 401 program for activities which place dredge or fill materials into state waters. According to the OEPA, the cost of the adverse impacts can vary greatly depending on the type and quantity of pollutants discharged, the amount of dilution water available to mix with the discharge, and the amounts of pollutants already present in the dilution water. The OEPA states that the adverse impacts to business are justified to implement the requirements of the CWA and to protect clean water in Ohio's streams, rivers, and lakes so that it remains suitable for swimming, drinking, and fishing.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Agency should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.