

Hearing Summary

Rule Package: Stormwater rules (OAC Chapter 3745-39)

Original filing date: October 28, 2024

Public comment start date: October 28, 2024

Public comment end date: December 5, 2024

Public hearing date: December 5, 2024

List of Rules: 3745-39-01, 3745-39-02, 3745-39-03, 3745-39-04

Were there any participants in this public hearing beyond Ohio EPA staff or JCARR staff?

☒ Yes*

☐ No

Were there comments received during the public comment period outside of those presented at this hearing?

☒ Yes

☐ No

This hearing summary has been compiled to meet the requirements of Section 119.03 of the Revised Code.

This hearing summary includes this cover sheet and the following attachments:

1. **Attachment A** - A copy of the public notice for this hearing.
2. **Attachment B** - A copy of the sign-in sheet for this hearing.
3. **Attachment C** - A copy of the script read into the record to begin and end the hearing.
4. **Attachment D** - A copy of the response to comments.

Ohio EPA's response to comments document includes the comments received, who commented, the agency response to comments, and a statement of whether or not the rule was changed due to the comments.

Ohio EPA digitally records all public hearings for rules. The digital recordings are available upon request. These recordings may be sent out for transcription if necessary.

*there were non-staff attendees at the public hearing, but none of them provided comments during the hearing.

OHIO ENVIRONMENTAL PROTECTION AGENCY

Public Notice
Proposed Rulemaking Governing
Storm Water

Notice is hereby given that the Director of Environmental Protection, under the authority of Sections 6111.03 of the Ohio Revised Code and in accordance with Chapter 119, proposes to original file the following rules of the Ohio Administrative Code:

<u>Rule #:</u>	<u>Title:</u>	
3745-39-01	Applicability of rules of procedure and definitions.	Amend
3745-39-02	Objectives of the Ohio EPA storm water management program for small MS4s.	Amend
3745-39-03	Ohio EPA NPDES requirements for small MS4s.	Amend
3745-39-04	Ohio EPA NPDES requirements for industries, including construction activities, and large and medium MS4s	Amend

These rules address stormwater regulations.

The purpose of this rule making is to conduct the five year rule review of rule 3745-39-01, to update language throughout the other three rules to be consistent, and to make updates of references and cross references with other rules and to be consistent with USEPA's June 7, 2023 final rule to clarify designation criteria for Small MS4s.

The public comment period will run until December 5, 2024. A public hearing on this proposed rulemaking will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. Ohio EPA will be holding an in-person and virtual public hearing on the rules on Thursday, December 5th at 10:30a.m. The in-person hearing will be at the same time and date and will be located at Ohio EPA, Suite 700, 50 W. Town Street, Columbus, Ohio 43215. During the hearing, the public may submit written comments on the record about the proposed rules if participating virtually and verbally if participating in person.

Citizens who want to participate virtually must register in advance for the meeting at: <https://attendee.gotowebinar.com/register/3197212030967960919>

Registration for the in-person hearing is not required. Citizens intending to give testimony at the hearing should notify the Ohio EPA Public Interest Center, P.O. Box 1049, Columbus, Ohio 43216-1049, (614) 644-2160 or by emailing mary.mccarron@epa.ohio.gov. Prior registration will ensure that registrants are heard ahead of those individuals who register at the hearing. Oral testimony may be limited to five minutes, depending on the number of persons testifying. All interested persons are entitled to attend or be represented and to present oral and/or written comments concerning the proposed rule making.

Written testimony should be sent to the attention of Emily Imhoff, Rules Coordinator at the Division of Surface Water, P.O. Box 1049, Columbus Ohio 43216-1049 or can be emailed to dsw_rulecomments@epa.ohio.gov. Written comments may also be submitted to

the Hearing Officer at the public hearing. Written testimony will receive the same consideration as oral testimony. All testimony received at the hearing or by close of business on December 5, 2024 will be considered by Ohio EPA prior to final action on this rulemaking proposal. Written comments submitted after this date may be considered as time and circumstances permit.

Questions regarding this rule package should be directed to Wesley Sluga, at the Division of Surface Water at Wesley.Sluga@epa.ohio.gov or by phone at (614) 644-2141.

To receive a copy of the proposed rules, please contact the DSW receptionist at (614) 644-2001. In addition, full copies of all proposed rules are available for review at any Ohio EPA district office and at the Ohio EPA central office. The proposed rules are also accessible on the DSW web page at epa.ohio.gov/divisions-and-offices/surface-water/regulations/proposed-rules

To request a reasonable accommodation due to a disability, visit <https://epa.ohio.gov/ada>

Attendee Report:		Public Hearing: Stormwater Rules (Statewide)		
Report Generated:				
12/05/2024 11:12 AM EST				
Webinar ID	Actual Date/Time	Start	Duration	# Registered
734-977-587	12/05/2024 10:06AM		55 minutes	11
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DSW Stormwater Rules Hearing

December 5, 2024

Hello and welcome to Ohio EPA's public hearing regarding Division of Surface Water's proposed rules. My name is Mary McCarron and I'm hosting today's public hearing. With me today from Ohio EPA are Emily Imhoff, Wes Sluga, and Amanda Payton. In a moment, we will move to the public hearing where we will take official comments on the proposed rules.

Before we get started, I want to go over some items for our online participants. For those attending online, you may type and submit any comments you have about the proposed rules in the Questions pane at any time. I will read aloud any comments submitted via the Questions pane so the whole audience can hear the comments.

On this slide here you will see an example screenshot of your Attendee interface. You should see something that looks like this on your computer desktop on the right-hand side of your screen. For this public meeting you are listening in using your computer audio. If you are having sound issues, try refreshing your browser. If that doesn't work, try logging off and logging back in.

If you are having technical difficulties, please submit those via the Questions button. Please submit public comments by clicking on the question mark icon and typing them into the Questions pane on your attendee interface. If you are online and plan on typing in your comments, you can do that at any time during the hearing. All typed comments will be read aloud for the whole audience to hear.

You can also click on the document icon to view included handouts.

We will now begin the hearing.

PUBLIC HEARING SPEECH

Thank you for taking time to attend this hearing before Ohio EPA. The purpose of the hearing today is to obtain comments from any interested person regarding Ohio EPA's proposed rules.

Ohio EPA proposes to original file the following water rules of the Ohio Administrative Code:

- 3745-39-01 Applicability of rules of procedure and definitions.
- 3745-39-02 Objectives of the Ohio EPA storm water management program for small MS4s.
- 3745-39-03 Ohio EPA NPDES requirements for small MS4s.
- 3745-39-04 Ohio EPA NPDES requirements for industries, including construction activities, and large and medium MS4s

These rules address stormwater regulations.

The purpose of this rule making is to conduct the five year rule review of rule 3745-39-01, to update language throughout the other three rules to be consistent, and to make updates of references and cross references with other rules and to be consistent with U.S. EPA's June 7, 2023, final rule to clarify designation criteria for small MS4s.

These rules have been filed with the Joint Committee on Agency Rule Review. Copies of the rules are available for public review on our website and in the handouts section in GoTo.

All interested persons are entitled to attend or be represented, and to present written or verbal comments concerning the proposed rules. All written comments received as part of the official record will be considered by the director of Ohio EPA.

To be included in the official record, written comments must be received by Ohio EPA by the close of business, today, June 6, 2024. These comments may be typed into the GoTo platform today, spoken during the hearing, or emailed to dsw_rulecomments@epa.ohio.gov. All emailed comments submitted for the record receive the same consideration as typed or spoken comments given today.

Written statements submitted after today may be considered as time and circumstances permit but will not be part of the official record of the hearing.

This hearing affords citizens an opportunity to provide input. Therefore, we will not be able to answer questions today.

YOU MAY NOW SUBMIT COMMENTS IN WRITING. I will read aloud any comments we receive in the Questions pane. I will keep the chat open until 11:00 a.m. to provide time for participants to type in comments.

CLOSING

After the hearing closes, we will accept written comments through 5:00 p.m. today. You can send those comments to the email address on the screen.

Thank you for your comments, cooperation, and participation in Ohio EPA's decision-making process. The time is now _____ and this hearing is concluded.



Environmental Protection Agency

Division of Surface Water Response to Comments

Rules Package: Stormwater

- 3745-39-01 Applicability of rules of procedure and definitions
- 3745-39-02 Objectives of the Ohio EPA storm water management program for small MS4s
- 3745-39-03 Ohio EPA NPDES requirements for small MS4s
- 3745-39-04 Ohio EPA NPDES requirements for industries, including construction activities, and large and medium MS4s

Agency Contact for this Package

Division Contact: Welsey Sluga, DSW, Wesley.Sluga@epa.ohio.gov or (614) 644-2141.

Ohio EPA held a public hearing on December 5, 2024, regarding the proposal of these four Stormwater rules. This document summarizes the comments and questions received at the public hearing and/or during the associated comment period, which ended on December 5, 2024.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

Please also see original comments attached at the end of this document for additional information.

Comment 1: Comment 3- Climate Change and Resilience should be addressed in the Ohio EPA stormwater rules. (OEC)

In response, Ohio EPA stated that “Ohio EPA will continue to evaluate the CGP’s water quality volume and propose changes when warranted.”

OEC thanks the Ohio EPA for this encouraging response. We believe there is extensive new data since 2018 that demonstrates the climate and hydrological impacts in Ohio. For example, see the NOAA National Centers for Environmental Information State Climate Summaries for Ohio, which document observed temperature change (and makes projections) and the substantial increase in the number of heavy rain events. There will be changes in climate for years to come including elevated temperatures, droughts, low and high stream flows and more extreme precipitation events, and consequent hydrologic and hydraulic impacts to streams. Among other things, “Drought conditions and lower stream flow can exacerbate these problems by concentrating pollutants and limiting dilution”. There is a need to adopt nature-based solutions for stormwater management due to climate changes. In addition to climate impacts,

populations and industry are increasing and the need for water treatment and management facilities is growing, and there will be more impervious surfaces to combat. We recommend incorporating new data and implementing new standards into Ohio EPA's rulemakings as soon as possible.

OEC offers to facilitate an Ohio EPA committee to further explore the topic of climate change impacts on stormwater systems. Would the Ohio EPA be interested in convening a committee in the near future? Or would the Ohio EPA provide a proposal to evaluate this further prior to the comment update? We would appreciate a follow-up response from the Ohio EPA on this topic as soon as possible. [Emily Kelly, MS; Agriculture and Water Coordinator; Ohio Environmental Council (OEC)]

Response 1: Thank you for the comment and information provided. Ohio EPA's current NPDES Construction Stormwater general permit (CGP) expires on April 22, 2028. Ohio EPA will evaluate the suggested information, as well as any other relevant information, when renewing the CGP. In addition, Early Stakeholder Outreach for the CGP renewal will begin approximately 18 months prior to the current CGP expiring. Ohio EPA will ensure to include the OEC in this upcoming process to provide input and discussion on developing the CGP renewal.

Comment 2: The Stormwater Rule Inadequately Account for Hydrology Impact. (OEC)

In response, Ohio EPA stated "As more information becomes available, Ohio EPA will attempt to incorporate sound requirements that are strongly connected with a source into applicable permits."

OEC thanks the Ohio EPA for your positive statement. The Ohio State University Byrd Polar and Climate Research Center's "Climate Analytics" program provides useful resources for climate and hydrological impacts on streams and rivers. One resource explores what drivers are responsible for watershed changes, and how the dominant drivers vary over time and as a function of the climate/water regime and land cover. We would be interested in seeing more on recognizing and combating extreme precipitation and hydrology impacts related to stormwater in the near future. We assume organizations like the Byrd Center would participate. (OEC)

Response 2: Please see Response to Comment #1.

Comment 3: Ohio EPA Should Review and Prepare a Report on the Cumulative Impacts of Development and Stormwater to Streams Since Stormwater Program Inception. The Ohio EPA should consider the cumulative impacts of stormwater in these

recently (the past 30-35 years) developed areas and determine how well stream health has fared when subject to the stormwater rules and permits. (OEC) In response, the Ohio EPA stated “Ohio EPA is open to discuss thoughts and options on how best to design such a study and determine whether such a study can be incorporated into Ohio EPA’s current surveys”.

OEC appreciates the Ohio EPA’s consideration to design a report on the cumulative impacts of development and stormwater to streams since the stormwater program inception. It is important the Ohio EPA consider preparing a statewide report on impacts on stormwater systems, and stream quality and trends. Small streams across the state have lower water quality than larger rivers across the state. On page G-13, in Table G-1 of Ohio EPA’s 2024 Integrated Water Quality Monitoring and Assessment Report 45% of headwater streams, and 40.3% of wading streams are in partial or non-attainment. While 28.3% of principal streams are in partial or non-attainment.

This is especially true for small streams where there is stormwater runoff. On page G-12 of the 2024 Integrated Report, Ohio EPA states “Principal causes for HUC 12 WAU impairments were those primarily related to landscape modification issues involving agricultural land use and urban development”. We offer to meet and discuss the following recommendations to be incorporated into the report.

First, an assessment of stormwater and its cumulative impacts must start with an assessment of pre-development stream quality conditions in a watershed and compare that to the current conditions after development, including the implementation of stormwater rules, permits and MS4 programs. This review would help determine if stream quality has been affected by development and stormwater in areas of relatively recent development and post-1990 (or post-MS4 program) stormwater management, and how effective programs have been. Ohio counties where this review might be most applicable and appropriate are those that have been rapidly developing, such as Delaware, Franklin, Warren and subwatersheds or parts of counties where development has been extensive and was subject to stormwater permits and MS4 programs. Some of these are in watersheds that continue to be rapidly developing (<https://epa.ohio.gov/divisions-and-offices/surface-water/reports-data/ms4-program-rapidly-developing-watersheds>). In other areas that should be subject to this assessment, the development has slowed down, but there has been significant development in the past 30 or more years. Ohio EPA could compare older, pre-development water quality data with new data in more recently developed streams and watersheds where stormwater best management practices were implemented, such as in the past 30-35 years. This would help in

the understanding of cumulative impacts and the effectiveness of stormwater management and MS4 programs.

Second, the Ohio EPA should consider the cumulative impacts of stormwater in these recently (the past 30-35 years) developed areas and determine how well stream health has fared when subject to the stormwater rules and permits. It also is important to consider cumulative impacts to streams, especially in light of the deregulation of ephemeral streams related to House Bill 175.

Third, OEC recommends the Ohio EPA design a report considering similar reports prepared in Ohio and other states. There are several publications based on statewide studies about the correspondence of urban development indicators to aquatic life use attainment (see attached three publications from 1999-2004). There are also publications based on statewide urban pollutants such as chlorides that highlight similar conclusions for urban streams to the other references (see attached 2005 U.S. EPA publication entitled the Urban Stream Syndrome).

Fourth, OEC recommends using Ohio urban stream studies results as interim placeholder endpoints as a requirement in a stormwater permit pending the development of more refined endpoints. The endpoints could include some form of urban land use thresholds (e.g., %developed land, %impervious surface, # of housing units, population density, etc.) that would vary by the tiered designated use for retrofit purposes and anti-degradation tier for protection purposes should be included a minimum. Some key endpoints for those specific parameters should include the QHEI and its key attributes plus well known urban pollutants like chlorides, total dissolved solids/conductivity, total Kjeldahl nitrogen, total P, and perhaps BOD and TSS.

The preparation of a report incorporating the recommendations above for a few counties that are experiencing rapid development would be helpful in establishing protection of downstream channels and stream quality where stormwater discharges occur, and how effective the stormwater program rules and permits have been. It would also provide findings for effective best practices including increased groundwater recharge and the implementation of more riparian buffers. These findings could potentially be incorporated into integrated reports, TMDLs, and more. Can the Ohio EPA provide details about how these recommendations will be considered? (OEC)

Response 3: Thank you for this input and suggestions. Please contact Jason Fyffe of the Division of Surface Water to schedule a meeting to discuss these suggestions. His contact information is Jason.Fyffe@epa.ohio.gov or 614-728-1793.

Comment 4: Like other discharges under the NPDES program, we encourage the Ohio EPA to adopt a rule which encourages local governments and other road salt users to measure and report their road salt use. (OEC)

In response, the Ohio EPA stated “Ohio’s NPDES Small MS4 general permit and NPDES MS4 Individual permits require regulated MS4s to cover salt piles and have secondary containment or alternatively bollard or barrier protection for all tanks of brine or other liquid road treatments. In addition, regulated MS4s are required to annually report the tons of salt used, gallons of brine used (and concentration), lane miles treated, and measures taken to minimize usage. No changes were made to the rule package”.

We appreciate the information that is gathered and submitted by these MS4 permittees. How does the Ohio EPA review and report this information now? Is there a report to the public that is prepared that summarizes progress in salt use reduction? This is what we would like to see. It could be beneficial to the public and entities responsible for road salt use, who we believe would like to see a summary of what progress is being made.

The Ohio EPA has noted that the H2Ohio Chloride Reduction Grant was announced in December 2023 awarded approximately \$1 million to help reduce road salt runoff and water contamination. We understand there was demand far beyond the available amount of funds, and we urge the Ohio EPA to encourage the State of Ohio to significantly increase the amount available funds, i.e., by at least an order of magnitude. We also would like to see a report summarizing the use of the funds, where they went, what practices were implemented as a result of funding and success stories.

While the data collection and H2Ohio Program are commendable, OEC finds these actions by the Ohio EPA to be insufficient to adequately address the impacts of road salt on Ohio’s waterways. We recommend the Ohio EPA go beyond these actions to better track the use of road salt, and report results and trends to the public, such as in the 2026 biennial Integrated Report. For reporting, for example, Ohio EPA could focus on the largest users and most likely problem areas of the state (e.g., the Cuyahoga River watershed, per Heidelberg University’s data, or urban areas with the highest known stream chloride concentrations gathered from Ohio EPA’s water quality database). The results documented in this report is a much better gauge of progress than the amount of H2Ohio funds granted, as it is closer to the environmental outcomes (reductions in stream concentrations and improvements in stream quality) we hope to see. (OEC)

Response 4: Thank you for your comments. Our H2Ohio Rivers Chloride Reduction Initiative launched in January 2024 with requests for proposals for salt equipment and facility upgrades. Our initial round of grants were announced in May 2024, followed by another round in August 2024 due to the number of requests Ohio EPA received.

Ohio EPA is excited communities wish to upgrade their equipment and facilities to ensure proper management of their salt usage. Ohio EPA is hopeful it will receive another round of funding for its H2Ohio Rivers Initiative in the next biennium budget to allow for funding for Chloride Reduction grants.

As Ohio EPA continues to build this program, we appreciate feedback on ways to improve the public's access to understanding Ohio's salt usage and ways we can lower Ohio's impact. Currently, there are 623 regulated MS4s which submit annual reports that provide salt usage information which are available online via Ohio EPA's eDocument website or can be requested via a public records request.

End of Response to Comments



December 4, 2024

Rule Coordinator
Ohio EPA, Division of Surface Water
PO Box 1049
Columbus, Ohio 43216-1019
Sent electronically: dsw_rulecomments@epa.ohio.gov

**RE: COMMENTS OF THE OHIO ENVIRONMENTAL COUNCIL ON
INTERESTED PARTY REVIEW FOR STORMWATER RULES (OAC 3745-39)**

Dear Agency Officials:

On behalf of the Ohio Environmental Council (OEC) and our thousands of members and supporters throughout the state of Ohio and the Great Lakes Region and beyond, we respectfully submit these comments for purposes of the interested party review on administrative rules for stormwater contained in Chapter 3745-39. We look forward to engaging with the Ohio Environmental Protection Agency (Ohio EPA) in the future regarding this rulemaking .

We recognize the Agency's present IPR focused on some minor edits of these rules. We are taking this opportunity to address Ohio EPA's response to our previous comments on the stormwater rule that included recommendations for issues beyond the agency's minor edits. Our earlier comments emphasized areas where we believe Ohio's stormwater rules need to further address important topics for Ohio's stormwater rules to be more effective and better meet the use attainment and other water quality goals and objectives of the Clean Water Act and to protect aquatic life.

As you know, many Ohio streams are not meeting Clean Water Act goals and are in nonattainment, especially in smaller streams (see the 2024 Ohio EPA Integrated Report) and in areas subject to stormwater management under OAC 3745-39. This is especially true in areas subject to development and urban stormwater, which these rules are meant to address. We maintain that Ohio needs to address some other factors to recognize current, emerging and future challenges and better address stream health in areas of stormwater impacts. OEC believes several stormwater related issues are inadequately addressed in the stormwater rules, including climate change and resilience, cumulative impacts, and future urban development. OEC recommends that Ohio EPA address these topics further in the stormwater rules.

1. Comment 3- Climate Change and Resilience should be addressed in the Ohio EPA stormwater rules. (OEC)

In response, Ohio EPA stated that “Ohio EPA will continue to evaluate the CGP’s water quality volume and propose changes when warranted.”

OEC thanks the Ohio EPA for this encouraging response. We believe there is extensive new data since 2018 that demonstrates the climate and hydrological impacts in Ohio. For example, see the NOAA National Centers for Environmental Information State Climate Summaries for Ohio, which document observed temperature change (and makes projections) and the substantial increase in the number of heavy rain events¹. There will be changes in climate for years to come including elevated temperatures, droughts, low and high stream flows and more extreme precipitation events, and consequent hydrologic and hydraulic impacts to streams.. Among other things, “Drought conditions and lower stream flow can exacerbate these problems by concentrating pollutants and limiting dilution”². There is a need to adopt nature-based solutions for stormwater management due to climate changes.³⁴ In addition to climate impacts, populations and industry are increasing and the need for water treatment and management facilities is growing, and there will be more impervious surfaces to combat. We recommend incorporating new data and implementing new standards into Ohio EPA’s rulemakings as soon as possible.

OEC offers to facilitate an Ohio EPA committee to further explore the topic of climate change impacts on stormwater systems. Would the Ohio EPA be interested in convening a committee in the near future? Or would the Ohio EPA provide a proposal to evaluate this further prior to the comment update? We would appreciate a follow-up response from the Ohio EPA on this topic as soon as possible.

2. Comment 7- The Stormwater Rule Inadequately Account for Hydrology Impact. (OEC)

In response, Ohio EPA stated “As more information becomes available, Ohio EPA will attempt to incorporate sound requirements that are strongly connected with a source into applicable permits.”

¹ Technical details on observations and projections are available online at <https://statesummaries.ncics.org/technicaldetails>.

² U.S. EPA. 2024. Climate Adaptation and Stormwater Runoff. Climate Change Adaptation Resource Center (ARC-X). <https://www.epa.gov/arc-x/climate-adaptation-and-stormwater-runoff>.

³ Hathaway et al 2023. A Synthesis of Climate Change Impacts on Stormwater Management Systems: Designing for Resiliency and Future Challenges. Journal of Sustainable Water in the Built Environment. Volume 10, Issue 2. <https://doi.org/10.1061/JSWBAY.SWENG-533>

⁴ Field, CB et al.. 2014 Technical summary. In Climate change 2014: impacts, adaptation, and vulnerability. Part A: global and sectoral aspects. Contribution of working group II to the fifth assessment report of the intergovernmental panel on climate change (eds. Field CB et al.), pp. 35-94. Cambridge, UK: Cambridge University Press.

OEC thanks the Ohio EPA for your positive statement. The Ohio State University Byrd Polar and Climate Research Center's "Climate Analytics" program provides useful resources for climate and hydrological impacts on streams and rivers⁵. One resource explores what drivers are responsible for watershed changes, and how the dominant drivers vary over time and as a function of the climate/water regime and land cover⁶. We would be interested in seeing more on recognizing and combating extreme precipitation and hydrology impacts related to stormwater in the near future. We assume organizations like the Byrd Center would participate.

3. Comment 8- Ohio EPA Should Review and Prepare a Report on the Cumulative Impacts of Development and Stormwater to Streams Since Stormwater Program Inception. The Ohio EPA should consider the cumulative impacts of stormwater in these recently (the past 30-35 years) developed areas and determine how well stream health has fared when subject to the stormwater rules and permits. (OEC)

In response, the Ohio EPA stated "Ohio EPA is open to discuss thoughts and options on how best to design such a study and determine whether such a study can be incorporated into Ohio EPA's current surveys".

OEC appreciates the Ohio EPA's consideration to design a report on the cumulative impacts of development and stormwater to streams since the stormwater program inception. It is important the Ohio EPA consider preparing a statewide report on impacts on stormwater systems, and stream quality and trends. Small streams across the state have lower water quality than larger rivers across the state. On page G-13, in Table G-1 of Ohio EPA's 2024 Integrated Water Quality Monitoring and Assessment Report 45% of headwater streams, and 40.3% of wading streams are in partial or non-attainment. While 28.3% of principal streams are in partial or non-attainment. This is especially true for small streams where there is stormwater runoff. On page G-12 of the 2024 Integrated Report, Ohio EPA states "Principal causes for HUC 12 WAU impairments were those primarily related to landscape modification issues involving agricultural land use and urban development". We offer to meet and discuss the following recommendations to be incorporated into the report.

First, an assessment of stormwater and its cumulative impacts must start with an assessment of pre-development stream quality conditions in a watershed and compare that to the current conditions after development, including the implementation of stormwater rules, permits and MS4 programs. This review would help determine if stream quality has been affected by

⁵ <https://byrd.osu.edu/research/groups/climate-analytics>

⁶ Li, Zhiying and Quiring, Steven M. "Identifying the Dominant Drivers of Hydrological Change in the Contiguous United States" *Water Resources Research* , v.57 , 2021 <https://doi.org/10.1029/2021WR029738>.

development and stormwater in areas of relatively recent development and post-1990 (or post-MS4 program) stormwater management, and how effective programs have been. Ohio counties where this review might be most applicable and appropriate are those that have been rapidly developing, such as Delaware, Franklin, Warren and subwatersheds or parts of counties where development has been extensive and was subject to stormwater permits and MS4 programs. Some of these are in watersheds that continue to be rapidly developing (<https://epa.ohio.gov/divisions-and-offices/surface-water/reports-data/ms4-program-rapidly-developing-watersheds>). In other areas that should be subject to this assessment, the development has slowed down, but there has been significant development in the past 30 or more years. Ohio EPA could compare older, pre-development water quality data with new data in more recently developed streams and watersheds where stormwater best management practices were implemented, such as in the past 30-35 years. This would help in the understanding of cumulative impacts and the effectiveness of stormwater management and MS4 programs.

Second, the Ohio EPA should consider the cumulative impacts of stormwater in these recently (the past 30-35 years) developed areas and determine how well stream health has fared when subject to the stormwater rules and permits. It also is important to consider cumulative impacts to streams, especially in light of the deregulation of ephemeral streams related to House Bill 175.

Third, OEC recommends the Ohio EPA design a report considering similar reports prepared in Ohio and other states. There are several publications based on statewide studies about the correspondence of urban development indicators to aquatic life use attainment (see attached three publications from 1999-2004). There are also publications based on statewide urban pollutants such as chlorides that highlight similar conclusions for urban streams to the other references (see attached 2005 U.S. EPA publication entitled the Urban Stream Syndrome).

Fourth, OEC recommends using Ohio urban stream studies results as interim placeholder endpoints as a requirement in a stormwater permit pending the development of more refined endpoints. The endpoints could include some form of urban land use thresholds (e.g., %developed land, %impervious surface, # of housing units, population density, etc.) that would vary by the tiered designated use for retrofit purposes and anti-degradation tier for protection purposes should be included a minimum. Some key endpoints for those specific parameters should include the QHEI and its key attributes plus well known urban pollutants like chlorides, total dissolved solids/conductivity, total Kjeldahl nitrogen, total P, and perhaps BOD and TSS.

The preparation of a report incorporating the recommendations above for a few counties that are experiencing rapid development would be helpful in establishing protection of downstream

channels and stream quality where stormwater discharges occur, and how effective the stormwater program rules and permits have been. It would also provide findings for effective best practices including increased groundwater recharge and the implementation of more riparian buffers. These findings could potentially be incorporated into integrated reports, TMDLs, and more. Can the Ohio EPA provide details about how these recommendations will be considered?

4. Comment 9- Like other discharges under the NPDES program, we encourage the Ohio EPA to adopt a rule which encourages local governments and other road salt users to measure and report their road salt use. (OEC)

In response, the Ohio EPA stated “Ohio’s NPDES Small MS4 general permit and NPDES MS4 Individual permits require regulated MS4s to cover salt piles and have secondary containment or alternatively bollard or barrier protection for all tanks of brine or other liquid road treatments. In addition, regulated MS4s are required to annually report the tons of salt used, gallons of brine used (and concentration), lane miles treated, and measures taken to minimize usage. No changes were made to the rule package”.

We appreciate the information that is gathered and submitted by these MS4 permittees. How does the Ohio EPA review and report this information now? Is there a report to the public that is prepared that summarizes progress in salt use reduction? This is what we would like to see. It could be beneficial to the public and entities responsible for road salt use, who we believe would like to see a summary of what progress is being made.

The Ohio EPA has noted that the H2Ohio Chloride Reduction Grant was announced in December 2023 awarded approximately \$1 million to help reduce road salt runoff and water contamination. We understand there was demand far beyond the available amount of funds, and we urge the Ohio EPA to encourage the State of Ohio to significantly increase the amount available funds, i.e., by at least an order of magnitude. We also would like to see a report summarizing the use of the funds, where they went, what practices were implemented as a result of funding and success stories.

While the data collection and H2Ohio Program are commendable, OEC finds these actions by the Ohio EPA to be insufficient to adequately address the impacts of road salt on Ohio’s waterways. We recommend the Ohio EPA go beyond these actions to better track the use of road salt, and report results and trends to the public, such as in the 2026 biennial Integrated Report. For reporting, for example, Ohio EPA could focus on the largest users and most likely problem areas of the state (e.g., the Cuyahoga River watershed, per Heidelberg University’s data, or urban areas with the highest known stream chloride concentrations gathered from Ohio EPA’s water quality database). The results documented in this report is a much better gauge of progress than

the amount of H2Ohio funds granted, as it is closer to the environmental outcomes (reductions in stream concentrations and improvements in stream quality) we hope to see.

The lower levels of Clean Water Act attainment and species diversity in urban areas are clear evidence that current protections, including in the stormwater rules and general permit, are not adequate to protect and improve Ohio streams. **OEC asks that the Ohio EPA develop and implement stormwater rules that require riparian protection, groundwater recharge and much more climate resilience in Ohio's developed and developing areas subject to stormwater permits.** Again, we recognize the Agency's present IPR focused on some minor edits of these rules and we are addressing issues well beyond these edits, but feel the need to address these issues is important. Ohio needs to address them as soon as possible to help avoid long-term stream quality degradation. A review of the effectiveness of the stormwater program since implementation of stormwater rules, permits and MS4 programs (e.g., since the early 1990s) also is warranted.

We look forward to working with the Ohio Environmental Protection Agency to protect Ohio waters.

Sincerely,

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