

Hearing Summary

Rule Package: Credible Data rules (OAC Chapter 3745-4)

Original filing date: April 21, 2025

Public comment start date: April 21, 2025

Public comment end date: May 29, 2025

Public hearing date: May 29, 2025

List of Rules: OAC 3745-4-01, 3745-4-02, 3745-4-03, 3745-4-04, 3745-4-05, 3745-4-06

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.

OHIO ENVIRONMENTAL PROTECTION AGENCY**Public Notice****Proposed Rulemaking Governing
The Credible Data Program**

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>	
3745-4-01	Purpose and applicability.	Amend
3745-4-02	Definitions.	Amend
3745-4-03	Qualified data collectors.	Amend
3745-4-04	Level 1 data requirements and reporting.	Amend
3745-4-05	Level 2 data requirements and reporting.	Amend
3745-4-06	Level 3 data requirements and reporting.	Amend

These rules address the credible data program.

The purpose of this rule making is to conduct the five year rule review of all six rules in the chapter.

The public comment period will run until May 29, 2025. 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, May 29, 2025, at 10:30 a.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/952054371045453152>

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 submitted to SmartComment at <https://ohioepa.commentinput.com?id=D59WjSdKs> or sent to the attention of Emily Imhoff, Rules Coordinator at the Division of Surface Water, P.O. Box 1049, Columbus Ohio 43216-1049. 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 May 29, 2025, 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 Kelsey Heyob of the Division of Surface Water at Kelsey.Heyob@epa.ohio.gov or by phone at (614) 705-1011.

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 <https://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>

Credible Data webinar May 29, 2025

Webinar ID **Duration** **# Registered**
364-708-251 41 minutes 8

Actual Start Date/Time
05/29/2025 10:20 AM EDT
Attended
4

Staff Details

Attended	Last Name	First Name	Email Address	Time in Session
Yes	McCarron	Mary	mary.mccarron@epa.ohio.gov	41 minutes
Yes		Amanda Payton	amanda.payton@epa.ohio.gov	37 minutes
In person		Emily Imhoff	Emily.Imhoff@epa.ohio.gov	n/a
In person		Kelsey Heyob	kelsey.heyob@epa.ohio.gov	n/a
In person		Melinda Harris	Melinda.Harris@epa.ohio.gov	n/a

Attendees

Attended	Last Name	First Name	Email Address	Time in Session
Yes	Fouche	Greg	greg.fouche@jcarr.state.oh.us	14 minutes
Yes	Hamilton	Jacob	jhamilton@jcarr.state.oh.us	3 minutes
Yes	Ratliff	Tera	ratliftj@miamioh.edu	12 minutes
Yes	Yoder	Chris	cyoder@mwbinst.com	17 minutes
No	Dalton	Brittany	daltonb@neorsd.org	n/a
No	Kinney	Chad	chad.kinney@dnr.ohio.gov	n/a
No	Reider	Ian	ian.reider@naturion.com	n/a
No	Robb	Connor	connor.robb@franklincountyohio.gov	n/a

DSW Credible Data Proposed Rules

May 29, 2025

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, Kelsye Heyob and Mandi 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 the format for today's hearing. We have an in-person audience as well as online participants. During a public hearing, Ohio EPA does not present or conduct a question and answer period. We want to hear from our stakeholders, so this is an opportunity for us to hear from our audience.

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.

We will not be responding to any comments submitted or questions asked during the public hearing today. Again, I will read aloud any comments we receive in the GoTo platform.

I'd like to go over a few more items for our on-line participants.

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 amend the following credible data program rules of the Ohio Administrative Code:

3745-4-01 Purpose and applicability

3745-4-02 Definitions

3745-4-03 Qualified data collectors

3745-4-04 Level 1 data requirements and reporting

3745-4-05 Level 2 data requirements and reporting

3745-4-06 Level 3 data requirements and reporting

These rules address the credible data program regulations.

The purpose of this rule making is to conduct the five year rule review of all six rules in the chapter.

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, May 29, 2025. These comments may be typed into the GoTo platform today, spoken during the hearing, or submitted online at ohioepa.commentinput.com. All comments submitted during the comment period receive the same consideration regardless of how they are submitted.

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.



Division of Surface Water Response to Comments

Rules:

3745-4-01	Purpose and applicability
3745-4-02	Definitions
3745-4-03	Qualified data collectors
3745-4-04	Level 1 data requirements and reporting
3745-4-05	Level 2 data requirements and reporting
3745-4-06	Level 3 data requirements and reporting

Agency Contact for this Package

Division Contact: Kelsey Heyob, DSW, Kelsey.Heyob@epa.ohio.gov or (614) 705-1011.

Ohio EPA held a public comment period starting April 21, 2025, regarding the proposal of these six Credible Data rules. A public hearing was held on May 29, 2025. This document summarizes the comments and questions received during the comment period, which ended on May 29, 2025.

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. Some comments are summarized, please see the original comments attached at the end of this document for details. The name of the commenter follows the comment in parentheses.

Comment 1: **We appreciate the agency taking many of our suggested changes made in our IPR comments submitted on December 31, 2024, into account in developing the proposed rule. We also appreciate the stakeholder meeting on April 23, 2025, and the forum for an exchange of ideas and information. We strongly encourage the agency to continue with these in-person forums. [Chris Yoder, Research Director, Midwest Biodiversity Institute (MBI)]**

Response 1: The Agency does plan to continue the in-person forums on an annual basis.

Comment 2: **3745-4-02 Definitions: We appreciate the acknowledgement and change to the HHEI and PHWH definitions. However, we maintain our comment of December 31, 2024, and suggested revision about the definition of Historical Data as follows: ...(J) "Historical data" means data that are more than five years old for assessment purposes. Historical data is a vital resource for documenting long term trends and serving as a baseline against which the overall effectiveness of water quality and natural resource management policies and programs can be judged and to serve**

as a means to demonstrate the benefits of those policies and programs to policymakers and the public.” ...Our concern is based on recent attempts (i.e., by previous administrations within the past 10-15 years) to purge historical documents... (MBI)

Response 2: Regarding the phrasing of the definition, this term is defined in statute in ORC 6111.50. The Agency plans to continue the use of this definition in order to maintain consistency with the statute. Ohio EPA utilizes historical data across several programs for trend analysis, baseline comparisons for recently collected data, and use designation rulemakings. Inclusion of the phrase “for assessment purposes” may narrow or limit the definition in comparison to the definition as it is in statute, and therefore, the use of historical data, so this change will not be made. Some of the other additional suggested wording is more appropriate for policy than a rule definition, which merely defines the term in question.

Regarding data retention, the Agency does intend to input all data received by the credible data program into its internal database regardless of the age of the data. Data may be prioritized for input, however, based on date of collection, watershed, etc. All data submitted to the credible data program is set to be permanently retained.

Comment 3: **...We propose that Level 3 QDCs who develop structured reports that follow the format and practice of Ohio EPA biological and water quality reports (“TSDs”), and that include recommendations for WQS use changes and 303[d] status that are clearly documented and supported by the data, be accepted under the provisions of new rule language and certification. ... There was no response to this comment, but we were able to initiate a discussion at the April 2025 Stakeholder meeting. We still believe that this needs to be seriously considered as a practical solution to the current situation. ... (MBI)**

Response 3: The Agency apologizes for the oversight in responding to this comment during the Interested Party Review. This proposed idea was discussed during the stakeholder meeting in April 2025, and the response was that Agency staff believe that the changes that have been made to the administration of the Credible Data program will show improvements in the timely acceptance and dissemination of data submitted by Qualified Data Collectors. Additionally, level 3 data will have to be entered into the EA3 database in the same way regardless of whether an additional certification is developed or not. While the program is believed to be moving in a positive direction, that does not mean that further changes won’t be considered for the future.

Comment 4: (This comment pertains to the BIA form, which is not considered at this stage in the rulemaking) ... We have had long standing concerns about the tone of this language as it conveys a very one-sided message about administrative rules in general. There needs to be a balance between the issues of costs and full consideration of the public benefits that environmental laws and rules have fostered over the past 50 years. The current BIA language is all about costs and nothing about benefits, i.e., the cost and no benefits syndrome. While we have no issue with the language about duplicative rules, transparency, responsiveness, predictability, flexibility, costs of compliance, and fairness, there needs to at least be some acknowledgement that rules can precipitate benefits that are at least equal to the cost of compliance and in most cases far exceed those costs. ... (MBI)

Response 4: The comment submitted for the IPR seemed to be directed more at the BIA form questions rather than the Credible Data program's response to the questions. Comments relating to the content of the BIA template itself may be addressed to the Common Sense Initiative using the contact information found on their website: <https://governor.ohio.gov/priorities/common-sense-initiative/contact-csi>

Additionally, the Credible Data Program recognizes the immense benefits stemming from all aspects of qualified data collector participation, most notably the collected data and training provided to future participants. Recent efforts have been made to make the program more robust and transparent, and these efforts will continue to be made to the fullest extent of power the program has to make them.

Comment 5: This comment letter is sent to reiterate our support of this vital program and to amplify the concerns expressed in those previous discussions and comments. Columbus Water & Power commends Ohio EPA on its intention to maintain the quality and breadth of the Credible Data Program and its commitment to not disregard historical data...DWR works with partners to perform Level 3 biological and water quality assessments that produce data that more accurately represents the current condition of our rivers and how they have changed over time compared to historical data. [Sarah Bloom Anderson, Assistant Director, Policy, Columbus Water & Power (CWP)]

Response 5: The Agency acknowledges and appreciates your comment.

End of Response to Comments

May 29, 2025

SUBMITTED VIA SMARTCOMMENT

Emily Imhoff, Rules Coordinator
Ohio EPA, Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1019

Re: Comments on Ohio EPA's Proposed Rules Review of the Credible Data Program Rules at OAC Chapter 3745-4

Dear Emily:

The City of Columbus, Department of Public Utilities (newly renamed Columbus Water & Power) appreciates the opportunity to participate in the proposed rule review for the Credible Data Program Rules at OAC Chapter 3745-4. Columbus Water & Power acknowledges and values Ohio EPA's consideration of our previous comments and the concerns of our partners, the Midwest Biodiversity Institute and the Association of Ohio Metropolitan Wastewater Agencies (AOMWA). This comment letter is sent to reiterate our support of this vital program and to amplify the concerns expressed in those previous discussions and comments. Columbus Water & Power commends Ohio EPA on its intention to maintain the quality and breadth of the Credible Data Program and its commitment to not disregard historical data. Both historical and more recent data warrant distinct consideration and value in their own right.

Columbus Water & Power is committed to protecting water quality. CWP's Division of Water Reclamation (DWR) operates two award-winning water reclamation plants that can serve an area covering 687 square miles, including the City of Columbus and 26 suburban communities. Between the two water reclamation plants, DWR treats an average of 180 million gallons of wastewater per day and serves over 1.4 million residents in greater Columbus. DWR works with partners to perform Level 3 biological and water quality assessments that produce data that more accurately represents the current condition of our rivers and how they have changed over time compared to historical data.

Above and beyond its work treating and distributing 145 million gallons of drinking water each day, Columbus Water & Power's Division of Water (DOW) operates a Watershed Program with a mission to protect the rivers and reservoirs which serve as our source water. DOW uses the credible data program to develop data from tributaries across Central Ohio to evaluate the quality of the headwaters that feed our reservoirs. Watershed staff conduct Level 3 Quality Data collecting for the Fish Index of Biotic Integrity (IBI) and the Qualitative Habitat



Evaluation Index (QHEI). Columbus Water & Power appreciates Ohio EPA's continued attention and resource allocation to the Credible Data Program, allowing it to build off the investment Columbus Water & Power has made in developing reliable and robust data sets.

Columbus Water & Power appreciates your consideration of these comments and the previous comments and discussions from us and our partners on this issue. Should you have any questions, please contact Sarah Bloom Anderson at stbloomanderson@columbus.gov or call (614) 645-5741.

Very truly yours,



Sarah Bloom Anderson
Assistant Director, Policy
Columbus Water & Power

Ecc: Madison Hill, CWP, Deputy Director
Rob Priestas, CWP, DWR Administrator
Stacia Eckenwiler, CWP, DWR Assistant Administrator
Paul Wilson, CWP, DWR Assistant Administrator
John Newsome, CWP, DOW Administrator
Matthew Steele, CWP, DOW Assistant Administrator
Brian Haemmerle, P.E., CWP, DOW Assistant Administrator



Midwest Biodiversity Institute, Inc.
4673 Northwest Parkway
Hilliard, OH 43206

MBI Credible Data Rule Comments

May 29, 2025

Rules Coordinator

Re: Credible Data Program Proposed Rules (OAC Chapter 3745-4)

P.O. Box 1049

dsw_rulecomments@epa.ohio.gov

Columbus, Ohio 43216-1049

Rules Coordinator:

In response to the April 24, 2025, Credible Data Proposed Rules (OAC 3745-4), MBI appreciates the opportunity to offer comments on both the policy and technical aspects of the proposed rule revisions. Of priority concern to MBI with any rulemaking is how the agency complies with the provisions of SB 9 as it is with any rulemaking that the agency must contend with since the passage of that bill. MBI is in a unique position to comment on each subject having practiced as Level 2 and 3 trainers and Level 3 practitioners since the inception of the Credible Data Program and its forerunner, the Voluntary Action Program. This includes:

1. Our experience in commenting on numerous agency rules since the SB 9 requirements first emerged;
2. Our direct involvement in conducting numerous Level 3 bioassessments each year in Ohio since 2011 and managing the application and renewal process for a complement of 12 Level 3 QDCs;
3. Serving as Level 2 and 3 trainers having trained hundreds of Level 2 trainees and more than 60 Level 3 trainees;
4. More than 150 years of cumulative professional experience among all of our Level 3 Qualified Data Collectors; and,
5. Four decades of experience with having written and implemented many of the parts of the Ohio WQS and the biological and water quality assessment protocols that are followed by the agency and required by the Ohio Credible Data Law and Rules.

Most recently we have had discussions with the Credible Data Program about improving the flow of submitted Level 3 data and ensuring that it is used in a timely manner to affect agency actions regarding changes to designated aquatic life uses and revisions to 303[d] impaired waters listings. While we appreciate the efforts that are being made to address this issue and look forward to a timelier process in the future, we have stated what we believe is a realistically practical solution at the end of the attached detailed comments.

We have had good experiences with the Credible Data Program and consider it to be one of the better programs at the agency. So please take all of our comments as being constructive and supportive of the program. Again, we appreciate the opportunity to comment on this phase of

the rulemaking. We appreciate the acceptance of many of our IPR comments, but we will await the details of any further changes suggested by our remaining comments on the proposed rules phase of the rulemaking process. We can make ourselves available for a meeting to clarify and discuss any of the submitted comments.

Please contact me directly if there are any questions.

Very truly yours,



Chris O. Yoder, Research Director
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4673 Northwest Parkway
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(614) 457-6000 x1102 [main]
(614) 403-9592 [mobile]
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www.midwestbiodiversityinst.org

Attachments

Detailed Comments by MBI on Proposed Credible Data Program Rules (OAC Chapter 3745-4)

Overall

We appreciate the agency taking many of our suggested changes made in our IPR comments submitted on December 31, 2024, into account in developing the proposed rule. We also appreciate the stakeholder meeting on April 23, 2025, and the forum for an exchange of ideas and information. We strongly encourage the agency to continue with these in-person forums.

3745-4-01[B]

Our IPR comment was fully addressed.

3745-4-01[B][3]

We accept the response to our IPR comment.

3745-4-01[C]

We accept the response to our IPR comments and the willingness to improve clarity both internally and externally.

3745-4-02 Definitions

We appreciate the acknowledgement and change to the HHEI and PHWH definitions. However, we maintain our comment of December 31, 2024, and suggested revision about the definition of Historical Data as follows:

“(J) ‘Historical data’ means data that are more than five years old.’ We believe this needs to be amplified to allay the oversimplified notion that data older than five years has a lesser status in terms of their value and usefulness. **Comment:** The five-year period is an antiquated holdover from 1980s era U.S. EPA guidance that distinguished monitored from assessed status for 305[b] purposes. This was done before states had multi-decadal databases thus the value of historical data was not yet recognized. We suggest the following revision:

(J) "Historical data" means data that are more than five years old **for assessment purposes. Historical data is a vital resource for documenting long term trends and serving as a baseline against which the overall effectiveness of water quality and natural resource management policies and programs can be judged and to serve as a means to demonstrate the benefits of those policies and programs to policymakers and the public.”**

Our concern is based on recent attempts (i.e., by previous administrations within the past 10-15

years) to purge historical documents which convey a denial at worst, or an ignorance at best, of the importance of institutional knowledge and information, the purge of which has already been attempted by numerous means. While those negative actions cannot be recalled, making a simple definition more informative has immense value and signals that the agency takes it seriously.

We accept that the current staff and managers value historical data and information, but we are not convinced this view is always held by the Division management level or the Director's office. Therefore, the very simple and amplifying change that we continue to request should safeguard against an intrusion of what is very shortsighted thinking. It is for these reasons that we disagree with the response "that the current definition allows for the broadest use of historical data". In actuality and in the "wrong hands" it could significantly narrow the use, recognition, or even awareness of historical data. Please reconsider adding our suggested definition.

3745-4-03 Qualified data collectors

We accept the response and revision of the IPR rule language.

3745-4-03(C) Expiration and renewals

We accept the response to our comment.

3745-4-03(E)(2)(d) Emeritus Trainer Status

We accept the response to our comments.

3745-4-06 Level 3 data requirements and reporting

We appreciate the clarification provided in the proposed rule.

Proposed Rule Additions

Original comment of December 31, 2024:

"Given the difficulty that the agency has had in keeping up with the entry of data submittals into EA3 in a timely manner sufficient to have timely WQS use designation and 303[d] listing actions, an alternative that keeps the WQS and 303[d] list current and in a reasonable time frame needs to be developed. As it is there are outstanding WQS use recommendations that have not been acted on for many years and Level 3 data that would change 303[d] listings some of which are based on Ohio EPA data that is 10-15 years old. We propose that Level 3 QDCs who develop structured reports that follow the format and practice of Ohio EPA biological and water quality reports ("TSDs"), and that include recommendations for WQS use changes and 303[d] status that are clearly documented and supported by the data, be accepted under the

provisions of new rule language and certification. While this would add a new layer of certification to the QDC process, such a provision is urgently needed as the agency currently has insufficient resources to support the current process of entering data into EA3 and either waiting for the next round of watershed surveys or the Integrated Report for the data analysis to take place. In some cases, there is a 10+ year backlog. While we appreciate the agency taking the time to discuss this critical situation, the interim remedy for using WQX is a half-measure. The current situation is untenable and is not going unnoticed by our clients who have funded the Level 3 data collection and analysis and are reliant on timely WQS and 303[d] listing actions. We stand ready to assist the agency with developing such an approach.”

There was no response to this comment, but we were able to initiate a discussion at the April 2025 Stakeholder meeting. We still believe that this needs to be seriously considered as a practical solution to the current situation. While we can understand the reluctance to in effect “delegate” an important agency function, the reality is it is unlikely that the agency will be able to commit sufficient resources to resolve the lengthy process of approving and using Level 3 data to affect WQS use designations and impaired waters determinations including listing and delisting. Unless the climate surrounding the funding of government, especially environmental programs, changes in a positive direction, this process must be streamlined such that the timeline toward making the ultimate regulatory decisions is greatly improved. While we opposed the original concept of the Water Quality Certified Professional (WQCP), which is codified in ORC 6111, in this case utilizing it for Credible Data decision making purposes would be entirely appropriate and a more practical solution to the current dilemma of the lag in the time it takes to go from data acceptance to a Level 3 action. Again, we are willing to work with the agency on developing such a process that will have sufficient safeguards against improper use.

Business Impact Analysis (BIA)

Our original comments on the BIA are restated here:

“The draft rules fact sheet requested input on the BIA format as follows:

In addition to the draft rule amendments, Ohio EPA is also seeking comments and feedback on the draft Common Sense Initiative Business Impact Analysis (BIA) form, which is being released with these draft rules during interested party review.”

Our comments have to do with the language at the bottom of the first page of the BIA:

“The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under

the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.”

We have had long standing concerns about the tone of this language as it conveys a very one-sided message about administrative rules in general. There needs to be a balance between the issues of costs and full consideration of the public benefits that environmental laws and rules have fostered over the past 50 years. The current BIA language is all about costs and nothing about benefits, i.e., the cost and no benefits syndrome. While we have no issue with the language about duplicative rules, transparency, responsiveness, predictability, flexibility, costs of compliance, and fairness, there needs to at least be some acknowledgement that rules can precipitate benefits that are at least equal to the cost of compliance and in most cases far exceed those costs. The admonition to utilize plain language is also understandable, but when rules deal with specialized science and engineering concepts it needs to be written to that level of understanding otherwise the rules can become so generic as to be meaningless.

MBI employs a team of qualified data collectors across the current range of specialties, offers QDC level courses for professional certification under the Credible Data Program, and trains community members to become Level One and Two trainers and QDCs. These activities represent significant investments by MBI as an independent applied research enterprise. However, we fully recognize and value the substantial benefits that the Credible Data Program provides to the state, as well as to the volunteers and professionals who monitor and manage water quality.

Yet, these benefits are more fully realized with a strong, robust, and responsive program. A less responsive and less transparent program not only imposes unnecessary costs on MBI and its public and private sector clients but also deprives communities and policy-makers of a comprehensive and timely understanding of the environmental benefits derived from the administrative rules administered by Ohio EPA. To its credit, the agency has seemed to navigate the BIA with a great degree of success and to our knowledge most rule proposals have been accepted. However, in light of our comments about Credible Data not being used in a timely enough manner due to a lack of resources within the agency, then to be fair, the drag on that resource availability that is caused by the competing need and detail of complying with the BIA must be also considered.

Extolling the benefits of sound science and fact-based regulation in the current deregulatory climate is more important than ever. Therefore, we strongly urge the Division to prioritize ensuring that the Credible Data Program is fully responsive to entities like MBI who contributes credible data under these rules and being timelier and more transparent about the benefits to local watersheds, communities, policymakers, and stakeholders across the state. This can serve as a much needed counterweight to the current zeal to arbitrarily disarm important regulations that have demonstrated benefits to the public, but which have been poorly demonstrated by the current practice of cost/benefit analysis across the U.S.”

We understand the response by the agency, but this so called Common Sense initiative has gone unchallenged for too long and it is doubtful that it has produced the intended results beyond adding another burden that diverts the agency away from its real mission.