

Nutrients ESO Comments Summary

Navistar

- Concerns about the proposed Phosphorus limit in their NPDES permit renewal
- Support for numeric criteria with narrative description of when or how the criteria applies

Ohio Home Builders Association

- Does not believe efforts to reduce nutrients should form the basis for additional regulation on construction storm water – since not a significant source
- Strongly discourages numeric criteria – supports narrative criteria

Advanced Drainage Systems, Inc.

- Supports 4R's
- States subsurface drainage is a valuable tool in reducing sediment and nutrient load from surface and subsurface runoff
- With systematically drained fields, more opportunity to reduce and treat nutrient loss
- Continue & expand education and outreach on Ag BMPs

Ohio Corn & Wheat Growers Association

- Supportive of Ohio approach
- Difficult to make substantial comments at this time

Ohio Farm Bureau Federation

- Provides responses to ESO questions on impacts
- Reducing nonpoint source voluntary flexibility would be unacceptable
- Supports ecoregion specific numeric criteria
- Questions
 - What process will be used to establish ecoregional thresholds to determine when natural eutrophication transitions into cultural?
 - Why use TP rather than DRP?
 - Why didn't Ohio EPA use regional reference (ecoregion) approach to develop numeric criteria for rivers & streams – used it for inland lakes

Bill Meinert, O'Brien & Gere, Consultant

- Recommends completing the mass balance recommendation of the Point Source and Urban Nonpoint Source Workgroup
- Concerns with nonpoint source reductions, questions about trading and expanding MS4 permits
- Supports flexibility for POTWs, encourages experimentation
- Equity issues – Lake Erie vs. Ohio River, funding for experimentation and implementation for early adopters, far-field effects vs. local TMDL requirements
- How did we consider the Gulf of Mexico Initiative of 2008
- How did we consider the on-going Great Lakes Restoration Initiative – past and recently announced findings
- Have we considered WERF Final Report “Modeling Guidance for Developing Site-Specific Nutrient Goals” – near and far-field effects
- How might trading be incorporated into the TIC methodology
- Annual average goals or limits – not monthly or weekly limits
- Identify sources of funding - all stakeholders

Guy Jamesson, Consultant

- Supports overall approach, supports use of stressor-response data relationships to develop numeric criteria, very much agrees with weight of evidence approach, supports TIC
- Strongly supports adaptive management in implementation
- Agrees with & supports comments from AOMWA and OWEA
- Concerns:
 - whether numeric criteria may be overly conservative and thereby impose excessive costs on point sources
 - How data will be used to evaluate the TIC for specific streams
 - How limits and loadings targets will be imposed and allocated among point & nonpoint sources – how permit limits will be implemented if nonpoint source controls are necessary to achieve target nutrient reductions yet are not mandated
 - How reasonable potential analysis will be performed
 - How effluent limits will be implemented in NPDES permits
- Requests Ohio EPA's review and response to a blog posting regarding use of the ICI in the TIC

Ohio Environmental Council

- Concerns with weighting of TIC indicators – importance of some indicators may be reduced relative to others
- Support criteria development for large streams and headwater streams (including MWH streams)
- Protections for downstream waters in rule language
- Biological assemblages used in the TIC should be broadened to include mussel species

The Nature Conservancy

- There is a clear need for nutrient water quality standards
- Need to clarify how downstream impacts of nutrient standards will be addressed if TIC is used
- Need standards for larger streams – based on maintaining & improving quality, downstream impacts to Lake Erie/Ohio River
- Higher concentrations of TP in MWH streams will dominate & not allow downstream streams to reach needed & lowers TP concentrations – request a specific analysis on effects of high nutrient MWH streams on downstream WWH and EWH attainment; asks that MWH streams be reassessed concerning potential for upgrade to at least WWH
- Ohio EPA, ODNR, ODA should structure more incentives to reach nutrient goals when source of problem is altered habitat
- Headwater stream contributions – look at ways to reduce nutrient input from
- Explain coordination with ORSANCO's Nutrient Criteria Plan and Lake Erie LaMP
- Explain how rules have been evaluated to meet drinking water standards
- Determine if nutrient criteria will be protective of mussels
- Provide additional examples of application of the criteria in plain language for general public
- Request Agency convene "Nutrient Standard Forums" during IPR steps

Ohio Water Environment Association

- Supports development of the TIC, weight of evidence approach
- Concern with lack of mandates on nonpoint sources
- Requests clarification on impacts to POTWs with existing nutrient limits
- TIC scoring questions
 - Where in relation to discharge will be scores be determined?
 - What time period & what type of data will be used in determining TIC score?
 - What will be the determination of credible data and how will it be evaluated?

- How will partial attainment be addressed?
- TMDL/WQBEL questions
 - How will TIC score be used in TMDL/WQBEL calculations?
 - How will contributions from point/nonpoint sources be determined and how will that factor into calculations?
 - How will reasonable potential be used to determine limits in permits? Will it include elements in November 2010 drafts of 3745-1-44 & 3745-33-07? – Support flexibility
 - Recommended consideration of seasonal or annual loading limits in lieu of weekly/monthly – long term loading limits
- Treatment Technology – draft strategy framework does not acknowledge difficulty existing plants face in major retrofit projects – costs in framework are out of date and will be considerably greater, ability of plants to meet technology limits may not be realistic
- Supports providing WWTP opportunity to pursue water quality trading/habitat restoration prior to receiving final effluent limits but compliance time should be flexible enough to allow results of these other actions to be measured and improvements determined before limits kick in
- Support incorporation of Integrated Planning into the rules
- Support inclusion of Adaptive Management
- Major problem – lack of regulatory requirements for nonpoint sources
- Economic and financial burden concerns
- Encourages Ohio EPA to form advisory board with participation from AOMWA, OWEA, small, medium and large municipalities, ODNR, ODA, nonpoint source representatives and select industry experts to assist in development of the rule
- Supports AOMWA comments

National Association of Clean Water Agencies

- Supportive of TIC and weight of evidence approach
- Supportive of adaptive management, inclusion of integrated planning, and affordability considerations and flexible implementation timeframes
- Meaningful reduction requirements for nonpoint sources – establishment of accountability frameworks at state level – quantitative allocation process for all sources, performance standards (to enable progress monitoring), and implementation drivers (loss or redirection of funding for nonpoint source management to extent possible under current law)

City of Columbus Department of Public Utilities

- Incorporates comments of AOMWA and NACWA
- Supports weight of evidence approach
- Concerns about implementation of nutrient limits when POTW not cause of impairment
- Supports adaptive management – flexibility in determining if alternative practices are effective before effluent limits kick in
- Supports creation of stakeholder Advisory Working Group for rule development

Association of Ohio Metropolitan Wastewater Agencies

- Supportive of broad concepts, TIC, weight of evidence approach and adaptive management
- Concerned that nutrient targets may translate into effluent limits at the edge of current technology capabilities, concerned targets are overly conservative – encourages Ohio EPA to reconsider target criteria
- Cost considerations and no guarantee stream targets will be achieved because of nonpoint sources
- Implement recommendations of Point Source & Urban Nonpoint Workgroup – statewide mass balance & integrated planning

- Encourages development of nonpoint source control programs to ensure these sources are controlled – should bear costs too
- TIC score process and implementation questions
 - How will credible data be used?
 - Where in relation to POTW's discharge will TIC be determined?
 - What time period and type of data will be used – should give more recent data higher weight in scoring process
 - How will multiple data values for each TIC component be used?
 - Concerned about draft TIC scoring for biocriteria within the range of non-significant departure being given only on-half the applicable biocriteria score – overly conservative
 - What happens when there is no data for one of the metric factors – or insufficient data to develop TIC score? – Believe nutrient limits should not be implemented until such data is developed
 - How will partial biological attainment be addressed?
 - Want to understand revisions made to TIC scoring process since 2010 Working Draft
- TMDL/WQBEL Calculations
 - Look forward to more details on utilizing the TIC score in TMDLs and WQBELs
 - How will Ohio EPA determine a point source's contribution to nutrient impairment is significant enough that controls will actually make a difference or should be imposed?
 - Will reasonable potential be same as used for toxics and if not – how will it differ?
 - Suggest seasonal or annual loading limits instead of concentration based limits – would be consistent with implementation in Chesapeake Bay watershed
- Implementation of Nutrient Limits
 - Further discussion on whether TP of 1.0 mg/l and DIN of 10 mg/l are appropriate interim limits
 - Support flexibility in length of time interim limits are in place – enough time to evaluate reduction measures
 - Suggest adaptive management be broadly defined to include more than water quality trading
 - Needs to be some sort of confirmation that nutrients are actual cause of the impairment as opposed to other non-nutrient stressors
 - Rule should include flexibility for compliance with nutrient limits when there are other stressors preventing attainment such as dams, lack of habitat, etc.
 - If reasonable potential indicates no rationale for nitrogen limits – there would be no interim DIN limits and no interim DIN WLA included in TMDLs, correct?
 - Strongly encourage adaptive management be incorporated into nutrient WQBELs and TMDLs
 - How will existing nutrient limits based on a TMDL be handled? – If no rationale based upon TIC process – such limits should be eliminated
 - Need to track water quality improvements in addition to pounds of reduction
 - Encourage credit be considered for nutrient reduction actions already taken by POTWs
- Advisory Workgroup – encourages formation of a group to help develop nutrient rules

Northeast Ohio Regional Sewer District

- Support for weight of evidence and adaptive management approach
- TIC scoring questions
 - Where in relation to POTW's discharge will TIC be determined?
 - What time period will be used for data?
 - How will values used to determine TIC scores be aggregated?
 - How frequently will TIC scores be calculated?
 - Will all available credible data be used?
 - How will situations where partial biological attainment existed be addressed in calculating the TIC score?
 - According to TIC – Rational and Scoring – sites with marginal biological performance and one indication of over-enrichment will be listed as impaired even if the TIC score indicates a higher classification.

Would this same downgrading of scores also apply to sites in non-attainment? It is possible for a site to fail biological criteria, have normal dissolved oxygen variance, and receive one in both the benthic algae and nutrient categories resulting in a score indicated of “threatened” water body – would such site be downgraded to impaired?

- WLA & WQBEL questions
 - In some cases TIC score will show improvement while not yet reaching acceptable level – how will this be handled?
 - How will Ohio EPA determine if point source controls will lead to wq improvements?
 - Should consider seasonal and/or annual loading limits
 - What will RP process look like for nutrients?
 - What is basis of using stream design flows at 80th percentile exceedance level – harmonic mean flows would be more appropriate especially if applied seasonally
 - How will other sources of nutrients be evaluated to assure wq improvements without excess cost?
- Concern over nutrient target values – not achievable with current technologies – also concerned with draft interim nutrient limits
- Concern rulemaking does not address nonpoint sources
- Encourages implementation of Point Source & Urban Nonpoint Source Workgroup Report
- Consider integrated planning & provisions of ORC 6111.03(J)(3) to allow point sources flexibility
- Invites Ohio EPA to convene advisory group to work with Agency in rule language development

Butler County Water & Sewer Department

- Supports numeric criteria, weight of evidence approach, TIC
- Supportive of mandatory nonpoint source reduction goals
- Supports AOMWA’s comments
- Cost input – real estimates to use!
- Concerned with cost, limits at the very edge of current technology
- Unbalanced regulatory burden inconsistent with Common Sense Initiative (EO 2011-01K) and Affordability Act (SB 22, 9/30/2011)

City of Lima

- Supportive of the TIC but is incomplete and has shortcomings
- General comments
 - Supports weight of evidence approach
 - Holistic assessment of causes/sources must be performed before nutrient limits are imposed
 - Point sources should not have to bear the burden where nonpoint sources are a significant part of the problem
 - Agency should not rely on trading to ease financial impacts on communities – trading has had limited success
 - Include off-ramps where TIC limits are economically unreasonable or technically infeasible
 - P removal cost information
- Technical comments
 - TIC scoring system needs to be fully peer reviewed and tested
 - Need clarification on current version of TIC
 - Several comments/questions on the draft Tetra Tech document
 - TIC needs to be verified before it is used
 - How will TIC be used for MS4s?
 - Numerous questions on TIC implementation
 - Mentions Advisory Panel for rule development

PCS Nitrogen Ohio, L.P.

- General Comments
 - If no impairment exists, nutrient reduction is not necessary – this concept needs to be explicitly stated
 - Averaging period must be explicitly identified
- The TIC should incorporate “limiting nutrient” concept
- TIC Scoring: The Rationale and Scoring Summary does not match up with the Technical Support Document – the TSD needs to be updated so that it supports the Rationale and Scoring.
- Conceptual Model: Confounding Factors must be accounted for in the derivation of numeric nutrient standards and in addressing aquatic life impairments
 - Response criteria must be sensitive to nutrients (See, Guiding Principles), but the ICI and IBI metrics upon which the TIC is based are not sensitive to nutrients (See, TSD Conceptual Model; 2013 USGS Streams Document).
 - Implementation of the TIC should incorporate adaptive management if confounding factors significantly influence use attainment.
- Criteria Derivation:
 - The data used to derive the numeric nutrient criteria and the statistical evaluations must be provided to allow for a transparent process
 - The proposed Dissolved Inorganic Nitrogen (DIN) criteria were not derived in the same manner as the Total Phosphorus (TP) criteria – the rationale for this approach requires greater explanation
 - The TP and DIN criteria were developed based on linear regressions. These regressions need to be revised to conform to guidance developed by USEPA on the use of Stressor-Response evaluations to derive numeric nutrient criteria.
 - The TP and DIN criteria derivation was based on the 0.5 probability basis from regressions with acknowledged poor predictive ability – OEPA needs to identify the error band around these analyses and explain how the proposed criteria are “necessary” to protect aquatic life uses.
- Additional Concerns:
 - Administrative review.
 - Implementation of TIC
 - Development of site-specific standards
 - Concerns with “default” permit limits in Framework